

**AGREEMENT TO AMEND WATER CONTRACTS
AND TO PROVIDE FOR PAYMENTS AND OTHER MATTERS
RELATED TO EARLY TERMINATION**

This **Agreement to Amend Water Contracts and to Provide for Payments and Other Matters Related to Early Termination** (hereinafter "Agreement") is made and entered into this 29th day of February, 2000 by and between the **City of Florence, Kentucky**, a Kentucky city of the third class, (hereinafter "Florence"), the **Boone County Water District**, a water district organized and operating under Chapter 74 of the Kentucky Revised Statutes, (hereinafter "Boone"), and the **Northern Kentucky Water Service District**, a water district organized and operating under Chapter 74 of the Kentucky Revised Statutes, (hereinafter "Northern"). Together, Florence, Boone and Northern shall be referred to herein as the "Parties."

W I T N E S S E T H:

WHEREAS, Kenton County Water District No. 1, a water district organized and operating under Chapter 74 of the Kentucky Revised Statutes, (hereinafter "Kenton") entered a water contract with Florence dated August 19, 1986, in which Kenton agreed to sell to Florence and Florence agreed to purchase from Kenton water for a period of 20 years; and

WHEREAS, Kenton entered a water contract with Boone dated December 18, 1990, in which Kenton agreed to sell to Boone and Boone agreed to purchase from Kenton water for a period of 20 years; and

WHEREAS, Northern is the legal and proper successor to Kenton as the result of the merger of Kenton and the Campbell County, Kentucky Water District on or about January 1, 1997; and

WHEREAS, Florence and Boone have entered a contract with the City of Cincinnati, Ohio and the Boone-Florence Water Commission for the purchase of water from the City of Cincinnati and have requested the early termination of their respective water contracts with Northern; and

WHEREAS, Northern is willing to provide for the early termination of its water contracts with Florence and Boone provided that Florence and Boone make certain payments to Northern and comply with other terms and conditions set forth in this Agreement;

NOW THEREFORE, in consideration of the premises and of the covenants and agreements contained herein, the Parties agree as follows:

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NOV 09 2000

PURSUANT TO 207 KAR 5011,
SECTION 9(1)
BY: Stephan D. Hill
SECRETARY OF THE COMMISSION

ARTICLE I

Nature of Agreement

This Agreement is an agreement in which Northern agrees to the early termination of its water contracts with Florence and Boone on the condition that Florence and Boone make the payments to Northern set forth in Article IV below in consideration of such early termination. This Agreement also establishes maximum volumes of water to be provided by Northern under the water contracts with Florence and Boone until their termination. It further provides for the payment of costs for disconnecting the Northern system from the Florence system and the Boone system and for the transfer of certain customers and water lines.

ARTICLE II

Amendments to Florence Water Contract

A. **Unconditional Amendments.** On the effective date of this Agreement described in Article VIII below, the water contract by and between Kenton and Florence, dated August 19, 1986, a copy of which is attached hereto as Exhibit 1, (hereinafter the "Florence Water Contract") is amended as follows:

1. The words "Northern Kentucky Water Service District" are substituted for the words "Kenton County Water Commission, District No. 1" wherever the latter words appear in the contract.
2. The first "WHEREAS" clause in the preamble of the contract is deleted in its entirety.
3. The language contained in paragraph 1 of the contract is deleted in its entirety and the following language is substituted therefor:

In accordance with the rules, regulations and water rates established by the Kentucky Public Service Commission, the District will use reasonable diligence and care to sell and deliver to the City a volume of water of up to 4.05 million gallons per day. The City agrees to purchase all of the water needed by the City and its residents from the District, but should the District be unable to provide all of the water needed by the City and its residents, the City may purchase the volume of water representing the shortfall from another water supplier. The City further agrees to pay on a timely basis for all water purchased from the District upon receipt of a statement from the District.

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PURSUANT TO 807 KAR 5.011.
SECTION 9 (1)
BY: Stanley D. [Signature]
SECRETARY OF THE COMMISSION

The City and the District acknowledge that the City's demand for water may exceed 4.05 million gallons per day. In such event, and should the District not be able to meet the demand of the City, the City will institute one of the progressive water conservation programs listed below. It is understood that the Level 1 program is the least restrictive program and that the Level 4 program is the most restrictive program. Within a reasonable time after the City institutes one of the four programs or upgrades to a more restrictive program, the District will institute a program or upgrade to a program that is no more than one level behind the program being employed by the City. The District will have no obligation to institute a program when the City has not instituted a program or when the City has instituted only the Level 1 program.

-- Level 1. All customers are requested to voluntarily limit all outdoor watering (including car washing, driveway washing, filling of swimming pools, use and filling of fountains and watering of lawns, bushes and trees) to designated days. The designated days for customers with addresses ending in an odd number are Tuesdays, Thursdays and Saturdays. The designated days for customers with addresses ending in an even number are Wednesdays, Fridays and Sundays.

-- Level 2. The conservation program described in Level 1 becomes mandatory, with appropriate enforcement.

-- Level 3. The conservation program described in Level 2 continues. In addition, customers are requested to voluntarily eliminate all outdoor watering (including car washing, driveway washing, filling of swimming pools, use and filling of fountains and watering of laws, bushes and trees), even on their "designated" days.

-- Level 4. The conservation program described in Level 3 becomes mandatory, with appropriate enforcement.

The City and the District acknowledge the possibility that the District may, from time to time, be unable to supply a sufficient quantity of water to supply the demands of all of the District's customers, including the City, when the City's demand has not exceeded 4.05 million gallons per day. In such event, the City will institute and follow the same level of conservation program followed by the District with the understanding that such level may be upgraded or downgraded from time to time.

The City and the District may agree to additional conservation measures if deemed necessary.

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PURSUANT TO 602 KAR 5011,
SECTION 2(1)

BY: Shirley D. King
SECRETARY OF THE COMMISSION

Nothing in this contract prohibits the District from acquiring, and supplying water to, new wholesale and retail customers.

4. The language contained in paragraph 4 of the contract is deleted in its entirety and the following language is substituted therefor:

The District shall not be liable for any failure or interruption of water supply or shortage of water, or any loss or damage resulting therefrom, that is occasioned in whole or in part by any cause beyond the reasonable control of the District. Such causes may include, but will not be limited to, breakage or damage to machinery or water lines, partial or total failure of water system, and system demand exceeding system production or distribution capability.

5. The following language is added as a new paragraph 10 of the contract:

10. Notwithstanding the duration provisions set forth in paragraph 6 above, the District, at its sole discretion, shall have the unconditional right to terminate this contract on or after June 1, 2004 by providing the City with 120 days advance written notice of termination.

B. Conditional Amendment. Subject to and expressly conditioned upon Northern's receipt of the payments from Florence described in Article IV below, the Florence Water Contract is amended as follows:

1. The language contained in paragraph 6 of the contract is deleted in its entirety and the following language is substituted therefor:

This contract will become effective upon its execution by both parties and will continue until such date between January 1, 2002 and May 31, 2004 that the City selects and identifies as the termination date of the contract. The City shall provide 120 days advance written notice of the termination date to the District. The failure of the City to provide 120 days advance written notice of the termination date to the District will require the City to pay for the volume of water representing the City's average daily consumption over the previous 30 day period for each day that the advance written notice falls short of 120 days before the termination date.

The amendment described in this Section B of Article II shall not become or remain effective if Florence fails to make the payments to Northern described in Article IV below.

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PURSUANT TO KRS 5.011,
SECTION 2(1)

BY: Stephen [Signature]
SECRETARY OF THE COMMISSION

ARTICLE III

Amendments to Boone Water Contract

A. **Unconditional Amendments.** On the effective date of this Agreement described in Article VIII below, the water contract by and between Kenton and Boone, dated December 18, 1990, a copy of which is attached hereto as Exhibit 2, (hereinafter the "Boone Water Contract") is amended as follows:

1. The words "Northern Kentucky Water Service District" are substituted for the words "Kenton County Water District No. 1" wherever the latter words appear in the contract.
2. The words "Northern District" are substituted for the words "Kenton District" wherever the latter words appear in the contract.
3. The third "WHEREAS" clause in the preamble of the contract is deleted in its entirety and the following language is substituted therefor:

WHEREAS, the Northern District expects to have the capacity and ability to continue to provide the Boone District with a certain amount of water and

4. The language contained in paragraph 1 of the contract is deleted in its entirety and the following language is substituted therefor:

In accordance with the rules, regulations and water rates established by the Kentucky Public Service Commission, the Northern District will use reasonable diligence and care to sell and deliver to the Boone District a volume of water of up to 5.95 million gallons per day. The Boone District agrees to purchase of all of the water needed by the Boone District and its residents from the Northern District, but should the Northern District be unable to provide all of the water needed by the Boone District and its residents, the Boone District may purchase the volume of water representing the shortfall from another water supplier. The Boone District further agrees to pay on a timely basis for all water purchased from the Northern District upon receipt of a statement from the Northern District.

The Boone District and the Northern District acknowledge that the Boone District's demand for water may exceed 5.95 million gallons per day. In such event, and should the Northern District not be able to meet the demand of the Boone District, the Boone District will institute one or more of the progressive water conservation programs listed below. It is understood that the Level 1 program is the least restrictive program and that the Level 4 program is the most

restrictive program. Within a reasonable time after the Boone District institutes one of the four programs or upgrades to a more restrictive program, the Northern District will institute a program or upgrade to a program that is no more than one level behind the program being employed by the Boone District. The Northern District will have no obligation to institute a program when the Boone District has not instituted a program or when the Boone District has instituted only the Level 1 program.

-- Level 1. All customers are requested to voluntarily limit all outdoor watering (including car washing, driveway washing, filling of swimming pools, use and filling of fountains and watering of lawns, bushes and trees) to designated days. The designated days for customers with addresses ending in an odd number are Tuesdays, Thursdays and Saturdays. The designated days for customers with addresses ending in an even number are Wednesdays, Fridays and Sundays.

-- Level 2. The conservation program described in Level 1 becomes mandatory, with appropriate enforcement.

-- Level 3. The conservation program described in Level 2 continues. In addition, customers are requested to voluntarily eliminate all outdoor watering (including car washing, driveway washing, filling of swimming pools, use and filling of fountains and watering of laws, bushes and trees), even on their "designated" days.

-- Level 4. The conservation program described in Level 3 becomes mandatory, with appropriate enforcement.

The Boone District and the Northern District acknowledge the possibility that the Northern District may, from time to time, be unable to supply a sufficient quantity of water to supply the demands of all of the Northern District's customers, including the Boone District, when the Boone District's demand has not exceeded 5.95 million gallons per day. In such event, the Boone District will institute and follow the same level of conservation program followed by the Northern District with the understanding that such level may be upgraded or downgraded from time to time.

The Boone District and the Northern District may agree to additional conservation measures if deemed necessary.

Nothing in this contract prohibits the Northern District from acquiring, and supplying water to, new wholesale and retail customers.

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PURSUANT TO DOT KAR 5011
SECTION 9 (1)
BY: STEPHEN D. BULL
SECRETARY OF THE COMMISSION

The Boone District water mains and service connections that are not master metered will be billed by the Northern District using metered consumptions provided by the Boone District plus 14.3 percent for fire protection and other unaccounted-for losses. The Northern District will be permitted to audit these meter readings annually. The Boone District will test these meters in accordance with PSC regulations.

5. The language contained in paragraph 2 of the contract is deleted in its entirety and the following language is substituted therefor:

The Northern District shall not be liable for any failure or interruption of water supply or shortage of water, or any loss or damage resulting therefrom, that is occasioned in whole or in part by any cause beyond the reasonable control of the Northern District. Such causes may include, but will not be limited to, breakage or damage to machinery or water lines, partial or total failure of water system, and system demand exceeding system production or distribution capability.

6. The following language is added to the end of paragraph 8 of the contract:

The Northern District will not be required to make any additional improvements to increase or improve water supply or water pressure to the Boone District after August 1, 1999.

7. The following language is added as a new paragraph 13 of the contract:

13. Notwithstanding the duration provisions set forth in paragraph 10 above, the Northern District, at its sole discretion, shall have the unconditional right to terminate this contract on or after June 1, 2004 by providing the Boone District with 120 days advance written notice of termination.

B. Conditional Amendment. Subject to and expressly conditioned upon Northern's receipt of the payments from Boone described in Article IV below, the Boone Water Contract is amended as follows:

1. The language contained in paragraph 10 of the contract is deleted in its entirety and the following language is substituted therefor:

This contract will become effective upon its execution by both parties and will continue until such date between January 1, 2002 and May 31, 2004 that the Boone District selects and identifies as the termination date of the contract. The Boone District shall provide 120 days advance written notice of the termination date to the Northern District. The failure of the Boone District to provide 120 days advance written notice of the termination date to the Northern District will require the Boone District to pay for the volume of water representing the Boone

District's average daily consumption over the previous 30 day period for each day that the advance written notice falls short of 120 days before the termination date.

The amendment described in this Section B of Article III shall not become or remain effective if Boone fails to make the payments to Northern described in Article IV below.

ARTICLE IV

Payments to Northern

A. Initial Payments. On or before September 29, 2000, Florence shall pay the sum of Seven Hundred Sixty-Four Thousand Nine Hundred Twenty-Three Dollars (\$764,923.00) to Northern and Boone shall pay the sum of Two Million Seven Hundred Twenty-Five Thousand Seventy-Seven Dollars (\$2,725,077.00) to Northern.

B. Subsequent Payments. Within thirty (30) days of the termination date of the Florence Water Contract, Florence shall pay to Northern the sum of Nine Hundred Sixty Eight Dollars (\$968.00) for each day that the Florence Water Contract is terminated prior to January 1, 2004. Within thirty (30) days of the termination date of the Boone Water Contract, Boone shall pay to Northern the sum of One Thousand Three Hundred Three Dollars (\$1,303.00) for each day that the Boone Water Contract is terminated prior to January 1, 2004. For purposes of this Section B of Article IV, the term "termination date" shall mean the termination dates selected and identified by Florence and Boone under Section B of Article II and Section B of Article III above.

Northern shall have no obligation and shall not be required to refund any payments to Florence or Boone in the event that the Florence Water Contract or the Boone Water Contract is terminated on or after January 1, 2004.

C. Finality of Figures, Calculations and Payments. Florence, Boone and Northern agree and covenant that the accuracy and amounts of the figures and payments set forth in this Article IV will not be challenged or disputed by any of them at any time or for any purpose.

ARTICLE V

Payment of Disconnection Expenses

The Parties have identified and agreed upon the points of separation and the transfer of certain lines in connection with disconnecting the Florence system and the Boone system from the Northern system. Such points of separation and transfers of lines, as well as the estimated expenses relating thereto, are listed in Exhibit 3 attached hereto. Florence and Boone shall be jointly responsible and liable for all expenses incurred in physically disconnecting the Florence system and the Boone system from the Northern system, including, but not limited to, the expenses estimated in Exhibit 3. Should Northern incur expenses in physically disconnecting the systems, Florence and Boone shall reimburse Northern for its expenses within thirty (30) days of receiving notice and evidence from Northern of the expenses incurred. All work performed on

water lines and related facilities that are or will be part of the Northern system after the disconnection of the systems shall be performed and completed in compliance with Northern's specifications and Northern's Rates, Rules and Regulations.

ARTICLE VI

Transfer of Customers

The Parties have agreed to the transfer of certain customers between their respective systems to facilitate the disconnection of the systems. Such transfer of customers is identified on Exhibit 4 attached hereto. The transfer of customers from Florence to Northern and from Northern to Florence will occur on the termination date of the Florence Water Contract as selected and identified by Florence as described in Section B of Article II above. The transfer of customers from Boone to Northern and from Northern to Boone will occur on the termination date of the Boone Water Contract as selected and identified by Boone as described in Section B of Article III above. The Parties shall work together to avoid any inconvenience or disruption of service to the customers who will be transferred.

ARTICLE VII

Enforcement Costs

Should any Party or Parties be required to commence litigation to enforce the terms and provisions of this Agreement, the prevailing Party or Parties in any such litigation shall be entitled to recover from the non-prevailing Party or Parties its or their reasonable attorneys fees and costs incurred in establishing its or their prevailing position in such litigation.

ARTICLE VIII

Effective Date

This Agreement shall become effective on the date that the Public Service Commission of the Commonwealth of Kentucky approves this Agreement and the transactions contemplated herein or determines that such approval is not required on its part and enters an appropriate order, decision, finding or ruling to either effect.

ARTICLE IX

Entire Agreement; Waiver; Modification

This Agreement constitutes the entire understanding and agreement between the Parties with respect to the amendment and early termination of the Florence Water Contract and the Boone Water Contract. There are no understandings, representations or warranties of any kind, expressed or implied, not expressly set forth in this Agreement. Conditioned solely upon the full performance of this Agreement, each of the Parties waives all other claims and remedies related

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BY _____
SECRETARY OF THE COMMISSION

to this matter. No modification of this Agreement will be effective unless in writing and signed by all Parties.

ARTICLE X

Assignment

Florence and Boone may assign the Florence Water Contract, the Boone Water Contract and this Agreement to the Boone-Florence Water Commission, but they will continue to remain responsible and liable, as guarantors, for the full performance of the Florence Water Contract, the Boone Water Contract and this Agreement. No other assignment of the Florence Water Contract, the Boone Water Contract or this Agreement will be valid without the written consent of all Parties.

ARTICLE XI

Authority to Execute Agreement

Florence represents that it possesses full authority to enter this Agreement as indicated by the lawful ordinance attached hereto as Exhibit 5. Boone represents that it possesses full authority to enter this Agreement as indicated by the resolution attached hereto as Exhibit 6. Northern similarly represents that it possesses full authority to enter this Agreement as indicated by the resolution attached hereto as Exhibit 7.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed in triplicate, each of which shall constitute an original.

CITY OF FLORENCE

Signature: *Diane E. Whalen*

Printed Name: DIANE E. WHALEN

Title: MAYOR

NORTHERN KENTUCKY WATER SERVICE DISTRICT

Signature: *Norman P. Veatch*

Printed Name: NORMAN P. VEATCH

Title: CHAIRMAN

BOONE COUNTY WATER DISTRICT

Signature: *Ronald Crume*

Printed Name: Ronald Crume

Title: Chairman

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OF KENTUCKY
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NOV 09 2000

PURSUANT TO KOP CAR 5011,
SECTION (1)
BY: *Shelby Lee*
SECRETARY OF THE COMMISSION