

**WATER PURCHASE AGREEMENT
BETWEEN
THE CITY OF MT. VERNON, KENTUCKY
AND**

THE NORTHERN ROCKCASTLE COUNTY WATER DISTRICT

THIS WATER PURCHASE AGREEMENT, is effective retroactive to October 8, 1992, (hereinafter referred to as the "Effective Date"), is made and entered into this _____ day of _____, 1993, by and between the **CITY OF MT. VERNON**, City Hall, P.O. Box 1465, 125 Richmond Street, Mt. Vernon, Kentucky 40456, (hereinafter referred to as the "SELLER"), party of the first part, and the **NORTHERN ROCKCASTLE COUNTY WATER DISTRICT**, Route 3, Box 117, Mt. Vernon, Kentucky 40456, (hereinafter referred to as the "PURCHASER"), party of the second part:

WITNESSETH:

WHEREAS, the SELLER owns and operates a water treatment plant and water supply distribution system within the city limits of Mt. Vernon, Kentucky and surrounding areas, all of which are located in Rockcastle County, Kentucky; and

WHEREAS, the PURCHASER was organized and established for the purpose of operating a water supply distribution system in an area contiguous to the area served by the City of Mt. Vernon, Kentucky; and

WHEREAS, the PURCHASER requires a supply of treated water to operate its water supply distribution system; and

WHEREAS, the SELLER has an excess supply of treated water and desires to sell; and

PUBLIC SERVICE COMMISSION
OF KENTUCKY

EFFECTIVE

OCT 06 1994

PURSUANT TO OTHER CODES, Sires to SECTION 9 (1)

BY: Arden C. Neal
PUBLIC SERVICE COMMISSION

WHEREAS, the PURCHASER has been purchasing water from the SELLER pursuant to the terms of a Water Purchase Contract dated April 30, 1971, and any and all supplemental contracts, addenda or amendments thereto; and

WHEREAS, the SELLER desires to establish a minimum amount of water to be purchased each month from the SELLER by the PURCHASER; and

WHEREAS, it is the purpose of this Water Purchase Agreement, (hereinafter referred to as the "Agreement"), to set forth the entire agreement between the SELLER and the PURCHASER for the sale and purchase of water at the designated points of connection between the two water supply distribution systems; to supersede the April 30, 1971, Water Purchase Contract, and any and all supplemental contracts, addenda or amendments thereto, between the parties; to establish minimum and maximum amounts of water to be sold each month; and to define the rates and charges for the amounts of water sold;

NOW THEREFORE, in consideration of all the foregoing and the terms and conditions expressed herein, the SELLER and the PURCHASER agree as follows:

1. TERM:

The term of this Agreement shall extend for a period of ~~ten (10) years~~ ^{PUBLIC SERVICE COMMISSION} ~~years~~ ^{OF KENTUCKY} from and after the Effective Date of this Agreement, unless otherwise ~~extended~~ ^{EFFECTIVE} or modified by written agreement between the Parties.

OCT 06 1994

2. QUANTITY OF WATER:

The SELLER shall furnish to the PURCHASER ~~such quantities of~~ ^{PURSUANT TO 807 KAR 5.011,} water as the PURCHASER may require in order to provide service to its customers, not to exceed, five (5) million gallons of water per month, delivered at the average flow rate of 164,160 gallons of water per day. The SELLER will perform a hydraulic analysis of its water supply distribution system within nine (9) months after the approval of this Agreement by all

FOR THE PUBLIC SERVICE COMMISSION

develop additional pressures needed within the PURCHASER'S system. The SELLER shall use reasonable care and diligence in the operation and maintenance of its water system to prevent and avoid abnormal interruptions and fluctuations of water supply and pressure.

Emergency failures of pressure or water supply due to main supply line breaks, power failure, flood, fire and use of water to fight fire, earthquake or other catastrophe shall excuse the SELLER from this provision for such reasonable period of time as may be necessary to restore service.

The points of delivery, water main sizes, and meter sizes are as follows:

	POINTS OF DELIVERY	MAIN SIZE	METER SIZE
1.	South US 25 at Chestnut Ridge	6-inch	1-inch
2.	South US 25 at Chestnut Ridge	6-inch	1 1/2-inch
3.	US 25 North at Renfro Valley	6-inch	4-inch

5. OPERATION OF SYSTEM:

The SELLER shall, at all times, operate and maintain its water system in an efficient manner and shall take such actions as may be reasonably necessary to perform its obligations under this Agreement. Temporary or partial failures to deliver water shall be remedied with all possible dispatch. The SELLER shall immediately inform the PURCHASER, by telephone, of the nature and extent of such temporary or partial failure to deliver water.

PUBLIC SERVICE COMMISSION
OF KENTUCKY
EFFECTIVE

OCT 06 1994

4

PURSUANT TO 807 KAR 5011,
SECTION 9 (1)

BY: C. C. Neal

6. METERING EQUIPMENT:

The SELLER shall furnish, install, operate, and maintain at its own expense, at the points 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 PURCHASER, but not more frequently than once every twelve (12) months. A meter registering not more than two percent (2%) above or below the test result shall be deemed to be accurate. The previous reading of any meter disclosed by test to be inaccurate shall be corrected for the one month period previous to such test in accordance with the percentage of inaccuracy found by such test, unless SELLER and PURCHASER shall agree upon a different amount. 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 of equal days 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 twentieth (20th) day of each month. The PURCHASER, at all reasonable times, and upon request with adequate notice of at least twenty-four (24) hours, during the normal business hours of the SELLER, shall have access to the meter(s) for the purpose of verifying the meter reading(s).

7. EXPANSION OF PURCHASER'S SYSTEM:

The PURCHASER agrees to inform the SELLER of any proposed water line extension project or proposed expansion or any major modifications to the PURCHASER'S water distribution system, hereinafter referred to as the "Project" according to the following criteria.

PUBLIC SERVICE COMMISSION
OF KENTUCKY
EFFECTIVE

OCT 06 1994

PURSUANT TO 807 KAR 5.011,
SECTION 9 (1)

BY: Robert C. Neal

A. The PURCHASER will furnish to the SELLER one (1) complete set of construction drawings, technical specifications and related material that describes the Project proposed by the PURCHASER. Said related material, shall include, but not be limited to, the estimated increase in water consumption that said Project will require.

B. The PURCHASER shall have the Project designed by a registered professional engineer licensed to practice in the Commonwealth of Kentucky. Said design shall be based on flow demands and pressure requirements as determined by a hydraulic analysis performed by a registered professional engineer licensed to practice in the Commonwealth of Kentucky.

C. The PURCHASER shall not initiate any Project that will increase the PURCHASER'S water consumption above five (5) million gallons of water, unless, this Agreement has been modified in writing prior to the Project being undertaken. The SELLER agrees that the PURCHASER may proceed with the implementation of any Project upon notification to the SELLER if the estimated increase in the PURCHASER'S water consumption as a result of the Project does not exceed the agreed upon limit of five (5) million gallons of water per month.

D. The PURCHASER shall furnish written evidence to the SELLER that any Project proposed by the PURCHASER has been approved by the Commonwealth of Kentucky Natural Resources and Environmental Protection Cabinet, Division of Water.

8. BILLING AND PAYMENT PROCEDURE:

The SELLER shall furnish the PURCHASER on or about the first (1st) day of each month with an itemized statement of the amount of water furnished to the PURCHASER at each of the points of delivery during the preceding month and the costs thereof. The

PUBLIC SERVICE COMMISSION
OF KENTUCKY
EFFECTIVE

OCT 06 1994

PURSUANT TO 807 KAR 5011,
SECTION 9 (1)

BY:

[Signature]

PURCHASER shall pay those costs to the SELLER not later than the twentieth (20th) day of each month. Any amount remaining unpaid after the due date shall be deemed delinquent and shall bear interest at the rate of twelve percent(12%) per annum until paid.

9. RATE:

The PURCHASER agrees to pay the SELLER for water delivered by the Seller and for any connections of the PURCHASER'S system to the SELLER'S system in accordance with the following:

A. To purchase from SELLER a minimum of two (2) million five hundred thousand (2,500,000) gallons of water per month during the term of this Agreement. The PURCHASER agrees to pay for the minimum monthly quantity of water even if the minimum monthly quantity of water is not used by the PURCHASER. The maximum amount of water purchased from the SELLER shall not exceed five (5) million gallons for any one month period at an average flow rate of 164,160 gallons of water per day. The daily maximum amount of water purchased shall not exceed 205,000 gallons.

B. The PURCHASER shall pay to the SELLER each month for water delivered by the SELLER to the PURCHASER one dollar and seven cents (\$1.07) per one thousand (1,000) gallons of water registered on the SELLER'S meter(s) effective the 8th day of October, 1992; provided, however, the PURCHASER shall be deemed to have taken at least the minimum quantity of water each month as stated above. The costs to the PURCHASER shall be measured by the volume of water registered at the meter(s) on a monthly basis. If the PURCHASER takes more than it's maximum quantity of water each month without having obtained prior written approval from the SELLER, an additional charge of twenty five (25) cents per one thousand (1,000) gallons of water that exceeds the

PUBLIC SERVICE COMMISSION
OF KENTUCKY
EFFECTIVE

OCT 06 1994

-7-

PURSUANT TO 807 KAR 5011,
SECTION 9(1)

BY: *[Signature]*

Any Cost of Service Study performed by the SELLER in support of a rate adjustment will follow guidelines set forth by the American Water Works Association (AWWA) in the latest edition of the AWWA Manual M1 - Water Rates.

11. ADVANCED NOTICE OF RATE MODIFICATION:

The SELLER shall notify the PURCHASER in writing of the proposed rate at least thirty (30) days before it is to be adopted as the actual rate. This will enable the PURCHASER to review and comment on the proposed rate before it is actually adopted by the SELLER. The SELLER shall furnish the PURCHASER with a copy of the Cost of Service Study to support the proposed rate modification.

At the expiration of the thirty (30) day review period, the SELLER may establish and adopt the actual rate to be charged the PURCHASER and shall immediately notify the PURCHASER in writing of the new rate.

12. EFFECTIVE DATE OF RATE MODIFICATION:

The Effective Date of the new rate as to the PURCHASER shall be at least thirty (30) days after the expiration of the thirty (30) day review period set forth in paragraph 11 of this Agreement.

13. WATER SHORTAGE:

In the event of a shortage of water, or if the supply of water available to the SELLER is otherwise diminished over a period of time, then, the supply of water made available to the PURCHASER shall be reduced or diminished by the same ratio or proportion as the supply of water to the SELLER'S other customers is reduced or diminished.

PUBLIC SERVICE COMMISSION
OF KENTUCKY
EFFECTIVE

-9-

OCT 06 1994

PURSUANT TO 807 KAR 5011,
SECTION 9 (1)

BY: 

14. INDEMNIFICATION:

Each Party shall be solely responsible for the construction, operation, and maintenance of its respective water system. Each Party, to the extent permitted by law, expressly agrees to indemnify, save harmless and defend the other Party against all claims, demands, costs, or expenses 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.

15. DEFAULT:

The PURCHASER agrees to pay all monies as described in the Agreement when due, and both Parties hereby agree to carry out all other duties and obligations to be performed by them pursuant to all of the terms and conditions set forth and contained in this Agreement. The failure of either Party to perform any of its duties or obligations contained herein shall be an event of default by that Party.

A. Notice of Default. Upon the occurrence of an event of default, the nondefaulting Party may promptly notify the defaulting Party, in writing pursuant to the terms of this Agreement, of the existence and nature of the event of default.

B. Curing of Default, Termination and Remedy.

(1) Within fifteen (15) days after written notice of the event of default has been received, the defaulting Party shall cure such default.

(2) Should the defaulting Party fail to cure the default within fifteen (15) days after written notice has been given to it, or within the time reasonably necessary to cure the default by the exercise of due diligence, or within the time specified by the Agreement, then

OFFICE OF THE COMMISSIONER
OF KENTUCKY
EFFECTIVE

OCT 08 1994

PURSUANT TO 807 KAR 5011,
SECTION 9 (1)

BY:

Paul

the nondefaulting Party may, at its option, immediately terminate this Agreement and recover from the defaulting Party any and all damages to which it may be entitled under applicable law.

(3) Notwithstanding the foregoing provisions, neither Party shall have the right to terminate this Agreement unless the event of default constitutes a breach of a material term or condition of this Agreement.

(4) The PURCHASER shall not be in default if all undisputed monies are paid when due.

16. TERMINATION OF WATER SERVICE FOR NONPAYMENT:

Should an act of default by the PURCHASER in payment of monies under this Agreement continue for a period of thirty (30) days from the giving of written notice without having been cured by the PURCHASER, then the SELLER may, by written notice, terminate the right of the PURCHASER to receive any or all of its water supply from the SELLER. If the default in payment continues for thirty (30) days or more after the termination of water service, the SELLER may terminate this Agreement and recover from the PURCHASER any and all damages to which it may be entitled under applicable law.

17. DISPUTED BILL:

If a portion of any bill issued by the SELLER to the PURCHASER is in a bona fide dispute, the undisputed amount shall be paid when due. In the event the SELLER is entitled to all or any portion of the disputed amount, the SELLER shall also be entitled to interest on such amount at twelve percent (12%) per annum.

PUBLIC SERVICE COMMISSION
OF KENTUCKY
EFFECTIVE

-11-

OCT 06 1994

PURSUANT TO 807 KAR 5011,
SECTION 9 (1)

P. Neal

21. ENTIRE AGREEMENT; SEVERABILITY:

This Agreement constitutes the entire agreement between the Parties with respect to the subject matter contained herein. Except as otherwise provided herein, no subsequent alteration, amendment, change or addition to this Agreement shall be binding upon either Party unless and until it is reduced to writing and signed by both Parties. Should any provision of this Agreement be declared to be invalid or unenforceable by a Court of competent jurisdiction, the remaining provisions of this Agreement shall remain in full force and effect unless such invalid or unenforceable provision substantially alters the benefits of the Agreement for either Party.

22. NON-WAIVER:

Any waiver at any time by any Party hereto of its rights with respect to the other Party or with respect to any matter arising in connection with this Agreement shall not be considered a waiver of any such rights or matters at any subsequent time.

23. SUCCESSORS AND ASSIGNS:

This Agreement shall inure to the benefit of and be binding upon the Parties hereto and their respective successors and assigns. This Agreement shall not be assigned by either Party without the written consent of the other Party.

24. PURCHASER'S SUCCESSOR:

In the event of any occurrence rendering the PURCHASER incapable of performing under this Agreement, any successor of the PURCHASER, whether the result of legal process, assignment, or otherwise, shall succeed to the rights and obligations of the PURCHASER and the terms of this Agreement shall be binding upon the successor in interest.

PUBLIC SERVICE COMMISSION
OF KENTUCKY
EFFECTIVE

OCT 06 1994

PURSUANT TO 807 KAR 5.011,
SECTION 9 (1)

BY: [Signature]
[Title]

25. PLEDGE:

It is understood by the Parties that the PURCHASER intends to, and does by the execution of this Agreement, pledge this Agreement to the United States of America, acting through the Farmers Home Administration (FmHA) as part of the security for the repayment of all indebtedness currently owed by the PURCHASER to FmHA. The SELLER, however is not incurring any liability to FmHA because of the PURCHASER'S pledge of this Agreement to FmHA; and the SELLER is not incurring any independent obligation to FmHA because of this pledge by the PURCHASER.

26. FmHA APPROVAL:

The PURCHASER has financed construction of its existing system through loan(s) from the United States of America, acting through the Farmers Homes Administration of the United States Department of Agriculture. The provisions of this Agreement pertaining to the undertakings of the PURCHASER are conditioned upon and subject to the approval of the State Office of the FmHA which approval shall not be unreasonably withheld. Similarly, any future modifications of the provisions of this Agreement by the Parties shall likewise be subject to the approval, in writing, of said State Office. Such approval shall not, however, apply to any change in rates paid by the PURCHASER for water purchased by it from the SELLER as same is controlled by the provisions of this Agreement.

27. EFFECTIVE DATE:

The Parties acknowledge that, in order for this Agreement to be made effective, it must be approved by and executed on behalf of the SELLER, the PURCHASER, and FmHA. The SELLER must also enact or amend such ordinance as may be necessary to

PUBLIC SERVICE COMMISSION
OF KENTUCKY
EFFECTIVE

OCT 06 1994

PURSUANT TO 807 KAR 5.011,
SECTION 9 (1)

BY: Justin C. Neal
FOR THE PUBLIC SERVICE COMMISSION

effectuate the provisions of this Agreement pertaining to establishing and modifying rates. This Agreement shall become effective with the final passage, approval, and publication of such ordinances. The Effective Date shall be the publication date. The term of this Agreement shall be measured from the Effective Date.

28. DISPUTES:

Every effort shall be made to resolve any disagreements arising from this Agreement between the respective representatives of the SELLER and the PURCHASER. Disagreements not so resolved will become disputes. Pending final resolution of a dispute hereunder, the Parties to this Agreement will continue to operate under the terms of the Agreement.

29. PRIOR CONTRACTS SUPERSEDED:

As of the Effective Date of this Agreement, the April 30, 1971, Water Purchase Contract, and any and all supplemental contracts, addenda or amendments thereto, shall be superseded.

PUBLIC SERVICE COMMISSION
OF KENTUCKY
EFFECTIVE

OCT 06 1994

-15-

PURSUANT TO 807 KAR 5:011,
SECTION 9 (1)

BY: *Jonathan C. Neal*
PUBLIC SERVICE COMMISSION

IN WITNESS THEREOF, the Parties hereto, acting under the authority of their respective governing bodies, have caused this Agreement to be duly executed in multiple counterparts, each of which shall constitute an original, on the date stated above.

CITY OF MT. VERNON

ATTEST:

KAYE RADER, CITY CLERK

BY:

GARY R. CROMER, MAYOR

NORTHERN ROCKCASTLE COUNTY WATER DISTRICT

ATTEST:

SECRETARY

BY:

BRYON BAKER, CHAIRMAN

This Water Purchase Agreement is approved on behalf of the Farmers Home Administration this _____ day of _____, 1993.

BY:

(Typed name of person and title)

SIGNATURE: _____

This Water Purchase Agreement has been approved as to legality of form and content by:

Mr. John E. Clontz
Clontz & Cox
Attorneys at Law
P.O. Box 1350
Mt. Vernon, Kentucky 40456
C:\WPFILES\NORTHERN.CON

PUBLIC SERVICE COMMISSION
OF KENTUCKY
EFFECTIVE

OCT 06 1994

PURSUANT TO 807 KAR 5.011,
SECTION 9 (1)

BY: Jordan C. Neal