

# WHOLESALE WATER PURCHASE CONTRACT

**THIS WHOLESALE WATER PURCHASE CONTRACT** is entered into on the 27<sup>th</sup> day of May, 2009, and made effective on the 1<sup>st</sup> day of June, 2009, between the CITY OF PIKEVILLE, Kentucky, a municipality of the third class, of 118 College Street, Pikeville, Kentucky, hereinafter sometimes referred to as "SELLER" and MOUNTAIN WATER DISTRICT of P.O. Box 3157, Pikeville, Kentucky 41502, hereinafter sometimes referred to as "PURCHASER";


## W-I-T-N-E-S-S-E-T-H:

WHEREAS, the Seller owns and operates a water production and supply distribution system with a capacity currently capable of serving the present customers of the Seller's system and desires to enter into a contract to provide water to the Purchaser to be distributed to the Purchaser's water supply distribution system.

WHEREAS, Purchaser is a Water District created under the provision of KRS Chapter 74 and owns and operates a water supply distribution system serving water users within the area described in plans now on file in the office of the Purchaser and to accomplish this purchase, the Purchaser desires to acquire a supply of potable treated water; and

WHEREAS, the parties hereto have heretofore entered into Water Purchase Contracts and amendments thereto dated January 12, 1987 and March 26, 1990 and being subject to further amendments in regard to rates for water service, and by this Contract do supersede and replace said Contract and Agreements with the terms and conditions set forth herein

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By   
Executive Director


WHEREAS, by resolution of the City of Pikeville, enacted on the \_\_\_\_ day of May, 2009, for the sale of water to the Purchaser in accordance with the provision of said resolution, and the execution of this Contract carrying out the said resolution by the Mayor of the City of Pikeville, and attested by the City Clerk, was duly authorized; and

WHEREAS, by resolution of Mountain Water District, enacted on the 27<sup>th</sup> day of May, 2009, for the purchase of water from the Seller in accordance with the provisions of said resolution, and the execution of this contract by the Board Chairperson and attested by the Secretary, was duly authorized;

**NOW, THEREFORE,** in consideration of the foregoing and the mutual terms, conditions and agreements of the parties hereto that are hereinafter set forth, the parties do hereby agree as follows:

1. **WATER PURCHASES, QUALITY AND QUANTITY.** Seller agrees to produce and sell and Purchaser agrees to buy at "points of delivery" hereinafter specified in Paragraph 2 during the term of this Contract or any renewal or extension thereof, potable treated water meeting applicable quality standards of the Kentucky Natural Resources and Environmental Protection Cabinet, Division of Water, a minimum of 28 million gallons per month, not to exceed 40 million gallons per month, at the rates provided for in paragraph 5 herein. Seller does further agree to make up to 45 million gallons per month available to purchase so long as the additional 5 million gallons does not interfere with water service to the Sellers' then existing water customers.

2. **POINT OF DELIVERY AND PRESSURE.**  
(A) The Water will be furnished by the Seller to the Purchaser at a reasonable constant pressure(s) and volume(s).

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that normally available at the points of delivery is required by the Purchaser, the cost of providing such greater pressure shall be borne by the Purchaser. Emergency failure of pressure or 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 periods of time as may be necessary to restore service.

(B) The points of delivery shall be at the following points:

- a. Town Mountain Gap at U.S. 119.
- b. Chloe Creek Gap.
- c. York Town at Indian Hills.
- d. Island Creek Trailer Park.
- e. Cowpen.
- f. Hoopwood Hollow.
- g. Coon Branch.
- h. Cedar Gap.
- i. Left Fork Island Creek.

(C) It is understood and agreed by the parties hereto that in the event that the Purchaser should desire additional purchase points, and if additional pump stations, transmission lines and/or upgrade of existing lines is necessary to provide the additional purchase point(s) which are solely for the Purchaser's benefit, then the Purchaser shall pay the entire costs of the additional lines and equipment.

(D) That in the event both parties agree that a second Levisa Fork River crossing at or in the vicinity of the Island Creek Bridge becomes necessary to benefit both parties, it is understood that both parties shall equally share the costs and expense associated with same.

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(E) That all extension of waterlines or upgrades of existing waterlines which shall thereafter become the obligation of the Purchaser to maintain shall be done pursuant to the building specifications currently adopted by the Purchaser or hereafter adopted, and in conformance with regulations and construction standards mandated by the Kentucky Natural Resources and Environmental Protection Cabinet, regardless of which party may herein be required to pay or reimburse the cost thereof.

3. **METERING EQUIPMENT.** Seller shall furnish, install, operate, and maintain at its own expense at the points of delivery (subject however to the Purchaser's obligation to pay the costs for additional purchase points provide for in paragraph 2 (C) above) 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 12 months. A meter registering not more than 2 percent above or below the test results shall be deemed accurate. The previous reading of any meter disclosed by test to be inaccurate shall be corrected for the 12 months previous to such test and in accordance with the percentage of inaccuracy found by such tests. If a meter fails to register for any period, the amount of water furnished during such period shall be deemed to be the amount of water delivered in the corresponding period immediately prior to the failure, unless Seller and Purchaser shall agree upon a different amount. The metering equipment shall be read on the first day of the month by the Seller. An appropriate official of the Purchaser at all reasonable times shall have access to the meter for the purpose of verifying its readings. Meters will

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be tested pursuant to applicable state regulations and copies of all testing reports will be provided to purchaser within 10 days of receipt of the reports.

4. **BILLING PROCEDURES.** The Seller shall furnish to the Purchaser at the above address not later than the fifth day of each month an itemized statement of the amount of water furnished the Purchaser during the preceding month. Payments shall be made within five (5) business days following the Board meeting for the month the bill is presented and approved.


5. **RATES.** Purchaser agrees to pay to Seller, not later than the 30th day of each month, for water delivered the preceding month in accordance with the following schedule of rates:

a. A wholesale rate of \$1.68 per one thousand (1,000) gallons of water for the first 28 million gallons per month.

b. \$1.30 per one thousand (1,000) gallons of water in excess of 28 million gallons per month.

6. **TERM OF CONTRACT.** This Contract shall extend for a term of 47 years from the date of the parties original agreement being January 12, 1987 and, thereafter may be renewed or extended for such term, or terms as may be agreed upon by the Seller and Purchaser. However, the rate schedule set forth in paragraph 5 above shall extend for a term of 5 years from the effective date of this agreement set forth hereinabove. The rate schedule shall automatically extend to additional year to year term(s) at the end of the original

5 year term or any one year extension term unless the "SELLER" sends a certified letter of its intent to change the rate to "Purchaser" six (6) months prior to the end of the original five (5) year term or any extension term. If the "Purchaser" is not agreeable to the proposed rate of \_\_\_\_\_ within 60 days of receipt of the "Seller's" certified letter send a re


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mail to the "Seller" and thereafter the Parties shall begin good faith negotiations for a new rate schedule.

If the Parties are unable to agree upon a new rate, then the Seller shall have prepared a cost of service study based on Public Service Commission requirements, and submit its rate application proposal to the Public Service Commission or such other agency which at said time has statutory jurisdiction.

7. **FAILURE TO DELIVER.** 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 not to exceed the maximum amount provided for hereinabove. 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 the Purchaser for Purchaser's customers shall be reduced or diminished in the same ratio or proportion as the supply to Seller's consumers is reduced or diminished. If Seller anticipates such an event, the Seller shall notify the Purchaser within 24 hours of any decision to reduce production.

8. **REGULATORY AGENCIES.** This Contract is subject to such rules, regulations or laws as may be applicable to similar agreements in this Commonwealth and the Seller and Purchaser will corroborate to obtain such permits, certifications or the like, as may be required to comply with said rules, regulations or laws as may now be applicable or as the same may be modified, amended or adopted hereinafter.

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9. **SUCCESSORS TO PARTIES.** This agreement shall be binding on the party's representatives, successors and assigns.

10. **SELLER'S RIGHT OF RECIPROCIITY OF WATER PURCHASES FROM PURCHASER.** Should circumstances arise wherein the City of Pikeville should need to purchase water from the Mountain Water District, Mountain Water District agrees to sell water which it produces to the City of Pikeville up to a maximum of 0.5 million gallons per day at the rate provided for in paragraph 5 herein at the delivery points provided for in paragraph 2 (B) hereinabove or as may be otherwise provided by the City of Pikeville herein at its sole costs. The City of Pikeville shall pay all monies due to Mountain Water District for water purchases within 30 calendar days of the date of billing. If a meter installation is needed to measure such purchase, the City of Pikeville shall pay for the same.

11. **COOPERATIVE AGREEMENT TO ASSIST IN THE COLLECTION OF DELINQUENT SANITARY SEWER SERVICE CHARGES.**

The Parties hereto agree that each of the Parties do or may in the future from time to time provide sanitary sewer services to the other Parties water customers and each shall assist the other Party to collect delinquent sanitary sewer service charges by disconnecting water services to its customers who are delinquent in the payment of the sanitary sewer fees to the other party herein. The parties hereto agree to jointly execute a cooperative agreement to provide for reciprocal disconnect of water services to delinquent sanitary sewer customers in the same form as attached hereto and marked as Exhibit A for identity.

12. **PUBLIC SERVICE COMMISSION APPROVAL** The parties hereto agree and understand that this Agreement is approved by the

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*[Signature]*  
**Executive Director**

Public Service Commission and in the event that said approval is not received by the effective date provided for herein then the effective date shall be considered the date that the Public Service Commission approves this Wholesale Water Purchase Contract.

IN WITNESS WHEREOF, the parties hereto acting under authority of their respective governing bodies, have caused this Contract to be duly executed in two counterparts, each of which shall constitute an original the day and year first above written.

Attested:

Rebecca Hamilton  
Rebecca Hamilton, City Clerk

**SELLER:**

CITY OF PIKEVILLE

By: Frank Justice  
FRANK JUSTICE

Its: Mayor

Attested:

John Collins  
Secretary

**PURCHASER:**

MOUNTAIN WATER DISTRICT

By: Toni Akers  
TONI AKERS

Its: Chairperson

**PUBLIC SERVICE COMMISSIONER APPROVAL:**

By: \_\_\_\_\_

Its: \_\_\_\_\_

Date: 5/29/09

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**EFFECTIVE 7/28/2009**  
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By: Jeff Oberen  
Executive Director