

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

RECEIVED  
AUG 27 2007  
PUBLIC SERVICE  
COMMISSION

IN THE MATTER OF:

THE APPLICATION OF KENTUCKY-AMERICAN WATER	)	
COMPANY FOR A CERTIFICATE OF CONVENIENCE	)	
AND NECESSITY AUTHORIZING THE CONSTRUCTION	)	CASE NO.
OF KENTUCKY RIVER STATION II, ASSOCIATED	)	2007-00134
FACILITIES AND TRANSMISSION MAIN	)	

**LEXINGTON-FAYETTE URBAN COUNTY  
GOVERNMENT'S RESPONSES TO DATA REQUESTS  
OF CITIZENS FOR ALTERNATIVE WATER SOLUTIONS**

Comes now the Lexington-Fayette Urban County Government (the "LFUCG"), by counsel, and files the following responses to the Data Requests of Citizens for Alternative Water Solutions ("CAWS").

Data Request No. 1

Please provide the minutes and any available recording, either audio or video, of the July 10, 2007 meeting of the Lexington Fayette Urban County Council.

Response: The minutes are attached. One copy of a DVD of the meeting has been filed with the Commission and provided to CAWS.

Data Request No. 2

The LFUCC [sic] adopted a resolution in 1999 that, paraphrased, indicated a preference for the Kentucky River as the source of water supply. This resolution also set forth other requirements related to lock and dam repair and enhancements on Pool 9 to ensure an adequate water supply. At the July 10, 2007 meeting of the LFUCC [sic], the Council's counsel advised that it would be inappropriate for the Council to cite this

resolution as guidance, since many of the repair requirements and enhancements anticipated in the 1999 resolution had never acted upon.

a. Does the LFUCG consider the 1999 resolution a current statement of preference on the part of the Council with respect to water supply?

b. If another water supply option, such as augmenting available Kentucky River supply with finished water from the Louisville Water Company, were shown to be a lower-cost option, how would LFUCG reconcile the preference in the 1999 resolution for the most cost-effective option, and for one reliant primarily or solely on the Kentucky River?

c. Does the LFUCG consider the 1999 resolution to be binding on the present Council and/or the current Administration?

d. What do you believe LFUCG's responsibility is to Fayette Countians in the area of water supply? To what extent does that responsibility involve consideration of cost, vulnerability of supply, reliability, and adequacy of supply?

e. What is the relationship between LFUCG and Kentucky American Water Company (KAWC)? Is it a franchiser-franchisee relationship? If so, to what extent does the LFUCG have the authority to direct the selection or advancement of options that are lowest-cost?

Response:

The Lexington-Fayette Urban County Government ("LFUCG") objects to the representations and characterization of legal counsel's comments at the July 10, 2007 meeting, and of Resolution No. 679-99, which speaks for itself. LFUCG further objects to the questions to the extent that they seek a legal opinion or conclusion. LFUCG has assumed that any reference to a 1999 resolution is a reference to Resolution No. 679-99. Without waiving said objections, LFUCG responds as follows:

- a. Resolution No. 679-99 is the last official expression of the Lexington-Fayette Urban County Government Council that directly addresses the water supply deficit issue. In addition, LFUCG is a member of Bluegrass Water Supply Commission, whose main objective is to assist in addressing the regional water supply deficit problem. The Bluegrass Water Supply Commission has to date supported a proposal that is substantially similar in concept to that proposed by Kentucky-American Water Company.
- b. LFUCG does not know what meaning has been placed on the terms "augmenting", "finished water", and "reconcile". In the event that a detailed proposal to address the water supply deficit was timely presented to LFUCG for consideration it is likely that LFUCG would consider a variety of factors in determining whether to support such a proposal, including, but not limited to, the level of detail contained in the proposal, whether the project could be completed on a timely basis, the feasibility of completing the project, the level and type of support the project has from the Bluegrass Water Supply Commission and others that are affected or impacted, the level and type of support the project has from appropriate federal, state, or local agencies, and the total cost.
- c. The LFUCG has significant concerns that the water supply deficit issue has still not been addressed nearly 8 years after the resolution was adopted, and some of the improvements to infrastructure contained in Resolution No. 679-99 that were expected to take place by certain dates have yet to be completed. In the event that the Lexington-Fayette Urban County Government Council was ultimately desirous of officially supporting a solution to the source of water supply deficit that significantly differed from that contained in Resolution No. 679-99, it is likely that it would consider adopting a new resolution or ordinance regarding such issues.
- d. The LFUCG does not understand the meaning of this question. To the extent that it is asking whether the LFUCG has a legal responsibility to address Fayette County's water supply, Kentucky-American Water Company is primarily responsible for addressing this issue. Otherwise, see the response to question 2(b), above. LFUCG further states that its Council may choose to adopt legislation pertaining to such issues.
- e. Kentucky-American Water Company has a non-exclusive utility franchise with LFUCG to provide water. The terms of the franchise, a copy of which is attached hereto, speak for themselves. The Urban County Government Council has the authority to adopt legislation (similar to Resolution No. 679-99) that expresses its position with respect to addressing the water supply deficit problem.

Respectfully submitted,

LEXINGTON-FAYETTE URBAN  
COUNTY GOVERNMENT

BY:



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ATTORNEYS FOR LEXINGTON-FAYETTE  
URBAN COUNTY

**CERTIFICATE OF SERVICE**

I hereby certify that an original and eight (8) copies of this document was served by first class U.S. Mail delivery, postage prepaid, to Beth O'Donnell, Executive Director, Public Service Commission, P.O. Box 615, 211 Sower Boulevard, Frankfort, Kentucky 40602-0615; furthermore, it was served by mailing a copy by first class U.S. Mail delivery, postage prepaid, on the following, all on this the 24th day of August 2007:

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and Lindsey W. Ingram, III, Esq.  
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Kentucky-American Water Company  
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Hon. Gerald Wuetcher  
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Hon. David Edward Spenard  
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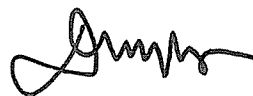
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ATTORNEY FOR LEXINGTON-FAYETTE  
URBAN COUNTY GOVERNMENT

URBAN COUNTY COUNCIL  
WORK SESSION SUMMARY  
& TABLE OF MOTIONS

July 10, 2007

Mayor Newberry chaired the meeting, calling it to order at 3:00 pm. All Council Members were present.

A motion by CM Beard pursuant to KRS 61.810(1)(c) to go into closed session for the purpose of discussing pending litigation matters involving the Lexington-Fayette Urban County Government, seconded by CM Crosbie, passed without dissent.

- I. Public Comment – Issues on Agenda-None
- II. Requested Rezoning / Docket Approval-Yes

A motion by CM Stevens to have schedule number 0030 containing the following FY 2007 budget amendments added to the docket for the July 10<sup>th</sup> Council Meeting: General Services District Fund(111) \$11,580,000; Urban Services Districts Fund(115) \$500,000; and Sanitary Sewer Fund(245) \$950,000. These budget amendments are done every year at this time to close out the planned (budgeted) personnel lapse accounts, seconded by CM Gorton, passed without dissent.

A motion by CM McChord to walk-on to the docket for the July 10<sup>th</sup> Council Meeting a resolution authorizing the acceptance of over 3.3 million dollars from the KY Transportation Cabinet for the resurfacing of roads within Lexington, seconded by CM Stevens, passed without dissent.

A motion by VM Gray to place on the docket a resolution authorizing the acceptance of the proposal of Management Partners, Inc. to perform a comprehensive management audit of the Urban County Government and authorizing the Mayor to execute the Agreement with Management Partners, Inc for the performance of such services at a cost not to exceed \$395,000.00, seconded by CM Ellinger, passed without dissent.

A motion by CM Ellinger to approve the docket as amended, seconded by CM Gorton, passed without dissent.

III. Approval of Summary – Yes

A motion by CM DeCamp to approve the June 26, 2007 summary, seconded by CM Gorton, passed without dissent.

IV. Budget Amendments-None

V. New Business

- A. Authorization of a Change Order No. 2 to Contract with Leak Eliminators, LLC for the Wilderness Road / Woodward Lane Sanitary Sewer Project. (358-07) (King/ D. Kelly)
- B. Authorization of a Change Order No. 1 to Contract with Pearce Blackburn Roofing for the Government Center Garage Roof Replacement Project. (359-07) (Cole)
- C. Authorization of a Change Order No. 1 to Contract with Asphalt Paving & Maintenance, Inc. for the Idle Hour Park. (376-07) (Cole)
- D. Authorization of an Agreement with the Fayette Fiscal Court and Sandra M. Varellas, Fayette County Judge Executive on behalf of the Department of Public Works and Development for the FY2008 County Road Aid Fund Program. (361-07) (D. Kelly)
- E. Authorization of an Amendment to Agreement with Brenda D. Cowan Center under the Transition Plus Program – FY2008. (362-07) (King/Helm)
- F. Authorization to Accept Donation from Windstream Communications. (365-07) (Bennett)
- G. Authorization to Purchase Properties at 548, 550 and 552 – 554 Grinstead Street for the Ann Street Acquisition Project. (367-07) (King)
- H. Authorization of Lease Agreements with Agencies at Black & Williams Neighborhood Center. (369-07) (Helm)
- I. Authorization of a Purchase of Service Agreement with the University of Kentucky Women's Place. (370-07) (Rabold)
- J. Authorization to Submit Application to the Kentucky Department of Education for Continuation of Programming at the Gainesway Empowerment Center. (366-07) (King)
- K. Authorization of an Amendment to Purchase of Service Agreement with the Salvation Army. (375-07) (Rabold)

- L. Authorization of a Release of a Utility Easement at 2089 Lakeside Place. (377-07) (Askew)
- M. Authorization to Amend Section 21-5 of the Code of Ordinances within the Division of Internal Audit. (371-07) (Allen/J. Kelly)

A motion by CM Gorton to approve new business, items A-M, seconded by CM Ellinger, passed without dissent.

## VI. Continuing Business / Presentations

### A. Committee of the Whole Report

This report was made by VM Gray. He stated that there has been 2 budget debriefing sessions already.

### B. Louisville Water Company Presentation

This presentation was done by Greg Heitzman, President, Vince Guenthner, Government Affairs Manager, and Jim Smith, Infrastructure Planning Manager.

A motion by CM Beard to place the issue of the proposed I-64 water pipeline into the Planning Committee, seconded by CM McChord, passed with dissents.

### C. Downtown Traffic Study-Postponed.

### D. Bates Creek High School-International Baccalaureate Program

This presentation was done by Teri Harper.

## VII. Council Report

CM Blevins-A motion by CM Blevins to refer the issue of cut-throughs for Allegheny Way to the Service Committee, seconded by CM McChord, passed without dissent.

A motion by CM Blevins to refer the issue of grading permits to the Storm Water Oversight Committee, seconded by CM McChord, passed without dissent.

A motion by CM Blevins to refer the issue of customer service with regard to the permit process to the Intergovernmental Committee, seconded by CM Blues, passed without dissent.



CM Lane- Stated that he believes the proper place for the water pipeline review is in Frankfort with the Public Service Commission.

CM James- Stated that she has been receiving calls from citizens regarding Code Enforcement issues. David Jarvis, Code Enforcement Director, explained the timing issue of certain requests. CM James announced the FREE S T Roach Basketball & Cheerleading Clinic at Dunbar Center on 7/23-7/27 and 7/30-8/8, ages 6-16. For more information, please call Parks at 288-2955 or Dist. 1 Council Office at 258-3216; SUPER SUNDAY is this Sunday at Douglass Park; Smithtown Day is 8/3-4; Don't forget the Back-T-School-Rallies- for more information, call Catherine Warner at 281-1302.

CM Blues- Announced the Meadowthorpe NA meeting tonight at 7 pm at the community center and Highlands NA will meet on Thursday at 7 pm at the park shelter on Mark Ave.

CM DeCamp- Announced that VM Gray has appointed a task force for the review of the downtown news rack ordinance and he will be the chair and the first meeting will be this Thursday at 4 pm in the 5<sup>th</sup> Floor Conference Room.

CM Crosbie- Expressed her sympathy to the family of Dean David Stockham who recently passed.

VM Gray- No Report.

CM Gorton- Wished employees happy fun days during Council's summer break and also safe travel to the CMs.

CM Stevens- A motion by CM Stevens to approve the NDF lists for July 10, 2007, seconded by CM McChord, passed without dissent.

A motion by CM Stevens to refer the issue of noise related to school events to the Services Committee, seconded by CM Gorton, passed without dissent.

CM Beard- Announced that Bealleau Woods NA will have its annual picnic am 6:30 pm on Thursday July 19<sup>th</sup> at Bealleau Woods Park.

CM McChord- Announced that on July 18<sup>th</sup> the Wellington NA will have its annual meeting at 7 pm at Lexington Christian Academy; welcomed 12-under Cal Ripken tournament at Shilito Park through Saturday; expressed thanks to the Mayor and his staff for the July 4<sup>th</sup> events; stated his pleasure in walking-on the issue of the resurfacing money.

CM Myers-Announced that Centre Pkwy NA will be meeting tonight at 7 pm across from the Gainesway Empowerment Center and the Gainesway NA will be meeting at 7 pm at the Tates Creek Golf Course.

CM Stinnett-Stated that he is in the process of finalizing the Dog Task Force Membership; mentioned that if any CMs have questions about the Risk Mgmt. reclassification that was tabled, to please ask them. CM Stinnett also stated that he has asked Michael Allen to give a presentation on the entire reclassification system upon Council's return from break.

CM Moloney-Announced that Golfview NA will meet Monday at 7 pm at Open Door. Complimented Sanitary Sewers for their quick response to a situation that he called them on; the constituent also wanted to thank the department.

#### VIII. Mayor's Report-Yes

A motion by CM McChord to approve the Mayor's Report, seconded by CM Gorton, passed without dissent.

Mayor Newberry stated that he also was appreciative of the job done between his administration and the Council.

#### IX. Public Comment-Issues not on the agenda-Yes

Citizen, Lillie Miller-Johnson, spoke.

A motion by CM Gorton to adjourn was seconded by CM Blues, passed without dissent.

Work Session was adjourned at 5:55 pm.

RESOLUTION NO. 679-99

A RESOLUTION ENDORSING A WATER SUPPLY PLAN FOR LEXINGTON-FAYETTE COUNTY.

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WHEREAS, the Urban County Council adopted Resolution 390-99 in July 1999 calling for the Urban County Council to gather information from experts and existing studies about water supply alternatives for Lexington-Fayette County and to endorse a plan for long-term supply; and

WHEREAS, this Council, sitting as a Committee of the Whole, reviewed studies, including the complete report of the Lexington-Fayette Water Supply Planning Council, Harza Report, Kentucky River Basin Water Supply Assessment Study done by the Kentucky Water Resources Research Institute, and others, and heard testimony from experts in the field including the U.S. Army Corps of Engineers, Kentucky Geological Survey, Kentucky Water Resources Research Institute, Kentucky American Water Company, Kentucky River Authority, Office of the Attorney General, interested parties and members of the public; and

WHEREAS, the Urban County Council recognizes the critical importance of an adequate and reliable water supply to guarantee the continued economic growth and health and safety of Fayette County; and

WHEREAS, the drought of 1999 in Lexington-Fayette County and the surrounding region required the imposition of water usage restrictions under a water shortage full alert thereby vividly underscoring the value of water as a precious resource to be protected, conserved and managed and the need to put a plan in place to provide a secure water supply for the future; and

WHEREAS, the Urban County Council recognizes the Kentucky-American Water Company for focusing the attention of the public

on the significance of the water supply deficit and water treatment capacity deficit, and for being an active participant in this extensive fact-finding process; and

WHEREAS, the Urban County Council recognizes that any water supply alternative must ensure the highest water quality and least adverse impact to the Kentucky River basin and land environment; and

WHEREAS, efficient water management and sufficient water supply are vital not only to residents in their daily lives, but also to the industry, agriculture, business, horse and livestock farming, recreation and tourism of Lexington-Fayette County; and

WHEREAS, it has long been recognized that the Kentucky River is the most immediate source of water supply for Lexington-Fayette County; and

WHEREAS, the time has come to move ahead with measures to ensure an adequate and sufficient water supply management system, based upon demand projections and the best available assessment of available alternatives.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:

Section 1 - That the Lexington-Fayette Urban County Council, based upon its hearings and study, does hereby make the following findings and recommendations in the public interest:

FINDINGS

1. The Council concludes that water supply projections estimate a current water supply deficit under drought of record conditions of approximately one (1) billion gallons in the Lexington-Central Kentucky area growing to potentially approximately three (3) billion gallons by the year 2020.

2. The Council concludes that to maintain unrestricted demand there is a present water treatment capacity deficit of approximately 9.36 million gallons daily (mgd) within the

service area of Kentucky-American Water Company, which is projected to rise to approximately 18-20 million gallons daily by 2020.

3. The Council concludes that a water conservation and demand management plan should be developed to educate the public on water conservation practices to reduce overall water consumption, especially on peak day demands.

4. The Council concludes that any alternative to provide additional water supply and water treatment capacity must be fairly and equitably financed.

#### RECOMMENDATIONS

1. The Council recommends that future water supply for Lexington-Fayette County should come from the Kentucky River based on its findings that:

a. This solution is cost effective because it can be financed in incremental phases with various funding sources and shared options; and

b. This recommendation supports a regional water supply effort and encourages regional cooperation; and

c. This recommendation supports potential recreation opportunities throughout the region; and

d. This recommendation ensures the maintenance of the existing water infrastructure.

2. The following schedule of improvements as presented by the Kentucky River Authority, Kentucky American Water Company and others should be met within the 2000-2002 time period:

a. Complete acquisition of lock and Dams 6, 7, 8, 9 & 11; and

b. Complete geo-technical study for lock and Dam # 10; and

c. Start and complete engineering design on Dam # 10; and

d. Start and complete environmental assessment of Dam # 10; and

e. Complete a general assessment of locks and dams 5-14 to determine which dam should follow Dam # 10 in rehabilitation effort; and

f. Study modifications to East Kentucky Power intakes; and

g. Begin design plans for water treatment plant capacity upgrades coincident with committed construction funding for Dam # 10; and

h. Investigate a regional solution to long-term water supply through a joint effort between and among the Urban County Government, Kentucky American Water (KAWC), Kentucky River Authority, and our surrounding counties, including information to be provided by June 1, 2000 to the Urban County Council by the regional Bluegrass Water Supply Consortium detailing their concept of a regional plan with a time schedule for implementation, cost implications, intergovernmental agreements among and between counties and water providers; and other pertinent facts; and

i. Develop a mutually agreeable water conservation and demand management plan involving Urban County Government, Kentucky American Water Company, Kentucky River Authority, the University of Kentucky Water Resources Research Institute and the Fayette County Agricultural Extension Office, for educating the public on practices and techniques to reduce water consumption.

3. The following schedule of improvements as presented by the Kentucky River Authority, Kentucky-American Water Company and others should be met within the 2002-2004 time period:

a. Start and complete construction work on Dam # 10; and

b. Start and complete geo-technical study for Dam #9 rehabilitation; and

c. Start and complete engineering design on Dam #9 rehabilitation; and

d. Start and complete environmental assessment on Dam #9 rehabilitation; and

e. Implement conservation practices; and

f. Consider demand management options, if necessary, to meet supply demands.

4. Kentucky American Water should start design to increase water treatment capacity for 15 mgd (million gallons daily) when Kentucky River Authority can document existing or imminent increased water supply as a result of Kentucky River improvements and/or management. An additional 5- mgd treatment capacity should be available by 2012 if needed.

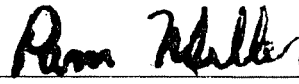
Section 2 - The Urban County Council, in conjunction with the Kentucky River Authority, Kentucky American Water Company and the UK Water Resources Research Institute, will study the success of improving water supply on the Kentucky River, progress on water treatment plant expansion and conservation measures. If sufficient progress on the improvements is not made, a reassessment of all alternatives, including the Ohio River pipeline, and pipelines from regional counties, will be made in 2003. The Council will receive a progress report in June 2000, and in each November annually thereafter.

Section 3 - The Urban County Council recognizes the need for the Kentucky River Authority to act and thereby urges and supports the Authority in its efforts to proceed with all due speed to obtain the monies and/or means to fully undertake the required improvements to existing dams on the Kentucky River.

Section 4 - That the Clerk of the Urban County Council is directed to send a copy of this Resolution, duly adopted, to:

Kentucky Governor Paul Patton; Lexington's delegation to the Kentucky General Assembly; the Kentucky Natural Resources Cabinet - Division of Water; the Kentucky Public Service Commission; the Office of the Attorney General; the Kentucky River Authority; the Lexington-Fayette Water Supply Planning Council; the U.S. Army Corps of Engineers; the Kentucky American Water Company; East Kentucky Power Company; University of Kentucky Water Resources Research Institute; Fayette County Agricultural Extension Office; Winchester Municipal Utilities; Frankfort Plant Board; City of Nicholasville Utilities; City of Paris Utilities; Congressman Hal Rogers, Chair, House of Representatives, Subcommittee on Energy and Water Development, Congressman Ernest Fletcher; and U.S. Senators Mitch McConnell and Jim Bunning.

PASSED URBAN COUNTY COUNCIL: December 9, 1999

  
MAYOR

ATTEST:

  
CLERK OF URBAN COUNTY COUNCIL

PUBLISHED: December 15, 1999-lt

BWG/res017



Lexington  
Fayette  
Urban  
County  
Government



OFFICE OF THE COUNCIL CLERK

December 27, 1999

The Honorable Paul Patton  
Governor  
State of Kentucky  
700 Capitol Avenue  
Suite 100  
Frankfort, Kentucky 40601

Dear Governor Patton:

I have been directed by the Lexington-Fayette Urban County Council to send you a copy of Resolution No. 679-99, which was passed at a meeting of the Council held on December 9, 1999.

This Resolution endorses a water supply plan for Lexington-Fayette County.

Your attention to this matter is greatly appreciated.

Sincerely,

A handwritten signature in cursive script, appearing to read "Liz Damrell".

Liz Damrell  
Council Clerk

Enclosure

RESOLUTION NO. 146-95

A RESOLUTION CREATING AND ESTABLISHING A WATER FRANCHISE.

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BE IT RESOLVED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:

Section 1 - There is hereby created and established a water franchise and privilege granting to the purchaser thereof, whose bid may be accepted, the discretionary right to construct, erect, lay, relay, replace, operate and maintain a waterworks system and plant, embracing mains, pipelines, valves and valve boxes, hydrants, meters and meter boxes, service pipe and appurtenances, and any and all other facilities, appliances, apparatus and equipment necessary, used or useable, in the operation of a waterworks system for the purpose of supplying and to supply water to the inhabitants of Fayette County for domestic, commercial, industrial and other purposes within the right-of-ways through, upon, over, along and under bridges, viaducts, sidewalks, public places and on the main public roads and highways in Fayette County, and on all streets, avenues and roads, running off from or connected therewith either directly or indirectly, and the privilege of opening and excavating the same without the payment of license or other fee as the business of the purchaser thereof may from time to time require, in constructing, erecting, laying, relaying, replacing, operating, maintaining or removing its pipelines and other works and equipment and together also with the right to transport water through its mains and pipelines to any other mains or pipelines, laid or to be laid, which are or may be connected therewith.

Section 2 - The franchise and privilege granted and established by this resolution shall be exercised in accordance with the conditions set out herein and shall continue in full force and effect for a period of twenty (20) years beginning on the date of acceptance by the Lexington-Fayette Urban County Government of a bid therefor. Nothing contained herein shall supersede the requirements of the Code of Ordinances of the Lexington-Fayette Urban County Government.

Section 3 - Prior to the opening of any right-of-way for the

EXHIBIT A

purpose of constructing, erecting, laying, relaying, replacing, operating, maintaining and/or removing any of said pipes and appurtenances, service facilities or other equipment in the exercise of the rights herein granted, the purchaser shall obtain a permit to do so from the Mayor or the Lexington-Fayette Urban County Government Division of Engineering or from any other person or official authorized to grant same and who may be designated by the Urban County Government for such purpose, except in case of an emergency, in which event the permit shall be subsequently obtained within a reasonable time. When the purchaser enters upon any right-of-way for the purposes herein specified, it shall prosecute the work, at its own cost and expense, except when the Urban County Government has requested relocation of facilities more than once within the same government project, all costs of such second relocation shall be paid by the Urban County Government. Purchaser shall prosecute all such work with due diligence and shall dig and close up all trenches and exposed places as rapidly as possible, and shall leave the right-of-ways in the same condition as when it entered the same for said purpose or purposes, all as required by the scope and nature of the project. All such repairs shall be maintained by the purchaser for one year in as good condition as the remainder of said right-of-way; and upon completion thereof, the Lexington-Fayette Urban County Government, through its duly constituted representative, shall inspect said work and, if properly replaced and restored, shall give to the purchaser a certificate thereto or, if not, it shall give to the purchaser a detailed statement of the work necessary to be done in order to comply with all reasonable requirements or regulations of the Urban County Government in restoring the surface of said right-of-way. If the purchaser does not replace within a reasonable time the surface of any right-of-way which has been opened by the purchaser, the Urban County Government, after written notice of its intention, may replace such surface to the condition herein specified at the cost of the purchaser.

Section 4 - The purchaser in pursuance of the rights, privileges and franchise herein granted, shall not unreasonably or

unnecessarily obstruct roads or other public places or right-of-ways and during the progress of any of its works shall exercise due care in the protection of the public from accident or injury and shall hold the Urban County Government harmless from any and all damages, suits and actions, by reason of negligence of the purchaser or its employees while constructing, erecting, laying, relaying, replacing, operating, maintaining and/or removing its works or equipment.

Section 5 - The quality of water to be furnished by the purchaser and the operating conditions affecting its quality shall be in accordance with the requirements and regulations of the Environmental Protection Agency or any legally constituted federal body designated as its successor in jurisdiction, the Kentucky Natural Resources and Environmental Protection Cabinet, Division of Water or any legally constituted state body designated as its successor in jurisdiction, and the Public Service Commission or any legally constituted state body designated its successor in jurisdiction.

Section 6 - The conditions and requirements of service to the inhabitants of the Fayette County and the rates to be charged by the purchaser for such service shall be in accordance with the lawful rules, regulations and orders of the Public Service Commission of Kentucky or any legally constituted State body designated as its successor in jurisdiction.

Section 7 - It shall be the duty of the Mayor, as soon as practicable after the effective date of this Resolution, to offer for sale at public auction said franchise and privilege and it shall be sold to the highest and best bidder, at a time and place to be fixed by her, after she shall have given due notice thereof by advertising this order in full one time, not less than seven (7) days nor more than twenty-one (21) days before the time to be fixed by her, in the Lexington Herald-Leader, a newspaper of general circulation in Fayette County, Kentucky, which newspaper is published in Fayette County, Kentucky.

Section 8 - The Urban County Government or its legal successor in interest, reserves the right at any time during the effective

period of the franchise to be awarded hereby, to impose upon the successful bidder a franchise fee in an amount not to exceed three percent (3%) per annum of the "Gross Revenues" as defined herein. If any franchise fee shall be due pursuant to the authority contained herein, the purchaser shall remit to the Urban County Government or its legal successor in interest, within forty-five (45) days of the end of each and every calendar quarter beginning with January 1, April 1, July 1 and October 1 next following the enactment of any such franchise fee, the amount of said franchise fee for said quarter or applicable portion thereof, until said franchise fee shall be discontinued or until the franchise expires.

Section 9 - "Gross Revenues", for purposes of this resolution, shall include all revenues from the sale of water, service charges based upon the size of facilities, municipal fire connections and hydrants, private fire connections and hydrants, temporary service connections for construction purposes, reconnection charges, returned check charges, service line inspection fees, and bulk sales to customers in Fayette County. All other sources of revenue are excluded from "Gross Revenues".

Section 10 - The franchise or privilege hereby granted shall be vested in the purchaser thereof, upon acceptance by the Urban County Council of the bid therefor, but the purchaser shall enter into a formal contract with the Urban County Government consenting to the terms, conditions, stipulations and provisions herein contained, which contract shall be in a form acceptable to the Lexington-Fayette Urban County Government.

Section 11 - The purchaser shall pay to the Urban County Government within thirty (30) days of receipt of a request for payment the amount equal to the reasonable costs which the Urban County Government may incur in connection with the granting to the purchaser of a franchise, but in no event to exceed Two Thousand Dollars (\$2,000.00).

Section 12 -

(a) The Urban County Government shall have the right to inspect the purchaser's income and water consumption records pertaining to Gross Revenues, in order to audit and to recompute

any amounts to be paid under this resolution.

(b) Should an underpayment be discovered at any time by the Urban County Government or the purchaser, notice of the underpayment shall be sent to the non-discovering party within ten (10) days, not including Saturdays or Sundays, of discovery along with a copy of any audit or other supporting documentation. Any additional amount due to the Urban County Government shall be paid no later than ten (10) business days following receipt of the written notice. In the event that any franchise payment or recomputed amount is not made on or before the applicable dates heretofore specified, interest shall be charged from such date at the annual rate of 8%. Overpayments discovered by the Urban County Government or the purchaser shall be an adjustment on the next quarterly payment without interest.

Section 13 -

(a) Copies of all documents relating to (1) the quality of potable water, (2) the capability of the purchaser to meet service requirements, and (3) environmental releases submitted by the purchaser to any federal, state or local governmental entity having jurisdiction over the quality of potable water or purchaser's services and further required because of a deterioration in the quality of potable water or services below defined standards, shall be submitted simultaneously to the Commissioner of Public Works.

(b) Within six (6) months of the close of each fiscal year, the purchaser shall submit an annual financial report to the Commissioner of Finance prepared by a qualified financial officer in accordance with the provisions of the codification of statements on auditing standards promulgated by the American Institute of Certified Public Accountants. Within fifteen (15) days of the end of each and every month purchaser shall submit a schedule showing its revenues (exclusive of sales and city taxes) for the previous month by category described in Section 9 hereof, by revenue class, and all adjustments thereto.

(c) The purchaser and Urban County Government shall designate in writing representatives who are responsible for

responding to requests for information related to water service in Fayette County made by each.

Section 14 -

(a) In the construction, reconstruction, maintenance or removal of any of said equipment and apparatus, the purchaser shall have due regard for the rights of the Urban County Government and others, and shall not interfere with, or in any way injure the property of the Urban County Government or others, under, on or above the ground. Said purchaser shall comply with all the laws of the Commonwealth of Kentucky and ordinances of the Urban County Government as to placing lights, danger signals or warning signs and shall be liable for any and all damage that may arise by reason of its failure or neglect to comply with such ordinances and laws. Work by the purchaser hereunder shall be done in a workmanlike manner and within a reasonable time as required by the scope and nature of the project and so as not to unnecessarily interfere with public use of any of said streets .

(b) Whenever the Urban County Government or any of its departments, agencies and/or agents, servants or employees shall grade, regrade, construct, reconstruct, widen or alter any street or shall construct, reconstruct, repair, maintain or alter any other public project (including but not limited to storm sewers, sanitary sewers and street lights) therein, it shall be the duty of the purchaser, when so ordered by the Urban County Government, to change, remove, relay and relocate its equipment and apparatus in the street at its own expense so as to conform to the established grade or line of such street and so as not to interfere with such public project so constructed, reconstructed or altered, except when the Urban County Government has requested relocation of facilities more than once within the same government project, all costs of such second relocation shall be paid by the Urban County Government.

Section 15 - All tests and measurements required to be taken by the purchaser by state and federal authorities shall be recorded and maintained for as long as required by the authority and shall be made available upon request to the Urban County Government.

Section 16 - The purchaser shall not be excused from complying with any of the terms and conditions of this Resolution by any failure of the Government, upon any one or more occasions, to insist upon the purchaser's performance or to seek purchaser's compliance with any one or more of such terms or conditions.

Section 17 - The purchaser agrees not to oppose intervention by the Urban County Government in any suit or proceeding to which the purchaser is a party and which involves this franchise agreement.

Section 18 - The purchaser shall abide by all provisions of the franchise and will not at any future time make any claim that the provisions of the franchise were, as of the time written, unreasonable, arbitrary or void.

Section 19 - Time shall be deemed to be of the essence in the performance of the terms and conditions of the franchise.

Section 20 - In any controversy or dispute under this resolution, the laws of the Commonwealth of Kentucky shall apply.

Section 21 - If any section, sentence, clause or phrase of the resolution is held unconstitutional or otherwise invalid, such infirmity shall not affect the remaining parts of the resolution.

Section 22 - That this Resolution shall become effective on the date of its passage.

PASSED URBAN COUNTY COUNCIL: April 27, 1995

/s/ Pam Miller

MAYOR

ATTEST:

/s/ Liz Damrell

CLERK OF URBAN COUNTY COUNCIL

PUBLISHED: May 3, 1995-lt

A:\ourwater.res  
(10/22/93)





Kentucky-American Water Company

2300 Richmond Road • Lexington, Kentucky 40502

606-269-2386

Coleman D. Bush  
Business Manager

May 10, 1995

The Honorable Pam Miller  
Office of the Mayor  
200 East Main Street  
Lexington, Kentucky 40507

Dear Mayor Miller:

In response to the Lexington-Fayette Urban County Government's offer of a water franchise, Kentucky-American Water Company hereby submits a bid, check enclosed (\$100) for the advertised franchise. We understand that said franchise will be for a 20 year period as authorized by Resolution 146-95 passed by the Lexington-Fayette Urban County Council.

Please be advised that Kentucky-American has received a Certificate of Public Convenience and Necessity from the Kentucky Public Service Commission authorizing the submission of this bid.

We appreciate the opportunity to bid and will be willing to discuss any related issues.

Sincerely,

  
Coleman D. Bush

CDB:kb

Enclosure ☐



RESOLUTION NO. 200-95

A RESOLUTION ACCEPTING THE BID OF KENTUCKY-AMERICAN WATER COMPANY IN ACCORDANCE WITH THE PROVISIONS OF RESOLUTION NO. 146-95, CREATING AND OFFERING FOR SALE A TWENTY-YEAR FRANCHISE FOR THE OPERATION OF A WATERWORKS SYSTEM IN FAYETTE COUNTY AND AUTHORIZING AND DIRECTING THE MAYOR, ON BEHALF OF THE URBAN COUNTY GOVERNMENT, TO EXECUTE AN AGREEMENT WITH KENTUCKY-AMERICAN WATER COMPANY INCORPORATING THE TERMS AND CONDITIONS OF RESOLUTION NO. 146-95.

BE IT RESOLVED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:

Section 1 - That the bid of Kentucky-American Water Company submitted on May 10, 1995 in accordance with the provisions of Resolution No. 146-95, creating and offering for sale a twenty-year franchise for the operation of a waterworks system in Fayette County, Kentucky, which bid is attached hereto as Exhibit A, is hereby declared to be the highest and best bid for said franchise; and said franchise is hereby sold to and vested in Kentucky-American Water Company, its successors and assigns, for the full period of twenty years from and after date of adoption of this Resolution.

Section 2 - That the Mayor, on behalf of the Lexington-Fayette Urban County Government, be and hereby is authorized and directed to enter into a written agreement with Kentucky-American Water Company for the period of twenty years, which agreement shall include all of the terms, restrictions and obligations set forth in Resolution No. 146-95 passed by the Urban County Council on April 27, 1995.

Section 3 - That this Resolution shall become effective on the date of its passage.

PASSED URBAN COUNTY COUNCIL: May 16, 1995

  
MAYOR

ATTEST:

  
CLERK OF URBAN COUNTY COUNCIL

PUBLISHED: May 24, 1995-1t

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CERTIFICATE



Kentucky-American Water Company

2300 Richmond Road • Lexington, Kentucky 40502

606-269-2386

R-200-95

Exh. A

Coleman D. Bush  
Business Manager

May 10, 1995

The Honorable Pam Miller  
Office of the Mayor  
200 East Main Street  
Lexington, Kentucky 40507

Dear Mayor Miller:

In response to the Lexington-Fayette Urban County Government's offer of a water franchise, Kentucky-American Water Company hereby submits a bid, check enclosed (\$100) for the advertised franchise. We understand that said franchise will be for a 20 year period as authorized by Resolution 146-95 passed by the Lexington-Fayette Urban County Council.

Please be advised that Kentucky-American has received a Certificate of Public Convenience and Necessity from the Kentucky Public Service Commission authorizing the submission of this bid.

We appreciate the opportunity to bid and will be willing to discuss any related issues.

Sincerely,

  
Coleman D. Bush

CDB:kb

Enclosure ☐

Equal Opportunity Employer

EXHIBIT A

Printed on Recycled Paper



**AGREEMENT**

**THIS AGREEMENT**, effective the 16th day of May, 1995, is made and entered into by and between **LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT**, an urban county government of the Commonwealth of Kentucky pursuant to Chapter 67A of the Kentucky Revised Statutes, 200 East Main Street, Lexington, Kentucky 40507 and **KENTUCKY-AMERICAN WATER COMPANY**, a corporation created and existing under and by virtue of the laws of the Commonwealth of Kentucky, with its principal office at 2300 Richmond Road, Lexington, Kentucky.

**W I T N E S S E T H:**

*Water Franchise*

For and in consideration of the payment by Kentucky-American Water Company to Lexington-Fayette Urban County Government of the sum of One Hundred Dollars (\$100.00), the receipt of which is hereby acknowledged, and in further consideration of the covenants, limitations and agreements as set forth in Resolution No. 146-95 passed by the Urban County Council on April 27, 1995, a copy of which is attached hereto as Exhibit A, and in further consideration of the covenants, limitations and agreements as set out in the bid of Kentucky-American Water Company dated May 10, 1995, a copy of which is attached hereto as Exhibit B, the Lexington-Fayette Urban County Government does hereby sell, grant and convey to Kentucky-American Water Company, its successors and assigns, a water franchise and privilege to install, erect, operate and maintain a waterworks system and plant as advertised by the Lexington-Fayette Urban County Government in the Lexington Herald-Leader published May 3, 1995 in Lexington, Fayette County, Kentucky. The franchise

and privilege sold, granted and conveyed shall continue in full force and effect for a period of twenty (20) years from the effective date of this Agreement. The franchise as adopted by Resolution No. 146-95 on April 27, 1995 and the bid of Kentucky-American Water Company dated May 10, 1995 are made a part of this agreement as fully as if set out at length herein. This Agreement shall supersede and be in place of the Agreement effective May 19, 1994.

The franchise hereby sold, granted and conveyed to Kentucky-American Water Company is not exclusive and shall not be construed as being in any way exclusive of preventing the Lexington-Fayette Urban County Government from providing for the sale of similar franchises to other persons, companies or corporations.

Kentucky-American Water Company, its successors and assigns, in consideration of the grant, sale and conveyance of the above franchise, does hereby bind itself, its successors and assigns, to faithfully and fully perform each and every condition of said franchise as contained in Resolution No. 146-95 and as contained in its May 10, 1995 bid, and further to faithfully perform all acts required of it as the purchaser of said franchise.

**IN WITNESS WHEREOF,** the Lexington-Fayette Urban County Government by and through its Mayor and Kentucky-American Water Company by and through Roy W. Mundy, II, its properly authorized Vice President and Manager, have executed this Agreement on the dates hereinafter set forth but to be effective as of the date first above written in the opening paragraph of this Agreement.

LEXINGTON-FAYETTE URBAN COUNTY  
GOVERNMENT

BY: Pam Miller  
PAM MILLER, MAYOR

COMMONWEALTH OF KENTUCKY )  
COUNTY OF FAYETTE )

The foregoing Agreement was subscribed, sworn to and acknowledged before me by Pam Miller, Mayor of Lexington-Fayette Urban County Government, for and on behalf of the Government, on this the 23<sup>rd</sup> day of May, 1995.

My commission expires: 10-18-98

Susan Lamb  
NOTARY PUBLIC, STATE AT LARGE, KY

KENTUCKY-AMERICAN WATER COMPANY  
BY: Roy W. Mundy II  
ROY W. MUNDY, II, VICE  
PRESIDENT AND MANAGER

COMMONWEALTH OF KENTUCKY )  
COUNTY OF FAYETTE )

The foregoing Agreement was subscribed, sworn to and acknowledged before me by Roy W. Mundy, II, Vice President and Manager, Kentucky-American Water Company, for and on behalf of the Company, on this the 15<sup>th</sup> day of May, 1995.

My commission expires: September 19, 1995

Patricia Ballard  
NOTARY PUBLIC, STATE AT LARGE, KY

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ORDINANCE NO. 105-95

AN ORDINANCE REQUIRING THE PAYMENT OF A FRANCHISE FEE OF TWO PERCENT (2%) PER ANNUM OF THE GROSS REVENUES RECEIVED BY KENTUCKY-AMERICAN WATER COMPANY FROM THE SALE OF WATER WITHIN THE TERRITORIAL LIMITS OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT, PURSUANT TO THE RESOLUTION CREATING SAID WATER FRANCHISE, AND PURSUANT TO THE AGREEMENT ENTERED INTO BETWEEN THE URBAN COUNTY GOVERNMENT AND KENTUCKY-AMERICAN WATER COMPANY; ALSO SETTING FORTH THE METHOD OF PAYMENT OF THIS FEE, AND PROVIDING THAT THIS ORDINANCE SHALL REMAIN EFFECTIVE UNTIL IT IS AMENDED BY THE URBAN COUNTY COUNCIL, UNTIL SAID WATER FRANCHISE EXPIRES, OR UNTIL A FRANCHISE FEE IS IMPOSED IN CONJUNCTION WITH A SUBSEQUENT FRANCHISE AGREEMENT, WHICHEVER MAY OCCUR EARLIER.

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WHEREAS, this Council is the successor to the Fayette County Fiscal Court; and

WHEREAS, the Lexington-Fayette Urban County Government did offer for bids a water franchise created and established by Resolution No. 146-95 passed April 27, 1995; and

WHEREAS, Kentucky-American Water Company submitted a bid for said franchise on May 10, 1995, which bid was accepted by Resolution No. 200-95 on May 16, 1995; and

WHEREAS, the Lexington-Fayette Urban County Government and Kentucky-American Water Company entered into an agreement under which Kentucky-American Water Company agreed to faithfully and fully perform each and every condition of said franchise as contained in Resolution No. 146-95 passed April 27, 1995, said agreement being effective on May 16, 1995; and

WHEREAS, in Section 8 of the above-mentioned Resolution passed April 27, 1995, creating a water franchise, the Urban County Council or its legal successor, reserved the right at any time during the effective period of said franchise to impose upon the successful bidder a franchise fee in an amount not to exceed three percent (3%) per annum of the gross revenues received by the successful bidder for the sale of water in Fayette County, Kentucky; and

WHEREAS, said franchise became effective on May 16, 1995 and is for a twenty (20) year term;

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:

Section 1 - That pursuant to Section 8 of Resolution No. 146-95 creating a water franchise passed by the Urban County Council on


April 27, 1995, and an agreement entered into between the Lexington-Fayette Urban County Government and the Kentucky-American Water Company effective May 16, 1995, a payment of a fee of two percent (2%) per annum of the gross revenues received by Kentucky-American Water Company from the sale of water within the territorial limits of the Lexington-Fayette Urban County Government be and hereby is required.

Section 2 - Under the terms of the above-mentioned Resolution and agreement, said franchise fee shall be remitted to the Director of the Division of Revenue, Lexington-Fayette Urban County Government, within forty-five (45) days of the end of each and every calendar quarter as set out in the franchise. Each remittance shall include the amount of said franchise fee for said quarter or applicable portion thereof.

Section 3 - The fee set by this Ordinance shall remain in effect until this Ordinance is amended by this Council, until the expiration of the above-mentioned franchise, or until a franchise fee is imposed in conjunction with a subsequent franchise agreement, whichever occurs earlier.

Section 4 - That this Ordinance shall become effective on the date of its passage.

PASSED URBAN COUNTY COUNCIL: May 18, 1995

  
MAYOR

ATTEST:

  
CLERK OF URBAN COUNTY COUNCIL

PUBLISHED: May 24, 1995-lt

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ORDINANCE NO. 3-2003

AN ORDINANCE AMENDING ORDINANCE NO. 105-95 TO INCREASE THE AMOUNT OF THE FRANCHISE FEE FROM TWO PERCENT (2%) TO TWO AND TWO HUNDRED EIGHTY-NINE THOUSANDTHS (2.289%) PERCENT PURSUANT TO SECTION 17C-22 OF THE CODE OF ORDINANCES, LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT, IN ORDER TO COVER KENTUCKY AMERICAN WATER COMPANY'S ANTICIPATED LEVEL OF PERMITTING UNDER THE "PUBLIC RIGHT-OF-WAY ORDINANCE (CHAPTER 17C OF THE CODE).

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WHEREAS, the Lexington-Fayette Urban County adopted a "Public Right-of-Way Ordinance" (Chapter 17C, Code of Ordinances, Lexington-Fayette Urban County Government) effective January 1, 2003; and

WHEREAS, pursuant to Section 17C-22 of the Code, each franchisee must pay the Urban County Government for its required level of permitting to install, remove, relocate or maintain its facilities and equipment in the public rights-of-way; and

WHEREAS, this required payment for permitting is to be included as an additional franchise fee; and

WHEREAS, this additional franchise fee has been calculated at the amount of .289 percent (.289%) per annum of the gross revenues received by Kentucky-American Water Company as further defined in the water franchise; and

WHEREAS, pursuant to the Public Right-of-Way Ordinance this additional franchise fee amount is for the purpose of funding the management and oversight of the public rights-of-way by the Urban County Government; and

WHEREAS, the Lexington-Fayette Urban County Government previously set the franchise fee for Kentucky-American Water Company at the amount of two percent (2%) per annum pursuant to Ordinance No. 105-95; and

WHEREAS, pursuant to the franchise agreement and Ordinance No. 105-95 the Lexington-Fayette Urban County Government may raise the franchise fee by an additional amount not to exceed a total of three percent (3%) by amending said Ordinance.

NOW THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:

Section 1 - That Ordinance No. 105-95 be and hereby is amended to increase the amount of the franchise fee from two percent (2%) to two and two hundred eighty-nine thousandths (2.289%) percent pursuant to Section 17C-22 of the Code of Ordinances, Lexington-Fayette Urban County Government, in order to cover Kentucky American Water

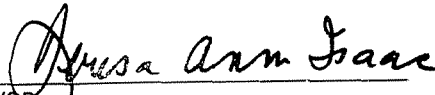
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Company's anticipated level of permitting under the "Public Right-of-Way Ordinance (Chapter 17C of the Code).


Section 2 - The remainder of Ordinance No. 105-95 shall be unchanged.

Section 3 - That this Ordinance shall become effective on the date of its passage.

PASSED URBAN COUNTY COUNCIL: January 16, 2003

  
MAYOR

ATTEST:

  
CLERK OF URBAN COUNTY COUNCIL

PUBLISHED: January 22, 2003-1t

DJB/ord109

ORDINANCE NO. 262-2003

AN ORDINANCE AMENDING ORDINANCE NO. 105-95 AND ORDINANCE NO. 3-2003 TO INCREASE THE AMOUNT OF THE FRANCHISE FEE PAID BY KENTUCKY-AMERICAN WATER COMPANY FROM TWO AND TWO HUNDRED EIGHTY-NINE THOUSANDTHS PERCENT (2.289%) TO THREE PERCENT (3%) PURSUANT TO THE TERMS OF RESOLUTION NO. 146-95 AND THE FRANCHISE AGREEMENT, AND PROVIDING THAT THIS ORDINANCE SHALL REMAIN IN EFFECT UNTIL IT IS AMENDED BY THE URBAN COUNTY COUNCIL, UNTIL SAID WATER FRANCHISE EXPIRES OR TERMINATES, OR UNTIL A FRANCHISE FEE IS IMPOSED IN CONJUNCTION WITH A SUBSEQUENT FRANCHISE AGREEMENT, WHICHEVER MAY OCCUR EARLIER

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WHEREAS, the Lexington-Fayette Urban County Government and Kentucky-American Water Company entered into a franchise agreement as contained in Resolution No. 146-95; and

WHEREAS, in Section 8 of the above-mentioned Resolution and under the terms of the franchise agreement, the Urban County Council or its legal successor reserved the right at any time during the effective period of said franchise to impose upon Kentucky-American Water Company a franchise fee in an amount not to exceed three percent (3%) per annum of the gross revenues received by Kentucky-American Water Company for the sale of water in Fayette County, Kentucky as further defined in Resolution No. 146-95 and the franchise agreement; and

WHEREAS, the Lexington-Fayette Urban County Government previously set the franchise fee for Kentucky-American Water Company at the amount of two percent (2%) per annum pursuant to Ordinance No. 105-95 and then amended said Ordinance with Ordinance No. 3-2003, which increased the franchise fee amount to two and two hundred eighty-nine thousandths percent (2.289%) in order to cover Kentucky-American Water Company's anticipated level of permitting under the "Public Right-of-Way Ordinance" (Chapter 17C of the Code); and

WHEREAS, the Lexington-Fayette Urban County Government has recently entered into franchise agreements with other utilities wherein the franchise fee has been set at three percent (3%) of gross revenues, with the ability to add the applicable permitting fees as an additional amount.

NOW THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:

Section 1 - That Ordinance No. 105-95 and Ordinance No. 3-2003 be and hereby are amended to increase the amount of the franchise fee paid by Kentucky-American

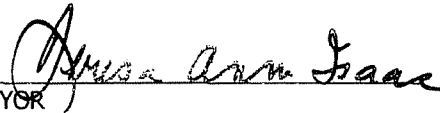
Water Company from two and two hundred eighty-nine thousandths percent (2.289%) to three percent (3%) pursuant to the terms of Resolution No. 146-95 and the franchise agreement.

Section 2 - The remainder of Ordinance No. 105-95 and Ordinance No. 3-2003 shall be unchanged.

Section 3 - The fee set by this Ordinance shall remain in effect until this Ordinance is amended by the Urban County Council, until the expiration or termination of the above-mentioned franchise, or until a franchise fee is imposed in conjunction with a subsequent franchise agreement, whichever occurs earlier.

Section 4 - That this Ordinance shall become effective on the date of its passage.

PASSED URBAN COUNTY COUNCIL: October 23, 2003

  
MAYOR

ATTEST:

  
CLERK OF URBAN COUNTY COUNCIL

PUBLISHED: October 29, 2003-1t

DJB/ord114