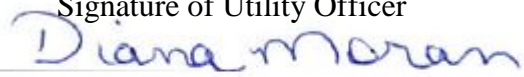


**PURCHASED WATER ADJUSTMENT FOR
WATER DISTRICTS AND WATER ASSOCIATIONS
(807 KAR 5:068)**

Name of Utility	BRACKEN COUNTY WATER DISTRICT DIVISION I & II		
Date	MAY 13, 2016		
Address	PO BOX 201		
City, State, Zip	BROOKSVILLE, KY	41004	
Telephone Number	606-735-3513		
Email Address	D.MORAN@BRACKENCOUNTYWATERDISTRICT.COM		
1.a. Name of all wholesale suppliers and the base (current) rate and changed rate of each. In the event the water purchased is billed by the supplier on a rate that is not a flat rate schedule, the entire rate schedule must be shown. Attach additional sheets if necessary.			
Supplier(s)	Base Rate	Changed Rate	
AUGUSTA REGIONAL WATER TREATMENT	2.31/1,000 gallons	2.35/1,000 gallons	
1.b. The Supplier adjusted its rate pursuant to the Commission's Order of 4/15/2016 in Case No. 2015-00039. A copy of this Order and the Supplier's subsequent bill is attached as Exhibits A and B.			
2. Twelve-month period upon which the purchased water adjustment is based. (This twelve-month period must end within 90 days of this filing).			
From	MARCH 2015	through	FEBRUARY 2016
	(month and year)		(month and year)
3. Statement of water purchases. Where water is purchased from more than one supplier, purchases from each supplier must be shown separately. If water is purchased through a declining block rate schedule, purchases for each month must be shown. Attach an additional sheet if necessary.			

Supplier(s)	Gallons Purchased during 12 month period
AUGUSTA REGIONAL WATER TREATMENT	156,537,300
TOTAL PURCHASES	156,537,300
4. Total gallons sold for the 12 month period	134,409,400
5. Increased water cost	6,261.50
<p>The increased water cost is the cost difference between purchases at base (current rate) and purchases at new rate. The calculation and all supporting documents used to determine the change in purchased water costs sufficient to determine the accuracy of the calculation is attached as Exhibit C.</p>	
6. Purchased water adjustment factor	.05
<p>The purchased water adjustment factor is obtained by dividing the increased cost of water by the total gallons sold.</p>	
<p>Note: The purchased water adjustment factor is added to each thousand gallons sold. If the minimum usage is 2,000 gallons then the purchased water adjustment factor would be added to the minimum bill twice.</p>	
7. A schedule listing the current and proposed rates is attached as Exhibit D.	
8. A copy of the resolution or other document of the utility's governing body authorizing the proposed rates is attached as Exhibit E.	
9. Proposed effective date	MAY 1, 2016
<p>Signature of Utility Officer </p>	
<p>Title</p>	

LIST OF EXHIBITS

Exhibit	Document
A	Order of 4/15/2016 in Case No. 2015-00039
B	City of Augusta Billing Invoice for Service Rendered 4/1/2016 – 4/30/2016
C	Calculation of Purchased Adjustment Factor (Electronic Copy includes electronic version in Excel Format)
D	Schedule of Pre-Adjustment and Post-Adjustment Rates
E	Resolution of Bracken County Water District Board of Commissioners Authorizing Adjustment
F	Revised Tariff Sheet Reflecting Adjusted Rates

EXHIBIT A

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PROPOSED ADJUSTMENT OF THE)
WHOLESALE WATER SERVICE RATES) CASE NO. 2015-00039
OF THE CITY OF AUGUSTA)

ORDER

On February 9, 2016, the city of Augusta (“Augusta”) and the Bracken County Water District (“Bracken District”), the only parties to this proceeding, filed a Joint Motion for Approval of Settlement Agreement and Stipulation and Water Purchase Contract (“Joint Motion”). Per the parties, the Settlement Agreement and Stipulation (“Settlement Agreement”) is “a fair, just, and reasonable disposition of the issues presented by the proposed wholesale rate adjustment,”¹ and the parties request an Order approving the Settlement Agreement.² Attached to the Settlement Agreement as Exhibit A is a proposed new Water Purchase Contract (“Contract”) that “supersedes and replaces the provisions of all previous agreements between the Parties,”³ and which is also submitted for approval by the Commission.

Having reviewed the Settlement Agreement, the Contract, and the evidence of record, the Commission finds that, except for the Contract’s provision of a penalty in the

¹ Joint Motion (filed Feb. 9, 2016) at Exhibit A, Settlement Agreement at 2.

² Joint Motion (filed Feb. 9, 2016) at 2.

³ *Id.*, at Agreement, Exhibit A, Contract at 1. The Settlement Agreement is Exhibit A of the Joint Motion, and the Contract is Exhibit A of the Settlement Agreement.

event that Augusta fails to provide certain reports and documents to Bracken District,⁴ the provisions are reasonable. The Commission, therefore, concludes that the Settlement Agreement and Contract are reasonable and in the public interest only if the penalty provision is stricken from the Contract.

BACKGROUND

On January 8, 2015, Augusta filed with the Commission a revised tariff sheet setting forth a proposed adjustment to its existing rate for wholesale water service to Bracken District effective for service provided on and after February 11, 2015. The revised tariff sheet contained a proposed new water usage rate of \$1.95 per 1,000 gallons. It also contained a Capital Cost Charge of \$6,090 per month for which no change was proposed. Bracken District filed an objection to the proposed new rate and requested that the Commission begin a formal proceeding to investigate the proposed rate. By an Order entered on February 10, 2015, the Commission suspended the proposed rate for five months from February 11, 2015, up to and including July 10, 2015.⁵

On August 28, 2015, Augusta filed a Motion to Amend for Rate Case Expense ("Motion to Amend") through which it proposed to recover rate-case expenses through a 36-month surcharge to Bracken District. The tariff sheet filed with the Motion to Amend contained the proposed new water usage rate of \$1.95 per 1,000 gallons, the Capital Cost Charge of \$6,090, and a proposed \$1,111.11 monthly surcharge for 36 months. The tariff sheet filed with the Motion to Amend contained a "Date of Issue" of August 27,

⁴ Joint Motion (filed Feb. 9, 2016), Contract at 8.

⁵ Order (Ky. PSC Feb. 10, 2015) at 1.

2015, and a “Date Effective” of September 27, 2015. By an Order entered on September 4, 2015, the Commission granted Augusta’s Motion to Amend and suspended the proposed rates set forth in the revised tariff sheet filed on August 28, 2015, for five month, from September 27, 2015, up to and including February 26, 2016.⁶

The proceedings in this case included multiple rounds of discovery, informal conferences, and one evidentiary hearing held on September 8, 2015. This case was also held in abeyance from June 17, 2015, through August 14, 2015, for the purpose of allowing settlement discussions.⁷ On November 5, 2015, we again entered an Order that granted the parties’ request for an abeyance to afford additional time for them to engage in settlement discussions.⁸ On January 20, 2016, we entered an Order holding the briefing schedule in abeyance after the parties advised the Commission that they had reached an agreement in principle.⁹

On February 9, 2016, the parties filed a Joint Motion seeking approval of a Settlement Agreement and Contract containing a new wholesale rate to be charged by Augusta for water service to Bracken District. A copy of the Settlement Agreement and Contract is appended to this Order as the Appendix. The major provisions of the Settlement Agreement and Contract are as follows.

- The existing Water Purchase Agreement, as modified, will be replaced with the new Contract.
- A new wholesale water purchase rate of \$2.35 per 1,000 gallons will be established.

⁶ Order (Ky. PSC Sept. 4, 2015) at 5.

⁷ Order (Ky. PSC Dec. 9, 2015) at 2.

⁸ *Id.*

⁹ Order (Ky. PSC Jan. 20, 2016) at 3.

- a) Augusta will eliminate the \$6,090 Capital Cost Charge and Depreciation Fund Contribution, included in its current tariff, which is billed to Bracken District each month.
- o Included in the Contract is a minimum monthly purchase volume that will last for the first 120 months following the effective date of the Agreement. Bracken District agrees to purchase a minimum of 6,500,000 gallons of water each month, with a provision to be excused from the minimum purchase volume if Augusta is unable to provide that volume or Bracken District suffers a major service interruption that limits its ability to receive and distribute water.
- o Augusta agrees to limit the frequency of Wholesale Rate Adjustments. Augusta may seek a rate adjustment one year from the effective date of the new Contract, but subsequent rate adjustments can occur no sooner than two years from the last rate adjustment. However, Augusta may implement an emergency adjustment to its rate for wholesale water service if it is able to demonstrate that its credit or operations will be materially impaired or damaged by failure to implement a rate adjustment.
- o The Contract establishes procedures that must be followed for new rate adjustments by Augusta. Those procedures are:
 - a) Augusta is required to provide Bracken District with written notice of any proposed wholesale rate adjustment at least 60 days prior to the proposed effective date.
 - b) Bracken District will have a 30-day comment period which includes the ability to request a meeting with Augusta's representatives to discuss the proposed rate adjustment.
 - c) Augusta will be required to provide a written response to Bracken District's comments, and if a request for a meeting has been made, Augusta will meet with Bracken District no later than ten days prior to the proposed effective date of the new rate.
- o Reporting requirements are established for Augusta to provide various financial reports and documents at

prescribed intervals throughout the year. The reports and documents required include, but are not limited to, Water Treatment Plant expense reports, General Ledgers and Check Registers, Annual Audit Reports, etc.

- The Contract includes a penalty provision authorizing Bracken District to permanently withhold 10 percent of the total invoiced water cost for the monthly period in which Augusta fails to make a timely submission to Bracken District of any reports or documents required under the Contract.

DISCUSSION

Having reviewed the Settlement Agreement, Contract, and evidence of record, the Commission finds that, with the exception of the penalty provision of the Contract as further discussed below, the Settlement Agreement and Contract are reasonable and in the public interest and should be approved.

Pursuant to the Supreme Court of Kentucky's decision in *Simpson County Water District v. City of Franklin*, 872 S.W.2d 460 (Ky. 1994), the rates and service of Augusta to Bracken District are subject to the jurisdiction of the Commission, and the Commission is required to ensure that the rates are fair, just, and reasonable. We find that the Settlement Agreement and the Contract are both subject to our review.

Numbered paragraph 20 of the proposed Contract requires Augusta to provide Bracken District with certain reports and documents. Numbered paragraph 21 (hereinafter, the "Penalty Provision") specifies the consequences if Augusta fails to timely provide the required reports and documents. In pertinent part, the Penalty Provision states that "Bracken District may withhold ten percent of the total invoiced cost of water for the monthly period in which Augusta's failure occurred."¹⁰ Although the Penalty Provision allows Augusta a 30-day opportunity to cure the failure and,

¹⁰ Joint Motion (filed Feb. 9, 2016) Contract at 8.

thereafter, receive the withheld 10 percent payment amount from Bracken District, the Penalty Provision permits Bracken District to permanently withhold the amount if Augusta fails to provide the required reports and documents within the 30-day window.¹¹

Bracken District states that any amount permanently withheld consequent to the Penalty Provision will not be refunded to its customers,¹² and that any amount permanently withheld is a “damage award for Augusta’s failure to comply with a term of the New Contract.”¹³ Bracken District likens it to a liquidated damage award,¹⁴ and states that any amounts permanently withheld will be “considered as miscellaneous income” which the Commission may consider when determining Bracken District revenue requirement from rates.¹⁵

KRS 278.010(12) provides the definition of a “rate” and states the following:

“Rate” means any individual or joint fare, toll, charge, rental, or other compensation for service rendered or to be rendered by any utility, and any rule, regulation, practice, act, requirement, or privilege in any way relating to such fare, toll, charge, rental, or other compensation, and any schedule or tariff or part of a schedule or tariff thereof;

The Commission finds that the Penalty Provision concerns the amount that Bracken District is required to pay Augusta for water service, and it is a “rate” as defined in KRS 278.010(12) in that it is a “rule, regulation, practice, act, requirement, or

¹¹ *Id.* The Penalty Provision also prescribes Augusta’s requirements under numbered paragraph 20 in the event that Augusta suffers a temporary or permanent loss of information through damage to or failure of its information technology system.

¹² Bracken District Revised Response to Commission Staff’s First Request for Information Made Jointly to Augusta and Bracken District (“Bracken District’s Response to Staff’s Joint Request”) (filed Apr. 1, 2016) at Response 6.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

privilege” that relates to the rate charged by Augusta and collected from Bracken District. We find that if there was a dispute over an amount withheld consequent to the Penalty Provision, the Commission would be, pursuant to *Simpson County*, the appropriate forum for resolving the dispute.

The Penalty Provision is not cost-based. The potential amount permanently withheld through application of the Penalty Provision could vary greatly from month to month, depending on factors such as the weather. Thus, the measure of the penalty imposed, the amount withheld, is not determined by a reasonable method because the same conduct can produce markedly different results. We find this result arbitrary and unreasonable.

We also note that the rates of Bracken District’s customers are highly dependent on the amounts that Bracken District is required to pay Augusta for water service. We find that Bracken District utilizes 807 KAR 5:068, the purchased water adjustment regulation applicable to water districts and water associations, as a means to adjust its rates and pass through its increased water costs. We find that if an amount is permanently withheld by Bracken District pursuant to the Penalty Provision, the cost of water to Bracken District is, in fact, reduced. Nonetheless, Bracken District takes the position that such a reduction does not impact the purchased water procedures or require a refund.¹⁶ We find that the Penalty Provision is also unreasonable, as it conflicts with 807 KAR, Section 5:068, by rendering the amounts paid by Bracken District provisional.

¹⁶ *Id.*

Pursuant to the terms of the Settlement Agreement, the Settlement Agreement is void and withdrawn by the parties in the event that the Commission does not accept it in its entirety.¹⁷ The Commission finds that the proposed Settlement Agreement and Contract will not be accepted unless, within seven days of the date of this Order, the parties agree to delete from numbered paragraph 21 the provision for a permanent withholding of 10 percent by filing either a new contract or a contract amendment. In the event that the parties fail to file a new contract or a contract amendment, the Commission finds that each party should be permitted to file a brief on or before 21 days from the date of this Order.

While the Commission now approves as reasonable the provisions of the Settlement Agreement, excepting the proposed Penalty Provision, we note that each of the parties has expended resources far out of proportion to the issues in this case. What started over 15 months ago as Augusta's tariff filing to raise its wholesale water rate to Bracken County by approximately \$20,000 annually has resulted in an intensely litigated proceeding lasting 50 percent longer than more complex rate cases involving tens of millions of dollars. The legal fees incurred in this case totaled approximately \$140,000, split almost evenly between Augusta and Bracken County. The result of these expenditures was a Settlement Agreement containing a revised rate structure which, based on test-year volumes, will reduce Augusta's proposed rate increase to approximately \$13,000 annually, thereby saving Bracken County approximately \$7,000 annually.

Since the Settlement Agreement contains no explicit reference to rate case legal fees, there is no reason to prolong this case to investigate the reasonableness of those

¹⁷ Joint Motion (filed Feb. 9, 2016) Settlement Agreement at 5.

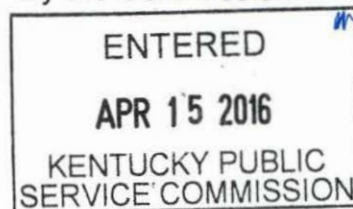
expenditures. All utilities, whether regulated by definition under KRS 278.010 or as cities under KRS 278.200, have an obligation to manage each and every expenditure, including legal fees. If in the future Augusta or Bracken County requests a rate increase to recover legal fees, the request must be supported by evidence demonstrating the reasonableness of the expenditures, the utility's efforts to manage the expenditures, and an analysis of the costs expended to the benefits achieved.

IT IS THEREFORE ORDERED that:

1. The Joint Motion to Approve the Settlement Agreement and Contract is granted conditioned upon the parties' filing, within seven days of the date of the Order, of a new contract or a contract amendment agreeing to delete from numbered paragraph 21 of the Contract the provision for a permanent withholding of 10 percent.

2. If neither a new contract nor a contract amendment is filed in accordance with ordering paragraph 1, each party shall have 21 days from the date of this Order to file a brief.

By the Commission



ATTEST:

Acting Executive Director

APPENDIX

APPENDIX TO AN ORDER OF THE KENTUCKY PUBLIC SERVICE
COMMISSION IN CASE NO. 2015-00039 DATED **APR 15 2016**

SETTLEMENT AGREEMENT AND STIPULATION

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

PROPOSED ADJUSTMENT OF THE)
WHOLESALE WATER SERVICE RATES OF) **CASE NO. 2015-00039**
THE CITY OF AUGUSTA)

SETTLEMENT AGREEMENT AND STIPULATION

This Settlement Agreement and Stipulation is entered this 8th day of February 2016 by and between the City of Augusta (“Augusta”) and Bracken County Water District (“Bracken District”) (collectively “the Parties”).

WITNESSTH

WHEREAS, on January 8, 2015, Augusta filed with the Commission a proposed revision to its wholesale water rate;

WHEREAS, on February 2, 2015, Bracken District filed with the Commission a request that a formal proceeding be established to review the reasonableness of Augusta’s proposed wholesale rate and that the proposed wholesale rate not be permitted to become effective pending a hearing;

WHEREAS, on February 10, 2015, the Commission established Case No. 2015-00039 to review the reasonableness of Augusta’s proposed wholesale rate;

WHEREAS, on August 28, 2015, Augusta filed additional revisions to its wholesale rate to permit the assessment of a surcharge from Bracken District or to assess a higher wholesale rate than originally proposed to recover its rate case expenses;

WHEREAS, on September 4, 2015, the Commission suspended the operation of the revised proposed wholesale rate until February 26, 2016;

WHEREAS, the parties in Case No. 2015-00039 have conducted discovery, presented witness testimony in support of their positions, and actively participated in the evidentiary hearing that the Commission held on September 8, 2015;

WHEREAS, the Commission has encouraged the Parties to resolve this matter by mutual agreement;

WHEREAS, the Parties desire to settle all of the issues related to the proposed wholesale rate adjustment;

WHEREAS, the adoption of this Settlement Agreement and Stipulation as a fair, just, and reasonable disposition of the issues presented by the proposed wholesale rate adjustment will eliminate the need for the Commission and the Parties to expend significant resources litigating those issues and eliminate the possibility of, and any need for, rehearing or judicial review of the Commission's final order in Case No. 2015-00039;

WHEREAS, the Parties acknowledge and understand that this Settlement Agreement is subject to the Commission's approval of the Commission insofar as it constitutes an agreement by the Parties for settlement, and, absent express agreement stated herein, does not represent agreement on any specific claim, methodology, or theory supporting the appropriateness of any proposed or recommended adjustments to Augusta's rates, terms, or conditions;

WHEREAS, the Parties have spent many hours over several weeks to reach the stipulations and agreements which form the basis of this Settlement Agreement;

WHEREAS, the Parties agree that this Settlement Agreement, viewed in its entirety, is a fair, just, and reasonable resolution of all the issues in Case No. 2015-00039; and

WHEREAS, the Parties believe sufficient and adequate evidence supports this Settlement Agreement, and further believe the Commission should approve it;

NOW, THEREFORE, for and in consideration of the promises and conditions set forth herein, the Parties hereby stipulate and agree as follows:

1. Effective for service rendered on and after the date of the approval of this Agreement and the Water Purchase Contract attached as Exhibit A to this Settlement Agreement and Stipulation (“New Water Purchase Contract”):

a. Augusta should be authorized to assess a rate of \$2.35 per 1,000 gallons for wholesale water service to Bracken District;

b. With the exception of a fee for late payment and the volumetric rate set forth in Paragraph 1a, Augusta should have no authority to assess any other fee or charge for such wholesale service, including a capital cost charge of \$6,090 per month;

c. Except as provided in Paragraph 5 of this Settlement Agreement and Stipulation, Bracken District should no longer be required to make any contribution to the Water Treatment Plant’s depreciation reserve fund;

d. The terms of the New Water Purchase Contract should exclusively govern Augusta’s sale of water to Bracken District.

2. The rate of \$2.35 per 1,000 gallons is a fair, just, and reasonable rate for Augusta’s wholesale water service to Bracken District.

3. The Parties’ 1993 Water Purchase Agreement, as amended and modified by the 1995 Addendum Agreement, 1999 Settlement Agreement, and 2008 Modification Agreement, should be terminated and replaced with the New Water Purchase Contract.

4. The Commission should approve the New Water Purchase Contract.

5. Within 30 days of the Commission’s approval of the New Water Purchase Contract, Bracken District will deliver to Augusta all monies owed under the 1993 Water

Purchase Contract, as modified, for contributions to the Water Treatment Plant's Depreciation Reserve Fund. Based upon water service provided through December 31, 2015, Bracken District owes Augusta \$28,997.51. For each additional month of service provided before the Commission's approval of the New Water Purchase Agreement, this amount should be increased by \$588.75.

6. Upon Commission approval of this Settlement Agreement and Stipulation, both Parties' claims for undercharges or overcharges resulting from the final calculation of the Variable Rate for Fiscal Years 2013-14 and 2014-15 as provided in Section 3 of the Variable Rate Schedule Addendum of the 1993 Water Purchase Contract shall be deemed satisfied.

7. Except as specifically stated otherwise in this Settlement Agreement and Stipulation, entering into this Settlement Agreement and Stipulation shall not be deemed in any respect to constitute an admission by either of the Parties that any computation, formula, allegation, assertion or contention made by any other party in this proceeding is true or valid.

8. The Parties agree that the foregoing stipulations and agreements represent a fair, just, and reasonable resolution of the issues addressed herein and request the Commission to approve the Settlement Agreement and Stipulation.

9. Following the execution of this Settlement Agreement, the Parties shall cause the Settlement Agreement and Stipulation and the New Water Purchase Contract to be filed with the Commission no later than February 10, 2016 and together with a request to the Commission for consideration and approval of this Settlement Agreement and Stipulation and the New Water Purchase Contract no later than March 1, 2016.

10. This Settlement Agreement and Stipulation is subject to the acceptance of and approval by the Commission. The Parties agree to act in good faith and to use their best efforts to recommend to the Commission that this Settlement Agreement be accepted and approved.

11. If the Commission issues an order adopting this Settlement Agreement and Stipulation in its entirety, each of the Parties agrees that it shall file neither an application for rehearing with the Commission, nor bring an action for review in Franklin Circuit Court with respect to such order.

12. If the Commission does not accept and approve this Settlement Agreement in its entirety, then: (a) this Settlement Agreement and Stipulation shall be void and withdrawn by the Parties from further consideration by the Commission and neither of the Parties shall be bound by any of its provisions, provided that neither of the Parties is precluded from advocating any position contained in this Settlement Agreement and Stipulation; and (b) neither the terms of this Settlement Agreement and Stipulation nor any matters raised during the settlement negotiations shall be binding on either of the Parties or be construed against either of the Parties.

13. If the Settlement Agreement and Stipulation is voided or vacated for any reason after the Commission has approved it, neither of the Parties will be bound by the Settlement Agreement and Stipulation.

14. The Settlement Agreement and Stipulation shall in no way be deemed to divest the Commission of jurisdiction under Chapter 278 of the Kentucky Revised Statutes.

15. The Settlement Agreement and Stipulation shall inure to the benefit of and be binding upon the Parties hereto, their successors and assigns.

16. The Settlement Agreement and Stipulation constitutes the complete agreement and understanding among the Parties, and any and all oral statements, representations or

agreements made prior hereto or contained contemporaneously herewith shall be null and void and shall be deemed to have been merged into the Settlement Agreement and Stipulation.

17. The Parties hereto agree that, for the purpose of the Settlement Agreement and Stipulation only, the terms are based upon the independent analysis of the Parties to reflect a fair, just, and reasonable resolution of the issues herein and are the product of compromise and negotiation.

18. The Parties agree that this Settlement Agreement and Stipulation may be executed in multiple counterparts.

IN WITNESS WHEREOF, the Parties have affixed their signatures.

City of Augusta, Kentucky

HAVE SEEN AND AGREED

By: M. Todd Osterloh
M. Todd Osterloh, Counsel

and

By: Cynthia C. Thompson
Cynthia C. Thompson, Counsel

Bracken County Water District

HAVE SEEN AND AGREED

By: Gerald E. Wuetcher
Gerald E. Wuetcher, Counsel

EXHIBIT A

WATER PURCHASE CONTRACT

This **Water Purchase Contract** (“the Agreement”) is made and entered into this 6th day of February, 2016 by and between the City of Augusta, Kentucky (“Augusta”) and Bracken County Water District (“Bracken District”) (collectively “the Parties”).

WITNESSETH:

WHEREAS, Augusta is a Kentucky city of the home rule class;

WHEREAS, Bracken District is a water district organized and operating under Chapter 74 of the Kentucky Revised Statutes;

WHEREAS, prior to November 1996, Augusta and Bracken District each operated its own water treatment facilities and water distribution system;

WHEREAS, on March 4, 1993, the Parties entered into a Water Purchase Contract (“1993 Water Purchase Contract”) which provided that Augusta would construct a water treatment plant to serve the Parties (“Water Treatment Plant”) and which further provided the terms and conditions under which the Water Treatment Plant would be managed and operated and treated water from the Water Treatment Plant would be distributed and sold;

WHEREAS, on April 26, 1995, the Parties executed an addendum to the 1993 Water Purchase Contract (“Addendum Agreement”) to modify the amount of the monthly capital cost payment that Bracken District would pay;

WHEREAS, on November 5, 1999, the Parties executed a Settlement Agreement in PSC Case No. 98-497 (“Settlement Agreement”) which addressed certain matters, including the billing and collection of undercharges and the timing for the revision and adjustment of the rates for water produced by the Water Treatment Plant;

WHEREAS, in May 2008, the Parties executed the Water Purchase Contract Agreement of 2008 (“2008 Modification Agreement”) to amend the 1993 Water Purchase Contract to increase the amount of water available to Bracken District to 75 percent of the Water Treatment Plant’s capacity and to increase Bracken District’s monthly capital cost payment to reflect the revised capacity allocation;

WHEREAS, the Parties desire to more clearly define each Party’s role in the ownership, operation and management of the Water Treatment Plant, including the terms and conditions under which Augusta provides water service to Bracken District;

NOW THEREFORE, the Parties agree as follows:

1. **Effect of Agreement on Previous Agreements.** As of the Effective Date set forth in Paragraph 32, this Agreement supersedes and replaces the provisions of all previous agreements between the Parties related to the Water Treatment Plant, including the 1993 Water

Purchase Contract, as amended by the Addendum Agreement, Settlement Agreement, and 2008 Modification Agreement.

2. **Relinquishment of Equitable Interest.** Bracken District relinquishes any equitable ownership interest in the Water Treatment Plant that may exist pursuant to the terms of the 1993 Water Purchase Contract, as amended by the 2008 Modification Agreement. Purchase of water service under this Agreement shall not create any equitable ownership interest in the Water Treatment Plant.

3. **Term.** The term of this Agreement is for a period of 20 years, commencing on the Effective Date as provided in Paragraph 32 unless otherwise extended or modified by the Parties' written agreement.

4. **Obligation to Finance Improvements or Repairs.** Under this Agreement, Bracken District shall have no obligation to pay for any cost associated with the improvement, expansion, repair, or replacement of the Water Treatment Plant except as those costs are included in the rate for purchased water.

5. **Quantity and Quality of Water.** Augusta shall furnish to Bracken District for purchase at the Agreed Rate up to 921,600 gallons of water daily at the Point of Delivery and further agrees to provide Bracken District additional quantities for purchase if such quantities are available after Augusta has supplied the needs of its distribution system and its other wholesale customers. Augusta shall furnish to Bracken District potable, treated water that meets all water quality standards set forth in state and federal law at the Effective Date of this Agreement and any subsequent amendments or revisions to such laws.

6. **Minimum Purchase Volume.** For the first 120 months following the Effective Date of this Agreement, Bracken District shall purchase a minimum of 6,500,000 gallons of water each month ("Agreed Monthly Minimum Volume"), provided, however, that Bracken District shall be excused of its obligation to purchase the Agreed Monthly Minimum Volume in any month in which Augusta is unable to furnish that volume or in which Bracken District suffers a major service interruption similar to that described in Paragraph 9 that limits its ability to receive and distribute water. At the end of this 120-month period, Bracken District shall not be required to purchase the Agreed Monthly Minimum Volume from Augusta provided it serves upon Augusta notice of its intent to purchase a lesser volume. Such notice must be in writing and must be provided a minimum of 24 months in advance of the first monthly period in which Bracken District intends to purchase less than the Agreed Monthly Minimum Volume. If Bracken District does not reduce its purchases below the Agreed Monthly Minimum Volume within 90 days of the start of the period identified in its written notice, Bracken District's notice shall be deemed ineffective. Bracken District's notice shall not be deemed ineffective if, after reducing its purchases in accordance with its notice, it subsequently purchases from Augusta a volume of water equal or above the Agreed Monthly Minimum Volume.

7. **Point of Delivery.** Augusta shall deliver water to Bracken District through a master meter located at a point immediately adjacent to the Water Treatment Plant at 203 Ferry Street, Augusta, Kentucky.

8. **Operation of Water Treatment Plant and Related Facilities.** Augusta shall remedy diligently all temporary or partial failures to deliver water with all practicable dispatch. Augusta shall immediately inform Bracken District by telephone, email, or facsimile transmission of the nature and extent of such failure to deliver water. Each Party shall promptly notify the other of any condition or event in the operation of their water supply, treatment or distribution facilities that would adversely affect the efficiency or reliability of the other Party's facilities.

9. **Major Service Interruptions.** Failure of pressure to the main supply, water main breaks, power failures, flood, fire, earthquake, raw water shortages or other catastrophes shall excuse Augusta from complying with those terms of this Agreement for supply of water or pressure until such time as the cause of the reduction of pressure or supply or water has been removed or remedied; provided, however, that Augusta shall make available to Bracken District 64 percent of treated water that is available for distribution during such emergencies or catastrophes. Bracken District agrees to take such actions as may be reasonably necessary to curtail water usage within its system in response to the emergency or catastrophe.

10. **Service Interruptions Due to Fire Events.** If the customers of either Party to this Agreement require unusually large quantities of water for a period of time not to exceed 24 hours, for the purpose of extinguishing unusual and extreme fires, Augusta may supply water to the Party whose customers require such water though such action may result in diminished or terminated water service to the Parties.

11. **Initial Wholesale Rate.** The initial rate for wholesale water service shall be \$2.35 per 1,000 gallons ("Agreed Rate") and shall be subject to modification pursuant to Paragraphs 12 through 16 of this Agreement

12. **Frequency of Adjustments to Wholesale Rate.** Augusta shall not adjust the Agreed Rate earlier than one year after the effective date of this Agreement. Following the first adjustment of the Agreed Rate, Augusta shall not adjust its rate for wholesale water service to Bracken District earlier than two years from the effective date of its most recent rate adjustment. "Effective date of the recent rate adjustment" shall mean the date on which Augusta proposed to begin charging the adjusted rate or the date on which the Kentucky Public Service Commission authorized Augusta to charge the adjusted rate, whichever is later.

13. **Emergency Adjustment of Wholesale Rate.** Notwithstanding the restrictions set forth in Paragraph 12, Augusta may adjust its rate for wholesale water service upon a showing that its credit or operations will be materially impaired or damaged by the failure to implement the proposed rate adjustment and such impairment or damage directly results from an act of God, strike, lockouts affecting Augusta or its suppliers, an act of the public enemy, war, blockade, insurrection, riot, epidemic, landslide, lightning, earthquakes, fire, storm, flood, washout, arrest and restraint of rulers and peoples, civil disturbance, explosion, breakage or accident to machinery or lines of pipe, the binding order of any court or governmental authority which has been resisted in good faith by all reasonable legal means, and any other cause, whether of the kind herein enumerated or otherwise, not reasonably within Augusta's control and which Augusta's exercise of due diligence is unable to prevent or overcome. In such event, Augusta shall provide Bracken District with written notice of its proposed emergency rate adjustment at

least 20 days prior to the proposed effective date of the emergency rate adjustment as well as the detailed calculations that it used to develop the proposed rate, including an explanation of each adjustment to test period expenses and revenue, and the reasons why an emergency rate adjustment is required.

14. **Notice of Proposed Rate Adjustment.** Augusta shall provide Bracken District with written notice of any proposed adjustment in its wholesale rate at least 60 days prior to the date that it proposes to begin charging the proposed rate and shall provide with such notice the detailed calculations that it used to develop the proposed rate, including an explanation of each adjustment to test period expenses and revenues. Bracken District shall have 30 days from the issuance of the notice to submit its written comments regarding the proposed adjustment, including any objections, and to request a meeting with Augusta's representatives to discuss the proposed rate adjustment. Augusta shall serve a written response to Bracken District's comments and, if a request for meeting is timely made, representatives of Augusta shall meet with Bracken District's representatives no later than 10 days prior to the date that it proposes to begin charging the proposed rate. If Augusta fails to strictly comply with all provisions of this Paragraph, its proposed rate adjustment may not take effect until it has strictly complied with all provisions of this Paragraph and the time period for any subsequent event contingent upon such compliance has elapsed unless Augusta has made a good faith effort to comply with the provisions of this Paragraph and Augusta's inability to strictly comply with those provisions was caused by Bracken District (for example, Bracken District's representatives were unable to meet with Augusta's representatives despite being provided with several meeting dates).

15. **Prospective Nature of Rate Adjustment.** Any adjustment to the Agreed Rate or the subsequent rate for wholesale water service shall be prospective only and shall not apply to water service provided prior to the date upon which the adjustment becomes effective.

16. **Methodology for Rate Adjustment.** Adjustments to the Agreed Rate and to any subsequent rate for wholesale water service under this Agreement shall be based upon Augusta's actual cost of providing water to the Point of Delivery. To determine the cost of water, the Parties shall use the following methodology:

a. The test period for determining any wholesale rate adjustment shall be Augusta's most recent fiscal year for which an audit has been completed and approved.

b. The rate for wholesale water service shall be a flat volumetric rate. No separate charge for debt service or depreciation reserve will be assessed. All costs are recovered only through the volumetric charge for sales.

c. The debt service component of the volumetric rate shall equal 120 percent of the annual debt service payment on debt instruments issued to finance the construction of Water Treatment Plant or of subsequent improvements thereto. The Water Treatment Plant's debt service shall be calculated based upon the average of the Water Treatment Plant's debt service payments (i.e., principal and interest) for the three-year period beginning with the year that the proposed rate is expected to become effective. This average will be multiplied by 1.2 to determine the total revenues allocated to debt service for ratemaking purposes. Should Augusta issue additional debt instruments to finance the cost of improvements to the Water Treatment

Plant, the coverage ratio for ratemaking purposes shall be adjusted to reflect the coverage requirements of these debt instruments.

d. Bracken District shall not be assigned more than 64 percent of the Water Treatment Plant's total annual debt service. (For example, if the three-year average of the Water Treatment Plant's debt service payments is \$100,000, then the revenues necessary to meet the debt service component will be \$120,000 ($\$100,000 \times 1.2$). The portion of the Water Treatment Plant's revenue requirement related to debt service that would be allocated to Bracken District would be \$76,800 ($\$120,000 \times .64$.)

e. The Water Treatment Plant's operating costs shall be allocated based upon the total annual volume of finished treated water delivered to Bracken District and to Augusta's distribution system at their respective delivery points located immediately adjacent to the Water Treatment Plant. (Augusta shall measure the flow of finished treated water from the Water Treatment Plant to Augusta's water distribution system by meter located immediately adjacent to the Water Treatment Plant.) Bracken District shall be assigned the percentage of Water Treatment Plant operating costs that is equal to the percentage that results from dividing the volume of finished treated water delivered to Bracken District at the Point of Delivery during the test period by the total annual volume of finished treated water delivered to Bracken District and Augusta's distribution system. (For example, if the Water Treatment Plant delivered 75,000,000 gallons of finished treated water during the test period to Bracken District and the Water Treatment Plant delivered a total volume of 100,000,000 gallons to the Parties at their respective delivery points in the test period, 75 percent of the Water Treatment Plant's adjusted operating expenses would be allocated to Bracken District.)

f. Test period operating costs may be adjusted to reflect known and measurable changes.

g. Depreciation expense shall be included in calculation of the Water Treatment Plant's operating costs, but only such depreciation expense on plant and facilities whose cost is not financed through the issuance of debt and that are in service at the time of the proposed rate adjustment. (For example, depreciation expense related to Water Treatment Plant facilities and equipment that were financed with the proceeds of Augusta's Water System Revenue Bonds 1995 Series A and B would not be included in the calculation of test period operating expenses.)

h. No civil penalty or fine assessed or levied against Augusta for its failure to comply with any applicable law or regulation shall be included in any operating costs allocated to Bracken District.

i. The adjusted wholesale rate to Bracken District shall be the sum of the debt service costs and operating costs allocated to Bracken District divided by the Water Treatment Plant's test period sales to Bracken District.

17. **Water Treatment Plant Advisory Board.** Within 60 days after the Effective Date, Augusta shall establish by ordinance a Water Treatment Plant Advisory Board ("Board") to receive comment and recommendations regarding the Water Treatment Plant's operation and

to provide for independent review of the Water Treatment Plant's operations. Within 30 days of the establishment of the Board, the governing bodies of Bracken District and the City of Brooksville ("Brooksville") shall submit the names of potential representatives as provided in Paragraph 17a.

a. The Board shall be composed of three members. The governing bodies of Augusta, Bracken District and the City of Brooksville ("Brooksville") (collectively "Participant Entities") shall each submit to Augusta's Mayor a list of at least two names to serve as its representative on the Board. Augusta's Mayor shall select one name from each list submitted.

b. Except as provided in subparagraph c, each of the Board's members will be appointed for a term of four years. If a vacancy occurs due to death, resignation, expiration of term or other reasons, the Participating Entity that is represented by the vacant position will within 15 days of the creation of the vacancy submit the names of at least two persons to fill vacant position. Within 30 days of receiving the nominations, Augusta's Mayor shall appoint one of the named persons to fill the vacancy. Vacancies resulting from any reason other than expiration of the term shall be filled for the unexpired term only.

c. A Board member shall be removed if the governing body of the Participating Entity that he or she represents advises Augusta's Mayor in writing that the member no longer has the Participating Entity's confidence and support.

d. A Board member may be removed for cause by Augusta's mayor. "Cause" shall include improper or inadequate performance, incompetency, neglect of duty, malfeasance, illegal conduct, or a violation of a lawfully adopted Augusta ordinance or resolution of the Augusta City Council. Prior to removing a Board member for cause, Augusta's mayor shall give 30 days' written notice to that Board member and the Participating Entity whom the Board member represents.

e. To ensure a reasonable level of experience and knowledge among the Board's members, the first appointees to the Board will be appointed for staggered terms from two to four years to be determined by lot.

f. Board members will be compensated at a rate of \$50 per meeting. However, this compensation shall not exceed \$250 per month. Augusta shall pay the compensation, but payments to Board members shall be considered an operating expense of the Water Treatment Plant. For purposes of determining the wholesale rate to Bracken District, only the compensation paid to the members representing Bracken District and Brooksville will be allocated to Bracken District.

g. The Board may examine the operation and management practices of the Water Treatment Plant and may make written recommendations to Augusta regarding those practices. Augusta shall allow any Board member access to the Water Treatment Plant's facilities and records during reasonable hours. Augusta shall provide the Board with advanced notice of operational and purchasing decisions for items or matters that are not in the ordinary course of business and allow the Board an opportunity to comment and make recommendations regarding those decisions. Augusta shall consider these recommendations and, if it finds that

those recommendations should not be implemented, shall provide the Board with a written statement explaining its decision.

h. Prior to creating any new position or filling any existing position vacancy at the Water Treatment Plant, Augusta shall request a recommendation from the Board regarding the need to fill the vacancy or create the new position and shall provide a reasonable period for the Board to respond. The Board may make any recommendations in writing to Augusta. If Augusta elects not to implement these recommendations, it shall provide each member of the Board with a written statement of its reasons for its decision.

i. The Board may review annually any rules that Augusta uses to allocate the cost of services that other city departments provide to the Water Treatment Plant and may advise Augusta in writing whether these rules accurately reflect the cost of those services and of any revisions that should be made in these rules to more accurately reflect the cost of those services. Augusta shall consider these recommendations and, if it finds that those recommendations should not be implemented, shall provide the Board with a written statement of its reasons for its decision.

j. At any Public Service Commission proceeding involving the review of Augusta's wholesale rate, Augusta shall have the burden of demonstrating the reasonableness of any test period expense that resulted from any action that was contrary to or inconsistent with a Board recommendation.

k. The ordinance adopted by Augusta to establish the Board shall require that the Board meet at least once every three months, prepare written minutes of each Board meeting, and make these minutes, as well as all findings and recommendations that the Board submits to Augusta, available to the Participating Entities as soon as reasonably practicable.

l. Upon the Board's request, the Participating Entities, either individually or collectively, may provide administrative and logistical support to the Board. If Augusta provides such support to the Board, the cost for such support shall be considered an operating expense of the Water Treatment Plant.

m. Augusta shall not dissolve the Board without Bracken District's consent, which shall not unreasonably be withheld. Dissolution of the Board without Bracken District's consent shall be deemed a material breach of the Agreement.

18. **Depreciation Reserve Fund Payment.** Within 30 days of the effective date of this Agreement, Bracken District will deliver to Augusta all monies owed under the 1993 Water Purchase Contract, as modified, for contributions to the Water Treatment Plant's Depreciation Reserve Fund. Based upon water service provided through December 31, 2015, Bracken District owes Augusta \$28,997.51. For each additional month of service provided before the effective date of this Agreement, this amount should be increased by \$588.75.

19. **Billing and Payment Procedure.** No later than the tenth day of each month Augusta shall furnish Bracken District an itemized statement of the amount and cost of water furnished Bracken District at the delivery point during the preceding billing cycle. Bracken

District shall pay those charges not later than the last day of each month. Any amount unpaid after that date shall be subject to a 10 percent late payment fee.

20. **Reports and Records.** Augusta shall provide the following reports and records to Bracken District:

a. No later than the 10th day of each month, Augusta will provide to Bracken District at no cost a report on the Water Treatment Plant's expenses for the previous month. This report will list the nature and amount of each Water Treatment Plant expense, including allocated expenses for services provided by other city departments. Upon Bracken District's request, Augusta will provide to Bracken District at no cost and in a reasonable period of time any receipt or invoice that supports the expenses listed in a monthly report.

b. Within 60 days of the close of its fiscal year, Augusta will provide Bracken District with a copy of the Water Treatment Plant's general ledger and check register for the previous fiscal year.

c. Within 15 days of the completion of the report of the annual audit of Augusta's financial statements by an independent auditor and the report's approval by the Augusta City Council, Augusta shall provide Bracken District a copy of the report.

d. The reports and records required by this Paragraph may be provided in physical copy or electronic copy delivered to Bracken District's office or e-mail address.

e. Nothing in this Paragraph shall limit Augusta's ability to account for employees' time spent on these activities to be included within the allocation of costs for services provided by non-Water Treatment Plant employees when appropriate.

21. **Failure to Timely Provide Required Reports.** If Augusta fails to make timely submission of any of the reports or documents as required by Paragraph 20 of this Agreement, Bracken District may withhold ten percent of the total invoiced cost of water for the monthly period in which Augusta's failure occurred. If Augusta provides the required report within 30 days of the date established by this Agreement, Bracken District shall pay the withheld monies to Augusta. Otherwise, Bracken District may permanently withhold the amount. Augusta shall, however, be excused from compliance of the requirements of Paragraph 20 if it suffers temporary or permanent loss of information through damage to or failure of its informational technology ("IT") systems. Augusta shall inform Bracken District about the loss of data within the proscribed time period identified in Paragraph 20 and produce to Bracken District all responsive information available to it. If information is restored at a later time, Augusta shall provide responsive information not previously produced to Bracken District. Upon notification of the loss of data due to damage to or failure of Augusta's IT systems, Bracken District may not withhold any amount of the invoiced cost of water pursuant to the terms of this Paragraph.

22. **Separate Records and Accounts.** Augusta shall maintain records for the Water Treatment Plant separate from its other departments and operations and, when purchasing supplies and services for the Water Treatment Plant, shall establish a separate account with vendors for the Water Treatment Plant unless reduced costs will clearly result through joint purchases with other departments.

23. **Allocation of Costs for Services Provided by Other City Departments.** Augusta shall within 120 days of the Effective Date of this Agreement implement a process for contemporaneous recording of the time that its non-Water Treatment Plant employees expend in support of the Water Treatment Plant and any time that the Water Treatment Plant's employees spend in support of non-Water Treatment Plant functions. In lieu of implementing such process, Augusta may retain an independent consultant to study Augusta's operations and develop cost allocation rules for those services. Prior to retaining a consultant to conduct such study, Augusta will obtain Bracken District's agreement as to the selection of a consultant. The cost of such study shall be amortized over a three-year period for ratemaking purposes and shall be considered an operating cost.

24. **Meters and Meter Testing.** As of the Effective Date of this Agreement, Augusta shall be the owner of the meter that measures the flow of finished treated water from the Water Treatment Plant to Bracken District. Augusta shall provide advance notice to Bracken District of all tests scheduled to be performed on any meter that measures the flow of water from the Water Treatment Plant to Bracken District or to Augusta's distribution system and will allow Bracken District's representatives to be present at such tests. Augusta shall annually have these meters tested by qualified persons and will provide Bracken District a copy of all meter test results. The total cost of testing the meter serving Bracken District will be allocated to Bracken District for ratemaking purposes. None of the costs associated with the testing of the meter recording the volume of water delivered to Augusta's distribution system will be allocated to Bracken District.

25. **Inaccurate/Non-Registering Meter.** A meter registering within the acceptable limits as identified by American Water Works Association standards shall be deemed to be accurate. A meter not registering accurately will be replaced or repaired and shall cause billings for at least one, and up to three months previous to such test, to be adjusted by the percentage of inaccuracy found by such test. If any meter shall fail to register usage for any regular billing period, the amount of water furnished during such billing period shall be considered to be the same as the amount of water furnished during the corresponding billing period immediately prior to the failure, unless the parties agree in writing to determine the amount of water furnished by some other method.

26. **Lease of Existing Water Wells.** Augusta currently withdraws water from Bracken District's Wells 1, 2, and 3. Subject to the conditions noted below, Augusta may lease from Bracken District for the sum of \$1.00 for the term of one year for the Water Treatment Plant's use. Unless one of the Parties provides the other with one year's written notice of its intent not to renew this lease, the lease shall be renewed annually without further action. Bracken District shall retain the right to conduct annual inspections of each well. Augusta shall be fully and completely responsible for the maintenance of the wells.

27. **Refinancing of Existing Bonded Debt.** Augusta shall exercise good faith efforts to refinance within 12 months of the Effective Date its Series 1995A and B Water System Revenue Bonds and Series 2004 Water System Revenue Bonds under such terms and conditions as to produce positive gross savings and net present value savings. If Augusta is unable to obtain such refinancing within that time period, it shall so advise Bracken District in writing.

28. **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, hold 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.

29. **Warranty.** Bracken District warrants that has not executed a contract for sale of water to Brooksville that guarantees Brooksville a percentage of any equitable ownership interest that Bracken District may possess in the Water Treatment Plant. To the extent that Brooksville has such a right or makes a claim to a right in equitable ownership interest in the Water Treatment Plant, Bracken District agrees to indemnify, hold harmless and defend Augusta against all claims, demands, costs or expense that Brooksville may assert.

30. **Material Breach.** If a party to this Agreement fails to comply with a material provision of this Agreement, the other party may terminate this Agreement upon 60 days written notice. In its notice of termination, the party seeking termination shall identify the provisions of the Agreement with which the other party has allegedly failed to comply and shall allow the other party 60 days in which to cure the alleged failure to comply. If the alleged failure to comply is not cured to the satisfaction of the party seeking termination, the dispute procedures set forth in Paragraph 31 shall be followed.

31. **Dispute Procedures.** The Parties shall resolve any dispute, controversy or claim arising out of or relating to this Agreement, or the breach, termination or invalidity hereof (“Dispute”), under the sections of this Paragraph.

a. Any Dispute related to an adjustment of the wholesale rate shall be governed by Paragraphs 11 through 16 of this Agreement, shall be subject to the jurisdiction of the Kentucky Public Service Commission, but shall not be subject to the procedures set forth in this Paragraph.

b. For any Dispute that is not related to the adjustment of the wholesale rate, the Parties shall first attempt in good faith to resolve such Dispute by negotiation and consultation between themselves. In the event that such Dispute is not resolved on an informal basis within 60 days after one party provides written notice to the other party of such Dispute, either party may, by written notice to the other party, demand that the Parties participate in mediation. The party receiving notice demanding mediation shall have 15 days to respond to the other party regarding establishing mediation.

c. The Parties shall make reasonable efforts to agree on a neutral mediator and not unreasonably delay the date for mediation.

d. The Parties agree that the mediator’s fees and expenses and the costs incidental to the mediation will be shared equally between the parties.

e. The Parties agree that all offers, promises, conduct and statements, whether oral or written, made in the course of the mediation by any of the Parties, their agents, employees, experts and attorneys, and by the mediator and any employees of the mediation

service, are confidential, privileged and inadmissible for any purpose, including impeachment, in any litigation, arbitration or other proceeding involving the parties, provided that evidence that is otherwise admissible or discoverable shall not be rendered inadmissible or non-discoverable as a result of its use in the mediation.

f. If the Parties cannot resolve for any reason, including, but not limited to, the failure of either party to agree within the permitted time period to enter into mediation or agree to any settlement proposed during any negotiations, any such Dispute, either Party may initiate proceedings in an appropriate forum.

32. **Effective Date.** The Parties acknowledge that this Agreement shall become effective upon an Order of the Kentucky Public Service Commission approving the Agreement.

33. **Successors and Assigns.** This Agreement shall inure to the benefit of and be binding upon the Parties and their respective successors and assigns. This Agreement shall not be assigned by either Party without the written consent of the other Party 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. No Party shall unreasonably withhold its consent.

34. **Entire Agreement.** This Agreement constitutes the sole and entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, representations, and warranties, written and oral, with respect to the subject matter.

35. **Legal Fees.** In the event of any legal action to enforce the provisions of this Agreement, the prevailing party shall be entitled to recover from the non-prevailing party all reasonable costs incurred including court costs, attorneys' fees, and all other related expenses incurred in such action. Legal action shall not include any proceeding before the Kentucky Public Service Commission. Nothing in this Paragraph shall prevent either party from claiming or challenging the recovery of rate case expenses in any proceeding before the Kentucky Public Service Commission.

36. **Choice of Law.** This Agreement shall be construed according to the laws of the Commonwealth of Kentucky.

37. **Notices.** Any notices, reports, records, or other information required under this Agreement shall be submitted as follows:

City of Augusta
c/o Water Treatment Plant Operations Manager
219 Main Street
Augusta, KY 41002
Telephone: (606) 756-2183
Fax: (606) 756-2185
E-mail: gengland@augustaky.com

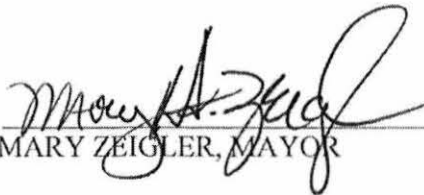
Bracken County Water District
P.O. Box 201
Brooksville, KY 41004
Telephone: (606) 735-3013
Fax: (606) 735-3017
E-mail: d Moran@brackencountywaterdistrict.com

Each Party shall provide written notice of any change in the contact information set forth above.

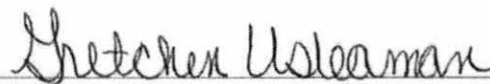
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SIGNATURE PAGE FOLLOWS**

IN WITNESS WHEREOF, the Parties 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 AUGUSTA, KENTUCKY

By: 
MARY ZEIGLER, MAYOR

ATTEST:


GRETCHEN USLEAMAN, CITY CLERK

BRACKEN COUNTY WATER DISTRICT

By: _____
ANTHONY HABERMEHL, CHAIRMAN

ATTEST:

TIMOTHY SWEENEY, SECRETARY

IN WITNESS WHEREOF, the Parties 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 AUGUSTA, KENTUCKY

By: _____
MARY ZEIGLER, MAYOR

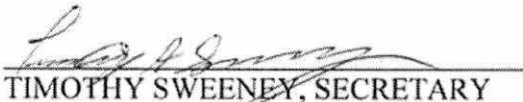
ATTEST:

GRETCHEN USLEAMAN, CITY CLERK

BRACKEN COUNTY WATER DISTRICT

By: 
ANTHONY HABERMEHL, CHAIRMAN

ATTEST:


TIMOTHY SWEENEY, SECRETARY

*Honorable Cynthia C Thompson
Attorney at Law
202 E. Riverside Drive
Augusta, KENTUCKY 41002

*Bracken County Water District
1324 Brooksville Germantown Road
P. O. Box 201
Brooksville, KY 41004

*Bracken County Water District
Bracken County Water District
1324 Brooksville Germantown Road
P. O. Box 201
Brooksville, KY 41004

*City of Augusta
219 Main Street
Augusta, KY 41002

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Augusta, KY 41002

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Lexington, KENTUCKY 40507-1801

*M. Todd Osterloh
Sturgill, Turner, Barker & Moloney, PLLC
333 West Vine Street
Suite 1400
Lexington, KENTUCKY 40507

EXHIBIT B



CITY OF AUGUSTA
 219 MAIN STREET
 P.O. BOX 85
 AUGUSTA, KY 41002

Phone: 606-756-2183
 Fax: 606-756-2185
 E-mail:
 gengland@augustaky.com

Invoice

DATE: May 3, 2016

Bill To:

BRACKEN COUNTY WATER DISTRICT
 P.O. BOX 201
 BROOKSVILLE, KY 41004

Date		Description			Total	
04/01/16-04/20/16		Capital Cost	Capital Cost \$3,667.60	Dep. Reserve \$392.60	\$ 4,060.20	
04/01/16-04/20/16		7,797,500 @ \$1.83 per 1,000			\$14,269.43	
04/01/16-04/20/16		72% of Water Plant usage-			\$ 123.26	
May 11-Mar. 16		Dep. Reserve—59 payments @ \$588.75			\$ 34,736.25	
04/21/16-04/30/16		3,920,800 @ \$2.35 per 1,000			\$ 9,213.88	
04/21/16-04/30/16		72% of Water Plant usage			\$ 69.20	
					Subtotal	\$ 62,472.22
					Balance Due	\$ 62,472.22

Term: Net 30 days

EXHIBIT C

Month	Water Billed	Plant Usage Billed	Depreciation	Capital Cost	Total	Gallons	New Cost
Mar-15	\$23,496.29	\$167.18	\$588.75	\$5,501.25	\$29,753.47	12,839,500	\$30,172.83
Apr-15	\$22,273.85	\$218.64	\$588.75	\$5,501.25	\$28,582.49	12,171,500	\$28,603.03
May-15	\$25,911.52	\$172.80	\$588.75	\$5,501.25	\$32,174.32	14,159,300	\$33,274.36
Jun-15	\$25,921.77	\$127.51	\$588.75	\$5,501.25	\$32,139.28	14,164,900	\$33,287.52
Jul-15	\$24,437.46	\$125.59	\$588.75	\$5,501.25	\$30,653.05	13,353,800	\$31,381.43
Aug-15	\$24,454.84	\$148.51	\$588.75	\$5,501.25	\$30,693.35	13,363,300	\$31,403.76
Sep-15	\$24,059.75	\$180.36	\$588.75	\$5,501.25	\$30,330.11	13,147,400	\$30,896.39
Oct-15	\$24,194.80	\$261.19	\$588.75	\$5,501.25	\$30,545.99	13,221,200	\$31,069.82
Nov-15	\$22,175.94	\$300.31	\$588.75	\$5,501.25	\$28,566.25	12,118,000	\$28,477.30
Dec-15	\$22,396.83	\$350.68	\$588.75	\$5,501.25	\$28,837.51	12,238,700	\$28,760.95
Jan-16	\$25,535.28	\$285.35	\$588.75	\$5,501.25	\$31,910.63	13,953,700	\$32,791.20
Feb-16	\$21,604.98	\$268.05	\$588.75	\$5,501.25	\$27,963.03	11,806,000	\$27,744.10
					\$362,149.48	156,537,300	\$367,862.66
Total Gallons Purchased:	156,537,300						
Total Gallons Sold:	134,409,400						
Total Increase in Cost (Actual):	\$5,713.18						
Adjustment Factor ¹ (\$/1,000 gals)			0.043				

Base Volumetric Rate (\$/1,000 gals)² \$2.31

Changed Volumetric Rate (\$/1,000 gals) \$2.35

Change in Volumetric Rate (\$/1,000 gals) \$0.04

Total Gallons Purchased: \$156,537,300

Total Increase In Cost:³ \$6,261.49

Adjustment Factor⁴ (\$/1,000 gals) \$0.05

¹ Total Increase ÷ Total Gallons Purchased

² Total Cost ÷ Total Gallons Purchased

³ Change in Volumetric Rate x Total Gallons Purchased

⁴ Total Increase Cost ÷ Total Gallons Sold

EXHIBIT D

EXHIBIT C

SCHEDULE OF PRESENT AND PROPOSED RATES

	Present Rate	Proposed Rate
First 2,000 Gallons	\$ 25.79 Minimum Bill	\$ 25.89 Minimum Bill
Next 38,000 Gallons	9.84 Per 1,000 Gallons	9.89 Per 1,000 Gallons
Over 40,000 Gallons	7.81 Per 1,000 Gallons	7.86 Per 1,000 Gallons
Wholesale Rate	3.74 Per 1,000 Gallons	3.79 Per 1,000 Gallons
Bulk Sales	8.75 Per 1,000 Gallons	9.00 Per 1,000 Gallons

EXHIBIT E

**A RESOLUTION OF THE BOARD OF COMMISSIONERS OF
BRACKEN COUNTY WATER DISTRICT ADJUSTING WATER
RATES AND CHARGES TO OFFSET THE CITY OF AUGUSTA'S
WHOLESALE RATE INCREASE**

WHEREAS, the City of Augusta, Kentucky (“Augusta”) is Bracken County Water District’s primary wholesale water supplier;

WHEREAS, on January 8, 2015, Augusta filed with the Kentucky Public Service Commission a proposed revision to its wholesale water rate;

WHEREAS, on February 2, 2015, Bracken County Water District filed with the Kentucky Public Service Commission a request that a formal proceeding be established to review the reasonableness of Augusta’s proposed wholesale rate and that the proposed wholesale rate not be permitted to become effective pending a hearing;

WHEREAS, on February 10, 2015, the Kentucky Public Service Commission established Case No. 2015-00039 to review the reasonableness of Augusta’s proposed wholesale rate;

WHEREAS, on February 9, 2016, Augusta and Bracken County Water District filed with the Kentucky Public Service Commission a Settlement Agreement and proposed Water Purchase Contract that would resolve all issues arising out of Case No. 2015-00039 and would increase a Augusta’s wholesale water rate from its current rate to \$2.35 per 1,000 gallons;

WHEREAS, the Kentucky Public Service Commission is expected to approve the Settlement Agreement and proposed Water Purchase Contract in the near future

WHEREAS, based upon the water purchases from Augusta during the previous 12 months, the annual increased cost to Bracken County Water District will be approximately **\$6,212.74**;

WHEREAS, prudent financial management dictates that Bracken County Water District take immediate action to adjust its retail rates commensurate with Augusta wholesale rate increase; and

WHEREAS, KRS 278.015 and 807 KAR 5:068 provide the legal mechanism for Bracken County Water District to increase its water rates commensurate with Augusta’s wholesale rate increase via a Purchased Water Adjustment (“PWA”);

NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE BOARD OF COMMISSIONERS OF BRACKEN COUNTY WATER DISTRICT AS FOLLOWS:

Section 1. The facts, recitals, and statements contained in the foregoing preamble of this Resolution are true and correct and are hereby affirmed and incorporated as a part of this Resolution.

Section 2. The PWA factor is **\$0.05** per 1,000 gallons;

Section 3. All tiers of all meter sizes of Bracken County Water District's existing tariff shall be increased by **\$0.05** per 1,000 gallons, effective the first day of the month following the date on which the Kentucky Public Service Commission approves the Settlement Agreement and proposed Water Purchase Contract filed in Case No. 2015-00039, subject to any minor adjustment that may be made by the Kentucky Public Service Commission.

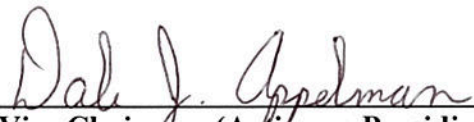
Section 4. The monthly water rates to be charged to and collected from the customers and users of Bracken County Water District's water system shall be as set forth in **Appendix A**, which is attached hereto and is incorporated herein by reference as a part of this Resolution. These monthly rates and charges shall be in effect for all water service rendered on and after the first day of the month following the date on which the Kentucky Public Service Commission approves the Settlement Agreement and proposed Water Purchase Contract filed in Case No. 2015-00039.

Section 5. The Chairman is hereby authorized and directed to execute and file the PWA Application, Tariff Sheet, and all other documents that may be required by the Kentucky Public Service Commission.

Section 6. The Chairman, all appropriate Staff, and Bracken County Water District's attorney are hereby further authorized and directed to take any and all other actions and to execute and deliver any and all other documents as may be reasonably necessary to implement the PWA.

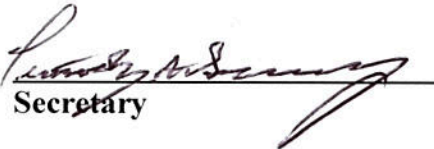
Section 7. This Resolution shall take effect upon its adoption.

ADOPTED BY THE BOARD OF COMMISSIONERS OF BRACKEN COUNTY WATER DISTRICT at a meeting held on February 17, 2016 signed by the Vice Chairman, and attested by the Secretary.



Vice Chairman (Acting as Presiding Officer in the Absence of Chairman)

ATTEST:



Secretary

APPENDIX A
APPENDIX TO A RESOLUTION OF THE BOARD OF COMMISSIONERS OF
BRACKEN COUNTY WATER DISTRICT
DATED FEBRUARY 17, 2016

RATES FOR WATER SERVICE PROVIDED BY BRACKEN COUNTY
WATER DISTRICT ON THE FIRST DAY OF THE MONTH FOLLOWING THE DATE
ON WHICH THE KENTUCKY PUBLIC SERVICE COMMISSION APPROVES THE
SETTLEMENT AGREEMENT AND PROPOSED WATER PURCHASE CONTRACT
FILED IN CASE NO. 2015-00039

First	2,000 gallons	\$ 25.89	Minimum bill
Next	38,000 gallons	\$ 9.89	per 1,000 gallons
Over	40,000 gallons	\$ 7.86	per 1,000 gallons

Multiple users	\$ 25.89	per unit
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Wholesale Water Rate	\$ 3.79	per 1,000 gallons
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Bulk Sales: Loading Station	\$ 9.00	per 1,000 gallons
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EXHIBIT F

FOR BRACKEN COUNTY WATER DIST

PSC KY NO. 1

29th Revised SHEET NO. 2

BRACKEN COUNTY WATER DISTRICT DIV I & II
(NAME OF UTILITY)

CANCELLING PSC KY NO. 2

28th Revised SHEET NO. 2

RESIDENTIAL, COMMERCIAL AND INDUSTRIAL
(Applicable to all of Bracken County except Augusta and Brooksville)

GALLONAGE BLOCK

First 2,000 gallons and minimum bill	\$25.89	(I)
Next 38, 000 gallons	\$ 9.89/1000 gal	↓
Over 40,000 gallons	\$ 7.86/1000 gal	
(Multiple users are billed a minimum of \$25.89 per unit.)		

Sales and Utility Tax where applicable.

CONNECTION FEE: \$750.00 on standard meter.

WHOLESALE DIVISION 1 (Applicable to City of Brooksville, and East Pendleton Co Water)

<u>GALLONAGE BLOCK</u>	\$3.79/1000 gal	(I)
<u>BULK SALES: Loading Station Division 1</u>	\$9.00/1000 gal	(I)
<u>FIELD CHARGE</u>	\$40.00	

DATE OF ISSUE May 13, 2016
MONTH / DATE / YEAR

DATE EFFECTIVE May 1, 2016
MONTH / DATE / YEAR

ISSUED BY /s/ Diana Moran
SIGNATURE OF OFFICER

TITLE Office Manager

BY AUTHORITY OF ORDER OF THE PUBLIC SERVICE COMMISSION
IN CASE NO. 2016-00172 DATED