

WATER PURCHASE AGREEMENT

THIS AGREEMENT for the sale and purchase of water entered into as of the 9 day of March, 2015, by and between **Letcher County Water and Sewer District**, P.O. Box 827, Whitesburg, Kentucky 41858, (hereinafter referred to as the "Seller"), and **The City of Neon** with an address of, 955 Hwy 317, Neon, Kentucky 41840 (hereinafter referred to as the "Purchaser").

WITNESSETH:

WHEREAS, the Purchaser for the purpose of operating a water supply distribution system serving water users within the area described in plans now on file in the office of the Purchaser and to accomplish this purpose, the Purchaser will require a supply of treated water, and

WHEREAS, the Seller owns and operates a water production and distribution system with a capacity currently capable of serving the present customers of the Seller's system and the estimated number of water users to be served by the said Purchaser as shown in the plans of the system now on file in the office of the Purchaser, and

WHEREAS, by Resolution enacted on March 9th, 2015 by the Seller, the sale of water to the Purchaser in accordance with the provisions of the said Resolution was approved, and the execution of this contract carrying out the said Resolution by the Chairperson of the Letcher County Water and Sewer District, and attested by the Commission's Secretary, was duly authorized, and

WHEREAS, by Resolution of the Purchaser, enacted on the 9th day of March, 2015, the purchase of water from the Seller in accordance with the terms set forth in the said Resolution was approved, and the executio

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the Mayor, and attested by the Secretary was duly authorized;

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements hereinafter set forth.

A. The Seller Agrees:

1. Quality and Quantity. To furnish the Purchaser at the point of delivery hereinafter specified, during the term of this contract or any renewal or extension thereof, potable treated water meeting applicable purity standards of the Commonwealth of Kentucky Division of Water and the U.S. Environmental Protection Agency, in such quantity as may be required by the Purchaser not to exceed 150 G.P.M. For purposes of this agreement, all water quality testing shall be conducted at the point of delivery. Peak demand shall end by 6:00 p.m.

2. Point of Delivery and Pressure. That water will be furnished at a reasonably constant pressure at 75 PSI from and existing main supply at a point located on Highway 317. If a greater pressure than that normally available at the point of delivery is required by the Purchaser, the cost of providing such greater pressure shall be borne by the Purchaser. Emergency failures of pressure or supply due to main supply line breaks, power failure, flood, fire, and use of water to fight fire, earthquake or other catastrophe shall excuse the Seller from the provisions for such reasonable period of time as may be necessary to restore service.

3. Billing Procedure. To furnish the Purchaser at the above address not later than the 30th day of each month, with an itemized statement of the amount of water furnished the purchaser during the preceding month.

B. The Purchaser Agrees:

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1. Rates and Payment Date. To pay the Seller, not later than the 10th day of each month (subsequent to the receipt of the bill), for water delivered in accordance with the following schedule of rates:

a. \$3.60 per 1,000 gallons of water for all water provided to Purchaser.

2. Meter Equipment. To furnish, install, operate, and maintain at its own expense at point of delivery, the necessary metering equipment, including a meter house or pit, and required devices of standard type for properly measuring the quantity of water delivered to the Purchaser and to calibrate such metering equipment whenever requested by the Seller but not more frequently than once every twelve months. A meter registering not more than two percent above or below the test results shall be deemed to be accurate.

The previous reading of any meter disclosed by test to be inaccurate shall be corrected for the six months previous to such test in accordance with the percentage of inaccuracy found by such tests. If any meter fails to register for any period, the amount of water furnished during such period shall be deemed to be the amount of water delivered in the corresponding period immediately prior to the failure, unless Seller and Purchaser shall agree upon a different amount. The metering equipment shall be read on or about the 18th day of each month by the Seller. Appropriate officials of the Purchaser and Seller shall at all reasonable times have access to the meter for the purpose of verifying its readings.

C. It is further mutually agreed between the Seller and the Purchaser as follows:

1. Terms of Contract. That this contract shall extend for a term of one (1) year from the date of the initial delivery of any water as shown by the first bill submitted by the Seller to the Purchaser and, thereafter may be renewed or extended for such term or

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terms, as may be agreed upon by the Seller and Purchaser. This agreement shall automatically renew on the anniversary date of this agreement unless either party gives written notice at least 90 days prior to the automatic renewal date of their intent not to renew this agreement.

2. Deliver of Water. That Purchaser shall notify Seller prior to the estimated date of completion of the Purchaser's water supply distribution system, the Seller will notify the Purchaser in writing of the date for the initial delivery of water.

3. Water for Testing. When requested by the Purchaser, the Seller will make available to the contractor at the point of delivery or other point reasonably close thereto, water sufficient for testing, flushing, and trench filling the system of the Purchaser during construction, irrespective of whether the metering equipment has been installed at the time, at a charge of \$3.60 per 1,000 gallons, which will be paid by the contractor or, on his failure to pay, by the Purchaser.

4. Public Notices. Seller agrees to notify Purchaser within 48 hours of any water quality test results that do not meet purity standards mentioned above. Purchaser agrees to notify customers if supplied water fails to meet division of water purity standards.

5. Failure to Deliver. That the Seller will, at all times, operate and maintain its system in an efficient manner and will take such action as may be necessary to furnish the Purchaser with quantities of water required by the Purchaser. Temporary or partial failures to deliver water shall be remedied with all possible dispatch. In the event of an extended shortage of water, or the supply of water available to the Seller is otherwise diminished over an extended period of time, the supply of water to Purchaser's consumers shall be reduced or diminished to the extent necessary and appropriate by the

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4/20/2015
PURSUANT TO 807 KAR 5:011 SECTION 9 (1)

Seller. In the event of failures to deliver water, mentioned above, during any month of the term of this contract or any extension thereof, minimum water quantity standards for that month shall not apply. Seller reserves the right to isolate service to the Purchaser if that demand impedes the Seller's ability to supply water to its existing customers.

6. Construction and Operation. Each party shall be responsible for the ownership, operation and maintenance of its own respective facilities during the terms of this Agreement and agrees that each party will be responsible for any and all losses, damages, claims or liabilities arising from or on account of its ownership or operations and maintenance of its facilities.

7. Modification of Contract. That the provisions of this contract pertaining to the schedule of rates to be paid by the Purchaser for water delivered are subject to modification at the end of every one (1) year period and the requesting entity shall bear the cost of the rate study. Any increase or decrease in rates shall be based on a demonstrable increase or decrease in the cost of performance hereunder, but such costs shall not include increased capitalization of the Seller's system. Other provisions of this contract may be modified or altered by mutual agreement in writing signed by both parties.

8. Miscellaneous Provisions.

a. Further Assurances: Each of the parties hereto agree to do any act or thing and execute any and all instruments that are necessary and proper to make effective the provisions of this Agreement.

b. Successors and Assigns: This agreement shall inure to the benefit of and be binding upon the parties named herein and their respective successors and assigns.

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Nothing in the Agreement, express or implied, is intended to confer upon any person other than the Purchaser and Seller any right or remedy under or by reason of this Agreement.

c. **Entire Agreement:** This Agreement embodies the entire agreement and understanding of the parties with respect to the subject matter of this agreement and supersedes all prior written or oral agreements, commitments, arrangements or understandings between the parties with respect thereto. There are no restrictions, agreements, promises, warranties, covenants or undertakings with respect to the subject matter of this Agreement other than those expressly set forth herein.

d. **Amendments and Waivers:** No amendment, modification or waiver of any provision of this Agreement shall be effective or binding upon the parties unless the same shall be in writing and signed by the parties hereto. The waiver of any party hereto of a breach of any provision in this Agreement shall not operate or be construed as a waiver of any subsequent breach by any party.

e. **Severability:** If any one or more of the provisions of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions of this Agreement shall not be affected thereby.

f. **Cooperation:** The parties hereto agree that they will cooperate with each other in all matters that are reasonably necessary or desirable to facilitate the performance of their respective obligations under this agreement with a minimum of expense, trouble and interferences with service; and each party hereto agrees to comply with the reasonable requests of the other party in connection herewith.

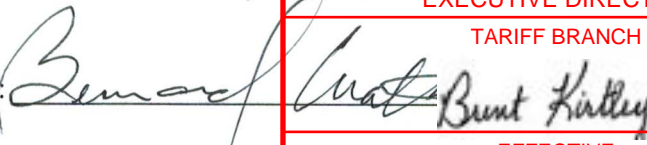
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9. Force Majeure. If either party hereto is delayed in or prevented from performing any of its obligations under this Agreement, in whole or in part, due to acts of God, war, riots, civil insurrection, acts of the public enemy, strikes, lockouts, fires, floods or earthquakes, or other causes of a similar nature, which are beyond the reasonable control and without the fault or negligence of the party affected thereby, then the obligations of both parties hereto shall be suspended to the extent made necessary by such event; provided that the affected party gives written notice of the existence and probable duration of the force majeure event to the other party as early as practicable after the occurrence of the force majeure event. The party declaring force majeure shall exercise due diligence to avoid and shorten the force majeure event and will keep the other party advised as to the continuance of the force majeure event.

10. Regulatory Agencies. That this contract is subject to rules, regulations, or laws as may be applicable to similar agreements in this State and the Seller and Purchaser will collaborate in obtaining such permits, certificates, or the like, as may be required to comply therewith.

IN WITNESS WHEREOF, the parties hereto, acting under authority or their respective governing bodies, have caused this contract to be duly executed in one Counter-part, each of which shall constitute an original.

Seller: Letcher County Water and Sewer District

By: 

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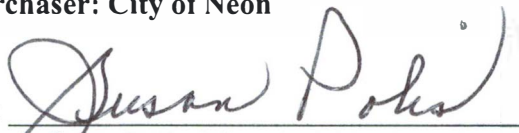
Bernard Watts, Chairperson

Attest:




secretary

Purchaser: City of Neon


By: 

Susie Polis, Mayor

Attest:



Secretary

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