

EMERGENCY WATER PURCHASE AGREEMENT

BETWEEN

PAINTSVILLE UTILITIES COMMISSION

AND

MAGOFFIN COUNTY WATER DISTRICT

THIS EMERGENCY WATER PURCHASE AGREEMENT is made and entered into this the 29 day of March, ¹⁰~~2009~~, by and between **PAINTSVILLE UTILITIES COMMISSION**, a governmental agency of the City of Paintsville, Kentucky, hereinafter referred to as "Seller" and the **MAGOFFIN COUNTY WATER DISTRICT**, a water district created and existing under the Laws of the Commonwealth of Kentucky, hereinafter referred to as "Purchaser";

WITNESSETH:

WHEREAS, the Seller is a governmental agency of the City of Paintsville and provides water and sewer service to the citizens of Johnson County and other areas;

WHEREAS, the Purchaser is a water district which was organized and established under the provisions of Chapter 273 of the Kentucky Revised Statutes;

WHEREAS, the Purchaser is in need of an emergency water supply;

WHEREAS, the Seller has water lines in the vicinity of Magoffin County and is willing to provide Purchaser with an emergency water supply subject to the provisions below;



WHEREAS, by resolution duly adopted on _____, ¹⁰2009 by the Seller's Commission, this Agreement was approved and the Seller's General Manager was authorized to execute this Agreement for and on behalf of the Seller; and

WHEREAS, by resolution adopted on _____, ¹⁰2009 by the Purchaser's Board of Directors, this Agreement was approved and the Purchaser's Superintendent was authorized to execute this Agreement for and on behalf of the Purchaser;

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

1. QUALITY AND QUANTITY OF WATER

Seller agrees to furnish the Purchaser at the point of delivery hereinafter specified, during the term of this Agreement, potable, treated water meeting applicable purity standards of all appropriate state and federal regulatory agencies in times of emergency as defined in Paragraph 2 below and in quantities to be determined and controlled by Seller's water available in excess of the quantities necessary to serve Seller's retail customers. Should Seller not have water available in excess of the quantities necessary to serve Seller's retail customers, Seller has no obligation to provide water to Purchaser for the duration of the lack of excess water.

2. DEFINITION OF EMERGENCY

Emergency means any situation or event, natural or manmade, which impairs Purchaser's water supply reserve or system such that (1) there is a disruption of the normal water supply functions to Purchaser's customers and (2) in order to protect the public health, an immediate supply of water is necessary.



3. **RESTRICTION ON RESALE OF WATER**

The water made available under this Agreement is only for use by retail customers (i.e. consumers) of the Purchaser and may not be sold on a wholesale basis to any other utility.

4. **TERM**

The term of this Agreement shall be for a period of one (1) year and shall automatically renew each year thereafter for a successive one-year term.

5. **TERMINATION**

Either party may terminate this Agreement at any time by giving written notice to the other party. Termination of this Agreement shall not prejudice the rights, nor relieve the obligations, accrued to the date of termination.

6. **POINT OF DELIVERY**

The water will be furnished to the Purchaser through one four-inch Omni meter located on U.S. 460 near the Johnson County/Magoffin County line. Purchaser shall be solely responsible for the financing, procurement and installation of all necessary water lines from its existing system to the Johnson County/Magoffin County line where Purchaser shall make connection with the Seller's water system in accordance with the Seller's system specifications. It shall also be the obligation and responsibility of Purchaser to purchase and install a water meter, at a location to be determined by Seller, to measure the water flow to Purchaser. Upon installation of said water lines, Purchaser agrees to convey ownership of said lines to Seller, and Seller shall adopt said lines into its existing system. Seller also reserves the right to install, at its own cost, a water meter on



the Johnson County side of the county line, to measure water flow in addition to the meter Purchaser installs.

7. DECLARING AN EMERGENCY SITUATION

Water will be available only for emergency purposes as defined in Paragraph 2 above. The procedure for declaring an emergency shall be as follows. Purchaser shall notify Seller of its intention to declare a water emergency and shall inform Seller of the nature and cause of the emergency, the number of customers affected by the emergency, the anticipated amount of water needed to abate the emergency and the anticipated duration of the emergency. Upon receipt of the information from Purchaser, should Seller concur a water emergency situation exists, Seller shall advise Purchaser of its concurrence and shall sell water to Purchaser in quantities to be determined and controlled by Seller's water available in excess of the quantities necessary to serve Seller's retail customers. Should Seller not have water available in excess of the quantities necessary to serve Seller's retail customers, Seller has no obligation to provide water to Purchaser for the duration of the lack of excess water.

8. OPERATION OF SYSTEM

The Seller shall, at all times, operate and maintain its water system in an efficient manner and shall take such action as may be reasonably necessary to perform its obligations under this Agreement. Temporary or partial failures to deliver water, when water is available in excess of the quantities necessary to serve Seller's other customers, shall be remedied with all possible dispatch upon discovery of any unknown breaks or unintentional disruptions of service lines. If and when discovered, the Seller shall inform



the Purchaser, by telephone, or by facsimile transmission, of the nature and extent of such temporary or partial failure to deliver water.

9. INITIAL WHOLESALE BILLING RATE

The initial billing rate shall be \$ 2.50 per 1,000 gallons of water. This rate is a discounted wholesale rate reflective of Seller's current cost of providing water service to the Purchaser at the point of delivery described in Paragraph 6 above. It is expressly understood that Seller is in the process of designing and constructing a new water treatment plant and the rate given herein shall lapse upon completion of said water treatment plant and the completion of a new cost of service rate study.

10. RATE MODIFICATIONS

The wholesale rate to be charged by the Seller to the Purchaser may be increased if the Seller's cost of providing water service to the Purchaser increases, including, but not limited to the completion of the new water treatment plant described in Paragraph 9.

11. EFFECTIVE DATE OF RATE MODIFICATIONS

The effective date of any rate modification shall be at least thirty (30) days after the Seller proposes to adopt the new rate.

12. NO LEAK ADJUSTMENT

Because the Purchaser is a wholesale customer and not a retail customer, the Purchaser shall not be entitled to any leak adjustments.

13. BILLING AND PAYMENT PROCEDURE

The Seller shall furnish the Purchaser, not later than the 4th day of each month, with an itemized statement of the amount of water furnished the Purchaser at the point of delivery during the preceding month and the cost thereof. The Purchaser shall pay



those charges not later than the 15th day of each month. A ten percent (10%) late payment penalty shall be assessed if any portion of the bill remains unpaid after the due date. In addition, any amount remaining unpaid after the last day of the month shall be deemed delinquent and shall bear interest at the rate of twelve percent (12%) per annum until paid.

14. 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 non-prevailing 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.

15. INDEMNIFICATION

It is agreed and understood that Purchaser shall fully and completely and unconditionally indemnify and hold harmless Seller for any claims or causes of action asserted against Seller for providing emergency water to Purchaser and any and all claims or causes of action arising out of this Agreement.

16. EFFECTIVE DATE AND CONTINGENCIES

The parties acknowledge that this Agreement shall not become effective until it has been reviewed by the PSC. The Effective Date of this Agreement shall be the date the Agreement is approved by PSC. The term of this Agreement shall be measured from the Effective Date.



17. 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 as each party shall designate by similar notice:

(A) As to the Seller:

Paintsville Utilities Commission
137 Main Street
Post Office Box 630
Paintsville, Kentucky 41240
Attention: General Manager

(B) As to the Purchaser:

Magoffin County Water District
P.O. Box 490
Salyersville, Kentucky 41465
Attention: Superintendent

18. RESPONSE TO NOTICES

At any time either party desires or is required to respond to any notice given pursuant to Paragraph 17, such response shall be made in the manner prescribed by Paragraph 17 and be given within fifteen (15) days after receipt of the notice unless otherwise provided in this Agreement.

19. 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.

20. FORCE MAJEURE



Seller's failure to perform any term or condition of this Agreement as a result of conditions beyond its control such as, but not limited to, war, strikes, fires, floods, drought, acts of God, governmental restrictions, power failures, or damage or destruction of any waterlines, or component equipment, or other machinery, shall not be deemed a breach of this Agreement.

21. ENTIRE AGREEMENT; SEVERABILITY

This Agreement constitutes the entire agreement between the parties with respect to the subject matter contained therein. Any prior agreements concerning this subject matter are hereby revoked and rescinded. Except as otherwise provided herein, no subsequent alteration, amendment, change or addition to this Agreement shall be binding upon either party unless and until it is reduced to writing and signed by both parties. Should any provision of this Agreement be declared to be invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall remain in full force and effect unless such invalid or unenforceable provision substantially alters the benefits of the Agreement for either party.

22. NON-WAIVER

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

23. 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 or transfer is to a successor in the operation of its properties by reason of a merger, consolidation, sale or foreclosure where substantially all such properties are acquired by such a successor empowered by law and financially able to effect the purposes of this Agreement which it must assume and, thereafter, be exclusively responsible for the performance of the terms of this Agreement to be performed by either party hereunder.

24. PURCHASER'S SUCCESSOR

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

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

PAINTSVILLE UTILITIES COMMISSION

BY: *James D. Smith*

ITS: *General Manager*

MAGOFFIN COUNTY WATER DISTRICT

BY: *Robert H. ... Chairman*

ITS: *... Secretary*



COMMONWEALTH OF KENTUCKY
COUNTY OF Magoffin

I, Shirley Borders, Notary Public for the County aforesaid, do certify that the foregoing Emergency Water Purchase Agreement was this day produced to me in said County and duly acknowledged before me by Larry Herald, as General Manager of the Paintsville Utilities Commission, on behalf of the Paintsville Utilities Commission, on this the 26 day of March, ~~2009~~ 2010

Shirley Borders
NOTARY PUBLIC

MY COMMISSION EXPIRES:

April 25, 2010

COMMONWEALTH OF KENTUCKY
COUNTY OF Johnson

I, Belva J. Jones, Notary Public for the County aforesaid, do certify that the foregoing Emergency Water Purchase Agreement was this day produced to me in said County and duly acknowledged before me by Larry D. Herald, as Superintendent of the Magoffin County Water District, on behalf of the Magoffin County Water District, on this the 29 day of March, ~~2009~~ 2010

Belva J. Jones
NOTARY PUBLIC

MY COMMISSION EXPIRES:

July 23, 2013

