

INTERLOCAL COOPERATION AGREEMENT
FOR THE DEVELOPMENT OF A
WATER TREATMENT PLANT AND RELATED INFRASTRUCTURE

THIS INTERLOCAL COOPERATION AGREEMENT (the "Agreement") is made and entered into and deemed effective as of the 14 day of November, 2003, by and between the Cumberland County Fiscal Court (referred to herein as "Fiscal Court"), the Cumberland County Water District (referred to herein as "District") and the City of Burkesville (referred to herein as "City"), each a "Party", (or collectively the "Parties") and each a political subdivision of the Commonwealth of Kentucky.

WHEREAS, under the Interlocal Cooperation Act, Sections 65.210 to 65.300, inclusive, of the Kentucky Revised Statutes ("KRS"), as amended, any power or powers, privileges or authority exercised or capable of exercise by a public agency (including a city, a county or any other political subdivision of the Commonwealth) may be exercised jointly with another public agency under an agreement (an "interlocal cooperation agreement") for joint or cooperative action pursuant to the provisions of the Act, and such public agencies may acquire, construct, maintain, add to and improve the necessary property, real and personal, which is required in order to accomplish the public purposes set forth in such interlocal cooperation agreement; and

WHEREAS, the District, a special district established pursuant to KRS 74 and regulated by the Kentucky Public Service Commission (pursuant to KRS 278), presently owns and operates a water treatment plant and distribution system, seeks to secure a reliable source of treated water to meet the demands of its present and future customers; and

WHEREAS, the City, a municipal corporation duly established pursuant to Kentucky statutes, owns and operates a water treatment plant and distribution system providing service to its customers and, through a water purchase agreement, provides water to the District, seeks to renovate and expand its water treatment plant to meet new water quality regulations and to meet the water demand of its customers and those of the District; and

WHEREAS, the Fiscal Court encourages the development of water service for all residents of the County and is an eligible applicant for the Kentucky Community Development Block Grant Program, and

WHEREAS, the Parties are in agreement that it is in their mutual interest to pursue cooperatively the public purpose of providing safe drinking water to the citizenry within their respective jurisdictions, and to this end seek to formalize by this Agreement an arrangement to share the costs and related benefits available through the cooperative development and use of one water treatment plant and extension to a transmission main (herein also referred to as "project"); and acknowledge that this

action is consistent with the objectives of the Lake Cumberland Area Water Management Planning Council, established pursuant to KRS 224A and KRS 151.

NOW THEREFORE, it is mutually acknowledged and agreed by and between the Parties hereto and so ordered as follows:

1. The Parties hereto agree that the foregoing statements are not mere recitals, but represent findings of fact by the respective bodies, and as such represent statements of public interest affecting all Parties hereto, including their respective constituencies.
2. Obligations and Responsibilities of the District:
 - A. The District hereby invites and encourages the City to take all steps necessary and appropriate to construct the project to meet the service needs of both the District and the City. The District will continue to encourage and support the City in this project and will actively participate in securing the necessary funding for the project.
 - B. The District will actively monitor the processes as the City procures all project related professional services and construction contractor(s) necessary for the appropriate and timely development of the project.
 - C. The District will continue to operate its water treatment plant until the new, shared plant comes on line, at which time the District will discontinue the use of its plant.
 - D. The District will continue to purchase water from the City of Albany according to its approved water purchase agreement with Albany until the new, shared plant comes on line, at which time the District, with appropriate notice to Albany, shall reduce the amount of water it purchases from Albany to a minimum amount and continue to purchase that amount for the term of that water purchase agreement. If emergencies warrant increasing the amount, the District may do so subject to timely notice to Burkesville, Albany and the Kentucky Public Service Commission at each such instance.
 - E. The District will retain full ownership of and responsibility for its water distribution system, remaining an autonomous legal entity, expanding to meet the needs of its service area to the extent feasible.
 - F. The District shall rely upon the expanded water treatment plant as its primary source of treated water and shall enter into a water purchase agreement with the City, which shall include the elements of this Agreement. The initial term of the water purchase agreement shall be ~~for ten~~ ^{for ten} years, and shall include an option for additional terms.

DEC 17 2003

PURSUANT TO 807 KAR 5:011
SECTION 9 (1)

BY Charles L. Down
EXECUTIVE DIRECTOR

3. Obligations and Responsibilities of the City:

A. The City hereby accepts the invitation of the District and commits to exercise all due and appropriate diligence to construct and bring on line its expanded water treatment plant envisioned by this Agreement, and to cooperate with the District and the Fiscal Court in securing the necessary funding for the project.

B. The City agrees to itemize, account for and report the total costs associated with all improvements and expansion to the water treatment plant and transmission main separately and distinctly from the City's costs related to its water distribution system and all other services provided by the City.

C. The City agrees to provide the District full and routine communication regarding all significant events related to the planning, development, and subsequent operation and management of the facilities envisioned herein and will take all reasonable effort to encourage routine observation of and participation in such significant events by the District's *contact person*, as set out in Section 5 A, below.

D. The City agrees to accept and give full consideration to applications for employment from individuals who are employed by the District at the time when the new, shared plant comes on line, who are qualified to fill a vacant position at the plant, and whose employment with the District may be terminated as a direct result of the District participating in this Agreement.

E. The City shall guarantee to the District delivery of up to one million gallons per day (1mgd) of treated water from the expanded plant at necessary and mutually agreed upon metering points. This volume amount and all related considerations shall be set out in a water purchase agreement with the District, which shall include the elements contained in this Agreement and which shall have an initial term of forty (40) years, with an option to extend the agreement for additional terms.

4. Obligations and Responsibilities of the Fiscal Court

The Fiscal Court agrees to assist in the overall project development as set out in this Agreement by serving as a joint applicant with the City in seeking grant assistance from the Kentucky Community Development Program.

Additionally, the Fiscal Court shall authorize the County Judge Executive to execute all required documentation to expedite the application process.

5. Parties agree as to Method for Determination of Rates:

Rates charged to each Party will be comprised of: a) that share of capital costs related to the design capacity purchased by the respective Party; plus b) the actual cost of water production (O&M) associated with the amount

PUBLIC SERVICE COMMISSION
OF KENTUCKY
EFFECTIVE

DEC 17 2003
BY Charles L. Brown
EXECUTIVE DIRECTOR

purchased. Production cost shall be determined via a cost of service analysis and a management analysis to be conducted on the water treatment plant every two years by an independent entity(ies) procured by both Parties jointly. More specifically:

A. Share of Design Capacity And Related Capital Cost: Based on an assessment of each system's respective need and subject to negotiation, an overall design capacity for the new facility shall be determined by the project engineer. A percentage of the total design capacity shall be dedicated to and purchased by the City and a percentage of plant capacity shall be dedicated to and purchased by the District. Each Party shall be assured of receiving up to that percentage of plant design capacity over the life of the plant. Consequently, each system shall bear the responsibility for the total capital cost of this facility in that same percentage at a fixed rate over the life of the plant.

During emergencies, when typical operating capacity may be significantly reduced, each Party shall receive a percentage of the daily production based on its percentage of the purchased design capacity.

The percentage of capacity dedicated to and acquired by each of the Parties may be altered by mutual agreement of the Parties.

B. Cost of Production: The cost of water production shall be established by a thorough analysis of all anticipated operation and maintenance costs on an annual basis, and these costs shall be fully disclosed to both systems which are Parties to this Agreement. These costs shall be incorporated into a unit cost per one thousand gallons, which shall be borne by the Parties based on their respective metered usage.

C. Rates: The actual rate per thousand gallons of water to be charged to the Party is comprised of the fixed capital amount based on that Party's percentage of dedicated design capacity plus the cost of production based on metered usage by that Party.

6. Parties further acknowledge and agree:

A. Each Party to this Agreement acknowledges the critical importance of open and continuing communication to assure the longterm benefit of this Agreement to their respective consumers. To this end, on the effective date of this Agreement and thereafter annually until its termination, each Party shall designate a principal *contact person* and it shall be the charge and obligation of these individuals to arrange for and actively engage in open communication on a routine basis, regarding any and all matters cited in or envisioned by this Agreement. Further, each designated *contact person* shall report on any issues and activities relating to this Agreement at regular or

special meetings of the Parties, in a manner as directed by the respective Party.

B. The Parties agree to work cooperatively in developing the water treatment plant, which shall include but not be limited to participation in planning and development activities, the securing or acceptance of funds, including participation in joint funding activities, the granting or securing of plan approvals and permits, encroachment permits, easements, rights of way, or other similar permits or authorizations as may be required.

C. The duration of this Agreement shall extend to and include the time by which all those activities and actions, as set out herein, relating to each Party, shall have been completed. The date of completion of the facilities and the signing of a water purchase agreement envisioned in this Agreement is anticipated to be not later than July 1, 2005

D. The acceptance of the completed facilities and the signing of a water purchase agreement between the Parties, subject to Kentucky Public Service Commission approval, shall together constitute the permissible method of complete termination of this Agreement.

E. The District operates under the jurisdiction of the Kentucky Public Service Commission. Consequently, the roles of the District as set out herein as well as the water purchase agreement to be entered into by the Parties of this Agreement are subject to the review and approval of the Commission. Every effort shall be made by both Parties to facilitate the appropriate review and implement the directives of the Commission in a timely and expeditious manner.

F. The Parties to this Agreement hereby designate the Lake Cumberland Area Development District to be the "administrator" of this Agreement. The responsibility of the administrator shall be limited to reporting the progress of implementation of the Agreement, to the Parties annually, on or near the anniversary of its effective date.

G. This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky. If any provision of this Agreement is held to be in conflict with any applicable statute or rule of law, or is otherwise held to be unenforceable, the invalidity of such portion shall not affect any or all of the remaining portions of this Agreement.

H. The principal purpose of the actions called for in this Agreement is to secure and take best advantage of the economies of scale by developing a single water treatment plant to secure lower costs per capita for the consumers of the District and City rather than to build two plants and incur higher costs for these same consumers.

PUBLIC SERVICE COMMISSION
OF KENTUCKY

DEC 17 2003

PURSUANT TO 807 KAR 5.011
SECTION 9 (1)

BY Thomas L. Dorn
EXECUTIVE DIRECTOR

I. The activities envisioned in this Agreement shall be financed by a combination of federal and state funding, including Rural Utility Services, Appalachian Regional Commission, Community Development Block Grant, 2020 Program Funds and Tobacco Development Program Funds, (made available by the 2003 Kentucky General Assembly).

J. All real and personal property to be acquired in the course of the project envisioned by this Agreement shall be properly procured pursuant to KRS 45A, used and held as public property and disposed of pursuant to statute.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by designated officers or officials as duly authorized by the respective legislative or managing body, effective as of the date first written above.

**APPROVED AS TO FORM AND COMPLIANCE
WITH APPROPRIATE KENTUCKY STATUTES**

Attorney General Albert B. Chandler III
Commonwealth of Kentucky

BY: *Phyllis Halloran 11/10/2003*
Assistant Attorney General

CUMBERLAND COUNTY WATER DISTRICT

Stephen D. Coan
Chair, Cumberland County Water District

Attest: *Gary R. Lee*
Secretary

CITY OF BURKESVILLE

Melvin Staley
Mayor, City of Burkesville

Attest: *Starr A. White*
City Clerk

CUMBERLAND COUNTY FISCAL COURT

Tom Lins
Judge Executive, Cumberland County

Attest: *Lynn W. Cyprien*
County Court Clerk

PUBLIC SERVICE COMMISSION
OF KENTUCKY
EFFECTIVE

DEC 17 2003

PURSUANT TO 807 KAR 5:011
SECTION 9 (1)

BY: *Chamelle D. Doss*
EXECUTIVE DIRECTOR