

WATER SUPPLY AGREEMENT

This Water Supply Agreement (hereinafter "Agreement") is made and entered into as of this 28th day of JUNE, 2006 (hereinafter the "Effective Date") by and between the **City of Walton, Kentucky**, a municipal corporation and a Kentucky city of the Fifth Class having a mailing address of 40 North Main Street, P.O. Box 95, Walton, Kentucky 41094-0095 (hereinafter the "City") and the **Northern Kentucky Water District**, a water district organized and operating under Chapter 74 of the Kentucky Revised Statutes and having a mailing address of 2835 Crescent Springs Road, Erlanger, Kentucky 41018 (hereinafter the "District"). Together the City and the District will be referred to herein as the "Parties".

WHEREAS, in 1979 the City constructed a twelve-inch water main along Kentucky Route 16 from the Boone-Kenton County boundary to the terminus of the District's then-existing eight-inch water line at Kentucky Route 16 and Wilson Road, and the City transferred said line to the District for the purpose of purchasing water from the District; and

WHEREAS, the District has owned, operated and maintained the twelve-inch water main along Kentucky Route 16 and has been the sole and exclusive supplier of water to the City since 1979; and

WHEREAS, the District desires to continue to be the City's sole and exclusive supplier of water for an additional 40 years; and

WHEREAS, the City desires to serve certain portions of the District's service area in Kenton County which the City has annexed, and the District does not object to such service provided that certain terms and conditions are sati

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SECTION 9 (1)

By 
Executive Director

WHEREAS, the Parties desire to memorialize in writing their agreement regarding these and related matters;

NOW, THEREFORE, in consideration of the premises and of the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are expressly acknowledged, the Parties hereby agree as follows:

1. **Quality and Quantity.** During the term of this Agreement and any renewal or extension thereof, the District will furnish to the City at the points of delivery hereinafter specified, potable, treated water meeting all applicable quality and purity standards of all appropriate state and federal regulatory agencies in such quantity as may be required by the City not to exceed one million five hundred thousand (1,500,000) gallons per day. The District shall not be obligated to provide water to the City in excess of one million five hundred thousand (1,500,000) gallons per day. Should the City's demand exceed one million five hundred thousand (1,500,000) gallons per day, the District will have the option to provide the excess before the City may purchase the excess from any other supplier of water. If the District is unable or unwilling to provide the excess and the City is required to purchase the excess from another supplier of water, the District shall remain the provider of at least one million five hundred thousand (1,500,000) gallons per day to the City for every day on which the City purchases excess from another supplier of water.

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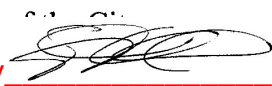
By 
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2. **Points of Delivery and Pressure.** The District will provide water to the City at the following two points of delivery: a.) the discharge side of the master meter located at or near a point where Kentucky Route 16 meets the Boone County/Kenton County line (the “Kentucky Route 16 Point of Delivery”); and b.) the discharge side of a master meter to be installed, at the City’s expense, at or near a point where U.S. Route 25 meets the Boone County/Kenton County line (the “U.S. Route 25 Point of Delivery”). The delivery of water at the U.S. Route 25 Point of Delivery will not commence until a meter pit is constructed and a master meter is installed. The City, at its expense, will construct the meter pit in accordance with the District’s specifications and will pay the District for the cost of the master meter which will be installed by the District. After installation, the master meter will be owned and maintained by the District.

The Parties, in writing, may agree to one or more additional points of delivery.

Subject to the force majeure events described in Section 11 of this Agreement, the District will use its best reasonable efforts to furnish water at the two points of delivery at a reasonably constant pressure of approximately 35 psi. If a greater pressure than that normally available at the two points of delivery is required by the City, the cost of providing such greater pressure shall be the responsibility of the City.

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3. **Term of Agreement.** This Agreement will take effect on the Effective Date and will continue for a term of forty (40) years thereafter. The Parties acknowledge that this Agreement will require submission to the Kentucky Public Service Commission (hereinafter the "PSC") for approval. If the PSC disapproves this Agreement or makes any material modifications to the language herein, then either Party, in its sole discretion, may terminate this Agreement by giving written notice to the other Party via certified mail, return receipt requested, within sixty (60) days of receipt of notice from the PSC of such disapproval or material language modification. Prior to giving any such notice of termination, the Party desiring termination shall meet with the other Party and negotiate in good faith in the interest of resolving any issues and restoring or maintaining this Agreement. The termination of this Agreement shall be effective on the earlier of (i) receipt of the written notice of termination by the Party to whom it is addressed, or (ii) three days after the written notice of termination is deposited in the U.S. mail, postage prepaid. This Agreement may be renewed or extended as may be agreed upon by the City and the District in writing.

4. **Metering Equipment and Flow Measurement.** The District will own, operate and maintain the master meter located at the Kentucky Route 16 Point of Delivery and, upon its installation, the master meter located at the U.S. Route 25 Point of Delivery. The District will

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inspections of the two meters and such other tests and inspections as the District may deem necessary. No correction will be made in the billing to the City unless a test or inspection shows that the metering is more than two percent (2%) slow or fast. If any test or inspection shows that the metering is inaccurate by more than two percent (2%) slow or fast, correction will be made to the billing to the City for the period during which the District and the City agree that the inaccuracy existed. If no such agreement is reached, it will be assumed that the error developed progressively from the date of the last meter test and an appropriate adjustment to billings will be made.

5. **Records and Audits.** The District will cause its accounts to be audited by a firm of certified public accountants on an annual basis. A copy of the certified public accountants' audit report will be supplied to the City upon the City's written request. The District will make its accounts and records available to the City for examination at reasonable times and locations.

6. **Billing Procedure.** No later than the 5th day of each month, the District will furnish the City with an itemized statement of the amount of water furnished to the City during the preceding month and the amount owed to the District for all water rates, charges and surcharges due for the preceding month.

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7. **Water Rates, Charges, Surcharges and Payment Date.** The City shall pay the District's water rates and charges for wholesale customers as such rates and charges may be adjusted from time to time. The District may, from time to time, increase its water rates and charges, but no rate or charge increase will take effect unless and until it has been reviewed and approved by the PSC.

In addition to paying to the District the water rates and charges stated above, the City shall pay to the District each month an amount equal to ten (10) surcharges for the District's Subdistrict C project until the expiration of the subdistrict's forty (40) year surcharge term. The Parties understand and agree that the amount of each surcharge may vary over time but will not exceed \$30.00 per month. The Parties further understand and agree that the City's obligation under this paragraph may vary over time but will not exceed \$300.00 per month. The District will recalculate the amount of each surcharge and the City's obligation under this paragraph annually. The City's obligation to pay an amount equal to ten (10) surcharges each month shall commence thirty (30) days after the master meter is installed at the U.S. Route 25 Point of Delivery, regardless of when the City actually begins receiving water at the U.S. Route 25 Point of Delivery.

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No later than the 20th day of each month, the City shall pay to the District the full amount owed for all water rates, charges and surcharges for the preceding month.

8. **Transfer of Portion of Service Area.** The City has annexed three areas within the District's service area in Kenton County. Each of these three areas is depicted and identified by the letter "A" on attached Exhibit A, which is incorporated herein by reference and made a part of this Agreement. Together, these three areas will be referred to herein as the "Annexed Areas". The City also has plans to annex the area identified by the letter "B" on attached Exhibit A. This area of proposed annexation will be referred to herein as "Area B". The District hereby grants to the City the right and authority to serve all customers located within the Annexed Areas and Area B, if and when Area B is annexed by the City. All water lines and appurtenances installed by the City within the Annexed Areas and Area B will be installed in accordance with specifications approved by the Kentucky Division of Water and the City. The minimum water main size will be eight (8) inches, and all water mains will be either ductile iron pipe, class 50 or greater, or PVC C900 DR14. The installation of all such water lines and appurtenances will be at no cost to the District.

9. **Remedy for Sale of System or Breach.** The City and the District recognize the value of this Agreement to the Di

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exclusive supplier of water to the City and also the value to the City of the right and authority to serve the Annexed Areas and Area B, if and when such area is annexed. Should the City, at any time during the term of this Agreement or any renewal or extension thereof, either a) merge, sell, transfer or alienate all or any portion of its water distribution system with or to a party other than the District or b) commence purchasing water from any supplier of water other than the District (except in the case if and when the City's demand exceeds one million five hundred thousand (1,500,000) gallons per day and the District is unable to provide the excess), the right and the authority of the City to serve the Annexed Areas and Area B, if such area has been annexed by the City, shall immediately cease and be terminated and all customers located within the Annexed Areas and Area B shall be transferred to the District as retail customers of the District at no charge or cost to the District. At such time, all of the City's right, title and interest in the water lines and appurtenances located within the Annexed Areas and Area B, if applicable, shall be immediately and automatically transferred to and vested in the District at no charge or cost to the District. In addition, the City shall pay all costs and expenses of any and all engineering and construction of water lines and appurtenances necessary for the District to become the direct supplier of water to the customers located within the Annexed Areas and Area B, if applicable. The remedy set forth in this Section 9 is provided in recognition of the damages to the District should the City sell, transfer or alienate its water distribution system or commence from

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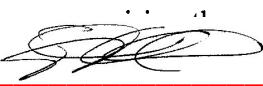
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any other supplier. This remedy is not provided as a penalty. In addition to this remedy, the District will have available any and all remedies available in law and equity.

10. **Responsibility and Indemnification.** The City and the District each shall be solely responsible for the construction, operation and maintenance of its own water system. The City and the District, to the extent permitted by law, expressly agree to defend, indemnify and hold harmless the other against any and all claims, demands, costs or expenses asserted by third parties and proximately caused by their negligence or willful misconduct in connection with the construction, operation or maintenance of their respective water systems.

11. **Force Majeure.** Except for the payments required of the City for water rates, charges and surcharges, either Party may suspend its performance under this Agreement if such Party's performance is prevented or delayed by a cause or causes beyond the reasonable control of such Party which could not have been avoided by the exercise of reasonable diligence by such Party. Such causes may include, but shall not be limited to, act of God, act of war, riot, fire, flood, power failure, earthquake, explosion, lockout or other labor disturbance, water line break, breakage or damage to machinery or pipelines, and partial or entire failure of water system. The Party asserting a right to suspend performance must, within a reasonable time of acquiring knowledge of the

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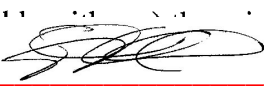
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suspension, notify the other Party in writing of the cause of suspension, the performance suspended, and the anticipated duration of the suspension. Performance will be suspended only during the time that it is prevented or delayed by the type of cause or causes described in this paragraph, and the Party whose performance is prevented or delayed will endeavor to remove or overcome the cause or causes with all reasonable dispatch. In the event of a system-wide shortage of water in the District's system, the City's supply of water under this Agreement will be reduced in the same ratio or proportion that the supply to the District's other customers is reduced.

12. **Right of First Refusal in Event of Merger or Sale of the City's System.**

In the event that, at any time during the term of this Agreement or any renewal or extension thereof, the City entertains an offer for any person or entity to merge with, acquire or purchase all or any part of the City's water distribution system, and if the City desires to accept such offer, the City shall notify the District in writing setting forth all of the terms of such offer, including the price, if any, and advising the District of the City's intention to accept the same. The District shall have sixty (60) days from receipt of such written notice to notify the City in writing that the District intends to merge with, acquire or purchase the City's water distribution system or any part thereof on such terms as are set forth in such written notice and at a purchase price as hereinafter described, if applicable. The purchase price for the District, if applicable, shall be set

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forth in such written notice if the part of the City's water distribution system proposed to be merged, acquired or purchased does not include any of the Annexed Areas or Area B or b) the price set forth in such written notice minus the amount of such price as is reasonably negotiated by the City and the District in good faith as representing or corresponding to all parts of the Annexed Areas and Area B included in the proposed merger, acquisition or purchase, if the part of the City's water distribution system proposed to be merged, acquired or purchased includes all or any parts of the Annexed Areas and Area B (the purchase price calculated under this sentence shall be hereinafter referred to as the "District Price"). If the District timely notifies the City of its intention to merge with, acquire, or purchase as described herein, the District shall consummate the merger, acquisition, or purchase within one hundred eighty (180) days from the date it first received written notice of the offer from the City. If the District does not give written notice of its intention to merge, acquire or purchase as set forth in this Section 12, or does not consummate the transaction within the one hundred eighty (180) day time period, then the City, subject to the limitations set forth in Section 9 of this Agreement, may proceed with the merger, acquisition or purchase of the relevant part of the City's water distribution system with or by such other person or entity at the price, if any, and on the terms set forth in the offer from or proposed to such other person or entity, and this Right of First Refusal shall remain in effect and be binding upon the City with respect to any other part of the City's water distribution system.

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merger, acquisition or purchase with or by the District. In no event, however, shall the City merge, transfer or sell all or any portion of the City's water distribution system with or to such other person or entity or to any other person or entity at a price, if applicable, or on terms less favorable to the City than those described in the written notice provided to the District without again notifying the District of such revised price, if applicable, and terms and giving the District the same time periods for notice of the District's intention to exercise its option and consummation of the merger, acquisition, or purchase as previously set forth in this Section 12 on such revised terms and at the new District Price, if applicable. This Right of First Refusal shall remain in full force and effect during the entirety of the term of this Agreement and any and all renewals and extensions thereof. In calculating and applying the one hundred eighty (180) day time limit set forth in this Section 12 for the District to consummate the merger, acquisition or purchase, each day that this Agreement is in the possession of the PSC for review and approval shall be deducted from the days that have actually elapsed since the District first received written notice of the offer from the City.

13. **Entire Agreement.** This Agreement constitutes the entire understanding and agreement between the Parties and supercedes all other understandings and agreements between the Parties with respect to the subject matter of this Agreement. There are no understandings, representations or warranties of any kind, expressed or implied, not

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expressly set forth in this Agreement. No modification or amendment of this Agreement shall be effective unless in writing and executed on behalf of both Parties.


14. **Termination of Prior Agreement.** The Agreement between Kenton County Water District No. 1 (predecessor to the District) and the City of Walton, Kentucky dated as of the 21st day of August 1979 and relating to the supply of water and other matters will automatically be terminated on the Effective Date; provided, however, that such agreement will immediately and automatically be revived and considered to be in full force and effect if either party terminates this Agreement pursuant to Section 3 herein.

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15. **Assignment.** This Agreement shall be binding on all successors and assigns of the Parties but shall not be assigned by either Party without the written consent of the other Party.

16. **Waivers.** The failure of any Party at any time to enforce any provision of this Agreement, to exercise its rights under any provision, or to require a certain performance of any provision shall in no way be construed a waiver of such provision nor in any way affect the validity of this Agreement or the right of the Party thereafter to enforce each and every provision.

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17. **Authority to Execute Agreement.** The City possesses full authority to enter this Agreement as indicated by the lawful resolution/order of the City attached hereto as Exhibit B. The District possesses full authority to enter this Agreement as indicated by the lawful resolution of the District attached hereto as Exhibit C.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed in two originals, one for each Party.

CITY OF WALTON, KENTUCKY



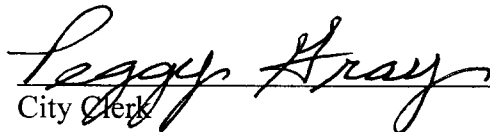
Phillip W. Arzop
Mayor

NORTHERN KENTUCKY WATER DISTRICT



Joseph J. Koester
Chair of Board of Commissioners

Attested:



Peggy Arzop
City Clerk

Exhibit A-Diagram of Annexed Areas and Area B
Exhibit B-Resolution/Order of the City of Walton
Exhibit C-Resolution of the Northern Kentucky Water District

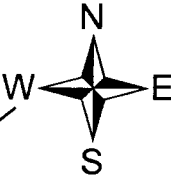
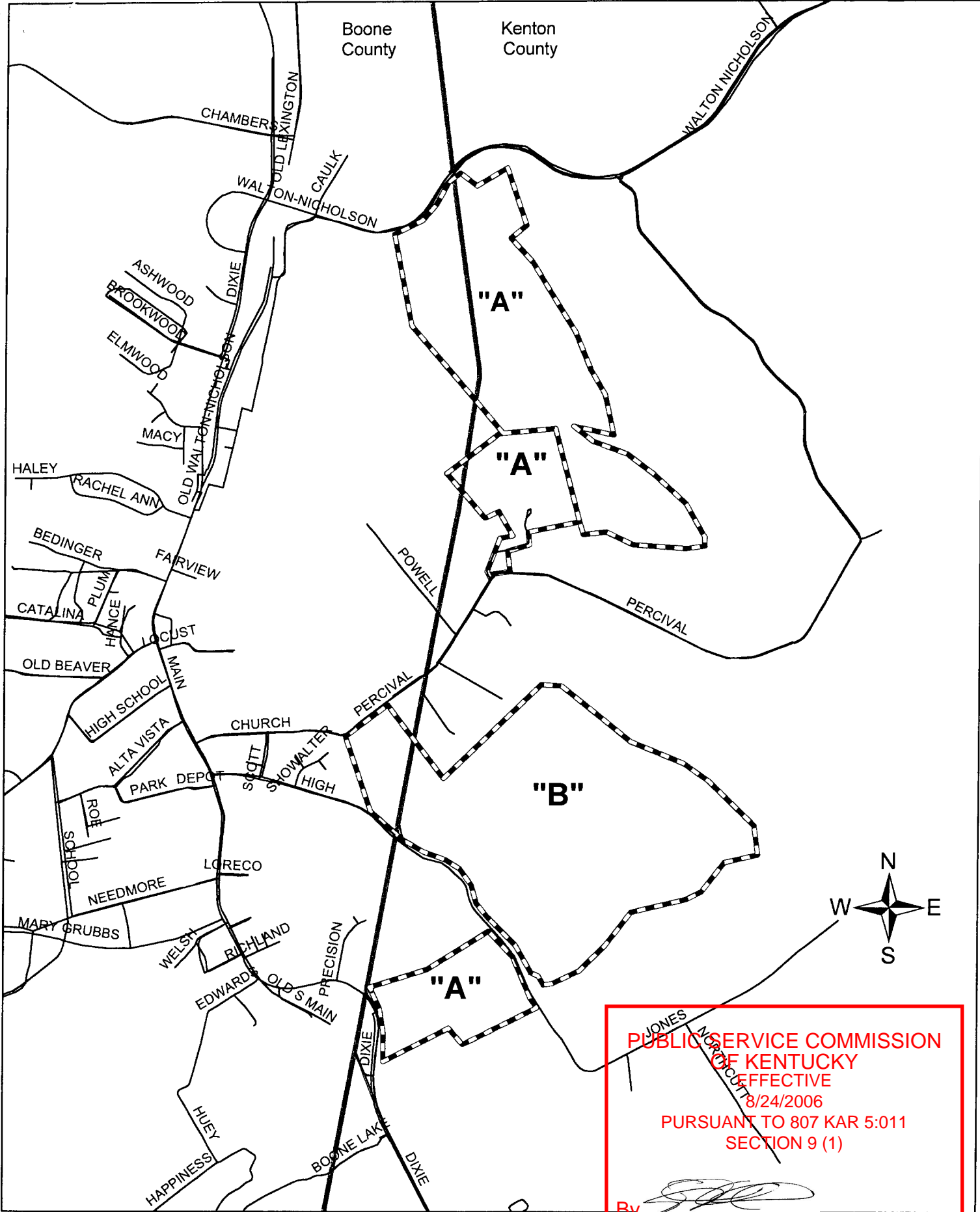
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By 

Executive Director

Boone County

Kenton County



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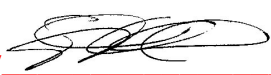
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Exhibit "A"

**RESOLUTION
OF
THE NORTHERN KENTUCKY WATER DISTRICT**

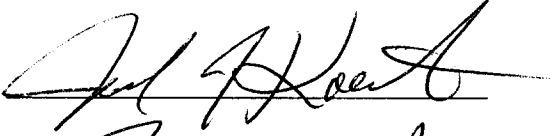
**A RESOLUTION REGARDING THE EXECUTION OF A WATER
SUPPLY AGREEMENT WITH THE CITY OF WALTON, KENTUCKY**

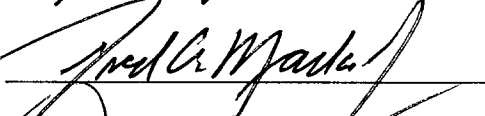
BE IT RESOLVED by the Board of Commissioners of the Northern Kentucky Water District (the "District") that the proposed Water Supply Agreement with the City of Walton, Kentucky is approved.

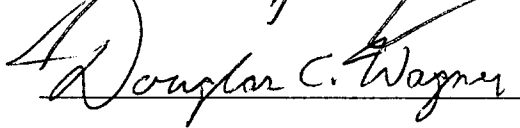
BE IT FURTHER RESOLVED that the District execute and enter the Water Supply Agreement.

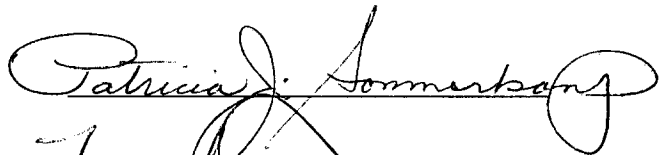
BE IT FURTHER RESOLVED that the Chair of the Board of Commissioners is authorized, empowered and directed to execute the Water Supply Agreement by and on behalf of the District.


AGREED, DETERMINED and RESOLVED this 23rd day of June, 2006 at a regular meeting of the Board of Commissioners of the District at the District's Central Facility at 2835 Crescent Springs Road in Erlanger, Kentucky.











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CITY OF WALTON, KENTUCKY
MUNICIPAL ORDER NO. 2006-09

A MUNICIPAL ORDER AUTHORIZING AND DIRECTING THE MAYOR TO ENTER INTO A CONTRACT WITH THE NORTHERN KENTUCKY WATER DISTRICT FOR THE PURCHASE OF WATER FROM THE NORTHERN KENTUCKY WATER DISTRICT AND FOR THE CITY TO PROVIDE WATER SERVICE TO AREAS WITHIN THE CITY LIMITS SITUATED IN KENTON COUNTY.

The City Council of the City of Walton, Kentucky hereby orders as follows:

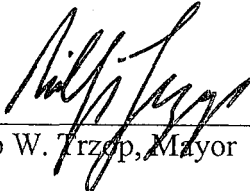
SECTION ONE

The Mayor of the City of Walton, Kentucky is hereby authorized and directed to enter into a contract with the Northern Kentucky Water District for the purchase of water from the Northern Kentucky Water District and for the City to provide water service to specified areas within the City limits situated in Kenton County. A copy of the contract is attached to this Municipal Order.

SECTION TWO

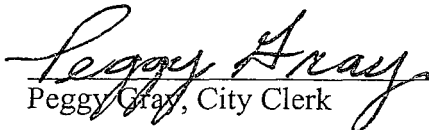
The Mayor is hereby authorized and directed to take any and all actions and to execute any and all documents on behalf of the City necessary, appropriate, or convenient to give effect to this Municipal Order.

ADOPTED AND PASSED by City Council of the City of Walton, assembled on the 12th day of June, 2006.



Phillip W. Trzop, Mayor

Attest:



Peggy Gray, City Clerk

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