

## WATER PURCHASE AGREEMENT

This Water Purchase Agreement (the "Agreement") is made and entered into as of the 26<sup>th</sup> day of April, 2024, by and between the **MOREHEAD UTILITY PLANT BOARD**, 135 South Wilson Avenue, Morehead, Kentucky 40351, hereinafter referred to as the "Seller," and the **BATH COUNTY WATER DISTRICT**, P.O. Box 369, Salt Lick, Kentucky 40371, hereinafter referred to as the "Purchaser."

### WITNESSETH:

**WHEREAS**, the Seller is a duly organized and existing agency of the City of Morehead, Kentucky, a municipal corporation and city of the home rule class of the Commonwealth of Kentucky;

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


**WHEREAS**, the Seller currently owns and operates water supply, treatment, and distribution facilities;

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

**WHEREAS**, the Purchaser has been purchasing potable water from the Seller pursuant to the provisions of an Interlocal Agreement between Seller, Purchaser and Rowan Water, Inc. dated November 2000 (the "Interlocal Agreement"); and

**WHEREAS**, the Parties wish to supersede the Interlocal Agreement, and all amendments or modifications thereto, with this Agreement.

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


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<b>EFFECTIVE 7/2/2024</b> PURSUANT TO 807 KAR 5:011 SECTION 9 (1)

1. **Term of Agreement.** This Agreement will take effect on the Effective Date as defined in paragraph 17 herein, and will continue for a term of forty-five (45) years thereafter, unless otherwise extended or modified by written agreement of the parties or terminated pursuant to the terms of this Agreement.

2. **Quantity of Water.** Seller shall furnish to Purchaser, at the points of delivery hereinafter specified, such quantities of water as Purchaser may require, but not to exceed an amount which, when combined with the usage of all other customers of Seller, would exceed Seller's water production capacity.

3. **Supply Assurance.** Seller agrees and binds itself to make available for delivery and sale to Purchaser an amount not to exceed 850,000,000 gallons of treated water annually, the assured amount. Notwithstanding this supply assurance the assured amount may be reduced by reason of water shortage, drought, emergencies, or any other unforeseen act of God or force majeure, or due to malfunctioning or rehabilitation of facilities in Seller's system. In such event of reduction of the assured amount Seller shall use all reasonable means to remedy the causing event and restore production to meet the assured amount, any reduction of the assured amount shall be a pro rata reduction based upon assured amounts of other wholesale customers and Seller's average retail customer usage, and Purchaser's minimum purchase amount shall be waived. Nothing herein shall prevent Seller from selling to Purchaser or Purchaser purchasing from Seller an amount of water in excess of the assured amount. However, Seller makes no such assurances of available water for sale beyond the assured amount herein.


4. **Minimum Purchases.** Purchaser shall purchase from Seller the following minimum quantities of water according to the time deadlines and subject to the conditions shown below:

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- A. There is no minimum purchase requirement until July 1<sup>st</sup>, 2025;
- B. From and after July 1<sup>st</sup>, 2025, Purchaser shall purchase a minimum of 320,000,000 gallons annually;
- C. All minimum annual purchase requirements are based upon 12 full months of purchases with each annual period ending on June 30<sup>th</sup>. For periods less than a calendar year, the minimum annual amount shall be prorated;
- D. In the event Purchaser fails to purchase the minimum annual amount in a particular year, Seller shall calculate the deficit and submit an invoice on the first business day of August for the amount owed by Purchaser. This invoice shall be separate from the monthly bill rendered by Seller. Purchaser shall have 30 days to pay the invoice; and
- E. In the event the Purchaser uses more than the minimum amount in a particular year, the surplus amount shall not be carried forward to the next calendar year.
- F. Purchaser shall be excused from its minimum purchase requirement in the event of Force Majeure as provided in paragraph 24 herein.

**5. Quality of Water.** Seller shall furnish to Purchaser, at the points of delivery hereinafter specified, during the term of this Agreement, or any renewal or extension thereof, potable, treated water meeting the applicable water quality standards of all appropriate state and federal regulatory agencies.

**6. Operation of System.** 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 diligently with all practicable dispatch. Seller shall immediately inform Purchaser by telephone (after hours contact 606-336-2863), by email, or by fac

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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 Seller is otherwise diminished over an extended period of time, the supply of water to Purchaser shall be reduced or diminished in the same proportion as the supply to Seller's other customers is reduced or diminished notwithstanding any assured amount pursuant to paragraph 3 herein. 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. Further, Purchaser's minimum purchase requirement of paragraph 4 will be reduced to correspond with the diminished supply during the term of the water shortage.

7. **Delivery Points.** Seller shall deliver the water to Purchaser at the existing points of delivery shown below and at such additional or substitute points of delivery which may be agreed upon in writing by both Parties:

A. **Highway US 60 West.**

Seller shall provide the water at each delivery point at reasonable constant pressure consistent with historical pressure at delivery. 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 a point of delivery be required by Purchaser, it shall be 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 Purchaser's system.


It is understood and agreed by the parties hereto that in the event Purchaser should desire additional purchase points, and if additional pump stations, transmission lines and/or upgrade of existing lines is necessary to provide the additional purchase point(s) which are solely for Purchaser's benefit, then Purchaser shall pay the entire costs of the

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Emergency failures of water supply due to main supply line breaks, power failure, flood, fire and use of water to fight fire, earthquake, or other catastrophe shall excuse Seller from this provision for such reasonable period of time as may be necessary to restore service. Further, Purchaser's minimum purchase requirement of paragraph 4 will be reduced to correspond with the diminished supply during the term any such period of time.

**8. Metering Equipment.** Purchaser shall furnish, install, own, operate and maintain at its own expense the necessary metering equipment to reliably measure the quantity of water delivered to Purchaser at the delivery points and shall test such metering equipment once every year. Purchaser shall provide a 24-hour notice to Seller prior to conducting any meter tests, allow access to the metering site during testing, and submit test results to the appropriate official designated by Seller. 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 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 Purchaser and Seller. An appropriate official of Purchaser and Seller shall have access to each master meter for the purpose of collecting usage data and verifying each master meter's readings.

**9. Telemetry.** Purchaser is not obligated to install telemetry equipment at any of the points of delivery, but if it elects to do so, Purchaser shall be responsible for the payment of all


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costs associated therewith. In addition, Purchaser shall operate and maintain, at its own expense, the telemetry equipment. Ownership of the telemetry equipment shall remain vested in Purchaser.


**10. Billing and Payment Procedure.** Purchaser shall provide to Seller the meter readings itemized by meter/delivery point through the 15<sup>th</sup> of the month, on or before the 25<sup>th</sup> day of the same month. Seller shall furnish Purchaser at the above address, not later than the **last** business day of each month, an itemized statement of the amount of water furnished Purchaser at each delivery point during the preceding billing cycle and the cost thereof. Purchaser shall pay those charges not later than the 15<sup>th</sup> day of the following month. Any amount unpaid after the due day shall be subject to a 10% late payment fee.

**11. Cost Based Rates.** Purchaser shall at all times pay the rates and charges for water established and approved by the Public Service Commission (PSC) at the time of delivery. Seller shall establish and adjust, from time to time, the wholesale rate based upon Seller's actual cost of providing water service to the points of delivery described in paragraph 7 of this Agreement. Purchaser acknowledges Seller's wholesale water rate is determined by Seller's rate-making methodology, and agree that Seller's rate making methodology is a reasonable basis for the rate adjustments under this Water Purchase Agreement. Seller agrees that it will continue to use methodology for revenue requirements and rate making consistent with acceptable methods of the PSC, or any successor regulatory agency. That methodology requires that the wholesale rate be determined by Seller's revenue requirement considering the following components including but not limited to: operation and maintenance expenses; and depreciation expenses; and debt service.

**12. Initial Rate Schedule.** The initial wholesale rate effective July 1, 2024 shall be **\$2.284** per 1,000 gallons. Effective July 15<sup>th</sup>, 2025 the wholesale rate shall be **\$3.61** per 1,000 gallons.

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**13. Gradual Implementation of Initial Rate Modification.** It is understood that the rate effective July 15<sup>th</sup>, 2025, \$3.61 per 1,000 gallons, is well short of estimated 2025 cost of water production to Purchaser. However, the parties have agreed to the July 15<sup>th</sup>, 2025 rate with the understanding that the actual cost of water production to Purchaser is greater and that Seller may recapture the actual cost over a three year period to minimize the impact to Purchaser of a sudden increase in rates. Therefore, Seller shall conduct a Cost of Service Study based upon actual costs during the fiscal year ending June 30<sup>th</sup>, 2025. The difference between the actual cost of water production for Purchaser and the \$3.61 per 1,000 gallons rate shall be implemented over three years, 2026, 2027, and 2028. The difference will be divided by the three and that amount shall be cumulatively added each year to the \$3.61 rate effective July 15<sup>th</sup>, 2026, again to the rate effective July 15<sup>th</sup>, 2027, and again to the rate effective July 15<sup>th</sup>, 2028. Further, Seller acknowledges that during this gradual implantation period Purchaser's rate will receive credit or reduction equal to Purchaser's share of capital charges collected from January 2024 to June 2024 for bonds that were paid off December 2023, and a credit or reduction for Purchaser's share of the reserve funds pursuant to the Interlocal Agreement. The parties agree that during this gradual implementation of the rate modification Seller may in its discretion conduct additional cost of service studies for the fiscal years ending June 30<sup>th</sup>, 2026, 2027, and/or 2028 and if the actual cost to produce water for Purchaser differs from the 2025 study, the difference may be allocated over the remainder of the gradual implementation periods beginning June 30<sup>th</sup>, 2026, 2027 and 2028 in the same manner as the initial difference. Seller agrees to incorporate all grants received toward the construction of the water plant or related projects into an updated cost of service study to ~~reflect the updated~~ wholesale water rates. Seller agrees to make reasonable efforts to obtain grants available to apply to the cost of new facilities and the cost of water production.

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14. **Rate Modification.** Following July 15<sup>th</sup>, 2028 Seller shall have the right, no more frequently than annually, to adjust or modify the rate set forth in this Agreement and any subsequent rate, to reflect changes in the Seller's cost of providing water service to Purchaser. Any adjustment or modification methodology shall be performed as set forth in paragraph 11 herein. Any increase or decrease in the wholesale rate shall be based on a demonstrable increase or decrease in the costs of performance hereunder.

15. **Advance Notice of Rate Modification.** Following July 15<sup>th</sup>, 2025, Seller shall notify Purchaser in writing of any proposed rate adjustment or modification at least thirty (30) days before it is to be adopted as the actual rate. This will enable Purchaser to review and comment on the proposed rate before it is actually adopted by the Seller.

At the expiration of the thirty (30) day review period, Seller may establish and adopt the actual rate to be charged Purchaser and shall immediately notify Purchaser in writing of the new rate.

16. **Effective Date of Rate Modification.** The effective date of the new wholesale rate shall be at least 30 days after Seller adopts the new rate. This will enable Seller to file a revised tariff with the PSC and obtain PSC approval of the new rate. This will also provide Purchaser sufficient time to obtain a Purchased Water Adjustment from the PSC.

17. **Financial and Operational Information.** Commencing with the fiscal year ending June 30, 2023 and continuing annually thereafter during the term of this Agreement, Seller shall provide Purchaser with a copy of Seller's Independent Auditor's Report within 30 days after it has been released. In addition, Purchaser, its auditor, or other designated representative shall have the right, at its own expense, to examine, upon reasonable notice and during regular business hours, Seller's financial records and operating reports concerning

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water expenditures, and line loss. Such examination shall be conducted in such a manner that it does not unduly disrupt the Seller's normal office routine. Seller reserves the right to limit such examination to one (1) examination per fiscal year.

**18. PSC Review.** The Parties acknowledge that this Agreement and any rate modifications hereunder cannot become effective until it has been reviewed and accepted for filing by the PSC. Seller shall file an executed copy of this Agreement with the PSC. Further, this Agreement is subject to such rules, regulations, or laws as may be applicable to similar agreements in the Commonwealth of Kentucky. Seller and Purchaser shall each cooperate and provide any necessary assistance in obtaining such permits, approvals, certificates or the like as may be required to comply therewith.

**19. Effective Date.** The Parties acknowledge that this Agreement will require submission to the PSC for approval. Seller shall file an executed copy of this Agreement with the PSC. Purchaser pledges its assistance to help expedite the PSC review process. The Effective Date of this Agreement shall be the later of July 1<sup>st</sup>, 2024, or the date the Agreement is deemed to be "filed" by the PSC. Seller shall give written notice of the Effective Date to Purchaser.

**20. Discontinuing Water Service for Delinquent Sewer Customers.** To the extent that Purchaser provides retail water service to Seller's sewer customers, pursuant to the provisions of KRS 96.930 to 96.943 and all other applicable laws, Purchaser agrees to discontinue water service to Seller's delinquent sewer customers upon written request by Seller. A Seller employee or representative will accompany Purchaser employee or representative during the disconnect.

**21. 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

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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.

**22. 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, or by email. 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:**


Morehead Utility Plant Board  
315 South Wilson Avenue  
Morehead, KY 40351  
Attention: General Manager  
hrosas@mupb.com

**B. As to the Purchaser:**

Bath County Water District  
P.O. Box 369  
Salt Lick, KY 40371  
Attention: General Manager  
bathcowater@roadrunner.com

**23. Response to Notices.** At any time either Party desires or is required to respond to any notice given pursuant to paragraph 22, such response shall be made in the manner prescribed by paragraph 22 and be given within fifteen (15) days after receipt of the notice unless otherwise provided in this Agreement.

**24. Force Majeure.** Emergency failures due to main supply line breaks, power failure, flood, fire, act of God, war, riot, earthquake, explosion, or other catastrophic events shall excuse the Purchaser and/or Seller from its performance under this Agreement.


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of time as may be necessary to restore service. Further, Purchaser's minimum purchase requirement of paragraph 4 will be reduced to correspond with the diminished supply during the term of such event.

**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. 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 hereof.

**27. 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 provisions substantially alter the benefits of the Agreement for either Party.

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28. **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.

29. **Jurisdiction.** Pursuant to Simpson County Water Dist. V City of Franklin, 872 SW2d 460 (Ky. 1994) the Parties acknowledge that the Kentucky Public Service Commission has exclusive jurisdiction to resolve disputes concerning “rates and services.” Any other dispute arising under this Purchase Water Agreement shall be filed and heard in Rowan Circuit Court.

30. **Prior Contracts Superseded.** As of the Effective Date of this Agreement, the Interlocal Agreement, and all amendments or modifications thereto, shall be null and void and superseded by this Agreement.

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

**SELLER:**

**Morehead Utility Plant Board**

  
Holly McGrath-Rosas, General Manager

**Attest:**

  
Benita Hammonds

**Date:** 4/24/24

**PURCHASER**

**Bath County Water District**


  
Mike Ginter,  
Chairman of Board

**Attest:**

  
Kenny Barber, Secretary

**Date:** 4/24/2024

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