

COPY

CITY OF JENKINS
RESOLUTION NO. 08-06-12-2

WATER PURCHASE CONTRACT

THIS WATER PURCHASE CONTRACT for the sale and purchase of potable water is entered into as of the 6th day of August, 2012, between the CITY OF JENKINS, KENTUCKY (City), of P. O. Box 568, Jenkins, Kentucky 41537, hereinafter referred to as the "Seller", and the LETCHER COUNTY WATER AND SEWER DISTRICT, of P. O. Box 827, Whitesburg, Kentucky 41858, a governmental entity formed pursuant to Kentucky Statute, hereinafter referred to as the "Buyer".

WITNESSETH

WHEREAS, Seller is a body politic classified as a fourth-class City under Kentucky Revised Statutes, and

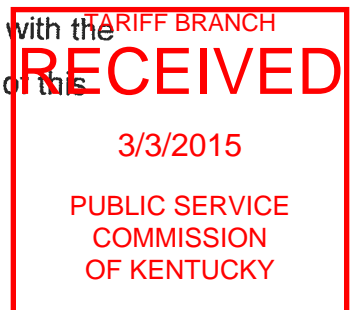
WHEREAS, Buyer is organized and established under the provisions of the Kentucky Revised Statutes, Chapter 74, et. seq., as a local district for the purpose of constructing and operating a water supply and distribution system serving water users within the area described in plans now on file in the office of the Buyer, and

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

WHEREAS, the Seller owns and operates a water supply 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 Buyer in the service area described as "PAYNE GAP" as shown in the plans of the system attached hereto as Exhibit A, and

WHEREAS, by Resolution No. 08-06-12-2, enacted on the 6th day of August, 2012, by Seller, the sale of water to the Buyer in accordance with the provisions of the said Ordinance was approved, and the execution of this Contract carrying out the said Ordinance by the Jenkins City Council, and attested by the City Clerk, was duly authorized, and,

WHEREAS, by vote of the majority of the Board of the Buyer, enacted on the 19th day of July, 2012, the purchase of water from the Seller in accordance with the terms set forth in the said Resolution was approved, being the exact terms of this Agreement, and



WHEREAS, the execution of this Contract by the Letcher County Water and Sewer District, and attested by the Chairman was duly authorized and pre-approved.

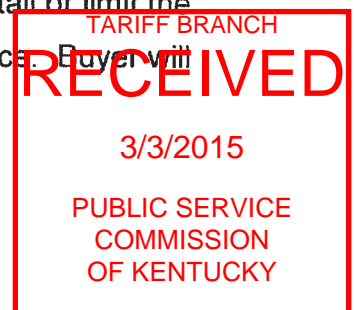
NOW THEREFORE, in consideration of the foregoing and the mutual agreements hereinafter set forth,

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 **45,000** gallons per day. The treated water shall be conveyed and measured through the Point(s) of Delivery identified as such on the attached map.

A2. Minimum Pressure Provided by Seller. The Seller shall provide the contracted volume of water to the Buyer at a reasonably constant pressure at approximately 60 pounds per square inch 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, main 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. The parties agree to adopt a gradual scale increasing the minimum pressure flow as Buyer adds more customers.

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:

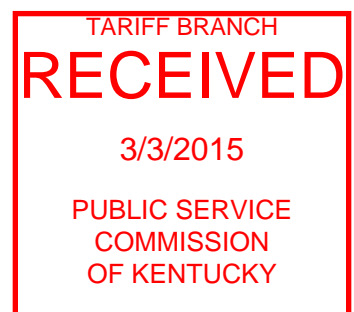
a. Point of Delivery No. 1 - Master meter located near the intersection of US 23 & US 119 as located on the attached map.

A6. Water Quality. Seller will produce water of sufficient quality to meet Department of Water requirements and be fit for human consumption. The Parties agree to pay their own respective fines or penalties assessed by regulatory agencies. The allocation of penalties shall be dependent upon the fault of the Parties.

A7. Delivery of Water. That Seller shall notify Buyer 15 to 20 days prior to the estimated date of completion of the Seller's water supply distribution system. The Buyer will in turn notify the Seller in writing of the date for the initial delivery of water with 15 to 20 days of Seller's notification.

A8. Payment Dates and Due Dates. The Seller agrees to furnish Buyer with an itemized list of the amount of water furnished to the Buyer no later than the 30th day of each month. The payment of water bills by the Buyer is due by the 25th of each following month.

A9. Priority. The Buyer understands and agrees that Seller has a primary duty to supply water to the City of Jenkins 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. The Buyer acknowledges that Seller will incur additional cost in the form of increased electrical charges necessary to pump water through the master meter. The Seller will pay for the electricity consumed for this purpose, but Buyer agrees to reimburse Seller for all electricity charges over \$250.00 per month incurred for this purpose. The Seller shall keep accurate records of this cost and bill Buyer monthly, whereupon Buyer shall reimburse Seller promptly.

B. THE BUYER AGREES:

B1. Minimum Volume to Be Purchased by Buyer. The Buyer shall purchase a minimum of **15,000** gallons of treated water per month 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.

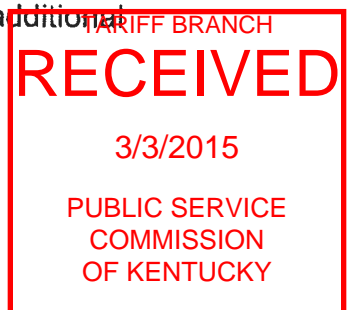
B2. Rates. The Buyer agrees to pay the Seller for water delivered in accordance with the following schedule of rates:

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. 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 Buyer and to calibrate such metering equipment whenever requested by the Seller but not more frequently than once every twelve months as set out in more detail at Article C3 herein.

B4. 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.



B5. 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.

B6. Public Notices. Seller agrees to notify Purchaser within 48 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.

B7. Storage. The Buyer agrees that it will store at least sufficient gallons of water to act as a 24 hour reserve based upon current consumption in case of emergencies.

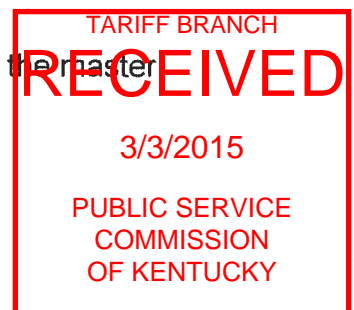
B8. Additional Water Usage. Should Buyer intend on expanding the service area beyond that which is fixed now, the Buyer will reasonably and timely notify Seller of its intent and provide Seller with copies of all plans to do so including estimates of additional water usage. Seller will strive but does not guarantee that it can service the new additions.

C. OPERATIONS.

C1. 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.

C2. Responsibility of Purchase and Installation of Master Meters. The Parties agree that the master meter station has been constructed through grant money administered by Seller. At the close of the grant, ownership of master meter shall past to Buyer. Should during the life of this Agreement or any extension thereof, there is a need to repair or upgrade the master meter, then it shall be done at cost of buyer. Either Party may request repair or upgrade.

C3. Calibration of Master Meters. The Seller will calibrate the master



meter on a frequency of not less than one (1) time every five (5) 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 on the 15th of each month, or the 14th if the 15th falls on a Saturday, or the 16th if the 15th falls on a Sunday. An appropriate official of the Buyer at all reasonable times shall have access to the meter for purposes of verifying its readings.

C4. Water for Testing and Initial Delivery. The Parties acknowledge that during construction of the Buyer's water supply distribution system, it will be necessary to test the system with full water pressure. The Buyer will notify the Seller in writing the date for the initial delivery of water. When requested by the Buyer, the Seller will make available to the Buyer's contractor at the point of delivery, or other point reasonably close thereto, water sufficient for testing and flushing the Buyer's system during construction, regardless of whether the metering equipment has been installed at that time, at a flat charge of \$2.00 per thousand gallons of water which will be paid by the contractor or, on the contractor's failure to pay, by the Buyer.

C5. 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.

C6. 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 City require an upward adjustment, then it will be supported by a City Cost of Service Study to justify the rate increase and the Buyer shall not otherwise object without reasonable grounds to do so.

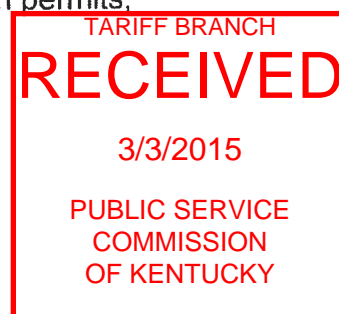
D. CONTRACT PROVISIONS.

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 ten (10) 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 such term, or terms, as may be agreed upon the by the Seller and Buyer.

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.

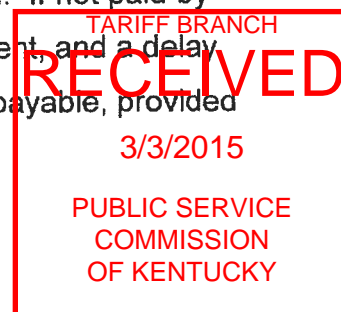
D4. Contract Subject To Regulatory Approval. If this Contract is subject to such rules, regulations, or laws as may be applicable to similar agreements in this Commonwealth and the Seller and Buyer will collaborate in obtaining such permits, certificates, or the like, as may be required to comply therewith.



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 a mediator to assist in the negotiations. If, after thirty (30) days, the parties are unable to resolve their disputes, the parties agree to use a mediator experienced in conflict resolution and certified by the Mediation Center of Kentucky, Inc. If parties cannot agree on a mediator, 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 mediation, the parties will submit their case to an arbitration. If the dispute is less than \$100,000, one arbitrator will be used. For amounts in dispute over \$100,000, three (3) arbitrators will be used. Arbitrators chosen must be listed with the American Arbitration Association. The method of choosing arbitrators shall be by mutual acceptance if only one arbitrator is used, or, if three are used, each party chooses one arbitrator and the chosen arbitrators choose a third arbitrator. Each party shall pay for its arbitrator so chosen and both parties shall share equally the cost of a third arbitrator.

D6. Seller Unable to Sell. 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. Further, Section _____ through _____ of the City's Ordinance, and subsequent amendments thereto, establishes water restrictions that may be levied on the customers of the Seller's municipal water utility in the event of a drought or water shortage emergency. The restrictions and requirements imposed upon the Seller's direct customers in water emergencies shall also apply to wholesale customers, in this case, the Buyer.

D7. Buyer Fails To Pay. As stated in Section A8 of this Contract, payment for water purchased is due at the City on or before the 10th of each month. If not paid by the 10th 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 10th 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. If the entire bill for water and penalty shall remain unpaid for a period of 60 days after with the date the penalty is added, then pursuant to authority of KRS 96.934, the water service connection to the Buyer is subject to be disconnected. Whether or not the Buyer's service is disconnected because of such delinquency, the Seller may exercise all rights under law to enforce and collect the amount of any bills remaining delinquent for sixty (60) days.

D8. Cost of Rate Filing. The Buyer acknowledges that as a water district, it may be subject to the Public Service tariff approval and must adhere to their process of petitioning and rate studies. As such, the Buyer shall undertake this compliance process at its cost.

D9. Surcharge. Should it become necessary from time to time that Seller incurs cost due to regulatory changes or requirements of KRS 278.150 particular rate change efforts 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 to the entire system being operated by the Seller.

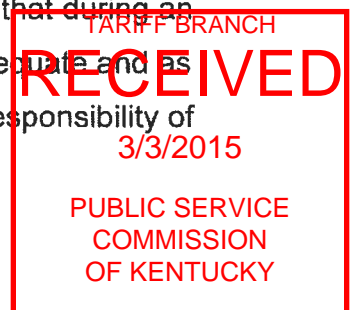
D10. Notices. For all notices required herein for either party, then for each, notice is effective when delivered in person or next if by mail or professional carrier. The official notice address are:

For Seller: City of Jenkins
P. O. Box 568
Jenkins, KY 41537

For Buyer: Letcher County Water & Sewer District
P. O. Box 827
Whitesburg, KY 41858

D11. 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.

D12. 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. It is the responsibility of



each party to give the other an emergency contact person and contract phone number for this purpose.

Emergency Notice:
City of Jenkins 606-832-2141
Contact Person: WATER Superintendent

Letcher County Water & Sewer District 606-633-8550
Contact Person: _____

D13. Change of Circumstance. Since the term for this Contract is ten (10) 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 presence or identification of an additional supplier of treated water for the Buyer is not cause for a renegotiation under a Change of Circumstance clause.

D14. 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:

CITY OF JENKINS, KENTUCKY

By: [Signature]
G.C. Kincer Jr., Mayor

Attest:
By: [Signature]
Sandra Puckett, City Clerk

BUYER:

LETCHER COUNTY WATER AND
SEWER DISTRICT

By: [Signature]
Phillip Back, Chairman

Attest:
By: [Signature] 3/3/2015
Secretary

