

WATER PURCHASE AGREEMENT

BETWEEN

CITY OF LANCASTER, KENTUCKY

AND

**GARRARD COUNTY
WATER ASSOCIATION, INC.**

October 3, 2017

**KENTUCKY
PUBLIC SERVICE COMMISSION**

**Gwen R. Pinson
Executive Director**

Gwen R. Pinson

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11/16/2017

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

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WATER PURCHASE AGREEMENT

This Water Purchase Agreement (the “Agreement”) is made and entered into as of the 3rd day of October, 2017, by and between the **CITY OF LANCASTER, KENTUCKY**, 308 W. Maple Avenue, Lancaster, Kentucky 40444, hereinafter referred to as the “Seller,” and the **GARRARD COUNTY WATER ASSOCIATION, INC**, P.O. Box 670, 315 Lexington Road, Lancaster, Kentucky 40444, hereinafter referred to as the “Purchaser.”

WITNESSETH:

WHEREAS, the Seller is a duly organized and existing municipal corporation and city of the home rule class of the Commonwealth of Kentucky;

WHEREAS, the Purchaser is a non-profit water association organized under the provisions of the KRS Chapter 273;

WHEREAS, the Seller currently owns and operates water supply, treatment, and distribution facilities;

WHEREAS, the Seller intends to construct a new water treatment plant and other water supply improvements as described in engineering reports prepared by the Kentucky Engineering Group, PLLC (the “New WTP Project” or the “Project”) for the benefit of both the Seller and the Purchaser;

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WHEREAS, the Purchaser currently owns and operates a water distribution system;

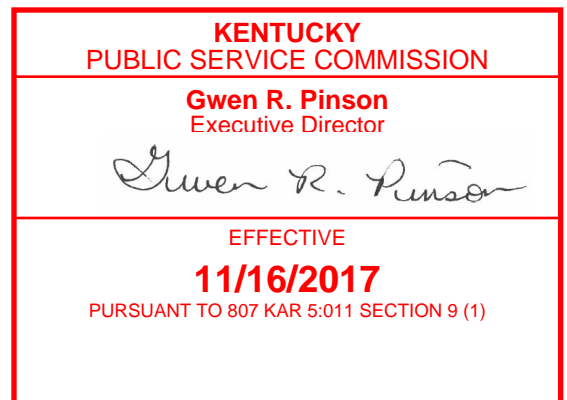
WHEREAS, the Purchaser has been purchasing potable water from the Seller pursuant to the provisions of a Water Purchase Contract dated March 25, 1970 (the “Existing Contract”);

WHEREAS, the Existing Contract has been amended or modified on numerous occasions;

WHEREAS, the Parties wish to supersede the Existing Contract, and all amendments or modifications thereto, with this Agreement;

WHEREAS, by Resolution No. 17-5 duly adopted on October 2, 2017 by the Seller’s City Council, this Agreement was approved and the Seller’s Mayor was authorized to execute this Agreement for and on behalf of the Seller; and

WHEREAS, by a Resolution duly adopted on October 3, 2017, by the Board of Directors of the Purchaser, this Agreement was approved and the Purchaser’s President was authorized to execute this Agreement for and on behalf of the Purchaser.



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

1. Term of Agreement. The term of this Agreement shall extend for a period of approximately 45 years, commencing on the Effective Date hereof as provided in paragraph 21 and terminating on June 30, 2062, unless otherwise extended or modified by written agreement of the Parties or terminated pursuant to the terms of this Agreement.

2. Quantity of Water. The Seller shall furnish to the Purchaser, at the points of delivery hereinafter specified, such quantities of water as the Purchaser may require, but not to exceed an amount which, when combined with the usage of all other customers of the Seller, would exceed the Seller's water production capacity.

3. Minimum Purchases. The Purchaser shall purchase from the Seller the following minimum quantities of water according to the time deadlines and subject to the conditions shown below:

- A. There is no minimum purchase requirement until the New WTP Project is substantially completed and the New WTP Project has been placed into service (the "Substantial Completion Date"),
- B. From and after the Substantial Completion Date, the Purchaser shall purchase a minimum of 325,000,000 gallons per day.

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- C. All minimum annual purchase requirements are based upon 12 full months of purchases with each annual period ending on January 10. For periods less than a calendar year, the minimum annual amount shall be prorated;
- D. In the event the Purchaser fails to purchase the minimum annual amount in a particular year, the Seller shall calculate the deficit and submit an invoice on the first business day of February for the amount owed by the Purchaser. This invoice shall be separate from the monthly bill rendered by the Seller for each master meter pursuant to paragraph 9 of this Agreement. The Purchaser shall have 30 days to pay the invoice; and
- E. In the event the Purchaser uses more than the minimum amount in a particular year, the surplus amount shall **not** be carried forward to the next calendar year.

4. Quality of Water. The Seller shall furnish to the Purchaser, at the points of delivery hereinafter specified, during the term of this Agreement, or any renewal or extension thereof, potable, treated water meeting the applicable water quality standards of all appropriate state and federal regulatory agencies.

5. 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 shall be remedied diligently with all practicable dispatch. The Seller shall immediately inform the Purchaser by telephone, by email, or by facsimile transmission of the nature and extent of such temporary or partial failure to deliver water. In the event of water, or if the supply of water available to the Seller is otherwise diminished

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over an extended period of time, the supply of water to the Purchaser shall be reduced or diminished in the same proportion as the supply to the Seller's other customers is reduced or diminished. The Purchaser also agrees to take such steps as may be reasonably necessary to curtail water usage within its system in response to a shortage of water.

6. Delivery Points. The Seller shall deliver the water to the Purchaser at the existing points of delivery shown below and at such additional or substitute points of delivery which may be agreed upon in writing by both Parties:

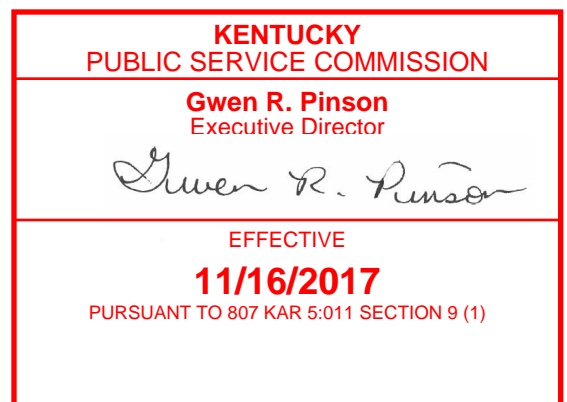
- A. **Danville Road Meter** which is located on west Kentucky Highway 52 at a point approximately 50 feet east of the centerline of Old Danville Road at the Seller's western corporate limits;
- B. **Lexington Road Meter** which is located on north U.S. Highway 27 at a point approximately 200 feet south of the centerline of House Hill Road;
- C. **Stanford Road Meter** which is located on south U.S. Highway 27 near the intersection of Stanford Road and Industry Road near the common property line of Moss Wholesale Flower and The Country Diner;
- D. **Fall Lick Road Meter** which is located at the intersection of Crab Orchard Road and Fall Lick Road;

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- E. **Buckeye Road Meter** which is located at a point just north of the entrance to the Feldman Lumber Company;
- F. **Merriwood Estates Meter** which is located on the south side of Kentucky Highway 39 at a point almost directly in front of the WRNZ Radio Station; and
- G. **Richmond Road Meter** which is located along the south side of Richmond Road, Loop 1 at a point approximately 50 feet west of the centerline of Conn's Lane.

The water shall be furnished at the points of delivery at a minimum pressure of seventy (70) pounds per square inch. The Seller shall 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. Should greater pressures than that available at a point of delivery be required by the Purchaser, it shall be Purchaser's responsibility, at its own expense, to provide within its system such booster pumping, storage, or other facilities as may be required to develop and maintain additional pressures within the Purchaser's system.

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 shall excuse the Seller from this provision for such reasonable period of time as may be necessary to restore service.




7. **Metering Equipment.** The Seller shall furnish, install, own, operate, and maintain at its own expense the necessary metering equipment to reliably measure the quantity of water delivered to the Purchaser and shall test such metering equipment once every year. The Seller shall provide a 24-hour notice to Purchaser prior to conducting any meter tests, allow access to the metering site during testing, and submit test results to the appropriate official designated by the Purchaser. A meter registering within the acceptable limits as identified by AWWA Standards shall be deemed to be accurate. Previous readings of any meter disclosed by test results to be inaccurate (registering outside of acceptable limits of AWWA Standards based upon type of meter) shall be adjusted for the six-month period prior to the test in accordance with the percentage of inaccuracy found by such test. Billings for the period shall be recalculated and the Purchaser's account credited or charged accordingly. If any meter fails to register usage for any period, the amount of water furnished during such period shall be estimated by any reasonable means agreeable to both the Purchaser and Seller. The metering equipment shall be read on or about the 10th day of each month, or any other day mutually agreed upon. An appropriate official of the Purchaser shall have access to each master meter for the purpose of collecting usage data and verifying each master meter's readings.

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8. Telemetry. The Purchaser is considering the possibility of installing, at its own expense, telemetry equipment at some or all of the points of delivery to enable it to remotely read the master meters. The Seller hereby consents to such installation at those points of delivery where there is adequate space and where the telemetry equipment will not pose a safety hazard. The Purchaser is not obligated to install telemetry equipment at any of the points of delivery, but if it elects to do so, the Purchaser shall be responsible for the payment of all costs associated therewith. In addition, the Purchaser shall operate and maintain, at its own expense, the telemetry equipment. Ownership of the telemetry equipment shall remain vested in the Purchaser. The Purchaser shall not install telemetry equipment at any point of delivery, however, without first presenting a drawing or illustration of the proposed telemetry equipment to the Seller. The Seller shall then promptly review the proposed installation and determine whether there is adequate space at the point of delivery or if the telemetry equipment is likely to pose a safety hazard.

9. Billing and Payment Procedure. The Seller shall furnish the Purchaser at the above address, not later than the **first** business day of each month, an itemized statement of the amount of water furnished the Purchaser at each delivery point during the preceding billing cycle and the cost thereof. The

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Purchaser shall pay those charges not later than the 10th day of each month. Any amount unpaid after the due day shall be subject to a 10% late payment fee.

10. Cost Based Rates. The Seller shall establish and adjust, from time to time, the wholesale rate based upon the Seller’s actual cost of providing water service to the points of delivery described in paragraph 6 of this Agreement. It is understood and agreed by the Parties that the Seller shall charge the Garrard County Water Association, Inc. and the City of Crab Orchard the same wholesale rate.

11. Initial Rate Schedule. The initial wholesale rate shall be \$2.05 per 1,000 gallons, plus the applicable Kentucky River Authority water withdrawal fees (the “KRA Fees”). This is the same rate that has been in effect since May 3, 2016. The wholesale rate shall be adjusted according to the following schedule:

Date	Amount (per 1,000 gallons)
5-03-16	\$ 2.05 plus KRA Fees
1-10-18	\$ 2.10 plus KRA Fees
7-10-18	\$ 2.15 plus KRA Fees
7-10-19	\$ 2.20 plus KRA Fees
7-10-20	\$ 2.25 plus KRA Fees
Substantial Completion Date	\$ 2.49 plus KRA Fees
Annually Thereafter	May be adjusted per Agreer

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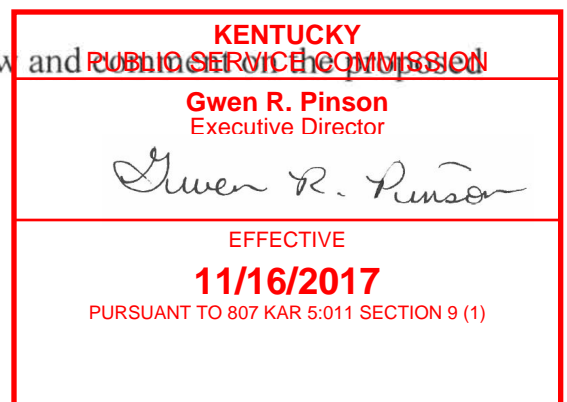
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12. Reduced Rate. From and after the Substantial Completion Date, the Purchaser is obligated, pursuant to paragraph 3 of this Agreement, to purchase certain minimum annual quantities of water. Once the Purchaser reaches the applicable minimum quantity, then all water purchased for the remainder of that particular annual period shall be sold at a reduced rate of \$1.40 per 1,000 gallons, plus the applicable KRA Fees.

13. Rate Modification. Commencing twelve months after the Substantial Completion Date, the Seller shall have the right, on an annual basis, to adjust or modify the volumetric rate set forth in paragraph 11 and the reduced rate set forth in paragraph 12 of this Agreement, to reflect changes in the Seller's cost of providing water service to the Purchaser. Any increase or decrease in the wholesale rate shall be based on a demonstrable increase or decrease in the costs of performance hereunder.

14. Advance Notice of Rate Modification. Except for the Initial Rate and the other incremental rate adjustments set forth in paragraph 11 of this Agreement, the Seller shall notify the Purchaser in writing of the proposed rate adjustment or modification at least thirty (30) days before it is to be adopted as the actual rate. This will enable the Purchaser to review and approve the proposed rate before it is actually adopted by the Seller.



At the expiration of the thirty (30) day review period, the Seller may establish and adopt the actual rate to be charged the Purchaser and shall immediately notify the Purchaser in writing of the new rate.

15. Effective Date of Rate Modification. The effective date of the new wholesale rate shall be at least 30 days after the Seller adopts the new rate. This will enable the Seller to file a revised tariff with the Kentucky Public Service Commission (the "PSC") and obtain PSC approval of the new rate. This will also provide the Purchaser sufficient time to obtain a Purchased Water Adjustment from the PSC.

16. Use of Surplus Funds. Subject to the limits of the Seller's applicable bond ordinances, any reserve or surplus funds generated from the sale of water to the Purchaser (e.g. cash funded depreciation accounts, operating surpluses, renewal and replacement accounts, and any other non-restricted funds, etc.) shall be set aside by the Seller (the "Surplus Funds"). The Seller may use these Surplus Funds to pay the costs of unusual or extraordinary maintenance, repairs, renewals, or replacements to its raw water intake, raw water transmission facilities, water production facilities, or transmission and storage facilities. In addition, the Surplus Funds shall be available for use by the Seller to construct or acquire additions, improvements, and/or equipment useful to its raw water intake, raw water transmission facilities, water production facilities, or t

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facilities which will either enhance its revenue-producing capacity or provide a higher degree of service. Seller's breach of the provisions of this paragraph shall be deemed to be a material breach of this Agreement.

17. Financial and Operational Information. Commencing with the fiscal year ending June 30, 2017 and continuing annually thereafter during the term of this Agreement, the Seller shall provide the Purchaser with a copy of the Seller's Independent Auditor's Report within 30 days after it has been released. In addition, the Purchaser, its auditor, or other designated representative shall have the right, at its own expense, to examine, upon reasonable notice and during regular business hours, the Seller's financial records and operating reports concerning water production, water sales, water expenditures, and line loss. Such examination shall be conducted in such a manner that it does not unduly disrupt the Seller's normal office routine. The Seller reserves the right to limit such examination to one (1) examination per fiscal year. Seller's breach of the provisions of this paragraph shall be deemed to be a material breach of this Agreement.

18. Evaluation of WTP Operations. Commencing at least six (6) months, but not more than 12 months, following the Substantial Completion of the New WTP Project, and continuing annually thereafter, a Commission member shall be appointed by the Kentucky Rural Water Association, Inc. (the "KRWA") or another third party

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agreed upon by the Seller and the Purchaser) shall conduct an on-site evaluation of the WTP Operations if requested by the Purchaser. The purpose of the evaluation shall be to review WTP operations, maintenance, record keeping, and reporting practices and procedures. The Qualified Third Party shall compare actual practices with the recommended procedures contained in the Operation and Maintenance Manual for the WTP. It shall prepare a written report summarizing its findings and recommendations. Each Party shall receive a copy of the evaluation report. The Qualified Third Party's fee shall be paid as follows: the Seller shall pay 25% and the Purchaser shall pay 75%. Both Parties may have an authorized representative present during the on-site evaluation.

In the event the Qualified Third Party recommends that corrective action be taken, the Seller shall, within a reasonable period of time, give due consideration to implementing the recommendations. The Seller shall promptly notify the Purchaser in writing of the Seller's proposed course of action.

Breach of the provisions of this paragraph of this Agreement by either Party, shall be deemed to be a material breach of this Agreement.

19. USDA-RD Concurrence. The construction of the Project is being financed in part by a loan made by, and a grant from, the Rural Development agency of the U.S. Department of Agriculture. There

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subject to concurrence by Rural Development as evidenced by the signature of a duly authorized Rural Development official.

20. PSC Review. The Parties acknowledge that this Agreement cannot become effective until it has been reviewed and accepted for filing by the PSC. Seller shall file an executed copy of this Agreement with the PSC. Purchaser pledges its assistance to help expedite the PSC review process.

21. Effective Date. The Parties acknowledge that, in order for this Agreement to become effective, the following events must occur:

- A. Rural Development shall acknowledge concurrence; and
- B. PSC shall review this Agreement and accept it for filing.

The Effective Date of this Agreement shall be the date upon which the later of the above events occurs. The Seller shall give written notice of the Effective Date to the Purchaser.

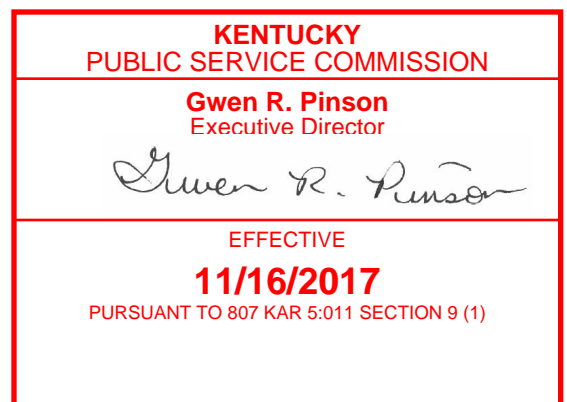
22. Contingencies. Certain undertakings and obligations of the Parties set forth in this Agreement are expressly conditioned and contingent upon the following:

- A. The Seller shall not be obligated to construct the New WTP Project under the following circumstances:
 - (1) If seller is unable to secure all the funding sources and amounts set forth in paragraph 2 of the Seller's Conditions dated April 21, 2017; or
 - (2) If the construction bids exceed \$9,310,000; or

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- (3) If the total Project costs are reasonably anticipated to exceed \$11,000,000.
- B. The Seller shall not borrow more than \$8,500,000 for the New WTP Project without first obtaining the prior, written consent of the Buyer.
- C. If the New WTP Project is not constructed by the Seller, then the following provisions of this Agreement shall not be applicable:
 - (1) **Paragraph 3 – Minimum Purchases.** The Purchaser shall not be obligated to purchase the minimum quantities set forth in paragraph 3;
 - (2) **Paragraph 11 – Initial Rate Schedule.** The automatic wholesale rate adjustment (\$2.49 per 1,000 gallons) scheduled to take effect on the Substantial Completion Date shall become null and void. The Seller shall have the right, however, to adjust the wholesale rate pursuant to the procedures set forth in paragraphs 10, 13, 14, and 15 of this Agreement; and
 - (3) **Paragraph 12 – Reduced Rate.** This paragraph shall be null and void.

23. 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.



24. 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 Lancaster
308 W. Maple Avenue
Lancaster, KY 40444
Attention: Mayor

B. As to the Purchaser:

Garrard County Water Association, Inc.
P.O. Box 670
315 Lexington Road
Lancaster, KY 40444
Attention: President

25. Response to Notices. At any time either Party desires or is required to respond to any notice given pursuant to paragraph 24, such response shall be made in the manner prescribed by paragraph 24 and be given within fifteen (15) days after receipt of the notice unless otherwise provided in this Agreement.

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26. Regulatory Agencies. This Agreement is subject to such rules, regulations, or laws as may be applicable to similar agreements in the Commonwealth of Kentucky. The Seller and Purchaser shall collaborate in obtaining such permits, approvals, certificates or the like as may be required to comply therewith.

27. Pledge. It is understood by the Parties that the Seller intends to, and does by the execution of the Agreement, pledge this Agreement and the revenues generated hereunder to the United States of America, acting by and through the U.S. Department of Agriculture, Rural Development (the "USDA-RD") as part of the security for the repayment of all indebtedness currently owed by the Seller to USDA-RD, and any additional loans hereinafter obtained from USDA-RD. The Purchaser, however, is not incurring any liability to USDA-RD because of the Seller's pledge of this Agreement to USDA-RD; and the Purchaser is not incurring any independent obligation to USDA-RD because of this pledge by the Seller.

28. 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 unreasonable. Any assignment or transfer is to a successor in the operation of a merger, consolidation, sale or foreclosure where substantially all such

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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.

29. 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 hereof.


30. 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 provisions substantially alter the benefits of the Agreement for either Party.

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31. 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.

32. Prior Contracts Superseded. As of the Effective Date of this Agreement, the Existing Contract, and all amendments or modifications thereto, shall be superseded by this Agreement.


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

SELLER:

City of Lancaster, Kentucky



Chris Davis, Mayor

Attest:



Debbie Carrier, City Clerk

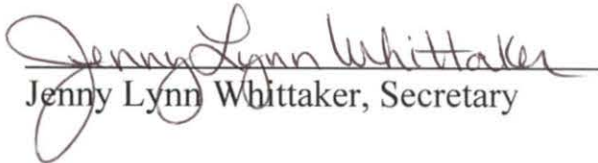
PURCHASER:

Garrard County Water Association, Inc.



Billy C. Doolin, President

Attest:



Jenny Lynn Whittaker, Secretary

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