

WATER PURCHASE CONTRACT

This Water Purchase Contract (the "Contract") for the sale and purchase of water is made and entered into as of the 20th day of June, 2011, by and between the **CITY OF CENTRAL CITY, KENTUCKY**, 214 North First Street, Central City, Kentucky 42330, hereinafter referred to as the "Seller," and the **MUHLENBERG COUNTY WATER DISTRICT NO. 3**, P.O. Box 67, Bremen, Kentucky 42325, hereinafter referred to as the "Purchaser."

WITNESSETH:

WHEREAS, the Seller is a duly organized and existing municipal corporation and city of the fourth class of the Commonwealth of Kentucky;

WHEREAS, the Seller intends to expand its existing water treatment plant and make substantial improvements to its transmission system for the benefit of both the Seller and the Purchaser;

WHEREAS, the Purchaser is a water district organized under the provisions of the KRS Chapter 74;

WHEREAS, the Purchaser currently owns and operates a water distribution system;

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WHEREAS, the Purchaser has been purchasing potable water from the Seller pursuant to the provisions of a Water Purchase Contract dated September 9, 1981 (the "Existing Contract");

WHEREAS, the Seller has received construction bids to expand its existing water treatment plant from 4 to 7 million gallons per day ("MGD"), to construct a 1,000,000 gallon water storage tank, to construct approximately 14,100 linear feet of transmission mains, and to make other water system improvements as described in engineering reports prepared by McGhee Engineering, Inc. (the "Project");

WHEREAS, by Ordinance No. _____ enacted on June _____, 2011 by the Seller's City Council, this Contract was approved and the Seller's Mayor was authorized to execute this Contract for and on behalf of the Seller.

WHEREAS, by action of the Board of Commissioners of the Purchaser taken on June 20, 2011, this Contract was approved and the Purchaser's Chairman was authorized to execute this Contract for and on behalf of the Purchaser, and;

NOW THEREFORE, in consideration of the foregoing and the mutual terms and conditions contained herein, the Seller and Purchaser agree as follows:

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1. **Term of Contract.** The term of this Contract shall extend for a period of approximately 50 years, commencing on the Effective Date hereof as provided in paragraph 21 and terminating on June 30, 2063, unless otherwise extended or modified by written agreement of the Parties.

2. **Quality and Quantity.** The Seller shall furnish to the Purchaser, at the points of delivery hereinafter specified, during the term of this Contract or any renewal or extension thereof, potable, treated water meeting the applicable purity standards of all appropriate State and Federal Regulatory Agencies in such quantity as may be required by the Purchaser, but not to exceed an amount which, when combined with the usage of other customers of the Seller, would exceed the Seller's water production capacity.

3. **Primary Supplier.** The Parties acknowledge and agree that the Seller shall continue to be the Purchaser's primary water supplier. Subject to the provisions of paragraph 4 of this Contract, the Purchaser shall purchase all of its water supply requirements from the Seller until the Purchaser has purchased at least 22,670,000 gallons per month from the Seller. This monthly amount represents an annualized amount of 272,000,000 gallons.

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4. **Other Water Suppliers.** Notwithstanding the provisions of paragraph 3 of this Contract, the Purchaser may purchase water from one or more other suppliers if any of the following events occur:

- a. The Seller is unable to deliver sufficient water due to water shortage, pipeline breaks, equipment failures, power outages, inadequate treatment capacity, natural disasters, other catastrophes, or other emergencies;
- b. The Purchaser experiences low flows or low pressures in a portion of its system and these conditions can be more easily alleviated by an alternate supply of water, but only for such reasonable period of time necessary for Purchaser to repair or correct such low flow or low pressure condition(s);
- c. The Purchaser experiences poor water quality, including taste or odor, in a portion of its system and the Seller is unable to correct the water quality concerns in a timely manner, but only if such condition(s) are the result of a failure on the part of Seller to provide water of a quality required pursuant to this contract. If such fault does not lie with Seller, Purchaser may purchase water from alternate source(s), but Purchaser shall not be relieved of its responsibility under paragraph 3 of this Contract;
- d. When it becomes necessary for the Purchaser to take a water storage tank or booster pump station out of service to facilitate maintenance or repairs (e.g. water storage tank repainting or rehabilitation), but only for such reasonable period of time necessary to complete the maintenance or repairs; or
- e. The Purchaser is unable to supply an adequate flow and pressure of water to a portion of its system due to pipeline breaks, equipment failures, power outages, use of water to fight fires, or natural disasters, other catastrophes, or other emergencies, but only for such reasonable period of time as may be necessary to repair or otherwise alleviate or correct any such condition.

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5. **Points of Delivery.** The Seller shall deliver the water to the Purchaser at two (2) points of delivery: (1) near the intersection of U.S. Highway 431 and Kentucky Highway 189 (replacing the existing delivery point adjacent to the water treatment plant); and (2) near the intersection of Kentucky Highway 70 and Spa Lane at a controlled pressure and flow rate sufficient to maintain the current normal operating conditions in the existing distribution system of the Purchaser. Additional or alternative delivery points may be provided subject to the Seller's approval, and if the Purchaser bears the cost of establishing or changing the delivery point. Seller reserves the right to restrict flow to the Purchaser to a rate that will not be detrimental to the Seller's water production or distribution system. Any such restrictions or water use curtailments shall be borne proportionately by all users served by the Seller's system. 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.

6. **Metering Equipment.** The Seller shall furnish, install, own, operate and maintain at its own expense the necessary metering equipment, including one or more meter enclosures and the required devices for properly and reliably measuring the quantity of water delivered to the Purchaser.

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metering equipment once every year. The Seller shall provide a 24-hour notice to Purchaser prior to conducting any meter tests, allow access to the metering site during testing, and submit test results to the appropriate official designated by the Purchaser. A meter registering within the acceptable limits as identified by AWWA Standards shall be deemed to be accurate. Previous readings of any meter disclosed by test results to be inaccurate (registering outside of acceptable limits of AWWA Standards based upon type of meter) shall be adjusted for the six-month period previous to the test in accordance with the percentage of inaccuracy found by such test. Billings for the period shall be recalculated and the Purchaser's account credited or charged accordingly. If any meter fails to register usage for any period, the amount of water furnished during such period shall be estimated by any reasonable means agreeable to both the Purchaser and Seller. The metering equipment shall be read on or about the last working day of each month, or any other day mutually agreed upon. An appropriate official of the Purchaser shall have access to each master meter for the purpose of collecting usage data and verifying each master meter's readings.

7. **Billing and Payment Procedure.** The Seller shall furnish the Purchaser at the above address, not later than the first business day of each month, an itemized statement of the amount of water furnished the Purchaser during the

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preceding billing cycle and the cost thereof. The Purchaser shall pay those charges not later than the 15th day of each month.

8. **Operation of System.** The Seller shall, at all times, operate and maintain its water system in an efficient manner and shall take such action as may be reasonably necessary to perform its obligations under this Contract. Temporary or partial failures to deliver water shall be remedied diligently with all practicable dispatch. The Seller shall immediately inform the Purchaser by telephone, by email, or by facsimile transmission of the nature and extent of such temporary or partial failure to deliver water. In the event of an extended shortage of water, or if the supply of water available to the Seller is otherwise diminished over an extended period of time, the supply of water to the Purchaser shall be reduced or diminished in the same proportion as the supply to the Seller's other customers is reduced or diminished. The Purchaser also agrees to take such steps as may be reasonably necessary to curtail water usage within its system in response to a shortage of water.

9. **End-User Quality.** It is the intent of both the Seller and the Purchaser to deliver, to the ultimate consumer, water which meets or exceeds all regulatory requirements for potable water. In the event of non-compliance with end-user quality standards, the Parties shall determine whether correction of the

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non-compliance can be more feasibly and economically achieved through actions of the Seller. If so, the Seller shall undertake such changes in the Seller's treatment methods, facilities, or operations as may be required to correct the non-compliance in a timely manner. If Seller is otherwise in compliance with its obligation regarding delivery of water of the quality required pursuant to this Contract, the additional cost, if any, of such action shall be borne by Purchaser.

10. **Connection Fee.** The Seller shall not charge a connection fee to the Purchaser.

11. **Cost Based Rates.** The Seller shall establish and adjust, from time to time, the wholesale rate based upon the Seller's actual cost of providing water service to the points of delivery described in paragraph 5 of this Contract. It is understood and agreed by the Parties that the Seller shall charge the Muhlenberg County Water District and the Muhlenberg County Water District No. 3 the same wholesale rate.

12. **Initial Rate.** The initial wholesale rate shall be \$2.63 per 1,000 gallons, but it shall not become effective until the Effective Date of this Contract (see paragraph 21). This initial rate is based upon the Seller's estimated cost of providing water service to the Purchaser at the points of delivery described in paragraph 5 of this Contract. This initial rate shall remain *Brent Kirtley* July 1,

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2014, at which time it is anticipated that the expanded water treatment plant will have been in service for at least one full fiscal year. On or after July 1, 2014, Seller may adjust the wholesale rate pursuant to the provisions of this Contract.

13. **Rate Modification.** As soon as the actual costs of operating the expanded water treatment plant and the other facilities constructed as part of the Project become known and measurable, the Seller shall determine the actual cost of providing water service to the points of delivery described in paragraph 5 of this Contract. The Seller shall utilize a methodology that is generally recognized and accepted in the water industry and by the Public Service Commission (the "PSC") to determine the proposed wholesale rate. Thereafter, the Seller may adjust, from time to time, the wholesale rate, but not more frequently than once every two (2) years.

14. **Advance Notice of Rate Modification.** The Seller shall notify the Purchaser in writing of any proposed rate adjustment or modification to the wholesale rate within five (5) business days after the Central City Municipal Water and Sewer Board recommends a wholesale rate adjustment and at least 30 days before it is to be adopted as the actual wholesale rate. This will enable the Purchaser to review and comment on the proposed wholesale rate before it is actually adopted by the Seller.

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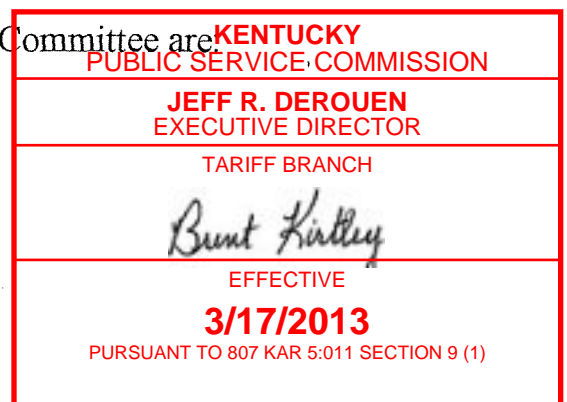
At the expiration of the 30-day review period, the Seller may proceed to establish and adopt the new wholesale rate. The Seller shall immediately notify, in writing, the Purchaser of the new wholesale rate.

15. **Effective Date of Rate Modification.** The effective date of the new wholesale rate shall be at least 30 days after the Seller adopts the new rate. This will enable the Seller to file a revised tariff with the PSC and obtain PSC approval of the new rate.

16. **Joint Planning Committee.** The Parties shall establish a committee to be known as the Muhlenberg Joint City-County Water Production Planning Committee (the "Joint Planning Committee"). The Joint Planning Committee shall be composed of one (1) representative selected by each of the following entities: City of Central City, Muhlenberg County Water District, Muhlenberg County Water District No. 3, and any other future direct wholesale water customer of Central City. Each entity shall determine the manner in which its representative is selected. The Joint Planning Committee shall meet as often as it deems necessary, but at least four (4) times per year on a quarterly basis.

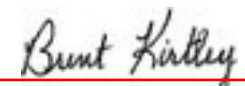
The primary purposes of the Joint Planning Committee are:

- a. To facilitate communications;



- b. To review operating and financial reports concerning water production, water sales, and line loss;
- c. To monitor water quality;
- d. To ensure compliance with all applicable water quality standards;
- e. To recommend any future changes in the treatment and delivery process;
- f. To plan future water treatment plant expansions or other water production improvements;
- g. To discuss and help resolve issues that may arise concerning this Contract; and
- h. To consider other water production and water quality issues.

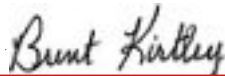
17. **Use of Surplus Funds.** Subject to the limits of the Seller's applicable bond ordinances, any reserve or surplus funds generated from the sale of water to the Purchaser (e.g. cash funded depreciation accounts, operating surpluses, renewal and replacement accounts, and any other non-restricted funds, etc.) shall be set aside by the Seller (the "Surplus Funds"). The Seller may use these Surplus Funds to pay the costs of unusual or extraordinary maintenance, repairs, renewals, or replacements to its water production facilities or any of the other facilities constructed as part of the Project. In addition, the Surplus Funds shall be available for use by the Seller to construct or acquire additions, improvements, and/or equipment useful to its water production facilities which will enhance its revenue-producing capacity or provide a higher degree of service.

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18. **Resale of Water.** The Purchaser may resell water to other public water systems (in addition to those already served) provided the increased demand is within the capability of the Seller's system to supply without expansion or improvement of water source, treatment, storage or conveyance facilities. Proposed new customers whose anticipated demand for water would necessitate the expansion or improvement of Seller's water source, treatment, storage or conveyance facilities may be added only with the written approval of the Seller, which approval shall not be unreasonably withheld; PROVIDED, HOWEVER, Seller shall not be compelled or required to expand or improve its water source, treatment, storage or conveyance facilities solely because of any such additional wholesale water resale by Purchaser.

19. **RD Concurrence.** The construction of the Project is being financed in part by a loan made by, and a grant from, the Rural Development agency of the U.S. Department of Agriculture. Therefore, this Contract is subject to concurrence by Rural Development as evidenced by the signature of a duly authorized RD official.

20. **PSC Review.** The Parties acknowledge that this Contract cannot become effective until it has been reviewed and accepted for ~~KENTUCKY~~ the PSC.

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Seller shall file an executed copy of this Contract with the PSC. Purchaser pledges its assistance to help expedite the PSC review process.

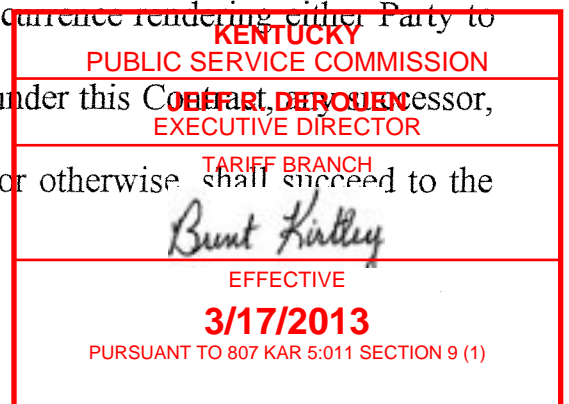
21. **Effective Date.** The Parties acknowledge that, in order for this Contract to become effective, the following events must occur:

- a. Rural Development shall acknowledge concurrence;
- b. PSC shall review this Contract and accept it for filing; and
- c. The Seller shall substantially complete the water treatment plant expansion portion of the Project.

The Effective Date of this Contract shall be 30 days after the completion of all three (3) of the above events. The Seller shall give written notice of the Effective Date to the Purchaser.

22. **Regulatory Agencies.** This Contract is subject to such rules, regulations, or laws as may be applicable to similar agreements in the Commonwealth of Kentucky. The Seller and Purchaser shall collaborate in obtaining such permits, approvals, certificates or the like as may be required to comply therewith.

23. **Successors.** In the event of any occurrence rendering either Party to this Contract incapable of performing its duties under this Contract, or its successor, whether the result of legal process, assignment or otherwise shall succeed to the rights of that Party hereunder.



24. **Pledge.** This Contract and the revenues generated hereunder are pledged on a parity basis to (i) the United States of America acting through the Rural Development agency of the U.S. Department of Agriculture, as part of the security for and to the extent of a loan from the United States of America; (ii) any holders of bonds or other indebtedness issued by the Seller to finance the costs of the Project; and (iii) any insurance company providing an insurance policy which insures the payment of principal and interest on any indebtedness issued by the Seller to finance the costs of the Project.

25. **Paragraph Headings.** The descriptive headings of the various paragraphs of this Contract have been inserted for convenience of reference only and shall in no way modify or restrict any of the terms and provisions hereof.

26. **Entire Agreement; Severability.** This Contract constitutes the entire agreement between the Parties with respect to the subject matter contained herein. Except as otherwise provided herein, no subsequent alteration, amendment, change or addition to this Contract shall be binding upon either Party unless and until it is reduced to writing and signed by both Parties. Should any provision of this Contract be declared to be invalid or unenforceable by a Court of competent jurisdiction, the remaining provisions of this Contract shall remain in full force and

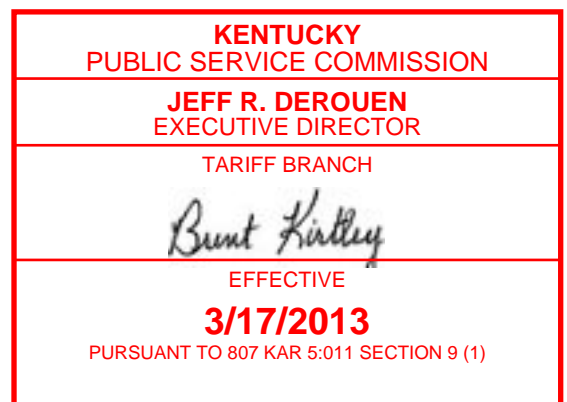
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effect unless such invalid or unenforceable provisions substantially alter the benefits of the Contract for either Party.

27. **Non-Waiver.** Any waiver at any time by any Party hereto of its rights with respect to the other Party or with respect to any matter arising in connection with this Contract shall not be considered a waiver of any such rights or matters at any subsequent time.

28. **Current Contract Superseded.** As of the Effective Date of this Contract, the Current Contract, and all amendments of modifications thereto, shall be superseded by this Contract.

29. **Nonpayment.** That in the event the Purchaser shall fail to make any payment to Seller for the purchase of water and such failure results in a default by Seller under any of the provisions of the documentation relating to the issuance of indebtedness by the Seller, including any required debt service coverage ratio, then the Seller shall increase the rates charged hereunder to Purchaser in an amount necessary, in the written opinion of an independent, certified public accountant, to allow the Seller to meet its financial covenants under such documentation.



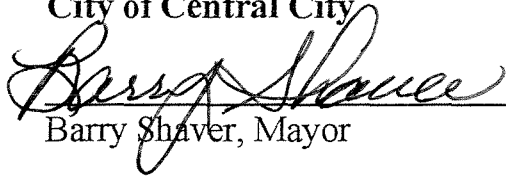
IN WITNESS WHEREOF, the Parties hereto, acting under authority of their respective governing bodies, have caused this Contract to be duly executed in multiple counterparts, each of which shall constitute an original.

Seller:

Purchaser:

City of Central City

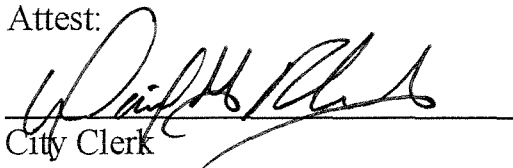
Muhlenberg County Water District No. 3


Barry Shaver, Mayor


Don Garrett, Chairman

Attest:

Attest:

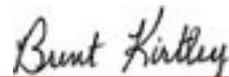

City Clerk


Secretary

**KENTUCKY
PUBLIC SERVICE COMMISSION**

**JEFF R. DEROUEN
EXECUTIVE DIRECTOR**

TARIFF BRANCH



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RD CONCURRENCE

The United States Department of Agriculture, Rural Development concurs in the provisions of this Contract on this 10 day of December, 201~~1~~¹²

RURAL DEVELOPMENT

BY: Vernon C. Brown
NAME

Program Director
TITLE

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