



Knoxville Utilities Board

V-F

July 28, 1999

Ms. Leah Cox  
MTAS  
U. T. Conference Center Building  
Suite 120  
Knoxville, Tennessee 37996-4105

Dear Ms. Cox:

Enclosed is the copy of a contract for sale of water to another utility district you requested. If we can be of further assistance, please call.

Sincerely,

A handwritten signature in cursive script that reads 'Darlene Love'.

Darlene Love  
Administrative Services  
Operations

dr

Enclosure

UT MTAS Library  
37996007303 7

SEP 03 1999

WATER PURCHASE AND SALE AGREEMENT

This WATER PURCHASE AND SALE AGREEMENT is entered into this \_\_\_\_ day of \_\_\_\_\_, 1992, by and between the City of Knoxville, Tennessee, a Tennessee municipal corporation, acting by and through the Knoxville Utilities Board ("KUB"), and [REDACTED] Utility District, a Tennessee utility organized and existing in good standing under the laws of the State of Tennessee ([REDACTED]).

RECITALS:

1. Both KUB and [REDACTED] provide treated water to customers in East Tennessee, KUB to those in Knox County and surrounding areas, and [REDACTED] to those in [REDACTED] County and surrounding areas.

2. The service areas of KUB and [REDACTED] adjoin, and, to assure storage of water for KUB and additional long-term supply of water for [REDACTED], the parties operated under a Water Purchase Contract, dated June 24, 1983, executed by [REDACTED] and KUB's predecessor in interest, [REDACTED] Utility District.

3. [REDACTED] needs additional water for both supply and storage, and KUB requires additional long-term water storage capacity.

4. KUB has agreed to provide [REDACTED] with a long-term water supply, and [REDACTED] has agreed to transfer ownership of the Water Tank, defined below and as contemplated by the Water Purchase Contract.

AGREEMENTS:

NOW, THEREFORE, in consideration of the foregoing recitals and mutual covenants hereinafter contained, the parties agree as follows:

I. DEFINITIONS. The following terms shall have the meanings indicated.

1.1 Environmental Laws. All statutes, ordinances, rules, and regulations of the United States of America, the State of Tennessee, the County of Knox, Tennessee, or the City of Knoxville, Tennessee, governing or regulating the quality, treatment, and resale of water for consumption.

1.2 Treated Water. Water treated by KUB at any of its water treatment plants and pumped by KUB to the Water Tank, for resale by KUB or ██████████ to their respective customers, said water to comply with Environmental Laws.

1.3 Water Purchase Contract. That certain agreement dated June 24, 1983, executed by and between ██████████ and ██████████ Utility District, and later assigned by ██████████ Utility District to KUB.

1.4 Water Tank. That certain water storage tank built by ██████████ pursuant to the Water Purchase Contract and operated by KUB, located on ██████████ in ██████████ County, Tennessee, two hundred feet north of ██████████ Road, including all conduits, pipes, meters, or other attachments or facilities leading to or from the tank or associated with the operation of the tank, beginning at the point of its connection with KUB's present facilities and extending through the inflow facilities, the tank, and the outflow facilities, to the KUB water meter presently in place and used by KUB to measure water use by ██████████

1.5 Water Tank Property and Easements. The real property upon which the Water Tank is located, as defined more particularly on Exhibit A attached hereto, and all easements necessary to the use of the Water Tank and held in the name of, or owned by, [REDACTED], whether or not transferable to KUB under the Water Purchase Contract, as defined more particularly on Exhibit B attached hereto.

II. SALE AND PURCHASE OF WATER. KUB shall sell, and [REDACTED] shall purchase, Treated Water, as follows:

2.1 Quantity. KUB shall offer for sale to [REDACTED] up to 250,000 gallons of Treated Water per day, for resale to customers of [REDACTED]. [REDACTED] shall purchase no less than a mean average of 140,000 gallons of Treated Water per day from KUB. "Mean average" shall be the same for each day in each calendar month and shall be determined for each month by taking the total use for such calendar month, as metered by KUB, and dividing the total by the number of days in the month. In the event that [REDACTED] anticipates a need to take greater than 250,000 gallons of Treated Water in any one day, [REDACTED] may request permission to do so from KUB, and, if granted, [REDACTED] may take the additional Treated Water at the price provided for in subparagraph 2.2 below; if such permission is not granted, and [REDACTED] nonetheless takes such additional unauthorized Treated Water, [REDACTED] shall pay the penalty provided in subparagraph 2.2. If circumstances are such that [REDACTED] cannot, using good business judgment and foresight standard in the industry, reasonably anticipate its excessive use (for example in the event of an undetected leak in its system or in the event of an emergency for which it cannot reasonably provide advance notice) [REDACTED] shall not be required to pay the penalty provided in subparagraph 2.2.

2.2 Price. The price for authorized Treated Water supplied by KUB to [REDACTED] under this Agreement shall be determined by KUB according to its applicable rate schedule, as established from time to time by KUB, in its sole discretion. In any month in which the mean average of actual daily use falls below 140,000 gallons, [REDACTED] shall be charged and shall pay a minimum charge for that month based upon the minimum required use of 140,000 gallons per day. For any day on which the actual daily use exceeds 250,000 gallons, and KUB has not authorized such excessive use in advance, [REDACTED] shall be charged and shall pay a penalty of \$1.94 per thousand gallons over the actual use of 250,000 per day. If KUB enacts an applicable rate schedule raising the price for Treated Water supplied to [REDACTED] above an equivalent of the rate then in effect for [REDACTED], plus fifteen cents (15¢) per thousand gallons of water sold by [REDACTED] [REDACTED] may terminate its obligation to purchase Treated Water under this subparagraph pursuant to subparagraph 5.2 below.

2.3 Point of Delivery; Metering. KUB shall supply [REDACTED] with the Treated Water at two KUB metering point, the first of which is located at the intersection of [REDACTED] and [REDACTED], and the second of which is located at the intersection of [REDACTED] and [REDACTED] both in [REDACTED] County, Tennessee. KUB shall measure the quantity of Treated Water taken by [REDACTED] by KUB meter, the type of which shall be determined by KUB in its sole discretion. [REDACTED] may request KUB to test the meter and shall pay for such testing, if and as permitted in the Rules and Regulations of KUB, as established from time to time. KUB shall bill [REDACTED] monthly for the previous month's purchase of Treated Water, and [REDACTED] shall pay for such Treated Water timely, in accordance with the applicable KUB rate schedule as provided in this Agreement.

III. TANK TRANSFER; EMERGENCY STORAGE.

3.1 Transfer. [REDACTED] shall transfer to KUB the Water Tank and the Water Tank Property and Easements within thirty (30) days of execution hereof. All real property to be transferred under this subparagraph shall be transferred unencumbered, and the real property defined in Exhibit A hereto, containing the Water Tank, shall be transferred by warranty deed and in fee simple.

3.2 Emergency Storage. [REDACTED] may count the water stored by KUB in the Water Tank as its own for emergency water storage purposes, as required by the State of Tennessee. KUB, however, does not guarantee storage of a minimum quantity of Treated Water.

IV. REPRESENTATIONS, WARRANTIES AND FURTHER COVENANTS.

Each party hereby represents and warrants to the other as follows:

4.1 Each is a utility duly organized, validly existing and in good standing under the laws of the State of Tennessee and has all requisite power and authority to carry out the business for which it was formed and as required by this Water Purchase and Sale Agreement.

4.2 [REDACTED] is governed by a board of directors and officers elected by the board of directors; KUB is governed by a board of commissioners and officers elected by the board of commissioners.

4.3 The board of directors of each has duly authorized execution, delivery and performance of this Water Purchase and Sale Agreement; no other proceeding on the part of either is necessary to authorize execution of this Water

Purchase and Sale Agreement or any transaction required or contemplated hereunder. Neither the execution, delivery nor performance of this Water Purchase and Sale Agreement, nor the compliance with, nor fulfillment of, the terms and provisions of this Water Purchase and Sale Agreement does or will (i) violate or conflict with, or result in, any breach of any of the terms, conditions or provisions of, or constitute a default (or an event which with notice or lapse of time, or both, would become a default) under the governing documents of either, or any agreement, bond or bond resolution, indenture, lease, mortgage or other instrument to which either is a party or by which it is bound, (ii) require (with the exception of disposal and site permitting) any affirmative approval, consent, authorization or other order or action of any court, governmental authority or regulatory body or of any creditor of either, (iii) result in any violation of any provision of Environmental Laws or any other law, rule, regulation or any court order, judgment, writ, injunction, decree or arbitration or order or determination, or (iv) give any party with rights under any instrument, bond, agreement, mortgage, judgment, order, award, decree or other restriction the right to terminate, modify or otherwise change the rights or obligations of either. Both KUB and [REDACTED] have full power and authority to do and perform all acts and things required to be done by it under this Water Purchase and Sale Agreement. This Water Purchase and Sale Agreement, when duly executed and delivered, constitutes a legal, valid, binding and enforceable agreement of [REDACTED] and of KUB.

V. TERM; TERMINATION.

5.1 Term. The date for KUB to begin providing water hereunder shall be January 1, 1993 (the "Commencement Date"). This Agreement shall be effective for a period of ten (10) years from the Commencement Date. Prior to the end of the

ninth (9th) year of performance hereunder, either party may provide written notice to the other that it would like to continue this Agreement for an additional term of five (5) years, and if both parties agree, this Agreement may be extended for such additional term. Any such extension shall be in writing and validly executed by both parties.

5.2 Termination. This Agreement may be terminated

(a) by ██████████ in the event KUB rate schedules require an excessive charge for the sale of Treated Water, as provided in subparagraph 2.2 hereof;

(b) by the non-breaching party if the other party commits a material breach of any covenant or provision hereof, and such breach continues unabated for seven (7) days after the non-breaching party gives written notice of the event constituting such breach to the breaching party; and

(c) by either party in the event of impossibility or impracticability, following the termination procedure as provided in this subparagraph. Impossibility or impracticability shall include, but not be limited to, a condition or event arising hereafter that would render performance by either party excessively burdensome and/or expensive. For example, ██████████ may terminate in the event that all or a substantial portion of its service area is taken over or acquired by another utility, e.g. that of ██████████ or ██████████. The party seeking to terminate shall, within ninety (90) days of the proposed date of termination, notify the other party of the event creating the impossibility or impracticability. Upon receipt of notice, the non-terminating party shall have the right to resolve or remove the impossibility or impracticability, if permitted by then existing law. If the non-terminating party is successful



in resolving the impossibility or impracticability, this Agreement shall not be terminated, but shall continue in full force and effect; if however, the non-terminating party is unsuccessful, this Agreement shall be terminated automatically upon the expiration of the ninety (90) day period.

5.3 Effect of Termination. In the event of termination for any reason whatsoever, by either party, the Water Tank, and all associated property (real or personal) shall remain in the name of KUB.

## VII. GENERAL PROVISIONS.

7.1 Compliance with Applicable Laws. KUB and [REDACTED] shall comply with all applicable federal, state, and local laws and regulations, including Environmental Laws and civil rights laws, and shall not discriminate on the basis of race, color, religion, national origin or handicap.

7.2 Attorney Fees. In the event that either party files a lawsuit to enforce this Water Purchase and Sale Agreement against the other, the prevailing party shall be entitled to recover reasonable attorney fees from the other party.

7.5 Successors; Assignment. This Agreement shall be binding upon and shall inure to the benefit of and be enforceable by the successors of the parties hereto. Except as provided in this paragraph, neither party shall assign or transfer, or permit the assignment or transfer of, its rights or obligations under this Agreement without the prior written consent of the other party, and any purported assignment or transfer without such consent shall be void. In the event that the form of government of Knoxville, Tennessee is changed to a metropolitan or similar form of government combining the

governmental obligations of the City of Knoxville with those of Knox County, or in the event that the City of Knoxville, Tennessee asserts control over the water function of KUB or assigns control of the water function of KUB to a third party, the obligations of the parties under this Agreement shall continue, and the rights and obligations of KUB shall become the rights and obligations of the party obtaining control of KUB water system.

7.6 Notices. All notices, requests, claims, demands, and other communications hereunder shall be in writing and shall be given or made by personal delivery, telegram, telex, telefax, or mail (registered or certified mail, postage prepaid, return receipt requested) to the parties as follows, or to such other address as either party may have furnished to the other in writing in accordance herewith:

If to KUB:

Superintendent, Bureau of Water  
626 Gay Street, Fourth Floor  
Knoxville, Tennessee 37902

With a copy to:

Robert F. Worthington, Esq.  
Baker, Worthington, Crossley,  
Stansberry & Woolf  
900 Gay Street, S.W.  
P.O. Box 1792  
Knoxville, Tennessee 37901

[REDACTED]

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

[REDACTED]

7.7 Governing Law. The laws of the State of Tennessee shall govern the interpretation, validity, performance and enforceability of this Water Purchase and Sale Agreement.

7.8 Invalidity. If any one or more of the provisions of this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect the remaining provisions or parts hereof, and this Agreement shall be construed in such a way and to the extent permitted by law to give effect to the intent of such invalid provisions or parts.

7.9 Headings. The headings and captions contained in this Agreement are solely for convenience and reference, and are not intended to, and do not, in any way limit, construe or modify the terms and conditions hereof.

7.10 Waiver. The failure of either party to exercise any of its rights hereunder or to enforce any of the terms or conditions hereof shall not constitute or be deemed a waiver of that party's rights thereafter to exercise any rights hereunder and to enforce each and every term and condition hereof. The consent or approval by either party to or of any act by the other party requiring such approval shall not be deemed to waive or render unnecessary consent to or approval of any subsequent or similar act.

7.11 Entire Agreement; Release; Amendment. This Water Purchase and Sale Agreement sets forth the entire understanding between the parties with respect to the subject matter hereof, and supersedes all prior agreements or undertakings between the parties, oral or written, with respect to such subject matter, including the Water Purchase Contract. Specifically, any requirement for [REDACTED] to pay either \$150,000.00 under the Water Purchase Contract is hereby superseded, and [REDACTED] is hereby released from any such obligation thereunder. No agreement shall be effective to change, modify or terminate this Water Purchase and Sale Agreement, in whole or in part, unless such agreement is in writing and duly authorized and signed by the party against whom enforcement of such change, modification or termination is sought.

IN WITNESS WHEREOF, KUB and [REDACTED] have executed this Agreement as of the date and year first written above.

CITY OF KNOXVILLE, TENNESSEE  
KNOXVILLE UTILITIES BOARD

By: \_\_\_\_\_  
General Manager

[REDACTED] UTILITY DISTRICT

By: \_\_\_\_\_  
Title: \_\_\_\_\_