

**WATER PURCHASE AGREEMENT**

**BETWEEN**

**SOUTHEASTERN WATER ASSOCIATION, INC.**

**AND**

**CITY OF BURNSIDE, KENTUCKY**

THIS WATER PURCHASE AGREEMENT (the "Agreement"), is made and entered into as of the 31 day of December, 2002, by and between the **SOUTHEASTERN WATER ASSOCIATION, INC.**, 147 East Somerset Church Road, Somerset, Kentucky, 42503, (hereinafter referred to as the "SELLER"), and the **CITY OF BURNSIDE, KENTUCKY**, 7929 South U.S. Highway 27, Burnside, Kentucky 42518, (hereinafter referred to as the "PURCHASER"):

**WITNESSETH:**

**WHEREAS**, the SELLER is a non-profit corporation which was organized and established under the provisions of Chapter 273 of the Kentucky Revised Statutes;

**WHEREAS**, the PURCHASER is a municipal corporation of the fifth class;

**WHEREAS**, the SELLER owns and operates a water distribution system;

**WHEREAS**, the SELLER currently purchases all its water from the City of Somerset ("Somerset");

**WHEREAS**, the PURCHASER owns and operates a water treatment plant;

**WHEREAS**, the PURCHASER, as a retail customer, has been purchasing water from the SELLER to enable the PURCHASER to provide an adequate supply of water to the Cumberland Heights area;

**WHEREAS**, the parties desire to enter into a long term water supply contract whereby the SELLER will be obligated to sell certain quantities of water on a wholesale basis to the PURCHASER;

**WHEREAS**, by resolution duly adopted on \_\_\_\_\_, 2002 by the SELLER's Board of Directors, this Agreement was approved and the SELLER's President was authorized to execute this Agreement for and on behalf of the SELLER; and

**WHEREAS**, by resolution duly adopted on \_\_\_\_\_, 2002 by the PURCHASER's City Council, this Agreement was approved and the PURCHASER'S Mayor was authorized to execute this Agreement for and on behalf of the PURCHASER;

**NOW THEREFORE**, in consideration of all the foregoing and the mutual terms and conditions expressed herein, the SELLER and the PURCHASER agree as follows:

**1. TERM.** The term of this Agreement shall extend for a period of forty (40) years from and after the Effective Date hereof as provided for in paragraph 19 of this Agreement, unless otherwise extended or modified by written agreement between the parties.

**2. QUANTITY OF WATER.** The SELLER shall furnish to the PURCHASER, at the point of delivery hereinafter specified, such quantities of water as the PURCHASER may require, but not to exceed, however, 72,000 gallons per day or 2,160,000 gallons per month. In addition, the peak flow rate shall not exceed 70 gallons per minute. There shall be no minimum purchase requirements.

**3. ADDITIONAL PURCHASES:** In the event the PURCHASER desires to purchase more than an average of 72,000 gallons per day ("GPD"), then the SELLER agrees to attempt to supply the additional water in excess of 72,000 GPD, to the extent water is available, if it is able to do so. The PURCHASER shall pay a twenty-five percent (25%) surcharge on all usage above an average of 72,000 MGD (e.g. 2,160,000 gallons for a 30 day month). In the event the

SELLER determines that it is experiencing, or likely to experience, a shortage of water available for its retail customers, then first priority shall be given to its retail customers and second priority shall be given to the PURCHASER.

**4. QUALITY OF WATER.** All water furnished to the PURCHASER by the SELLER during the term of this Agreement, or any renewal or extension thereof, shall be potable, treated water meeting applicable purity standards of all appropriate state and federal regulatory agencies. The water shall also be of the same quality furnished to the SELLER'S other customers.

**5. DELIVERY POINT.** The SELLER shall deliver the water to the PURCHASER at the existing point of delivery located near the intersection of U.S. Highway 27, Kentucky Highway 90 and Kentucky Highway 1247 and at such additional or substitute points of delivery which may be agreed upon in writing by both parties.

The water shall be furnished at the point of delivery at a minimum pressure of fifty (50) pounds per square inch. The SELLER shall use 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 the point of delivery be required by the PURCHASER, it shall be the PURCHASER'S responsibility, at its own expense,

to provide within its system such booster pumping, storage or other facilities as may be required to develop and maintain additional pressures within the PURCHASER'S system.

Emergency failures of water supply due to failure of Somerset to supply an adequate quantity of water to SELLER, 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. 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 Agreement. Temporary or partial failures to deliver water shall be remedied with all possible dispatch. The SELLER shall immediately inform the PURCHASER, by telephone, or by facsimile transmission, of the nature and extent of such temporary or partial failure to deliver water.

**7. METERING.** The SELLER shall furnish and install at the point of delivery, in a building or pit, an adequately sized meter (the "Master Meter") registering in U.S. gallons.

Title, ownership and control of the Master Meter shall vest in the SELLER. The SELLER shall be responsible for the cost of testing, operating and maintaining the Master Meter, but these costs shall be included in the wholesale rate charged to the PURCHASER.

**8. TESTING OF MASTER METER.** The SELLER shall have an annual test performed and report prepared regarding the condition and accuracy of the Master Meter. Such test and report shall be performed by an independent company or firm whose representative and equipment used for such test are certified by the Public Service Commission of the Commonwealth of Kentucky (the "PSC"). The meter testing shall be performed in accordance with the latest standards published by the American Water Works Association (the "AWWA") and the Master Meter shall be adjusted or calibrated to bring the accuracy within the latest standards of the AWWA. A copy of the meter test report certifying the accuracy and calibration shall be promptly furnished to the PURCHASER.

**9. BILLING ADJUSTMENTS.** If the Master Meter registers not more than two percent (2%) above or below the actual flow rate during testing it shall be deemed to be **accurate**. If the Master Meter registers more than two (2%) above or below the actual flow rate during testing, it shall be deemed to be **inaccurate**. If inaccurate, the previous readings of the meter shall be corrected for

the three (3) months previous to such test in accordance with the percentage of inaccuracy found by such test. If the Master 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 Master Meter shall be read on or about the same day of each month.

**10. BILLING AND PAYMENT PROCEDURE.** The SELLER shall furnish the PURCHASER, not later than the first (1st) day of each month, with an itemized statement of the amount of water furnished the PURCHASER at the point of delivery during the preceding month and the cost thereof. The PURCHASER shall pay those charges not later than the tenth (10th) day of each month. A ten percent (10%) late payment penalty shall be assessed if any portion of the bill remains unpaid after the due date. In addition, any amount remaining unpaid after the last day of the month shall be deemed delinquent and shall bear interest at the rate of twelve percent (12%) per annum until paid.

**11. INITIAL RATE.** The initial rate shall be \$2.43 per 1,000 gallons of water. This rate is based upon the SELLER's actual cost of providing water service to the PURCHASER at the point of delivery described in paragraph 5 of this Agreement.

**12. WHOLESALE RATE INCREASE.** At the present time the SELLER's supplier, Somerset, is charging the SELLER \$2.00 per 1,000 gallons. The PURCHASER's initial rate of \$2.43 per 1,000 gallons is based upon the SELLER having to pay its supplier \$2.00 per 1,000 gallons. In the event Somerset increases its rate to the SELLER, then the SELLER shall increase its rate to the PURCHASER by the same amount (For example, if Somerset increases its rate to the SELLER by ten (10) cents per 1,000 gallons, then the SELLER shall increase its rate to the PURCHASER by ten (10) cents per 1,000 gallons).

**13. OTHER RATE MODIFICATIONS.** The wholesale rate to be charged by the SELLER to the PURCHASER may also be increased if the SELLER's cost of providing water service to the PURCHASER increases. Any increase shall be based upon a demonstrable increase in the cost of performance hereunder as supported by a cost of service study. Any such increase must also be approved by the Public Service Commission of Kentucky ("PSC") before it can be placed into effect.

**14. EFFECTIVE DATE OF RATE MODIFICATION.** The effective date of any rate modification shall be at least thirty (30) days after the SELLER proposes to adopt the new rate. This will enable the SELLER to file a revised Tariff with the PSC and obtain PSC approval of the new rate.



**15. NO LEAK ADJUSTMENT.** Because the PURCHASER's status has been changed from a retail to a wholesale customer, the PURCHASER shall no longer be entitled to any leak adjustments.

**16. TERMINATION.** The PURCHASER may terminate this Agreement at any time by giving written notice to the SELLER. Termination of this Agreement shall not prejudice the rights, nor relieve the obligations, accrued to the date of termination.

**17. DISPUTED BILL.** If a portion of any bill is in a bona fide dispute, the undisputed amount shall be paid when due. In the event either party is entitled to all or any portion of the disputed amount, such party shall also be entitled to interest on such amount at twelve percent (12%) per annum. In any dispute relating to the payment of money, the prevailing party shall be reimbursed by the nonprevailing party for the reasonable costs of resolving such disputes, including reasonable attorney and consulting fees. Use of the above procedure shall not be deemed an event of default under this Agreement.

**18. INDEMNIFICATION.** Each party shall be solely responsible for the construction, operation, and maintenance of its respective water system. Each party, to the extent permitted by law, expressly agrees to indemnify, save harmless and defend the other party against all claims, demands, cost, or expense asserted

by third parties and proximately caused by the negligence or willful misconduct of such indemnifying party in connection with the construction, operation, and maintenance of its respective water system. Each party shall maintain a liability insurance policy acceptable to both parties with limits of at least one million dollars (\$1,000,000.00) in an insurance company doing business in the Commonwealth of Kentucky.

**19. EFFECTIVE DATE AND CONTINGENCIES.** The parties acknowledge that this Agreement shall not become effective until it has been reviewed by the PSC. The Effective Date of this Agreement shall be the date the Agreement is approved by PSC. The SELLER shall give written notice of the Effective Date to the PURCHASER. The term of this Agreement shall be measured from the Effective Date.

**20. NOTICES.** If at any time either party desires or is required to give notice to the other party pursuant to the terms of this Agreement, such notice shall be in writing and shall be hand delivered or mailed by certified mail, return receipt requested. Notice shall be effective upon receipt. Notices shall be given to the parties at the following addresses or such other place or other person as each party shall designate by similar notice:

(A) As to the SELLER:

Southeastern Water Association, Inc.  
147 East Somerset Church Road  
Somerset, Kentucky 42503  
Attention: President

(B) As to the PURCHASER:

City of Burnside, Kentucky  
7929 South U.S. Highway 27  
Burnside, Kentucky 42518  
Attention: Mayor

**21. RESPONSE TO NOTICES.** At any time either party desires or is required to respond to any notice given pursuant to paragraph 20, such response shall be made in the manner prescribed by paragraph 20 and be given within fifteen (15) days after receipt of the notice unless otherwise provided in this Agreement.

**22. PARAGRAPH HEADINGS.** The descriptive headings of the various paragraphs of this Agreement have been inserted for convenience of reference only and shall in no way modify or restrict any of the terms and provisions thereof.

**23. ENTIRE AGREEMENT; SEVERABILITY.** This Agreement 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 Agreement shall be binding upon either party unless and until it is reduced to writing and signed by both parties. Should any provision of this Agreement be declared to be invalid or unenforceable by a court of competent jurisdiction, the remaining provisions of this Agreement shall remain in full force and effect unless such invalid or unenforceable provision substantially alters the benefits of the Agreement for either party.

**24. 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 Agreement shall not be considered a waiver of any such rights or matters at any subsequent time.

**25. SUCCESSORS AND ASSIGNS.** This Agreement shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns. This Agreement shall not be assigned by either party without the written consent of the other party, which consent shall not be unreasonably withheld, unless such assignment or transfer is to a successor in the operation of its properties by reason of a merger, consolidation, sale or foreclosure where substantially all such properties are acquired by such a successor empowered by law and financially able to effect the purposes of this Agreement which it must

assume and, thereafter, be exclusively responsible for the performance of the terms of this Agreement to be performed by either party hereunder.

**26. PURCHASER'S SUCCESSOR.** In the event of any occurrence rendering the PURCHASER incapable of performing under this Agreement, any successor of the PURCHASER, whether the result of legal process, assignment, or otherwise, shall succeed to the rights and obligations of the PURCHASER and the terms of this Agreement shall be binding upon the successor in interest.

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.

**SOUTHEASTERN WATER  
ASSOCIATION, INC.**

DATE: 12-31-2002

BY: Joe Richards, I  
**JOE RICHARDS, I, PRESIDENT**

**ATTEST:**

Ernest Stoutz 12-31-02  
**SECRETARY**

**CITY OF BURNSIDE, KENTUCKY**

**DATE:** 12/31/02

**BY:** *Dolores B. Sizelove*  
**DOLORES SIZELOVE, MAYOR**

**ATTEST:**

*Cecil Gopp, Jr.*  
**CITY CLERK**