WATER PURCHASE AGREEMENT

BETWEEN

CITY OF HODGENVILLE, KENTUCKY

AND

LARUE COUNTY WATER DISTRICT NO. 1

THIS WATER PURCHASE AGREEMENT (the "Agreement"), is made and entered into as of the 13th day of February, 2012, by and between the **CITY OF HODGENVILLE, KENTUCKY**, PO Box 189, Hodgenville, Kentucky, 42748 (hereinafter referred to as the "Seller"), and the **LARUE COUNTY WATER DISTRICT NO. 1**, 6215 North L & N Turnpike, Buffalo, Kentucky, 42716 (hereinafter referred to as the "Purchaser").

W I T N E S S E T H:

WHEREAS, the Purchaser has been purchasing potable water from the Seller pursuant to the provisions of a Water Purchase Contract between the Parties dated September 12, 1979 (the "1979 Contract");

WHEREAS, the 1979 Contract has been amended on numerous occasions;

WHEREAS, the Parties wish to supersede the 1979 Contract, and all amendments thereto, with this Agreement;

WHEREAS, by resolution duly adopted on February 13, 2012 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 resolution duly adopted on February 13, 2012 by the Purchaser's Board of Commissioners, this Agreement was approved and the Purchaser's Chairman 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. **Term.** The term of the Agreement shall extend for a period of approximately fifty (50) years, commencing on the Effective Date hereof as provided for in paragraph 19 of this Agreement, and terminating on June 30, 2062, unless otherwise extended or modified by written agreement between the parties.

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, however, **6.0** million gallons per month.

3. **Minimum Purchases.** The Purchaser agrees to purchase from the Seller a minimum of **1.5** million gallons per month. The Purchaser shall pay for the minimum monthly quantity of water even if not used by Purchaser. Any

surplus amount used by the Purchaser during a particular month shall not be carried over to the next month.

4. **Quality of Water.** All water furnished to the Purchaser by the Seller during the term of this Agreement, or any renewal or extension thereof, shall be potable, treated water meeting applicable purity standards of all appropriate state and federal regulatory agencies. The water shall also be of the same quality furnished to the Seller's retail customers.

5. **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. Intersection of Leafdale Road and US Highway 31E;

b. LaRue County Industrial Park at the intersection of Commerce Drive and Lincoln Parkway;

c. Emergency connection at the intersection of Kentucky Highway 84/357 and Kentucky Highway 224; and

d. Emergency connection at the intersection of Miller Road and Lincoln Farm Road.

The water shall be furnished at the points of delivery at a minimum pressure of thirty (30) 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.

6. **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 with all possible dispatch. The Seller shall immediately inform the Purchaser by telephone, by e-mail, or by facsimile transmission of the nature and extent of such temporary or partial failure to deliver water.

7. **Point of Delivery Equipment.** The Purchaser shall furnish, operate and maintain, at its own expense, at the points of delivery, in a building or pit, the necessary metering equipment. Title and ownership of the buildings, meter pits and metering equipment shall continue to vest in the Purchaser.

8. **Testing of Master Meters and Adjustments.** The Purchaser shall be responsible for testing the master meters at least as often as the intervals set forth

in 807 KAR 5:066, Section 16 (e.g. 2-inch meter to be tested every 4 years). A meter registering not more than two percent (2%) above or below the actual flow rate during testing shall be deemed to be accurate. If the meter registers more than two percent (2%) above or below the actual flow rate during testing, it shall be deemed to be inaccurate. If inaccurate, the previous readings of the meter shall be corrected for the three (3) months previous to such test in accordance with the percentage of inaccuracy found by such test. If any 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 or about the **15th** day of each month.

9. Billing and Payment Procedure. The Seller shall furnish the Purchaser not later than the **first** business day of each month with an itemized statement of the amount of water furnished the Purchaser at each of the points of delivery during the preceding month and the cost thereof. The Purchaser shall pay those charges not later than the **20th** day of each month.

10. Initial Rate. The initial wholesale rate shall be **$2.10** per 1,000 gallons of water purchased. The initial volumetric wholesale rate shall remain in effect until at least December 31, 2015. This volumetric wholesale rate is based

upon the Seller's actual cost of providing water service to the points of delivery described in paragraph 5 of this Agreement.

11. Rate Modification. Commencing after January 1, 2016, the Seller shall have the right, on an annual basis, to adjust or modify the volumetric rate 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.

12. Advance Notice of Rate Modification. Except for the Initial Rate, 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 comment on 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.

13. Effective Date of Rate Modification. The effective date of the new rate shall be at least sixty (60) days after the Seller adopts the new rate. This will provide the Purchaser sufficient time to obtain a Purchased Water Adjustment from the Kentucky Public Service Commission (the "PSC").

14. 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. Each Party shall maintain a liability insurance policy acceptable to both Parties with limits of at least five million dollars ($5,000,000) with an insurance company qualified to do business in the Commonwealth of Kentucky.

15. Discontinuing Water Service for Delinquent Sewer Customers. The Purchaser provides retail water service to some of the Seller's sewer customers. Pursuant to the provisions of KRS 96.930 to 96.943 and all other applicable laws, the Purchaser agrees to discontinue water service to the Seller's delinquent sewer customers upon written request by the Seller.

16. Pledge. It is understood by the Parties that the Purchaser intends to, and does by the execution of the Agreement, pledge this Agreement 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 Purchaser to USDA-RD, and any additional

loans hereinafter obtained from USDA-RD. The Seller, however, is not incurring any liability to USDA-RD because of the Purchaser's pledge of this Agreement to USDA-RD; and the Seller is not incurring any independent obligation to USDA-RD because of this pledge by the Purchaser.

17. USDA-RD Concurrence. Both Parties are indebted to USDA-RD. Therefore, this Agreement is subject to concurrence by USDA-RD as evidenced by the signature of a duly authorized USDA-RD official.

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

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

a. USDA-RD 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 latter of the above events occurs. The Seller shall give written notice of the Effective Date to the Purchaser.

20. 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 Hodgenville
P.O. Box 189
200 South Lincoln Boulevard
Hodgenville, KY 42748
Attention: Mayor

(B) **As to the Purchaser:**

LaRue County Water District No. 1
6215 North L & N Turnpike
Buffalo, KY 42716
Attention: Chairman

21. Response to Notices. At any time either Party desires or is required to respond to any notice given pursuant to paragraph 20, such response shall be made in the manner prescribed by paragraph 20 and be given within fifteen (15) days after receipt of the notice unless otherwise provided in this Agreement.

22. Paragraph Headings. The descriptive headings of the various paragraphs of the Agreement have been inserted for convenience of reference only and shall in no way modify or restrict any of the terms and provisions thereof.

23. 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 the 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.

24. Non-Waiver. Any waiver at any time by either Party 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.

25. 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.

26. Prior Contracts Superseded. As of the Effective Date of this Agreement, the 1979 Contract, and all amendments or modifications thereto, shall be superseded by this Agreement.

[Remainder of page intentionally left blank]

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.

CITY OF HODGENVILLE, KENTUCKY

BY: Terry L Cruse
TERRY L. CRUSE, MAYOR

DATE: 2-14-2012

ATTEST:

MaDonna Hornback
MaDonna Hornback, City Clerk/Treasurer

LARUE COUNTY WATER DISTRICT NO. 1

BY: John Maurice Detre
JOHN MAURICE DETRE, CHAIRMAN

DATE: 2-13-12

ATTEST:

Bobby Garrison
Bobby Garrison, Secretary