

WATER PURCHASE CONTRACT

THIS WATER PURCHASE CONTRACT for the sale and purchase of potable water is entered into as of the 23 day of MARCH, 2015, between the **KNOTT COUNTY WATER AND SEWER DISTRICT, INC. (KCW)**, of 7777 Big Branch Road Vicco, Kentucky 41773, hereinafter referred to as the "Seller", and **PERRY COUNTY**, a body politic, of Main Street, Hazard, Kentucky 41701, hereinafter referred to as the "Buyer".

WITNESSETH

WHEREAS, Seller is organized and established under the provisions of the Kentucky Revised Statutes, KRS 65.810 and Chapter 24, et. seq., as a local district for the purpose of producing and operating a water supply and distribution system, and

WHEREAS, Buyer is a county governmental entity who has assumed responsibility to provide water to the residents of Vicco and it's environs and

WHEREAS, to accomplish this purpose, Buyer will require a supply of treated water, and

WHEREAS, by Resolution, enacted on the 19th day of March, 2015, the Seller, agreed to sell water to the Buyer in accordance with the provisions of the said Resolution, and the execution of this Contract carrying out the said Resolution by the KCW, and attested by the Secretary, was duly authorized, and

WHEREAS, the Fiscal Court of the Buyer, will enact a Resolution on the 21st day of April, 2015. Wherein, the County will ratify the purchase of water from the Seller in accordance with this Contract, and

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

A. THE SELLER AGREES:

A1. Maximum Volumes Allowed to Buyer. The Seller agrees to furnish the Buyer at the point of delivery hereinafter specified, during the term of this contract or any renewal or extension thereof, potable, treated water meeting the purity standards of the United States Environmental Protection Agency, and the Kentucky Division of Water in such quantity as may be required by the Buyer, not to exceed a volume of **400,000** gallons per day. The treated water shall be conveyed and measured through



the Point(s) of Delivery identified at the master meter located near the gap at red oak mountain near blue storage tank.

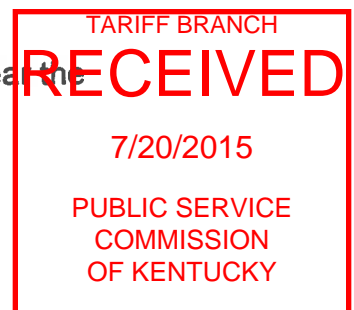
A2. Minimum Pressure Provided by Seller. The Seller shall provide the contracted volume of water to the Buyer at a reasonably constant pressure sufficient to deliver the volume of water promised from the point herein described as the "Point of Connection No. 1" as designed. If a greater pressure than that normally available at the point of delivery is required by the Buyer, the cost of providing such greater pressure shall be borne by the Buyer. Emergency failures of pressure or supply due to drought, line breaks, power failure, flood, fire and use of water to fight fire, earthquake, or other catastrophe constituting a force majeure shall excuse the Seller from this provisions for such reasonable period of time as may be necessary to restore service.

A3. Seller to Provide Three-Days Notice of Work to Main. In the event the Seller wishes to conduct pre-planned or scheduled maintenance or other work to the transmission main or distribution lines that convey treated water to the Buyer, the Seller shall provide three-days notice of such work to the Buyer. The three days shall be weekdays, i.e. Monday through Friday, in addition to any Saturdays or Sundays that fall within the notice period. The Buyer may be asked to curtail or limit the purchase of treated water from the Seller during the scheduled maintenance. Buyer will designate a contact person for this purpose and provide his or her contact information to the Seller.

A4. Procedures to Notify of Unscheduled/Emergency Work. In the event the Seller must make emergency or unscheduled repairs to the transmission main or distribution lines that convey treated water to the Buyer, the Seller will endeavor to notify the Buyer immediately upon becoming aware of the necessary repairs. The Buyer may be asked to curtail or discontinue the purchase of treated waters while repairs are undertaken. The Seller will promptly notify the Buyer when repairs are complete and purchase of water through the master meter(s) may resume.

A5. Points of Connection. The Seller shall furnish the Buyer potable water at the point(s) of delivery described below:

a. Point of Delivery No. 1 - Master meter located near the gap at Red Oak Mountain near blue storage tank.



A6. Water Quality. Seller will produce water of sufficient quality on a consistent average basis to meet Department of Water requirements and be fit for human consumption. However, should water quality dip below state and federal standards the Parties agree to pay their own respective fines or penalties assessed by regulatory agencies. However, should the water sold to the Buyer fail to meet those standards and it can be demonstrated that the water quality problem is exclusively attributable to the Seller, the Seller shall pay any fines or penalties assessed by the regulatory agency against the Buyer for non-compliance.

A7. Delivery of Water. That Seller shall deliver water under this Agreement starting March 3, 2015 which shall be the effective date of this Agreement.

A8. Payment Dates and Due Dates. The Seller will fix water usage by the end of production month. The Seller agrees to furnish Buyer with an itemized list of the amount of water furnished to the Buyer no later than the 1st fo the month following production. The payment of water bills by the Buyer is due by the 20th of each month following production.

A9. Priority. The Buyer understands and agrees that Seller has a primary duty to supply water retail customers and that this obligation will supercede any promise to wholesale water to the Buyer should conditions warrant an inability by Seller to meet both obligations.

A10. Electricity. Seller shall pay the cost of electrical charges necessary to pump water through the master meter.

B. THE BUYER AGREES:

B1. Minimum Volume to Be Purchased by Buyer. The Buyer shall purchase a minimum of **80,000** gallons of treated water per day from the Seller. The buyer shall pay the Seller for the minimum volume of treated water at the contracted price per gallon whether or not the water was conveyed to the Buyer, unless the Seller declares a suspension as per Section D6.

B2. Rates. The Buyer agrees to pay the Seller for water delivered in accordance with the following schedule of rates:

a. **\$3.00** for the first **1,000** gallons, which amount shall also be the minimum rate per month.

b. **\$3.00** per **1,000** gallons for water in excess of **1,000** gallons.



B3. Future Requirement Forecast. On or before the 15th day of January of each year, the Buyer will provide the Seller with a three-year forecast of the Buyer's anticipated water volume requirement. If the forecast includes more than modest growth (greater than three (3) Percent annually), the Buyer will include a topographic map clearly indicating the area(s) from which the anticipated additional demand will come.

B4. Regulatory Compliance. The Buyer shall be responsible for any customer notification procedures as required by regulatory agencies such as boil water advisories. The Buyer shall be responsible for flushing or disinfection process requirements.

B5. Public Notices. Seller agrees to notify Purchaser within 24 hours of any water quality test results that do not meet purity standards mentioned above. Buyer agrees to notify customers if supplied water fails to meet Division of Water purity standards.

B6. Storage. The Buyer agrees that it will store at least sufficient gallons of water to act as a 12 hour reserve based upon current consumption in case of emergencies.

B7. Additional Water Usage. Should Buyer intend on expanding the service area beyond that which is fixed now, the Buyer will reasonably and timely notify Seller of its intent and provide Seller with copies of all plans to do so including estimates of additional water usage. Seller will strive but does not guarantee that it can service the new additions.

C. OPERATIONS.

CI. The Sellers Minimum Delivery. The Seller shall deliver and sell a minimum of 80,000 gallons of treated water per day to the Buyer, unless Seller declares a suspension as per section D6.

C2. Fire Flow Pressure. The Seller and the Buyer acknowledge and agree that the Seller is not providing water for fire flow service and therefore guarantees no fire flow volume or residual pressures during fire flows to the Buyer. Any fire hydrants or other fire facilities installed by the Buyer shall be serviced by the Buyer and at the Buyer's risk as no fire flows or residual pressure conditions are assured herein.

C3. Calibration of Master Meters. The Seller will calibrate the master meter on a frequency of not less than one (1) time every two (2) years and bear the costs



of said calibration. The Seller will furnish certified written results of the calibration to the Buyer at no cost. The Buyer may, at any time, request calibration of the master meter. Should the Buyer request, the calibration will be paid by the Buyer if the meter is found to be accurate or the Seller if the meter is found not to be accurate. A meter registering not more than two (2) percent above or below the test result shall be deemed to be accurate. The previous readings of any meter disclosed by test to be inaccurate shall be corrected for the three (3) months previous to such test in accordance with the percentage in 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 the Seller and Buyer shall agree upon a different amount based upon more accurate information. The metering equipment shall be read by the Seller between the 15th or 20th of the month. An appropriate official of the Buyer at all reasonable times shall have access to the meter for purposes of verifying its readings.

C4. Adjustments to Water Bills. Leaks which may develop on the Buyer's side of the master meter are the sole responsibility of the Buyer. Section C3 of this Contract allows for adjustments due to inaccurate or malfunctioning master meters. No adjustment will be made for leaks on the Buyer's side of the master meter. The Seller, being unquestionably aware of a significant leak on the Buyer's side of the master meter, can, after written notice is given, interrupt water service to the Buyer until such leak is repaired. A significant leak, for purposes of this Contract, is defined as water lost at 1.2 times the maximum allowable rate as defined in Section A1 of this Contract.

C5. Rate Adjustments. Upon the anniversary of this Agreement and for every year thereafter within the term, the Parties shall meet and confer on a raise in the wholesale rate. Should the Sellers require an upward adjustment, then it will be supported by a Cost of Service Study to justify the rate increase and the Buyer shall not otherwise object without reasonable grounds to do so.

D. MUTUAL CONTRACT PROVISIONS.

D1. Altering The Contract. The provisions of this Contract pertaining to the schedule of rates to be paid by the Buyer for water delivered are subject to modification at the end of every one-year period Any increase or decrease in rates shall be based on a demonstrable increase or decrease in the costs of performance hereunder. Cost factors



shall include chemicals, electric, and labor cost, but such costs shall not include increased capitalization of the Seller's system. Other provisions of this Contract may be altered or modified by mutual agreement with any such modifications or alterations being manifested in writing, signed and witnessed by the parties to this Contract.

D2. Term of Contract. This Contract shall extend for a term of five (5) years from the date of the initial delivery of any water as shown by the first bill submitted by the Seller to the Buyer and, thereafter may be renewed or extended for three additional two year terms. Said renewals to occur automatically unless one of the parties serves written notice of cancellation at least sixty (60) days before expiration of current term or renewal.

D3. Assignment of Contract. In the event of any occurrence rendering the Buyer incapable of performing under this Contract, any successor of the Buyer, whether the result of legal process, assignment, or otherwise, shall succeed to the rights of the Buyer hereunder.

D4. Contract Subject To Regulatory Approval. If this Contract is subject to such rules, regulations, or laws as may be applicable to similar agreements in this Commonwealth and the Seller and Buyer will cooperate in obtaining such permits, certificates, or the like, as may be required to comply therewith.

D5. Conflict Resolution. If differences arise between the Buyer and the Seller that does not concern payment, the parties hereby agree to resolve their differences using an arbitrator to assist in the negotiations. If, after thirty (30) days, the parties are unable to resolve their disputes among themselves, then the parties agree to use a arbitrator experienced in conflict resolution and certified by the Mediation Center of Kentucky, Inc. If parties cannot agree on arbitrator, then the Mediation Center of Kentucky, Inc. shall pick one. The cost of mediation shall be borne equally by the parties. Finally, if disputes remain unresolved after attempts at arbitration, then parties may file suit in Circuit Court to obtain final resolution as this is a non-binding arbitration.

D6. Seller Unable to Produce. 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 Buyer with quantities of water required by the Buyer. 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 the Buyer's consumers shall be



reduced or diminished in the same ratio or proportion as the supply to the Seller's consumers is reduced or diminished. The Seller may be excused from performance should there occur a force Majeure event is an event that arises beyond the control of the Seller such as Act of God or will also include acts of third parties such as Corp of Engineers or catastrophic equipment failure. Once Seller declares a force Majeure event then Sellers full performance under this contract shall be excused without a default being declared or damages incurred. Should a force Majeure event continue for 10 business days then the Parties shall confer to see if this Agreement should be terminated or modified.

D7. Prior Indebtedness. As a part of this Agreement and as an inducement to KCW to forgo a suspension of water service, Buyer has agreed to assume certain indebtedness the City of Vicco owes KCW said amount being \$234,066.00 Judgment Debt and approximately \$55,000.00 Interim Debt. Which are collectively referred to as the Collective Debt. The details of which are spelled out within the Debt Assumption Agreement between the Parties hereto and attached herein as Exhibit A to this Agreement as if fully set out herein.

E. BUYER DEFAULT:

E1. Buyers Late Payment.

As stated in Section A8 of this Contract, payment for water purchased is due at the Seller on or before the 20th of each month. If not paid by the 20th of the month following the date rendered, the bill shall be delinquent, and a delay penalty equal to 6% of the face amount of the bill shall become due and payable, provided however, that if the 20th day should fall upon a Sunday or legal holiday, then the face amount of the bill may be paid on the next sequential day that is not a holiday.

E2. Buyers Arrearage. Should Buyer fail to pay in full for a period of two pay cycles (60 Days) hereinafter the debt along with penalty becomes an "the arrearage debt". Whereupon, the Sellers may choose to exercise certain judicial or non-judicial remedies to which Buyer must comply

a) Disconnect: If the entire bill for current water consumed and penalty or collective debt shall remain unpaid for a period of 60 days, then Seller shall exercise the right as it maintains it has pursuant to KRS 96.934, to disconnect water service upon the giving of a minimum 10 day advance written notice as provided by law. The date of issuing the 10 day letter Seller must attempt the remedies of Surcharge & Assignment



b) Surcharge: Upon demand by Seller, then Buyer will add an additional temporary raise to the individual retail customer account until the arrearage owed by Buyer to Seller is paid. Buyer agrees further to isolate and preserve the surcharge funds and to remit some to Seller on the next pay cycle. The Surcharge will continue until the arrearage is paid.

c) Assignment of Retail Payments: or Seller may choose to exercise the non judicial remedy of assignment. Upon demand by Seller, then Buyer will assign retail water customers payments directly to Seller. Buyer will notify retail water customers in writing at Sellers cost of the assignment of payments with directions that their monthly payment shall be paid directly to Seller at Sellers address. The assignment shall continue for each future retail billing cycle until the arrearage is paid.

d) Litigation: Whether or not the Buyer's service is disconnected because of such delinquency, the Seller may exercise all rights under contract law to enforce and collect the amount of any bills remaining delinquent for sixty (60) days.

e) Upon a default Buyer waives any defense of sovereign immunity either at common law or by statute.

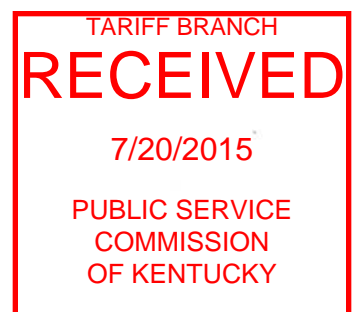
f) Should Buyer's default result in legal collection action then Buyer shall pay Sellers reasonable Attorney Fees and Court Cost associated with the legal collection action.

F. SURCHARGE: Should it become necessary from time to time that Seller incurs cost due to regulatory changes requiring capital upgrades beyond the means of Seller, then Buyer shall be charged a surcharge in addition to the normal sale against the Buyer for reimbursement of these costs. The Buyer's portion of these costs shall be limited to an amount proportional among customers to the entire system being operated by the Seller.

G. NOTICES: For all notices required herein for either party, then for each, notice is effective when delivered in person or next if by mail or professional carrier. The official notice address are:

For Seller:

Attn: Manager
Knott County Water & Sewer District, Inc.
7777 Big Branch Road
Vicco, KY 41773



For Buyer:

Perry County
Judge Scott Alexander, County Judge Executive
Perry County Courthouse
481 Main Street
Hazard, KY 41701

H. RECORDS: Each party shall have reasonable access to the others' records as it bears to the provisions of this Agreement. Both Parties agree to a record retention of ten (10) years, being the life of the initial term.

I. EMERGENCY NOTICE: The parties further acknowledge that during an emergency or natural disaster, the normal notices provisions may be inadequate and as such, each party may elect to give emergency notice by phone. This emergency contact person shall be available on a 24/7 basis. It is the responsibility of each party to give the other an emergency contact person and contract phone number for this purpose.

Emergency Notice:
Knott County Water & Sewer District, Inc.
Contact Person: LJ TURNER
606-642-3582 office
606-634-5586 cell

Perry County
Contact Person: Judge Scott Alexander, County Judge Executive
Perry County Courthouse
481 Main Street
Hazard, KY 41701

J. CHANGE OF CIRCUMSTANCE: Since the basic term for this Contract is five (5) years, a legitimate cause for renegotiation might come to exist if the parties are subject to drastically changed conditions. The Parties agree to negotiate in good faith. The Buyer and Seller agree, however, that the availability of an additional supplier of treated water for the Buyer is not cause for a renegotiation under a Change of Circumstance clause.

K. CANCELLATION: All previous Agreements held by the City of Vicco with KCW either written or oral require any future performance by KCW is hereby cancelled and held for naught.



L. MISCELLANEOUS: In witness whereof, the parties, acting under authority of their respective governing bodies, have caused this Contract to be duly executed in counterparts, each of which shall constitute an original.

SELLER:

KNOTT COUNTY WATER AND SEWER DISTRICT, INC.

By: James O. Childers

Attest:

By: CHAIRMAN

BUYER:

PERRY COUNTY

By: Scott Alesford

Attest:

By: Perry County Judge Executive

