

OPERATION AND MAINTENANCE AGREEMENT

THIS OPERATION AND MAINTENANCE AGREEMENT (the "Agreement"), dated for reference purposes as of August 1, 2002, to be effective October 2, 2002, by and between the COUNTY OF BOONE, KENTUCKY, (hereinafter called the "County") and the BOONE COUNTY WATER DISTRICT, a water district created pursuant to Chapter 74 of the Kentucky Revised Statutes (hereinafter called the "District");

WITNESSETH

WHEREAS, the County has determined to issue its General Obligation Public Project Bonds, Series 2002B (the "Bonds") in the principal amount of \$5,750,000, and to use a portion of the proceeds thereof to construct and install certain water lines and appurtenant facilities as more fully described in Exhibit A attached hereto (the "Project"); and

WHEREAS, in order to provide for the continued operation and maintenance of the Project and to provide for the payment of a portion of the debt service on the Bonds from a source other than the County's general fund, the District has determined to operate and maintain the Project and to make certain annual payments to the County as set forth herein.

NOW, THEREFORE, IT IS AGREED BETWEEN THE PARTIES HERETO AS FOLLOWS:

Section 1. The County agrees to issue its general obligation bonds in a principal amount of \$5,750,000 and to use a portion of the proceeds thereof to construct and install the Project, to be used only for public purposes. Such bonds shall mature no later than 30 years, as determined by the County, from the date of issuance

Section 2. The District agrees to operate and maintain the Project, to be used only for public purposes, for the period commencing October 2, 2002 and ending June 30, 2003 or such earlier date as hereinafter provided. Unless and until terminated as provided herein, this Agreement shall continue in effect from fiscal year to fiscal year. The obligations of the County and the District under this Agreement shall be subject to either party's annual right to terminate and no obligation hereunder shall constitute an obligation in any future year. If either party determines, for any reason, to exercise its annual right to terminate this Agreement, effective on any June 30, such party must give written notice thereof to the other party not later than the preceding May 31. In addition, either party hereto may terminate this Agreement at any time by providing written notice thereof to the other party at least ninety days prior to the termination date set forth in such notice. Upon termination of this Agreement, any amounts required to be paid hereunder shall accrue until the date of termination, at which time all such obligations shall cease to accrue.

The County agrees to set and the District agrees to collect rates and charges (collectively, the "Project Revenues") for customers using the Project, as follows:

(a) the District's water service rates applicable to other customers of the District that are not users of the Project (the "Service Charges"); plus

(b) an additional charge of \$25.00 each month, or such other dollar amount or any one time charge for new customers as may be established from time to time by the County and

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BY Charles L. Dore
EXECUTIVE DIRECTOR

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communicated to the District in writing (the "Surcharge" and, together with the Service Charges are collectively referred to as, the "Water Charges"); plus

(c) the District's tap-in fee applicable to other customers of the District that are not users of the Project (currently \$625.00) (the "District Tap Fee").

The Project Revenues shall be allocated (based on information set forth in the most recent annual report (the "PSC Report") filed by the District with the Kentucky Public Service Commission (the "PSC")), as follows:

(a) The District shall retain the District Tap Fee;

(b) The District shall retain its cost of Water Purchased for Resale (page 31 of the PSC Report) applicable to customers related to the Project (the "Project Water Volume");

(c) The District shall retain its cost of operation and maintenance ("O&M") related to the Project, which shall be determined by multiplying the Project Water Volume times O&M cost (the "Adjusted County Water Charges"), with O&M cost determined by computing the difference between Water Utility Expenses (appearing below line 675 column (c) on page 30 of the PSC Report) and Purchased Water (appearing at line 610 on page 30 of the PSC Report) and dividing such difference by the total Water Purchased for Resale (appearing on page 31 of the PSC Report); and

(d) The District shall remit the Adjusted County Water Charges to the County which shall be used by the County, as follows:

- (i) to pay interest on the Bonds as scheduled;
- (ii) to pay principal on the Bonds as scheduled;
- (iii) to reimburse the County for its accrued County Subsidy Payments (as hereinafter defined);
- (iv) to redeem Bonds earlier than their scheduled maturity as is permitted by the ordinance authorizing the Bonds.

The District shall provide notice to the County of the adjusted O&M cost by July 1 of each year.

Amounts payable by the District to the County shall be paid within thirty (30) days of receipt thereof by the District

Notwithstanding that this Agreement is between the District and the County, all payments due hereunder shall, if so requested by the County in writing, be made directly to the paying agent bank for the Bonds (the "Paying Agent") for deposit in the Bond Payment Fund established in the Ordinance authorizing the Bonds.

The County agrees that, if during any fiscal year (ending June 30) the Adjusted County Water Charges are not sufficient to meet the scheduled principal and interest payments on the Bonds, the County will cover the deficiency with funds of the County (the "Kentucky Subsidy Payment").

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Section 3. The Project referred to in this Agreement is located in Boone County, Kentucky, and is more particularly described in Exhibit A attached hereto.

Section 4. The District represents and warrants that:

(a) It is a water district duly organized, validly existing, and in good standing under the laws of the Commonwealth of Kentucky.

(b) It has the power and has been duly authorized to enter into this Agreement and perform all of its obligations hereunder.

(c) The District is not subject to any contractual or other limitation or provision of any nature whatsoever which in any way limits, restricts or prevents the District from entering into this Agreement, or performing any of its obligations hereunder or thereunder; and the execution and delivery of this Agreement, the consummation of the transactions contemplated hereby, and the fulfillment of or compliance with the terms and conditions of this Agreement will not conflict with or result in a breach of the terms, conditions or provisions of any restriction, agreement or instrument to which the District is a party or by which it is bound, or constitute a default under any of the foregoing, and will not violate any provision of law or regulation applicable to the District or any court or administrative order or decree.

Section 5. The County represents and covenants that it has full power to execute and perform this Agreement and the covenants and promises contained herein.

Section 6. The District hereby accepts the Project, as is, and the County makes no warranty or representation, either express or implied, as to the value, design, condition, fitness for particular purpose or fitness for use of any of the Project. The County agrees that it will require all contracts for the construction of the Project to contain a provision extending any and all warranties, express or implied, under such contracts to the District as well as the County. The County further agrees that the County will transfer to the District any and all warranties, express or implied, resulting from contracts for the construction of the Project which do not contain such provision.

Section 7. The District will operate and maintain the Project in a manner substantially consistent with the laws of the Commonwealth of Kentucky regarding water distribution Projects and in a manner which will substantially effectuate the public purposes of Chapters 74 and 96 of the Kentucky Revised Statutes.

Section 8. The District covenants and agrees with the County that the District shall during the term of this Agreement keep and maintain the Project and all parts thereof in good condition and repair, ordinary wear and tear excepted, including, but not limited to, the furnishing of all parts, mechanisms and devices required to keep the Project in good mechanical and working order. The District shall keep the Project in substantial compliance with all applicable governmental regulations and requirements, and in each case the District shall make all replacements and repairs necessary in connection therewith.

Section 9. The District shall have and is hereby given the right, at its sole expense, to make or accept such additions, improvements, changes and alterations in and to any part of the Project as the District from time to time may deem necessary or advisable; provided, however, that the District shall not make or accept any addition, change or alteration which would change the

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character of the Project as a water distribution Project. All additions, changes and alterations made or accepted by the District pursuant to the authority of this Section shall (a) be made in a workmanlike manner and in substantial compliance with all laws and ordinances or resolutions applicable thereto, (b) when commenced, be prosecuted to completion with due diligence without delay or abatement in the District's payments due hereunder, and (c) when completed, be deemed a part of the County's Water System (the "System") until such time as the Bonds have been fully retired, at which time the Project and all additions, improvements, changes and alterations shall become part of the District's Water System. The provisions of this Section 9 are not to be construed to create any liability of the District under 807 KAR 5:066, Section 11 to reimburse customers for extensions to the Project.

Section 10. The District shall neither do nor permit others under its control to do any work in or about the Project or related to any repair, rebuilding, restoration, replacement, alteration or addition to the Project, or any part thereof, unless District shall have first procured and paid for or caused to be procured and paid for all requisite municipal and other governmental permits and authorizations. All such work shall be done in a good and workmanlike manner and in substantial compliance with all District policies and specifications as well as all applicable building, zoning, and other laws, ordinances, governmental regulations and requirements and in accordance with the requirements, rules and regulations of all insurers under the policies required to be carried under Section 13 hereof.

Section 11. Except as provided in Section 2 hereof, the District shall be responsible for establishing fees and charges (including any surcharge to customers of the District using the Project) for the use by the public of the System (including the Project), subject to any limitations provided by law.

Section 12. Notwithstanding anything herein to the contrary, the District, for the benefit of the County and each holder of the Bonds, hereby represents that it has not taken, or permitted to be taken on its behalf, and agrees that it will not take or permit to be taken on its behalf, any action which would adversely affect the excludibility from gross income of the interest on the Bonds for federal income tax purposes, and that it will make and take, or require to be made and taken, such acts and filings as may from time to time be required under the Internal Revenue Code of 1986, as amended, to maintain such excludibility from gross income.

Section 13. The County shall have reasonable access and the right to inspect, examine and make copies of the books, records, accounts, tax returns and other such financial information of the District.

Section 14. During construction of the Project, the County shall obtain or shall cause to be obtained insurance with respect to the Project issued by an insurer or insurers and on policy forms in such amounts which are customary with the County for facilities which are similar to the Project, against loss or damage from theft, fire, vandalism and other events covered by uniform standard extended coverage endorsements approved by the insurance regulatory authority in the Commonwealth of Kentucky. The County may alternatively insure such property under a blanket insurance policy or policies which cover not only such property but other properties. Upon completion of construction of the Project, the District shall be responsible for insuring the Project in accordance with this Section 14.

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Each insurance policy provided for in the preceding and following paragraphs shall contain a provision to the effect that the insurance company shall not cancel the same without first giving written notice thereof to the County at least thirty (30) days in advance of such cancellation.

The District shall also carry public liability insurance with reference to the Project with one or more reputable insurance companies duly qualified to do business in Kentucky, for death or bodily injury and property damage in amounts which are customarily carried for water districts which are similar to the District. The County shall be made an additional insured under such policies. Such public liability insurance may be by blanket insurance policy or policies.

The parties hereto recognize that continued inflation, the emergence of new risks, and various other factors foreseeable or unforeseeable may at some future time cause the insurance coverages required by this Agreement to become inadequate in face amount or the type of risks insured against. The District hereby covenants with the County that throughout the life of this Agreement the District shall keep the Project continuously insured against such risks as are customarily insured against by the District, and in such amounts as would be customarily maintained, by businesses of like size and type.

Section 15. If the Project is destroyed (in whole or in part) or is damaged by fire or other casualty, the District (i) shall promptly replace, repair, rebuild or restore the property damaged or destroyed to substantially the same condition as existed prior to the event causing such damage or destruction, with such changes, alterations and modifications including the substitution and addition of other property as may be desired by the District and as will not impair the operation of the Project or change its character and the District will apply for such purpose so much as may be necessary of any net proceeds of insurance resulting from claims for losses, under the insurance policies required to be carried herein, resulting from such damage.

Section 16. The County and its duly authorized representatives and agents, reserve the right to enter the Project at all reasonable times during the term of this Agreement for the purpose of (a) examining and inspecting the same, including the construction, installation and equipping thereof and (b) performing such work in and about the Project made necessary by reason of the District's default under any of the provisions of this Agreement. The County shall also have the right at all reasonable times to examine the books and records of the District.

Section 17. This Agreement is made on condition that if (each of the following events being deemed an "Event of Default" under the provisions of this Agreement):

(a) the District fails to punctually make any payment required hereunder as the same becomes due; or

(b) the District fails to observe, keep or perform any other covenant or obligation herein contained on the District's part to be observed, kept or performed, and the District fails to remedy the same within thirty (30) days after the County has given the District written notice specifying such failure and requesting that it be remedied; or

(c) the District vacates or abandons the Project; or

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(d) any representation or warranty by the District contained in this Agreement or in any certificate or instrument delivered by the District pursuant to this Agreement is false or misleading in any material respect;

then the County may at its election then or at any time thereafter, and while such default shall continue, give the District written notice of intention to terminate this Agreement on a date specified therein, which date shall not be earlier than ten (10) days after such notice is given, and, if all defaults have not then been cured, on the date so specified, the District's rights to operation of the Project shall cease and this Agreement shall thereupon be terminated, and the County may re-enter and take possession of the Project.

Section 18. If the District shall fail to keep or perform any of its obligations as provided in this Agreement in respect of (a) maintenance of insurance, (b) payments required hereunder, (c) repairs and maintenance of the Project, (d) substantial compliance with legal or insurance requirements hereunder, (e) keeping the Project lien free, or in the making of any other payment or performance of any other obligation so to do) upon the continuance of such failure on the District's part for thirty (30) days after written notice of such failure is given to the District by the County and without waiving or releasing the District from any obligation hereunder, as an additional but not exclusive remedy, the County may make any such payment or perform any such obligation, and all sums so paid by the County and all necessary incidental costs and expenses incurred by the County in performing such obligation shall be deemed additional amounts due and payable by the District and shall be paid to the County, and if not so paid by the District, the County shall have the same rights and remedies as provided for in the case of default by the District in the payment of amounts due under Section 2 hereof.

Section 19. The District shall indemnify and hold the County, its officers, directors, agents and employees harmless against and from all claims by or on behalf of any person, firm or corporation arising from the conduct or management of, or from any work or thing done on the Project during the term of this Agreement, and against and from all claims arising during the term of this Agreement from (a) any condition of the Project caused by the District, (b) any breach or default on the part of the District in the performance of any of its obligations under this Agreement, (c) any act of negligence of the District or of any of its agents, contractors, servants, employees or licensees, and (d) any act of negligence of any agents, contractors, servants, employees or licensees of the District in connection with the construction, installation, furnishing, equipping, management or operation of the Project during the term of this Agreement. Any indemnified party seeking to enforce the above indemnity shall give the District written notice of and the opportunity to defend any claims with respect to which indemnity is sought to be enforced hereunder, in which event the District shall either (i) employ counsel reasonably acceptable to such party to defend such claims and pay all costs and expenses in connection with such defense, or (ii) permit such party to defend such claims itself through counsel of its own choosing in which event the District shall indemnify and hold such party harmless from and against all reasonable costs and expenses incurred in or in connection with any action or proceeding brought with respect to such claims. Upon notice from such party in any such action or proceeding, if the District fails or refuses to proceed under option (i) above, the District shall be deemed to have agreed that such party may proceed under option (ii) above.

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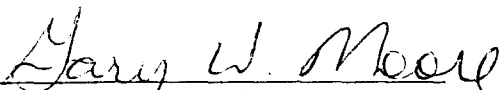
BY Charles H. Dow
EXECUTIVE DIRECTOR

Section 20. Upon payment in full of the Bonds, the County, so long as no event of default by the District hereunder has occurred and is continuing, will immediately transfer all of its right, title and interest in and to the Project to the District.

Section 20. This Agreement shall be effective as of the date set forth above, subject to approval hereof by the PSC or a determination by the PSC that approval of this Agreement is not required.

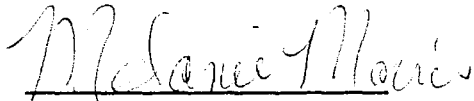
IN TESTIMONY WHEREOF, the District has caused this instrument to be executed for and on its behalf by its Chairman and attested by its Secretary and the County has caused this instrument to be executed for an on its behalf by its Judge/Executive and attested by its Fiscal Court Clerk, as of the date first above written.

COUNTY OF BOONE, KENTUCKY



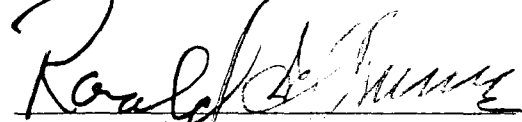
Judge/Executive

ATTEST:



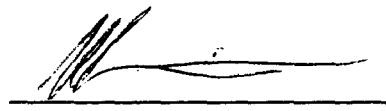
Fiscal Court Clerk

BOONE COUNTY WATER DISTRICT



Chairman

ATTEST:

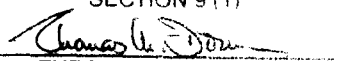


Secretary

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PURSUANT TO 807 KAR 0011
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BY 

EXECUTIVE DIRECTOR

EXHIBIT A

Description of Project

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EXHIBIT B

Project Site

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EXECUTIVE DIRECTOR

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