

## WATER PURCHASE CONTRACT

22<sup>nd</sup> This Contract (the "Contract") is made and entered into at Williamstown, Kentucky this day of September, 2008, by and between the City of Williamstown, Kentucky (the "City") and the City of Dry Ridge, Kentucky (the "Customer").

### WITNESSETH:

WHEREAS, on or about December 5, 1975, the parties entered into a water purchase contract; and

WHEREAS, the parties amended the December 5, 1975 water purchase contract pursuant to an amendment dated September 9, 1976, an amendment dated March 12, 1990, a contract entered May 6, 1999 (hereinafter the December 5, 1975 contract, as amended) thereafter on May 3, 1999 for a term to end on August 31, 2018; and a contract entered into June 3, 2002 for a term to end on June 3, 2043, as amended, is referred to as the "Previous Contract"; and

WHEREAS, the Parties to the Previous Contract will terminate it on May 31, 2008; and

WHEREAS, the parties have determined that it is in their respective best interests to enter into a new forty (40) year water purchase contract, with the term of such contract to commence on June 1, 2008 and to end on June 1, 2049.

NOW, THEREFORE, in consideration of the promises and covenants set forth herein, the parties hereto do hereby agree as follows:

1. **Supply of Water.** The City agrees to supply to the Customer and the Customer agrees to purchase from the City, at the Point of Delivery (as defined in Section 2 hereof), potable water to be used for domestic, commercial, manufacturing or fire suppression purposes. The Customer hereby agrees to purchase from the City all of its water requirements during the life of this Contract; provided, however, that the City shall not be obligated to furnish water to the Customer in excess of ten million (10,000,000) gallons per month or three hundred thirty-three thousand three hundred thirty-three (333,333) gallons in any twenty-four (24) hour period; and provided further, however, that no provision of this Contract shall prevent the Customer from purchasing such water as it may require in excess of the water which the City is willing, capable and required to furnish hereunder, at any time, from any other source.

2. **Delivery Location of Water.** The City will deliver the water which is the subject of this Contract to the Customer at the meter vault and metering equipment located at the terminus of the water main of the City and at the origin of the waterline of the Customer (sometimes referred to herein as the "Point of Delivery"). The City will provide the water described herein at the Point of Delivery at a minimum pressure of thirty (30) p.s.i. If a greater pressure and/or volume than the pressure and/or volume normally available at the Point of Delivery is required by the Customer, then all costs of providing such increased pressure and/or volume shall be borne by the Customer.

3. **Rate Payable by Customer.**

(a) The Customer shall pay to the City a fee or charge for each one thousand (1,000) gallons of water delivered to the Customer as shown by the water meter referenced in Section 5 of this Contract at an initial rate per one thousand (1,000) gallons equal to the rate charged by the City to its individual customers located within the City's corporate limits. Notwithstanding anything herein contained in this Contract to the contrary, the Customer shall be billed for a minimum of five million five hundred thousand (5,500,000) gallons per month regardless of whether or not such amount is actually delivered to the Customer.

(b) The rate to be charged by the City to the Customer for water furnished under this Contract may be increased or decreased by the City, in its sole discretion, during the term of this Contract only in accordance with the following requirements:

- (i) The City shall not increase or decrease the rate per one thousand (1,000) gallons to be paid by the Customer to the City more often than once in any one (1) calendar year.
- (ii) The City shall neither increase nor decrease the rate per one thousand (1,000) gallons to be paid by the Customer to the City unless the City shall have delivered or mailed to the Customer written notice of such increase or decrease a minimum of three (3) months prior to the effective date of such increase or decrease.
- (iii) The City shall not increase or decrease, at any one time, the rate per one thousand (1,000) gallons to be paid by the Customer to the City by an amount of more than ten percent (10%) of the then current charge per one thousand (1,000) gallons prior to such change; provided, however, that if the City can demonstrate that the cost of producing and/or delivering water will increase at a percentage rate in excess of ten percent (10%) per year, then the City may increase the rate per one thousand (1,000) gallons by such percentage rate.

4. **Operation and Maintenance of Meters.** The City will operate and maintain the meter house or meter pit and the meters, piping, valves, and appurtenances installed therein at the City's sole expense for the purpose of properly measuring the quantity of water delivered by the City to the Customer and shall cause the metering equipment to be calibrated, as required by the Customer or desired by the City, but such calibration shall not be required more frequently than once every twelve (12) months. The cost of calibration of the metering equipment shall be borne equally by the City and the Customer. A meter registering not more than one and one-half percent (1 ½%) above or below the test results will be deemed to be accurate.

5. **Reading of Meter.**

(a) The previous readings of any meter disclosed by test to be inaccurate shall be corrected for the six (6) months previous to such 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 City and the Customer shall agree upon a different amount. The metering equipment shall be read on or about the 15th day of each month. Any appropriate official of the Customer shall have access to the meter for the purpose of verifying its readings, at all reasonable times.

(b) The City will cause such meter to be read by its personnel on or about the 15th day of each month and will cause such reading to be entered into its permanent records and will utilize such reading in preparing the statement of charges mentioned in Section 5(c) below.

(c) The City will furnish to the Customer at 31 Broadway, Dry Ridge, Kentucky 41035 (or at such other place as the Customer may designate in a writing delivered or mailed to the City) on or about the first day of each month following each meter reading a statement of charges showing the amount of water delivered by the City to the Customer during the preceding meter reading period (15th to 15th), and the amount of the payment due for the water so furnished.

6. **Payment.** The Customer shall pay to the City not later than the 10th day of each month the amount of the statement of charges received by it on or about the first day of that month. Such payments shall be delivered or mailed to the City at 400 North Main Street, P.O. Box 147, Williamstown, Kentucky, 41097 (or at such other place as the City may designate in a writing delivered to the Customer).

7. **Compliance with Water Quality Standards.** In the event water supplied by the City to the Customer at any time does not meet any of the then existing water quality standards imposed or promulgated by any federal, state, or local agency having jurisdiction, the City agrees that it will provide all necessary additions to its facilities and all additional treatments for the processing of potable water to be distributed to its customers in order that the water sold by the City to the Customer will meet any and all then applicable Federal, State, or Local agency water quality standards.

8. **Additional Expenses to be Paid by Customer.**

(a) The Customer agrees that it will pay, in addition to all other charges provided to be paid pursuant to this Contract, its pro rata share of the cost of all equipment, appurtenances, treatments and other items installed by or on behalf of the City for the purpose of:

- (i) enhancing the level of service (e.g., increased water pressure) or quality of water to be provided to the Customer, whether or not such enhancements are required in order to meet standards imposed or promulgated by any federal, state, or local agency having jurisdiction; and/or
- (ii) increasing the capacity of the City's water purification and distribution system.

Except as provided in Section 8(b) below, the Customer's pro rata share of such costs shall be determined by multiplying the total of such costs by a fraction, the numerator of which shall be

the total volume of water sold by City to the Customer in an appropriate thirty (30) day period, with such thirty (30) day period to be determined by the City in its sole discretion, and the denominator of which shall be the total of the water sold by the City to all customers, including the Customer, in said thirty (30) day period.

(b) If the equipment, appurtenances, treatments or other items installed by or on behalf of the City benefit only the Customer and no other customer of the City, then the Customer shall pay the entire cost thereof. An example of a cost that would be paid entirely by the Customer would be the cost of installing in-line chlorinators in the water mains to increase the levels of chlorine in the water delivered to residents of the Customer. If the equipment, appurtenances, treatments or other items installed by or on behalf of the City benefit one (1) or more other customers of the City but do not, directly or indirectly, benefit the Customer, then the Customer shall not be required to pay any portion of such cost thereof.

(c) Any amounts required to be paid by the Customer pursuant to the terms of this Section 8 shall be added to the monthly statement of charges delivered to the Customer and shall be paid by the Customer in full on or before the date on which the other charges set forth in the statement of charges are required to be paid.

9. **Force Majeure, etc.** The City will be relieved of its duty to supply water at the Point of Delivery at a minimum pressure of thirty (30) p.s.i. if the flow to such point is interrupted due to water main breaks, electrical power failure, flood, fire, explosion, use of water to fight fire, strike, labor problems, civil strife, acts of war, acts of god, or any other force majeure, for such reasonable period of time as may be required to restore normal service.

10. **Review of Contract.** The Customer and the City agree to review at least once every five (5) years (measured from the date of this Contract) the water needs of the Customer, and the excess water, if any, which the City may have available for sale, and may then by mutual agreement enter into a written agreement modifying the provisions hereof relating to the amount of water to be sold and purchased thereafter by the terms of this Contract.

11. **Term.** The term of this contract shall be a term of forty (40) years, commencing on June 1, 2008 and ending on June 1, 2049.

12. **Best Efforts.** The City will endeavor, at all times, to the best of its ability, to operate and maintain its water purification and distribution system in an efficient manner and will take such action within its capabilities as may be reasonably necessary to furnish the Customer with the quantities of potable water required by the Customer hereunder. Temporary or partial failures to deliver water shall be remedied by the City as promptly as is reasonably possible. In the event of an extended shortage of water, or the supply of water available to the City is otherwise diminished over an extended period of time:

- (a) except as provided in Section 12(b) below, the supply of water to the Customer's consumers shall be reduced or diminished in the same ratio or proportion as the supply to the City's consumers is reduced or diminished, and

- (b) the Customer hereby agrees to adopt and enforce water conservation practices and rules for itself and its consumers equal to those adopted and enforced by the City and shall promptly cease sales to persons hauling water for use outside of the Customer's city limits. In the event the Customer should fail to impose and enforce such restrictions, then the City may reduce the amount of water supplied under the Contract to the extent necessary to ensure performance by the Customer of this Section 12(b).

13. **Prohibition Against Supply of Water by Customer.**

(a) The Customer shall not at any time connect or permit any person, firm or entity to connect any service line to supply water outside of the Customer's city limits as such limits may be fixed from time to time by proper ordinance of the Customer's city council; provided, however, that said prohibition shall not prevent, in cases of emergency, the Customer from permitting water from its mains to flow into presently existing water mains of the Bullock Pen Water District, if prior to permitting such water to flow into the mains of the Bullock Pen Water District the Customer has obtained written permission therefor from the Mayor or another authorized official of the City.

(b) The Customer shall not at any time sell water to any other person, firm or entity outside of the Customer's city limits if such water is to be conveyed through the Customer's water mains unless the Customer has obtained written permission therefor from the Mayor or another authorized official of the City.

(c) Sections 13(a) and 13(b) above shall not be interpreted to prevent the Customer from maintaining one or more truck loading facilities and selling water in tank truck load quantities for use outside of the Customer's city limits.

14. **Water System Failure.** In the event of a failure of the City's water system or the inability of the City to supply its own needs, the Customer hereby agrees to permit such water as can be made available by another water supplier to the City to flow through the Customer's water mains. In such case, the City shall make payment directly to the water supplier for the water purchased and conveyed through the Customer's water mains; provided, however, that the City shall pay the Customer a "wheeling charge" of five cents (5¢) per one thousand (1,000) gallons of water purchased by the City from the water supplier and conveyed through the Customer's water mains.

15. **The Sale of Water to other Customers.** The City may sell water to such customers as it may elect and in so doing may use any of Customer's present or future water mains as a conduit for conveying water to such customers subject to the right of the Customer to make a wheeling charge not to exceed the sum of five cents (5¢) for each one thousand (1,000) gallons of water conveyed through its water mains; provided, however, that the Customer shall not be obligated in any manner, at any time, to replace, enlarge or otherwise add to its water

mains in order to facilitate to the sales of water by the City to other customers.

16. **Notices.** All notices and other communications required or permitted to be given hereunder shall be in writing and shall be delivered to the parties at the following addresses:

If to the City:           The City of Williamstown  
                              400 North Main Street  
                              P.O. Box 147  
                              Williamstown, Kentucky 41097

If to the Purchaser:    The City of Dry Ridge  
                              31 Broadway  
                              P.O. Box 145  
                              Dry Ridge, Kentucky 41035

Notices shall be deemed to be served upon deposit in the United States mail, registered or certified, return receipt requested or with a nationally recognized overnight delivery service.

17. **Further Assurances.** Each party hereby agrees that, at any time and from time to time, upon the request of the other party, it will execute and deliver such further documents and do such further acts and things as the other party reasonably requests in order to effect the purposes of this Contract.

18. **Entire Agreement; Amendment.** This Contract constitutes the entire agreement of the parties with respect to the subject matter hereof and supersedes any and all prior negotiations, correspondence and understandings between the parties with respect to the subject matter hereof, whether oral or in writing. This Contract may only be amended by a writing signed by all of the parties hereto.

19. **Severability.** The provisions of this Contract are severable, and if any clause or provision hereof shall be held invalid or unenforceable in whole or in part, then such invalidity or unenforceability shall attach only to such clause or provision or part thereof and shall not in any manner affect any other clause or provision in this Contract.

20. **Section Headings.** The section headings contained herein are for the purposes of convenience only and are not intended to define or limit the contents of said sections.

21. **Delay and Waiver.** No delay on the part of either party hereto in exercising any right under this Agreement shall operate as a waiver of such right. The waiver by either party of any term or condition of this Contract shall not be construed as a waiver of a subsequent breach or failure of the same term or condition or waiver or any other term or condition contained in this Contract.

22. **Assignment; Binding Effect.** This Contract may not be assigned by the

Customer without the prior written consent of the City. This Contract shall benefit and be binding upon the respective successors and assigns of the parties hereto.

23. **Governing Law.** This Contract shall be governed by and construed in accordance with the laws of the Commonwealth of Kentucky.

(signatures begin on the next page)

IN WITNESS WHEREOF, the parties hereto have executed this Contract as of the date first above-written.

THE CITY OF WILLIAMSTOWN,  
KENTUCKY (the "City")

ATTEST:

Vivian Link  
Vivian Link, Clerk

By: Glenn Caldwell  
Glenn Caldwell, Mayor

THE CITY OF DRY RIDGE,  
KENTUCKY (the "Customer")

ATTEST:

Cindy L. Harris  
Cindy L. Harris, Clerk

By: Clay Crupper  
Clay Crupper, Mayor



**CITY OF WILLIAMSTOWN**  
400 NORTH MAIN STREET  
P.O. BOX 147  
WILLIAMSTOWN, KENTUCKY 41097

*originals to  
Vink  
9/24/08  
lnk*

(859) 824-6351 – Mayor's Office  
(859) 824-2633 – City Clerk's Office  
(859) 824-6320 – Facsimile

Glenn V. Caldwell, Mayor  
Douglas Beckham, City Administrator  
Trevan Link, City Clerk/Treasurer

CITY COUNCIL MEMBERS:

Kim Crupper  
Edward Gabbert  
William Hutchinson  
Robert Perry  
Rick Skinner  
Stanley Woodward

September 24, 2008

The Honorable Clay Crupper  
City of Dry Ridge  
31 Broadway  
Dry Ridge, KY 41035

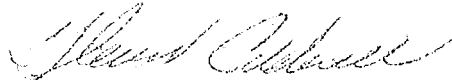
**RE: Sewer Contract  
Water Purchase Contract**

Dear Mayor Crupper:

Please find enclosed a fully executed Sewer Contract and a fully executed Water Purchase Contract between the Cities of Dry Ridge and Williamstown.

Thank you for the opportunity for the City of Williamstown to continue providing the City of Dry Ridge with sewer and water services.

Sincerely,



Glenn V. Caldwell  
Mayor

GVC:llm

enclosures

