

WATER PURCHASE AGREEMENT

BETWEEN

THE CITY OF MT. VERNON, KENTUCKY

AND

THE NORTHERN ROCKCASTLE COUNTY WATER DISTRICT

THIS WATER PURCHASE AGREEMENT, is made and entered into this _____ day of _____, 1992, by and between the CITY OF MT. VERNON, P. O. Box 1465, Mt. Vernon, Kentucky 40456, (hereinafter referred to as the "SELLER"), party of the first part, and the NORTHERN ROCKCASTLE COUNTY WATER DISTRICT, Route 3, Box 117, Mt. Vernon, Kentucky 40456, (hereinafter referred to as the "PURCHASER"), party of the second part:

WITNESSETH:

WHEREAS, the SELLER owns and operates a water treatment plant and water supply distribution system within the city limits of Mt. Vernon, Kentucky and surrounding areas, all of which are located in Rockcastle County, Kentucky; and

WHEREAS, the PURCHASER was organized and established for the purpose of operating a water supply distribution system in an area contiguous to the area served by the City of Mt. Vernon, Kentucky; and

WHEREAS, the PURCHASER requires a supply of treated water to operate its water supply distribution system; and

WHEREAS, the SELLER has a supply of treated water which it desires to sell; and

WHEREAS, the PURCHASER has been purchasing water from the SELLER pursuant to the terms of a Water Purchase Contract dated April 30, 1971, and any and all supplemental contracts, addenda or amendments thereto; and

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

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PURSUANT TO 807 KAR 5.011,
SECTION 2 (1)

BY _____

WHEREAS, the PURCHASER desires to increase the maximum amount of water it can purchase from the SELLER; and

WHEREAS, it is the purpose of this Water Purchase Agreement, (hereinafter referred to as the "Agreement"), to set forth the entire agreement between the SELLER and the PURCHASER for the sale and purchase of water at the designated points of connection between the two water supply distribution systems; to supersede the April 30, 1971, Water Purchase Contract, and any and all supplemental contracts, addenda or amendments thereto, between the parties; to establish minimum and maximum amounts of water to be sold; and to define the rates and charges for the amounts of water sold;

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

1. TERM:

The term of this Agreement shall extend for a period of thirty nine (39) years from and after the Effective Date of this Agreement, unless otherwise extended or modified by written agreement between the parties.

2. QUANTITY OF WATER:

The SELLER will furnish to the PURCHASER such quantities of water as the PURCHASER may require in order to provide service to its customers, not to exceed, however, 164,160 gallons per day or five (5) million gallons per month.

3. MINIMUM WATER PURCHASES:

During the life of this Agreement, the PURCHASER agrees to purchase from the SELLER a minimum of two million five hundred thousand (2,500,000) gallons per month. The PURCHASER shall pay for the minimum monthly quantity of water even if the minimum ~~quantity~~ amount is not used by the PURCHASER.

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4. REDUCED PURCHASES:

In the event the PURCHASER purchases less than the minimum monthly amount of water set forth in paragraph 3 above for twenty-four (24) consecutive months, then the maximum monthly quantity of water

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BY *James G. Kelly*
FOR THE PUBLIC SERVICE COMMISSION

required to be furnished by the SELLER in paragraph 2 of this Agreement will be automatically reduced to the minimum amount of water set forth in paragraph 3 of this Agreement.

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, will be potable, treated water meeting applicable purity standards of the Kentucky Department of Natural Resources, Division of Water.

6. DELIVERY POINTS:

The SELLER will 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.

The water will be furnished at the points of delivery at a reasonably constant pressure calculated at thirty (30) pounds per square inch. Should greater pressures be required by the PURCHASER than that available at a point of delivery, then, it shall be the PURCHASER'S responsibility, at its own expense, to provide and operate and maintain such booster pumping, storage and other facilities within its system as may be required to develop additional pressures within the PURCHASER'S system. The SELLER will 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.

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 will 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 size, and meter sizes are as follows:

<u>POINT OF DELIVERY</u>	<u>MAIN SIZE</u>	<u>METER SIZE</u>
1. South US 25 at Chestnut Ridge	6-inch	1-inch
2. South US 25 at Chestnut Ridge	6-inch	1 1/2-inch
3. US 25 North at Renfro Valley	6-inch	4-inch

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Charles C. Neal

7. OPERATION OF SYSTEM:

The SELLER will, at all times, operate and maintain its water system in an efficient manner and will take such actions as may be reasonably necessary to perform its obligations under this Agreement. Temporary or partial failures to deliver water will be remedied with all possible dispatch. The SELLER will inform the PURCHASER of the nature and extent of such temporary or partial failure to deliver water as soon as is reasonably possible after a failure to deliver water has been identified.

8. METERING EQUIPMENT:

The SELLER will furnish, install, operate, and maintain at its own expense, at the points of delivery set forth in paragraph 6 of this Agreement, 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 disclosed by test to be inaccurate will be corrected for the one month period previous to such test in accordance with the percentage of inaccuracy found by such test, unless SELLER and PURCHASER agree upon a different amount. If any meter fails to register for any period, the amount of water furnished during such period will be deemed to be the amount of water delivered in the corresponding period immediately prior to the failure, unless SELLER and PURCHASER agree upon a different amount. The metering equipment will be read on or about the twentieth (20th) day of each month. The PURCHASER, at all reasonable times, and upon request with adequate notice of at least twenty-four (24) hours, during the normal business hours of the seller, shall have access to the metering equipment for the purpose of verifying the meter reading(s).

9. EXPANSION OF PURCHASER'S SYSTEM:

Any proposed water line extension project or proposed expansion or any major modifications on the PURCHASER'S system must be submitted to the SELLER for review and written approval prior to any construction activities beginning and shall meet the following minimum criteria listed below. The SELLER'S written approval will not be unreasonably withheld.

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BY: James L. Hibel
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(a) The PURCHASER shall furnish three (3) complete sets of construction plans, specifications, and related material to the SELLER that adequately describes any extension or expansion or modification project proposed by the PURCHASER.

(b) The PURCHASER shall size all water lines based on flow demands and pressure requirements as determined by a hydraulic analysis performed by a registered professional engineer licensed to practice in the Commonwealth of Kentucky. The hydraulic analysis shall also identify the PURCHASER'S additional water usage anticipated for the project so that the SELLER can determine what effect, if any, the project will have on the SELLER'S ability to adequately serve all of its customers, both retail and wholesale.

10. HYDRAULIC ANALYSIS:

The PURCHASER shall provide the SELLER with three (3) sets of construction plans and specifications of the PURCHASER'S water supply distribution system and a computer generated hydraulic analysis of the PURCHASER'S system within nine (9) months following the effective Date of this Agreement.

11. BILLING AND PAYMENT PROCEDURE:

The SELLER will furnish the PURCHASER on or about the first 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 period and the costs thereof. The PURCHASER shall pay those costs to the SELLER not later than the twentieth (20th) day of each month. Any amount remaining unpaid after the due date shall be deemed delinquent and shall bear interest at the rate of twelve percent (12%) per annum until paid.

12. RATE:

The PURCHASER agrees to pay the SELLER for water delivered by the SELLER and for any connections of the PURCHASER'S system to the SELLER'S system in accordance with the following:

(a) To purchase from SELLER a minimum of two million five hundred thousand (2,500,000) gallons of water per month for thirty-nine years. The PURCHASER agrees to pay for the minimum monthly quantity of water even if the minimum monthly quantity of water is not used by the PURCHASER. The monthly maximum amount of water purchased from SELLER shall not exceed five (5) million gallons of water for any

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FOR THE PUBLIC SERVICE COMMISSION

one month period during the life of this Agreement at a flow rate not to exceed one hundred fourteen (114) gallons per minute.

(b) The PURCHASER shall pay to the SELLER each month for water delivered by the SELLER to the PURCHASER \$1.07 per one thousand (1,000) gallons of water registered on the SELLER'S metering equipment; provided, however, the PURCHASER shall be deemed to have taken at least the minimum quantity of water as stated above. The costs to the PURCHASER will be measured by the volume registered at the metering equipment on a monthly basis. If the PURCHASER takes more than it's maximum monthly quantity without having obtained prior written approval from the SELLER, an additional charge of twenty five (25) cents per one thousand (1,000) gallons of water that exceeds the monthly maximum quantity of five (5) million gallons shall be paid by the PURCHASER to the SELLER.

Volume reports shall be submitted by the SELLER to the PURCHASER with the monthly bill. The PURCHASER shall have the right to make audits at reasonable times during normal business hours of the SELLER'S records to the extent necessary to verify the SELLER'S calculations of the water delivered to the PURCHASER.

Any water purchased at any time during the life of this Agreement by the PURCHASER in excess of the SELLER'S monthly maximum quantity of five (5) million gallons shall be only for the convenience of the PURCHASER and shall not be considered as a waiver of the SELLER'S monthly maximum quantity.

(c) The PURCHASER shall reimburse the SELLER within thirty (30) days of receipt of SELLER'S itemized invoice for all costs incurred by the SELLER for making connection of the PURCHASER'S system to the SELLER'S system as requested by the PURCHASER. Said costs may include construction costs, engineering, inspection, administration, accounting, legal and property costs.

13. RATE MODIFICATION:

The provisions of this Agreement pertaining to the rate to be paid by the PURCHASER for water delivered by the SELLER are subject to modification from time to time based upon the SELLER'S cost of providing water to the PURCHASER, but will not be modified more than once per year. Any rate adjustment

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modification proposed by the SELLER will be based on a demonstrable increase or decrease in the costs of providing water service to the PURCHASER.

14. ADVANCE NOTICE OF RATE MODIFICATION:

The SELLER will notify the PURCHASER in writing of the proposed rate at least thirty (30) days before it is to be adopted as the actual rate so that the PURCHASER can submit written comments, if any, on the proposed rate before it is actually adopted by the SELLER.

At the expiration of the thirty (30) day period, the SELLER may establish and adopt the actual rate to be charged the PURCHASER and will immediately notify the PURCHASER in writing of the new rate.

15. EFFECTIVE DATE OF RATE MODIFICATION:

The effective date of the new rate will be the date the SELLER adopts the actual rate. Said date will be at least thirty (30) days after the SELLER has notified the PURCHASER in writing of the proposed rate.

16. WATER SHORTAGE:

In the event of an extended shortage of water, or if the supply of water available to the SELLER is otherwise diminished over an extended period of time, the supply of water made available to the PURCHASER shall be reduced or diminished by the same ratio or proportion as the supply to the SELLER'S other retail and wholesale customers is reduced or diminished.

17. WATER STORAGE:

The PURCHASER agrees to install, maintain and utilize sufficient storage capacity in its distribution system to maintain its system for a minimum period of twenty-four (24) hours, based upon the average daily usage of its customers.

18. INDEMNIFICATION:

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

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BY: [Signature]
FOR THE

19. DEFAULT:

The PURCHASER agrees to pay all monies as described in the Agreement when due, and both Parties hereby agree to carry out all other duties and obligations to be performed by them pursuant to all of the terms and conditions set forth and contained in this Agreement. The failure of either Party to perform any of its duties or obligations contained herein shall be an event of default by that Party.

(a) Notice of Default. Upon the occurrence of an event of default, the nondefaulting Party may promptly notify the defaulting Party, in writing pursuant to the terms of this Agreement, of the existence and nature of the event of default.

(b) Curing of Default, Termination and Remedy.

(1) Within fifteen (15) days after written notice of the event of default has been received, the defaulting Party shall cure such default.

(2) Should the defaulting Party fail to cure the default within fifteen (15) days after written notice has been given to it, or within the time reasonably necessary to cure the default by the exercise of due diligence, or within the time specified in this Agreement, then the nondefaulting Party may, at its option, immediately terminate this Agreement and recover from the defaulting Party any and all damages to which it may be entitled under applicable law.

(3) Notwithstanding the foregoing provisions, neither Party shall have the right to terminate this Agreement unless the event of default constitutes a breach of a material term or condition of this Agreement.

20. TERMINATION OF WATER SERVICE FOR NONPAYMENT:

Should an act of default by the PURCHASER in payment of monies under this Agreement continue for a period of thirty (30) days from the giving of written notice without having been cured by the PURCHASER, then the SELLER may, by written notice, terminate the right of the PURCHASER to receive any or all of its water supply from the SELLER. If the default in payment continues for thirty (30) days or more after the termination of water service, the SELLER may terminate this Agreement and recover from the PURCHASER any and all damages to which it may be entitled under applicable law.

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BY: Justin L. Neal
FOR THE PUBLIC SERVICE COMMISSION

21. DISPUTED BILL:

If a portion of any bill is in a bona fide dispute, the undisputed amount shall be paid when due. In the event either Party is entitled to all or any portion of the disputed amount, such Party shall also be entitled to interest on such amount at twelve percent (12%) per annum. In any dispute relating to the payment of money, the prevailing Party shall be reimbursed by the nonprevailing Party for the reasonable costs of resolving such disputes, including reasonable attorney and consulting fees. Use of the above procedure shall not be deemed an event of default under this Agreement.

22. 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:

(A) As to the SELLER

City of Mt. Vernon
City Hall
P. O. Box 1465
Mt. Vernon, Kentucky 40456
Attention: Mayor

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(B) As to the PURCHASER

Northern Rockcastle County Water District
Route 3
Box 117
Mt. Vernon, Kentucky 40456
Attention: Chairman

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BY: Judith C. Keel
FOR THE PUBLIC SERVICE COMMISSION

23. RESPONSE TO NOTICES:

At any time either Party desires or is required to respond to any notice given pursuant to paragraph 22, such response shall be made in the manner prescribed by paragraph 22 and be given within fifteen (15) days after receipt of the notice unless otherwise provided in this Agreement.

24. 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.

25. 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.

26. 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 Agreement shall not be considered a waiver of any such rights or matters at any subsequent time.

27. SUCCESSORS AND ASSIGNS:

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

28. 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,

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BY: Justin A. Neal
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shall succeed to the rights and obligations of the PURCHASER and the terms of this Agreement shall be binding upon the successor in interest.

29. PLEDGE:

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

30. FmHA APPROVAL:

The PURCHASER has financed construction of its existing system through loan(s) from the United States of America, acting through the Farmers Homes Administration of the United States Department of Agriculture. The provisions of this Agreement pertaining to the undertakings of the PURCHASER are conditioned upon and subject to the approval of the State Director of the FmHA, which approval shall not be unreasonably withheld. Similarly, any future modifications of the provisions of this Agreement by the Parties shall likewise be subject to the prior approval, in writing, of said State Director. Such prior approval shall not, however, apply to any change in rates paid by the PURCHASER for water purchased by it from the SELLER as same is controlled by the provisions of this Agreement.

31. EFFECTIVE DATE:

The Parties acknowledge that, in order for this Agreement to be made effective, it must be approved by and executed on behalf of the SELLER, the PURCHASER, and FmHA. The City (SELLER) must also enact or amend such ordinances as it deems necessary to effectuate the provisions of this Agreement pertaining to establishing and modifying rates. This Agreement shall become effective with the final passage, approval, and publication of such ordinances. The Effective Date shall be the publication date. The term of this Agreement shall be measured from the Effective Date.

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BY: Justin C. Rich
FOR THE PUBLIC SERVICE COMMISSION

32. PRIOR CONTRACTS SUPERSEDED:

As of the Effective Date of this Agreement, the April 30, 1971 Water Purchase Contract, and any and all supplemental contracts, addenda or amendments thereto, shall be superseded.

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.

CITY OF MT. VERNON

BY: _____
GARY R. CROMER, MAYOR

ATTEST: _____
KAYE RADER, CITY CLERK

NORTHERN ROCKCASTLE COUNTY WATER DISTRICT

BY: _____
BYRON BAKER

ATTEST: _____

CONCURRENCE BY
FARMERS HOME ADMINISTRATION

BY: _____
MARY ANN BARON, STATE DIRECTOR

DATE: _____

This Water Purchase Agreement has been approved as to legality of form and content by:

MR. JOHN E. CLONTZ
Clontz & Cox
Attorneys at Law
P. O. Box 1350
Mt. Vernon, KY. 40456

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BY: _____
FOR THE PUBLIC SERVICE COMMISSION