

WATER PURCHASE AGREEMENT

THIS WATER PURCHASE AGREEMENT, is made and entered into as of 12-23, 1988, by and between the LEBANON WATER WORKS COMPANY, hereinafter referred to as the "COMPANY"; and the MARION COUNTY WATER DISTRICT, hereinafter referred to as the "DISTRICT":

W I T N E S S E T H:

THAT WHEREAS, the parties hereto by Contract of January 4, 1982, entered into a written Agreement whereby the COMPANY furnishes to the DISTRICT certain quantities of treated water which the DISTRICT then, in turn, makes available for sale to its customers; and

WHEREAS, that January 4, 1982 Agreement was thereafter, on February 15, 1984, and on January 6, 1986 modified by Addendums executed by the parties and made a part of that original Agreement; and

WHEREAS, the term of those contractual agreements entered into between these parties extended for a period of 40 years from and after January 4, 1986, and it is now the desire of the parties to provide for an additional extension of the term of that contract so that the term thereof shall extend for a period of 41 years from and after the date of this Agreement; and

WHEREAS, in order to further expand its service area, the DISTRICT now requires additional quantities of water and is

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BY: James Miller  
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desirous of having the COMPANY increase the guaranteed daily allotment of water to be sold to the DISTRICT; and

WHEREAS, the parties are desirous of having one document that sets forth their entire agreement and which supersedes all prior contractual agreements between the parties;

NOW, THEREFORE, in consideration of all the foregoing, and the mutual terms and conditions hereinafter set forth, the parties do hereby agree as follows:

1. TERM:

That the term of this Agreement shall extend for a period of forty-one (41) years from and after the effective date hereof, as provided for in paragraph twenty-five (25) of this Agreement, unless otherwise extended or modified by written agreement between the parties.

2. QUALITY OF WATER:

The COMPANY shall furnish the DISTRICT at the points of delivery hereinafter specified, during the term of this Agreement or any renewal or extension thereof, potable, treated water meeting applicable purity standards of all appropriate state and federal regulatory agencies. The water shall also be of the same type and quality furnished to the COMPANY'S other water customers.

3. QUANTITY OF WATER:

The COMPANY shall furnish to the DISTRICT such quantities of water as the DISTRICT may require in order to provide service to its customers, not to exceed, however, 900,000 gallons per day. This amount shall be designated the "Guaranteed Amount". If and

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BY: *George A. Hill*  
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when the future needs of the DISTRICT exceed this Guaranteed Amount, then the COMPANY, subject to the limitations contained in paragraph fourteen (14) of this Agreement, also agrees to supply that Excess Demand ("Excess Demand"), to the extent water is available and it is able to do so.

4. DELIVERY POINTS:

There are presently seven (7) points of delivery:

- (1) St. Mary's Road (Ky. 49 and 52),
- (2) St. Rose Pike (Ky. 429),
- (3) Danville Highway (US 68),
- (4) Sulphur Springs Road,
- (5) Fairgrounds Road,
- (6) West Main Street (US 68 and 55 South), and
- (7) Calvary (Ky 208).

The COMPANY does not guarantee any specific water pressure at any of the existing points of delivery, but does covenant to use all reasonable care and diligence in the operation and maintenance of its water system to prevent and avoid abnormal interruptions and fluctuations of supply and pressure. Should greater pressures than that available at a point of delivery be required by the DISTRICT, it shall be the DISTRICT'S responsibility, at its own expense, to provide such booster pumping, storage or other facilities as may be required to develop additional pressures within the DISTRICT'S system. The COMPANY shall not be held responsible for emergency failure of pressures and flow at any point of delivery ~~due to~~ <sup>due to</sup> main leaks,

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power failures, flood, fire and use of water to fight fire, an act of God, or other causes beyond the control of the COMPANY.

5. OPERATION OF SYSTEM:

The COMPANY shall, at all times, operate and maintain its system in an efficient manner and shall take such action as may be necessary to furnish the DISTRICT with the Guaranteed Amount of water set forth in paragraph three (3) of this Agreement. Temporary or partial failures to deliver water shall be remedied with all possible dispatch.

6. MASTER METER TESTING:

The COMPANY shall furnish, operate and maintain at its own expense at each 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 DISTRICT at each location, and to calibrate such metering equipment, whenever requested by the DISTRICT, but not more frequently than once ever twelve (12) months.

A meter, registering not more that two percent (2%) 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 six (6) months previous to said test in accordance with the percentage of inaccuracy found by such test. 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 COMPANY and the DISTRICT shall agree upon a different amount.

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7. BILLING PROCEDURE:

The metering equipment shall be read by the Company on or about the twentieth (20th) day of each month. The COMPANY shall furnish the Treasurer of the DISTRICT at Lebanon, Kentucky not later than the first (1st) day of each month, with an itemized statement of the cost and amount of water furnished the DISTRICT during the preceding month. The DISTRICT shall pay those charges to the COMPANY, not later than the tenth (10th) day of each month. The bill shall be calculated according to the COMPANY'S prevailing rate schedule, as amended from time to time. The prevailing rate schedule at this time is set forth in Ordinance No. 87-12 of the City of Lebanon, a copy of which is attached hereto and incorporated herein by reference as "Exhibit A". (The parties recognize that Ordinance No. 87-12 must be amended prior to the effective date of this Agreement so as to incorporate the Excess Usage Fee referred to in paragraph fifteen (15) of this Agreement.) It is understood and agreed by the parties that the COMPANY'S obligation to furnish certain quantities of treated water to the DISTRICT is contingent upon the DISTRICT'S timely payment of those monthly charges calculated under the prevailing rate schedule. In the event of a dispute over those sums due the COMPANY by the DISTRICT, then the DISTRICT will continue to pay on a monthly basis in accordance with the COMPANY'S monthly billing statement until such time as resolution of such dispute provides otherwise.

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8. RATE MODIFICATION:

It is understood and agreed that the COMPANY may hereafter modify its rate schedule by increasing or decreasing the rates charged its customers, including the DISTRICT. Such rate modification shall be reasonably related to any demonstrated changes in the COMPANY'S cost of operation of its business, and any rate change shall be made with the approval of the governing legislative body of the City of Lebanon. Any increase in cost of operation may include increases in capitalization of the COMPANY'S system if such increased capitalization is necessary to permit the COMPANY to carry out its service obligations within its service area.

With respect to any future application for modification of its rates, the COMPANY shall present only to the City Council of Lebanon, Kentucky, the basis upon which such rate modification is sought. Whereupon, the City Council, having heard and considered such application for rate modification, and any protest or objection thereto, may enact by proper Ordinance a rate schedule fixing those rates to be charged by the Company to its customers, including the District. The District is not entitled to any separate or independent showing on the part of the Company as to the need or purpose of any such rate modification. However, and with respect to any subsequent application by the Company to the City Council for modification of the COMPANY'S rate schedule, copies of all supporting documents, exhibits, studies, reports, records, and the like which may be presented by the COMPANY as a part of and in support of its application, shall be made available by the City for review and copying by the DISTRICT upon

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request by a DISTRICT representative presented to any elected official of the City of Lebanon, Kentucky. Upon such timely request for information, documentation, and data supporting any rate modification proposed or sought by the COMPANY, the DISTRICT shall be furnished or given access to same sufficiently in advance of any public hearing conducted thereupon by the City Council of Lebanon, Kentucky, or its designated representatives, to permit the DISTRICT'S reasonable assimilation and review of same prior to any such hearing.

These rate modification procedures do not apply to the contemplated amendment of Ordinance No. 87-12 which must be done to impose the Excess Usage Fee referred to in paragraph fifteen (15) of this Agreement.

9. ADVANCE NOTICE:

The COMPANY shall give the DISTRICT written notice at least thirty (30) days before making application to the Lebanon City Council of its intent to apply for rate modification.

10. EFFECTIVE DATE OF RATE MODIFICATION:

The effective date, as to the DISTRICT, of any future rate modifications, except for the imposition of the Excess Usage Fee referred to in paragraph fifteen (15) of this Agreement, shall be sixty (60) days after the second reading and final passage of any Ordinance which modifies the rate schedule. This delay will allow the DISTRICT time to apply to the Public Service Commission for a Purchase Water Adjustment, so the DISTRICT can pass through the increased rates to its customers.

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PUBLIC SERVICE COMMISSION - SNAPEP

11. SOLE SUPPLIER:

The DISTRICT shall purchase from the COMPANY all water used by the DISTRICT or its customers during the entire term of this Agreement, or any renewals or extensions hereof. It is understood between the parties that, in order to fulfill its obligations under this Agreement, to provide for the increased usage that is reasonably anticipated, and to maintain an adequate reserve capacity, the COMPANY must undertake and make substantial improvements to both its raw water source and its existing plant and facilities. Such improvements will be made, in part, by reason of anticipated revenues to be derived from the DISTRICT during the full term of this AGREEMENT. It is further recognized that, in the event of the DISTRICT'S failure to purchase all of its water from the COMPANY throughout the term of this Agreement, the COMPANY would, at any point in time, have difficulty in establishing such actual damages as it might sustain by reason of the breach by the DISTRICT in this regard, particularly inasmuch as such breach may result in substantial financial damage to the COMPANY well beyond that time period for which such damages would be readily ascertainable upon such default. Accordingly, the parties agree that in the event the DISTRICT, during the term of this Contract and without the COMPANY'S written consent, purchases or otherwise procures any water for use as a part of the operation of its system from any source other than from the COMPANY, then the COMPANY may, at its option, <sup>PUBLIC SERVICE COMMISSION</sup> ~~bill the DISTRICT~~ <sup>OF KENTUCKY</sup> and receive payment from the DISTRICT for that quantity of water <sup>FEB 14 1989</sup> equaling the actual consumption by the DISTRICT and its customers <sup>PURSUANT TO ORDER OF MAR 5:011, SECTION 9 (1)</sup>

BY: Shari K. Hill  
PUBLIC SERVICE COMMISSION MANAGER



during each given month, regardless of the source of the water. The amount to be charged the DISTRICT shall be computed using the rate schedule in effect at the time of the usage. In the event the DISTRICT does purchase water from some other source, then the DISTRICT agrees to make available to the COMPANY, upon request, the DISTRICT'S monthly consumption records.

It is further agreed, however, that should the COMPANY be unable to produce and deliver to the DISTRICT sufficient quantities of water to meet the needs of the DISTRICT; then, in such event, the DISTRICT, after having purchased from the COMPANY all of the water made available to the DISTRICT by the COMPANY, shall be allowed to purchase from any other source such additional quantities of water as may be necessary to meet its needs. In that event, the DISTRICT shall be billed by the COMPANY only for that quantity of water actually purchased by the DISTRICT. The privilege of the DISTRICT to purchase water from other sources and without payment penalty shall be considered temporary in nature, and shall extend only for such periods of time within which the COMPANY is unable to provide for the needs of the DISTRICT. Upon notification by the COMPANY that it is again able to furnish to the DISTRICT water sufficient to meet the DISTRICT'S needs, then the DISTRICT'S privilege of alternate purchasing, without penalty, shall cease.

12. WATER SHORTAGE:

In the event of an extended shortage of water, or if the supply of water available to the COMPANY is otherwise diminished over an extended period of time, or in event the COMPANY is

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unable to produce sufficient quantities of water to meet the needs of both its customers and the customers of the DISTRICT; such water as is available shall be allocated between the DISTRICT and the other customers of the COMPANY according to the following ratio: the numerator shall be 900,000 gallons per day, which will be the assumed usage by the DISTRICT, and the denominator shall be 900,000 gallons plus the actual, average daily usage by the COMPANY'S other customers during the most recent measurable monthly period prior to the declaration or implementation of any conservation effort declared under any applicable ordinance, or otherwise. The available supply of water shall then be allocated between the DISTRICT and the COMPANY'S other customers according to that ratio. (For example, if prior to any shortage or conservation efforts, the COMPANY'S other customers were using 900,000 gallons per day, then the DISTRICT would get fifty (50%) percent of the available water and the COMPANY'S other customers would get fifty (50%) percent of the available water).

13. INABILITY TO PRODUCE:

The term "unable to produce sufficient quantities of water" used in the preceding paragraph of this Agreement shall, by definition, include, but not be limited to, those situations in which the COMPANY is operating under a "Water Shortage Emergency" (as that term is defined in City of Lebanon Ordinance Number 87-11, or any subsequent ordinances that might be applicable).

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BY: Glenn L. Lee  
PUBLIC SERVICE COMMISSION MANAGER

14. USAGE CEILING:

In order to adequately provide for the future needs of its other customers, the COMPANY, subject to its obligation to provide the Guaranteed Amount, reserves the right to limit the amount of water made available to the DISTRICT. This limit shall be designated the "USAGE CEILING." The Usage Ceiling shall be the Guaranteed Amount set forth in paragraph three (3) of this Agreement plus thirty (30%) percent, or a total of 1,170,000 gallons per day. If and when the DISTRICT'S water consumption exceeds the Usage Ceiling, the COMPANY may, if it so chooses, request the DISTRICT to reduce its consumption to a level that is equal to or less than the Usage Ceiling. This request can be made by the COMPANY at any time and for any reason. The COMPANY shall provide the DISTRICT with as much advance notice as is reasonably possible under the circumstances. The DISTRICT must then either reduce its consumption so that it is within the Usage Ceiling or pay the excess Usage Fee provided for in paragraph fifteen (15) of this Agreement.

15. EXCESS USAGE FEE:

Because of the practical difficulty in limiting the amount of water made available to the DISTRICT by the COMPANY, the COMPANY may levy a fifty (50%) percent Excess Usage Fee upon all water used by the DISTRICT in excess of the Usage Ceiling (1,170,000 gallons per day). This Excess Usage Fee shall only be levied after the COMPANY has made a written request for the DISTRICT to limit its consumption to the Usage Ceiling and the DISTRICT fails, after expiration of seven (7) days from the date of delivery of such written request, to do so. Pursuant to the imposition of

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REQUEST FOR  
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an Excess Usage Fee is also contingent upon the Lebanon City Council modifying its current rate ordinance (See Exhibit A) to provide for such a fee.

16. DISTRICT EXPANSION PROJECTS:

The DISTRICT shall notify the COMPANY in writing of its intent to undertake any water system expansion project, or combination of projects, which will significantly increase the DISTRICT's water usage.

17. PLEDGE:

It is understood by the parties that the DISTRICT intends to, and does by the execution of this Agreement, pledge this Agreement to the United States of American, acting through the Farmers Home Administration (FmHA) as part of the security for the repayment of all indebtednesses currently owed by the DISTRICT to FmHA, and/or any additional loans hereinafter obtained from FmHA. The COMPANY, however, is not incurring any liability to FmHA because of the DISTRICT'S pledge of this Agreement to FmHA; and the COMPANY is not incurring any independent obligation to FmHA because of this Pledge by the DISTRICT.

18. COOPERATION:

The regulations and limitations which the COMPANY may impose upon other regular customers with respect to the use of its water will be applicable to the DISTRICT, and the DISTRICT will cooperate with the COMPANY in the enforcement of same. In addition, the DISTRICT will use all reasonable efforts to cooperate with the COMPANY during water shortage situations so

that the provisions of Lebanon Ordinance No. 87-11 (Water Shortage Ordinance), and any subsequent amendments thereto, may be effectuated.

19. FmHA APPROVAL:

The District has financed construction of its existing system through loans from the United States of American, acting through the Farmers Home Administration of the United States Department of Agriculture, and the proposed water system improvement project is being financed by FmHA. The provisions if this Agreement pertaining to the undertakings of the DISTRICT are conditioned upon and subject to the approval of the State Director of the FmHA. Similarly, any future modifications of the provisions of this Agreement by the DISTRICT and the COMPANY shall likewise be subject to the prior approval, in writing, of said State Director. Such prior approval shall not, however, apply to any change in rates paid by the DISTRICT for water purchased by it from the COMPANY as same is controlled by the provisions of this Agreement.

20. CITY COUNCIL APPROVAL:

The City of Lebanon joins in this Agreement for the purposes of acknowledging the obligations imposed upon it with respect to the procedures that will be followed when the COMPANY makes applications for rate modifications, and the imposition of the Excess Usage Fee referred to in paragraph fifteen (15) of this Agreement. The City agrees to perform those obligations imposed upon it by this Agreement.

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21. PROHIBITED SALES:

The DISTRICT shall not sell or deliver any water other than to its regular, metered customers, without the prior, written consent of the COMPANY. The sale of water for resale, or for delivery by truck or otherwise, except through the DISTRICT'S distribution system is hereby prohibited.

22. PARAGRAPH HEADINGS:

Paragraph headings herein are for convenience only and do not define, limit, confine, or construe the contents of such paragraphs.

23. NON-WAIVER:

Failure on the part of either party to insist upon strict compliance by the other with any of the terms, covenants or conditions hereof shall not be deemed a waiver of such terms, conditions or covenants.

24. ENTIRE AGREEMENT:

This Agreement sets forth all of the promises, agreements, conditions, and understandings between the parties governing their business relationship. There are no covenants, promises, agreements, conditions, and understandings, either oral or written between them other than those set forth herein. Except as herein provided, no subsequent alteration, amendments, changes or additions to this Agreement shall be binding upon either party unless and until reduced to writing and signed by both parties.

25. EFFECTIVE DATE:

The parties covenant that, in order for this Agreement to be made effective, it shall be executed by or on behalf of the COMPANY, the DISTRICT, the City, and the PUBLIC SERVICE COMMISSION OF KENTUCKY. The City shall then

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enact or amend such ordinances as may be necessary to effectuate the provisions of this Agreement, including the imposition of the Excess Usage Fee referred to in paragraph fifteen (15) of this Agreement. 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.

26. PRIOR AGREEMENTS VOID:

Since the provisions of the January 4, 1982, Water Purchase Agreement, the First Addendum dated February 15, 1984, and the Second Addendum dated January 6, 1986, will be superseded by this Agreement, those agreements are hereby declared null and void and will no longer have any legal effect after the Effective Date of this Agreement.

IN WITNESS WHEREOF, 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.

LEBANON WATER WORKS COMPANY

DATE: 1-2-89

BY: *Simeon Montgomery*  
SIMEON MONTGOMERY, PRESIDENT

ATTEST:  
*William D. Thompson*  
SECRETARY

PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EXECUTIVE

FEB 14 1989

PURSUANT TO KRS 5.011,  
SECTION 9(1)  
BY: *Sharon A. Hill*  
PUBLIC SERVICE COMMISSION SECRETARY

MARION COUNTY WATER DISTRICT

DATE: 12-23-1988

BY: J. B. Peterson  
J. B. PETERSON, CHAIRMAN

ATTEST:

H. E. O'Daniel  
H. E. O'DANIEL, SECRETARY

CITY OF LEBANON

DATE: 1/3/89

BY: Maurice D. Spalding  
MAURICE D. SPALDING, MAYOR

ATTEST:

Joyce A. Ford  
LEBANON CITY CLERK

CONCURRENCE BY FARMERS HOME  
ADMINISTRATION

DATE: 1/17/89

BY: Mary Ann Baron  
MARY ANN BARON, STATE DIRECTOR

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PURSUANT TO KRS. 5:011,  
SECTION 2(1)

BY: [Signature]  
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