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Boonesboro Water Association  
Contract File

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THIS WATER PURCHASE AGREEMENT, made and entered into this 13th day of October, 1981, by and between the CITY OF WINCHESTER, KENTUCKY, a municipal corporation of the third class located in Clark County, Kentucky, by and through its WINCHESTER MUNICIPAL UTILITIES COMMISSION, hereinafter referred to as WMU, and BOONESBORO WATER ASSOCIATION, INC., hereinafter referred to as Boonesboro, of Winchester, Clark County, Kentucky;

WITNESSETH: WHEREAS, WMU has in operation a water treatment plant and delivery system, supplying water to customers both within and without the corporate limits of the City, and

WHEREAS, by contract dated December 19, 1967, Boonesboro has heretofore purchased water for the purpose of supplying its customers in western and southern Clark County, and

WHEREAS, the parties hereto have determined that because Boonesboro's water requirements are now exceeding those contracted for under the prior contract and for territorial considerations arising out of the City's providing of sewer service in certain areas now included in the territory of Boonesboro, as established by said contract, that said contract should now be terminated and replaced by this new contract;

NOW, THEREFORE, in consideration of the premises and the covenants and agreements hereinbelow contained, the parties agree and bind themselves as follows:

1. TERMINATION OF PRIOR CONTRACT. That certain Water Purchase Contract heretofore entered into by and between the parties hereto, dated December 19, 1967, is by mutual consent of the parties hereby cancelled and held for naught.

2. WMU TO BE EXCLUSIVE SUPPLIER. Boonesboro herewith agrees to purchase all of its water requirements from WMU during the term of this contract, subject to the maximum provided for in Paragraph 5 below, and WMU shall be Boonesboro's exclusive supplier.

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3. BOONESBORO TERRITORY. Except as hereinbelow provided, Boonesboro has and shall retain, exclusive of the rights of WMU, the right to provide water service to all of those areas of western and southern Clark County as marked on the map attached hereto and identified as "Boonesboro."

4. TERRITORIAL ENCROACHMENTS. The parties agree that certain areas outside the territory assigned by this agreement to Boonesboro are now served by Boonesboro, and that WMU shall have the right, at its option, to commence supplying any customers or territory not included in the Boonesboro territory identified by the attached map at any time, upon thirty (30) days' written notice to Boonesboro. Any master meter required to be moved by the taking over of customers or territory by WMU as herein provided shall be moved at the expense of WMU.

5. QUANTITY OF WATER TO BE SUPPLIED. WMU hereby agrees to sell and deliver to Boonesboro any amount of water Boonesboro desires to purchase up to eight percent (8%) of the rated capacity of WMU's system as limited by the pumping or treatment facilities of WMU or by its raw water supply. It is understood and agreed that such capacity may from time to time increase or decrease and the maximum supply of water available to Boonesboro shall increase or decrease accordingly. It is further understood and agreed that the present limitation on treated water in WMU's system is the treatment plant, that the rated capacity of the present treatment plant is 5.5 million gallons per day, which is the amount of water available for purchase by Boonesboro under current conditions.

6. COMPENSATION. The compensation which Boonesboro shall pay to WMU for water furnished under this agreement shall be sixty-five cents (65¢) per hundred cubic feet. The said rate

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shall be subject to increase or decrease at any time the City, in its sole discretion, changes the water rates for other customers of WMU. The amount of the increase or decrease of the rate hereinabove fixed shall be directly proportional to the increase or decrease produced by such rate change in WMU's gross revenues received for water from its other customers. Any revised rate shall be rounded to the nearest cent. "Other customers" as used herein shall mean regular customers subject to the general water rate schedule fixed by the City from time to time and shall not include water districts or other customers subject to special contractual rates.

7. METERING. Water delivered to Boonesboro by WMU shall be measured by up to five (5) master meters to be placed at locations agreed upon between the parties. The meters shall be purchased and installed at the cost of Boonesboro, but the meters shall be owned and maintained by WMU. Each meter shall be examined and tested at least once every five (5) years. In the event that it is ascertained that any meter is not accurate, it shall either be repaired or replaced so as to render it accurate, and an adjustment shall be made to the charges imposed upon Boonesboro, based upon such examination and test and upon the average monthly charges to Boonesboro during the preceding twelve (12) month period.

8. TERMS AND CONDITIONS OF SERVICE. Subject to the provisions of this contract, Boonesboro hereby agrees and binds itself to abide by all ordinances, rules and regulations of the City of Winchester and WMU applicable to other customers and to pay all charges and delinquent penalties, if any, to be subject to termination for non-payment of charges, and otherwise to receive the water service in the same manner and under the same terms and conditions as other customers of WMU.

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9. LIMITS OF OBLIGATIONS AND LIABILITIES OF WMU. WMU hereby agrees to supply and deliver the quantity of water to Boonesboro as herein set forth, and WMU expressly limits and restricts the providing of such service with the understanding that WMU shall only be required to use reasonable attention, care and diligence in the operation and maintenance of its system to prevent and avoid any unnecessary interruptions and fluctuations in the supply of water. WMU does not represent or guarantee that interruptions or fluctuations will not happen or occur, and due to conditions which may be brought about or emergencies which may be caused by breaks, leaks, defects, repairs, extensions, enlargements or demands upon the system, or by fires, floods, strikes, acts of God, or other unforeseen causes there may be times and occasions when the quantity or supply of water may be diminished or interrupted, and there shall be no obligation or requirement upon WMU to deliver or provide the water to be supplied at any specific pressure or flow. The pressure and quantity of water resulting from normal operation of WMU's system shall be available to Boonesboro at its various meters. It is agreed that in case of shortages of supplies of WMU all customers and users shall share the shortages proportionately and WMU will not discriminate against Boonesboro under such circumstances. Boonesboro hereby agrees to hold WMU harmless from any and all liability incurred as a result of its furnishing to Boonesboro, or its reasonable failure to furnish, any particular quantity or pressure of water under this agreement.

10. RESTRICTION AGAINST RESALE OF WATER BY BOONESBORO. Boonesboro shall not sell any water provided to it under this agreement outside the limits of its territory as described herein, nor shall it sell or deliver any water to any other water district or other supplier of water to individual

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customers without the consent of WMU, which consent shall be obtained through proper legislative action of the City of Winchester.

11. EFFECTIVE DATE AND TERM OF CONTRACT. This agreement shall become effective immediately upon its execution and shall remain in force and effect for a period of twenty (20) years thereafter; provided, however, that Boonesboro shall have the right to renew and extend this agreement for an additional period of twenty (20) years if it so desires, upon written notice to WMU at least sixty (60) days prior to the expiration of the first twenty-year term.

12. PARTIES BOUND. This agreement shall be binding upon the parties hereto, their successors and assigns.

IN TESTIMONY WHEREOF, this agreement has been executed this day and year first above written by the Mayor of the City of Winchester, Kentucky, the Chairman of the Winchester Municipal Utilities Commission, and the President of Boonesboro Water Association, Inc.

ATTEST:

Nancy S. Daber  
City Clerk

ATTEST:

Richard J. Lewis  
Secretary

ATTEST:

Joseph F. Nolan  
Secretary

CITY OF WINCHESTER, KENTUCKY

By Canny E. Litch Mayor

WINCHESTER MUNICIPAL UTILITIES  
COMMISSION

By R. M. Jackson Chairman

BOONESBORO WATER ASSOCIATION, INC.

By Kenneth D. Dove President

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