

**WHOLESALE WATER PURCHASE CONTRACT**

This contract for the sale and purchase of water is entered into as of the 13 day of September, 2005, between the MOUNTAIN WATER DISTRICT, P.O. Box 3157, Pikeville, Kentucky 41502, hereinafter referred to as the "SELLER" and the CITY OF ELKHORN, P.O. Box 681, Elkhorn City 41522, hereinafter referred to as the "PURCHASER", WITNESSETH:


WHEREAS, the Purchaser is a municipality that owns and operates a water supply distribution system serving water users within the area described in plans now on file in the office of the Purchaser and to accomplish this purpose, the Purchaser will require a supply of treated water, and

WHEREAS, the Seller owns and operates a water supply 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 Purchaser as shown in the plans of the system now on file in the office of the Purchaser, and

WHEREAS, by Resolution enacted on the 31~~st~~ day of August, 2005 by the Seller, the sale of water to the Purchaser in accordance with the provisions of the said Resolution was approved, and the execution of this contract carrying out the said Resolution by the Board Chairperson, and attested by the Secretary, was duly authorized, and

WHEREAS, by Resolution of the Elkhorn City Government, enacted on the 13 day of September, 2005, the purchase of water from the Seller in accordance with the terms set forth in the said Resolution was approved, and the execution of this contract by the Mayor; and attested by the Secretary was duly authorized;

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SECTION 9 (1)**

By   
Executive Director

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

A. Seller Agrees:

1. (Quality and Quantity) To furnish the Purchaser at the point of delivery hereinafter specified, during the term of this contract or any renewal or extension thereof, potable treated water meeting applicable quality standards of the Kentucky Natural Resources and Environmental Protection Cabinet, Division of Water in such quantity as may be required by the Purchaser not to exceed Two Hundred and Fifteen Thousand (215,000) gallons per day or Six Million Five Hundred Thousand (6,500,000) gallons per month.

2. (Point of Delivery and Pressure) That water will be furnished at a reasonable constant pressure(s) calculated at 100-175 PSI from an existing Eight (8") inch main supply at a point located Intersection of US 460 and Ferrell's Creek. If a greater pressure than that normally available at the point of delivery is required by the Purchaser, the cost of providing such greater pressure shall be borne by the Purchaser. Emergency failures of pressure or 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.

3. (Metering 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 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

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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 Twelve (12) months previous to such test in accordance with the percentage of 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 Seller and Purchaser shall agree upon a different amount. The metering equipment shall be read on the 1<sup>st</sup> day of the month. An appropriate official of the Purchaser at all reasonable times shall have access to the meter for the purpose of verifying its readings.

4. (Billing Procedure) To furnish the Purchaser at the above address not later than the 10<sup>th</sup> day of each month, with an itemized statement of the amount of water furnished the Purchaser during the preceding month. Payments made more than ten (10) days after the due date shall be considered "late" payment(s).

B. The Purchaser Agrees:


1. (Rates and Payment Date) To pay the Seller, not later than the 30<sup>th</sup> day of each month, the 28<sup>th</sup> day of the month for February, for water delivered the preceding month in accordance with the following schedule of rates:

a. Flat Wholesale Rate \$1.58 per 1,000 gallons not to exceed 250,000 gallons per day or 6,500,000 gallons per month.

b. All over 215,000 gallons per day or 6,500,000 gallons per month at \$2.40 per 1,000 gallons if additional water is available or can reasonably be produced by the Seller.

c. 10% penalty for payments made past the due date.

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d. 1.5% interest each month thereafter on the outstanding balance due.

2. (Connection Fee) To pay as an agreed cost, a connection fee to connect the Seller's system with the system of the Purchaser, the sum of Zero (\$0) dollars which shall cover any and all costs of the Seller for installation of the metering equipment and Purchaser to install and donate to seller.

3. (Deposit) Upon execution of this contract Purchaser shall pay seller a deposit of \$15,000.00 to secure its payments under this agreement. Purchaser agrees to maintain said deposit through out the term of this agreement.

C. It is further mutually agreed between the Seller and the Purchaser as follows:

1. (Term of Contract) That this contract shall extend for a term of three (3) years from the date of the initial delivery of any water as shown by the first bill submitted by the Seller to the Purchaser and, thereafter may be renewed or extended for such term, or terms, as may be agreed upon by the Seller and Purchaser.

2. (Delivery of Water) That 30 days prior to the estimated date of completion of construction of the Purchaser's water supply distribution system, the Purchaser will notify the Seller in writing the date for the initial acceptance of water.

3. (Failure to Deliver) That 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 Purchaser with quantities of water required by the Purchase not to exceed amounts listed herein. 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 Purchaser's consumers shall

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be reduced or diminished in the same ratio or proportion as the supply to Seller's consumers is reduced or diminished.

4. (Failure to Pay) That the Purchaser will at all times operate and maintain its system in an efficient manner and will take such action as may be necessary to limit outage and shortages to the maximum extent possible. This contract shall be null and void if all payments for invoices for purchased water are not received within ninety (90) days of the due date. In the event a payment is thirty or more days late, Purchaser may apply the security deposit to the debt owed and pursue all available legal remedies to collect any deficiency due.

5. (Right to Cure) The Purchaser may cure a default, prior to the contract becoming null and void, by full payment of the outstanding balance due. If the payment to cure a default is made after the security deposit is drawn down by Seller, then the amount necessary to cure the default shall be all outstanding bills due and replenishment of the security deposit.

6. (Modification of Contract) That the provisions of this contract pertaining to the schedule of rates to be paid by the Purchaser for water delivered are subject to modification at the end of every one (1) year period. Any increase or decrease in rates shall be based on a demonstrable increase or decrease in the costs of performance hereunder, but such costs shall include only that % of increased capitalization) of the Seller's system necessary to meet future, more stringent regulations promulgated by EPA or DOW or increased volumes of water needed by the Purchaser. Other provisions of this contract may be modified or altered by mutual agreement.

7. (Regulatory Agencies) That this contract is subject to such rules, regulations, or laws as may be applicable to similar agreements in this State and the Seller and

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Purchaser will collaborate in obtaining such permits, certificates, or the like, as may be required to comply therewith.

8. (Successor to the Purchaser) That in the event of any occurrence rendering the Purchaser incapable of performing under this contract, any successor of the Purchaser, whether the result of legal process, assignment, or otherwise, shall succeed to the rights of the Purchaser hereunder.

In witness whereof, the parties hereto, acting under authority of their respective governing bodies, have caused this contract to be duly executed in *two (2) counterparts*, each of which shall constitute an original.

Seller:

MOUNTAIN WATER DISTRICT

BY: Michael L. Kitejoch

Title: ACTING CHAIRPERSON

ATTEST:

John Collins  
JOHN COLLINS (ACTING SECRETARY)

PURCHASER:

CITY OF ELKHORN CITY

BY: Rand Selzer

TITLE: Mayor

ATTEST:

Cressie Berry  
(SECRETARY)

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By: [Signature]  
Executive Director

PSC Approval:

\_\_\_\_\_

BY \_\_\_\_\_

TITLE: \_\_\_\_\_

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By  \_\_\_\_\_  
Executive Director