

AGREEMENT

THIS AGREEMENT, made and entered into on the 31<sup>st</sup> day of October, 1996, by and between the 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 ("Government"), and KENTUCKY-AMERICAN WATER COMPANY, with offices located at 2300 Richmond Road, Lexington, Kentucky 40502 ("Water Company").

RECITALS:

**WHEREAS**, the Government is the operator of the sanitary sewer system and appurtenances thereto serving Fayette County, Kentucky; and

**WHEREAS**, the Government has established charges for sanitary sewer services rendered to its customers based upon water usage by such customers and bills such charges on a periodic basis to its customers so served; and

**WHEREAS**, the Government is obligated to collect delinquent sanitary sewer service charges from its customers so served; and

**WHEREAS**, Chapter 96 of the Kentucky Revised Statutes permits the Government to enforce collection of rates and charges for the use of sewer facilities by requiring that water service be discontinued until payment is made or some satisfactory arrangement is reached; and

**WHEREAS**, the Water Company is engaged in the business of providing water service to substantially the same area and customers as are served by the Government and the Water Company is in a position to supply to the Government the customer and water usage data the Government requires to compute and monitor collection of its sanitary sewer service charges and to terminate water service for reason of delinquency in the payment of any sanitary sewer service charge by a customer of the Government; and

**WHEREAS**, the Water Company is authorized, pursuant to Chapter 96 of the Kentucky Revised Statutes, to enter into an agreement with the Government for the termination of water service and discontinuance of the supply of water from its system to any premises at which the sanitary sewer service charge for sanitary service supplied by the Government are unpaid; and

**WHEREAS**, the Government has requested the Water Company to perform billing, accounting, and collecting for sanitary sewer service customers of the Government including the termination of

water service for reason of delinquency in the payment of any sanitary sewer service charge and to reconnect such water service upon all charges, including any reconnect charges, being paid by the sanitary sewer customer; and

**WHEREAS**, the Government has further requested the Water Company to furnish to the Government certain customer and water usage data which will permit the Government to compute and monitor collection of its sanitary sewer service charges; and

**WHEREAS**, the Water Company is willing to furnish the requested customer and water usage data to the Government, to perform billing accounting and collecting for sanitary sewer service customers of the Government and to disconnect and reconnect such service, all pursuant to and subject to the terms and conditions hereinafter set forth.

**NOW, THEREFORE**, in consideration of the Recitals which are a material part of this Agreement, the mutual covenants hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are mutually acknowledged, it is agreed by and between the parties as follows:

**A. BILLING, ACCOUNTING AND COLLECTING**

1. The Government and the Water Company shall jointly designate and cause to be identified on the Water Company's computer records, each customer of the Government who is also a sewer customer of the Water Company (the "Joint Accounts"). The Water Company shall bill all such Joint Accounts for sanitary sewer service charges on behalf of the Government at the rates provided to it by the Government pursuant to Paragraph A(3).

(a) Accounts involving exclusion meters will be billed at 100% of the customer's usage. The Government will calculate and approve exclusion credits for these accounts monthly or quarterly based on the exclusion information provided by the customer. The Government will transmit the credit information, by facsimile, to the Water Company and the Water Company will enter the exclusion credits on the customer's account and bill accordingly.

(b) Accounts involving extra strength adjustments will be billed by the Water Company, with adjustments being based on information provided by the Government. The information required for adjustments will be provided in a spreadsheet format which lists the account name, account number, adjustment period and adjustment amount. The Water Company will place a debit on the customer's account to be billed during the next billing cycle.

2. The Water Company shall be responsible for the sanitary sewer customer billing, accounting and collecting for only those

users of the sanitary sewer system of the Government identified pursuant to Paragraph A(1) above, and only during the term of this Agreement.

3. The Government shall, prior to the commencement of billing, accounting and collecting services by the Water Company pursuant hereto, furnish the Water Company with the ordinance or ordinances establishing the rate or rates to be charged for sanitary sewer services, including both the flat and metered rates. The Government will notify the Water Company of any revisions of such rates; provided that such revisions shall not be effective until the billing cycle following the end of the month in which notice has been given. In no event shall the period between notice of the rate change and implementation for billing purposes be more than sixty (60) days.

4. The sanitary sewer customers to be billed by the Water Company pursuant hereto shall be billed on a cycle which is the same as the Water Company uses for the billing of its water service customers.

5. The Water Company shall administer the accounts of the Government and prepare a bill for water service that includes a bill for all customers of the Government receiving sanitary sewer service subject hereto in accordance with the regular and periodic billing procedure followed by the Water Company in the billing of its customers receiving water service. The Water Company agrees to observe the same diligence, policies and procedures in the billing, accounting and collecting of the sanitary sewer accounts subject hereto as it uses in administering the billing, accounting and collecting of its water service accounts, including but not limited to establishment of payment plans, preparation and mailing of delinquent notices, procedures for the handling of medical situations, reconnects and removal of meters.

6. In the case of Joint Accounts, the Water Company and the Government will take whatever action is necessary to have sanitary sewer service and the liability therefor placed in the same person/name as is the water service for such account. An example of this requirement would be in the case of rental property, where the landlord is billed instead of the tenant(s) or vice versa.

7. Water bill adjustments which directly relate to the quantity of water discharged into the sanitary sewer system shall be made by the Water Company, accepted by the Government and recognized in determining the billing for sanitary sewer charges, excluding, however, any exclusion meter customer. The Water Company shall make any other adjustment requested, in writing (which may include a facsimile), by the Government, for the next billing cycle(s) and until such adjustment has been made in full.

8. (a) The Water Company shall (i) calculate, as set forth above, the applicable sanitary sewer charges for each of the Government's sanitary sewer customers identified pursuant to Paragraph 1; (ii) print a water bill including the sanitary sewer service bill therefore, and (iii) deposit such bill in the United States mail, with a return envelope pre-addressed to the Water Company.

(b) In addition to the calculation of sanitary sewer service charges as set forth herein, the Water Company shall calculate the applicable state sales and use tax and include same on the bill to customers.

9. All of the Government's sanitary sewer service charges, plus any and all applicable federal, state or local sales, use or other tax, which is currently in effect or which may be imposed during the term of this Agreement, paid by its customers, will be collected and receipted by the Water Company and the Water Company shall transmit to the Government, on a daily basis, the collected balance from the preceding business day. The Government shall be solely responsible for filing any necessary and related tax forms and remitting amounts due to the appropriate taxing entities, subject to any errors in calculation, collection, or transmission by the Water Company. Any reconnect fees, returned check fees, or other fees which may be imposed by the Water Company during the term of this Agreement which are charged to and collected from customers, shall be retained by the Water Company.

10. The Water Company shall maintain accounts receivable data for the Government's sanitary sewer service customers. A monthly revenue summary report for sewer service charges and appropriate taxes shall include the beginning balances, adjustments, payments, billings, write-offs, and ending balances. A monthly summary report shall also provide totals of receivables that are current, over thirty (30) days and over ninety (90) days. An aging listing for any account over ninety (90) days shall also be provided upon request. These reports shall be delivered to the Government by the seventh (7th) of the month following the month to which such reports relate.

11. The Water Company shall shut off water service for non-payment of sanitary sewer service charges and applicable taxes and pursue the collection of delinquent accounts, observing the same diligence, policies and procedures in such shut off situations and collections as it uses in terminating its water service accounts. Pursuing collection of delinquent accounts shall include, but is not limited to, transferring such accounts to a collection agency and filing proofs of claim in bankruptcy actions. The Government, upon seven (7) days written notice, may assume the collection responsibility for any sanitary sewer service account. Further, the Water Company shall restore water service observing the same diligence, policies and procedures as it uses in restoring water service accounts.

12. For purposes of this Agreement, the water service and sanitary sewer service charges shall be considered one unified bill which must be paid in full or which must be the subject of a suitable payment plan in order to prevent termination of water service or collection efforts. Any payment received by the Water Company which is not adequate to pay the bill in full or any payment according to a payment plan, may be applied first to the water service portion of the bill.

13. In consideration of the services to be provided to the Government by the Water Company pursuant hereto, the Water Company will issue an invoice to the Government within fourteen (14) days of the close of each month. The bill will be payable within ten (10) days of receipt. The invoice is to include calculations supporting the invoiced amount based on a charge for each Joint Account billed the prior month as follows:

(a) The charge for each Joint Account billed from and including the effective date of this Agreement through and including March 31, 1997 or the last day of the month immediately preceding the first day of the month for which the Water Company will bill for landfill use pursuant to a separate agreement with the Government, whichever occurs first, shall be fifty-four cents (\$.54). The charge for each Joint Account billed after and including April 1, 1997 or the first day of the month for which the Water Company will bill for landfill use, whichever occurs first and before the termination of or renegotiation of this Agreement, shall be forty-seven cents (\$.47) subject to the provisions of subparagraph (b) below. It is contemplated by the Water Company and the Government that an agreement for the billing of landfill use will be fully executed by the parties by December 12, 1996 and that the first day of the first month for which the Water Company will bill for landfill use will be April 1, 1997. The foregoing notwithstanding, if an agreement for the billing of landfill use is not executed by December 12, 1996, the charge for each Joint Account billed shall remain at \$.54 until landfill use billing commences. The Water Company will, however, exercise due diligence in making the program and other necessary changes to facilitate the commencement of landfill billing as quickly as possible. In the event the Government changes its method or rates for sanitary sewer service billing, it shall pay the Water Company's additional reasonable expenses to accommodate any such change, subject to funds being appropriated. The Water Company shall not be responsible for making such changes without compensation. For purposes of this subparagraph, changes by the Government in methods or rates shall not include the changes made in converting to monthly sewer user billing or the associated changes in fall/winter averaging.

(b) Requests for payment should be accompanied by a summary of the number of accounts billed. Said charges shall be adjusted each January 1 beginning on January 1, 1998, by an amount based upon the Consumer Price Index For All Urban Consumers, the U.S. City Average ("CPI-u") published monthly by the Bureau of

Labor Statistics. The amount to be charged per bill shall be adjusted up or down by a factor determined by averaging the monthly CPI-u published for the twelve-month period ending, and including, November of the year before the January 1 adjustment. Upon termination of the Agreement by either party as set forth in paragraph 16 herein, the Water Company shall be compensated only for the services provided to the effective date of the termination.

**B. CUSTOMER AND WATER USAGE DATA**

14. During the term of this Agreement, by the seventh (7th) day of the month following the month to which such reports relate, the Water Company shall furnish to the Government the following information relative to all current and newly discontinued Water Company customer accounts for Fayette County, Kentucky:

1. Tape 1 -- Usage Data
  - (a) Customer account numbers
  - (b) Customer name and address
  - (c) Revenue class code
  - (d) Meter size code
  - (e) Billing period (service code)
  - (f) Previous and current reading dates
  - (g) Previous reading, out reading (if applicable)
  - (h) Set reading (if applicable), current reading
  - (i) Current consumption (usage)
  - (j) Past 12 consumptions (if applicable)
  - (k) Indicator if reading was estimated
  - (l) New accounts (new home or building)
  - (m) New customer (change of occupant)
  - (n) Terminated or transferred accounts
2. Tape 2 -- Daily Transactions
  - (a) Transaction date
  - (b) Account number
  - (c) Account suffix

- (d) Amount billed--sewer service
- (e) Tax amount billed--sewer service
- (f) Amount paid--sewer service
- (g) Tax amount paid--sewer service
- (h) Adjustment amount--sewer service
- (i) Tax adjustment amount--sewer service

Such information shall be provided in a computer format compatible to the Government's computer equipment.

15. The Water Company shall, without delay, code each new water service account as a sanitary sewer service account unless the account is specifically known to be located within a non-sewer area of the Fayette County. The Government shall notify the Water Company of those accounts that have existing water service but are newly tapped-on to the sewer system on a monthly basis. The Water Company shall, without delay, code each such existing water service account as a sanitary ~~service~~ <sup>sewer</sup> account. *PM*

**C. MISCELLANEOUS PROVISIONS**

16. The term of this Agreement shall be for a period of five (5) twelve month periods beginning on October 1, 1996. This Agreement will automatically renew at the end of each twelve month period of the term, upon the same terms and conditions, subject to sufficient funds being appropriated in the applicable fiscal year by the Government. Any party proposing a renewal with different terms and conditions shall submit a written proposal containing such terms and conditions to the other party no later than sixty (60) days prior to the expiration of the then-current twelve month term of the agreement. Either party to this Agreement may terminate the agreement upon sixty (60) days written notice to the other party at the addresses first above written.

17. This Agreement shall be construed to be applicable to only the parties hereto and shall not confer any rights, privileges, or obligation on any third party, including customers of the Water Company and/or the Government.

18. The Water Company shall provide the Government with on-line, read only access to the Water Company computer for the purpose of looking up individual sanitary sewer billing and payment information by any one of the following: name, service location, number. The Government shall, on request, also have the ability to run queries on the Water Company computer. The cost of the communication line(s) will be borne equally by both parties. The Water Company and the Government shall each be responsible for their own costs incurred for equipment housed in their respective

offices. The Water Company and the Government shall each designate an individual or individuals as liaison to assist in the implementation of the terms of this Agreement by assisting with the transmission of information required by the Agreement, by responding to questions or requests for information from the public and by informing eligible customers of the assistance program established in Section 16-59.1 of the Code of Ordinances.

19. The water service terminated pursuant to this Agreement shall not be restored until all charges, taxes and reconnect fees have been paid or until suitable payment arrangements have been made by the sanitary sewer service customer, but shall be restored thereafter as soon as practicable.

20. In accordance with KRS 96.942, the Water Company shall incur no liability by reason of discontinuing water service pursuant to this Agreement except to the extent of its own negligence or other improper conduct. The Water Company agrees to indemnify, hold harmless and defend the Government, its elected and appointed officials, employees, agents and successors in interest from and against all liabilities, claims, damages, penalties, causes of action, costs and expenses, including reasonable attorney fees, imposed upon or incurred by or asserted against the Government by reason of the intentional or negligent acts, or other improper conduct on the part of the Water Company, its contractors, agents or employees.

The Government agrees to defend, indemnify and hold harmless the Water Company, its employees, agents and successors in interest from and against all liabilities, claims, damages, penalties, causes of action, costs and expenses, including reasonable attorney fees, imposed upon or incurred by or asserted against the Water Company by reason of the intentional or negligent acts, or other improper conduct on the part of the Government, its contractors, agents or employees.

21. In accordance with KRS 96.943, in the event the Water Company wrongfully fails or refuses to discontinue water service pursuant to this Agreement and continues such failure or refusal for a period of thirty (30) days after receipt of written notice from the Government to do so, the Water Company shall be liable to the Government for any amount due from the sewer user involved.

22. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors.

23. This Agreement has been entered into and shall be construed in accordance with the laws of the Commonwealth of Kentucky.

24. After the agreement is executed by both parties, the Water Company will file the agreement with the Kentucky Public Service Commission. It is agreed and understood by the parties



hereto that the provisions of this Agreement shall not become effective on October 1, 1996 unless it is filed with the Commission.

25. It is understood between the parties that the Water Company will continue to provide the necessary data for the Government to bill and collect for sanitary sewer user service that occurs prior to the October 1, 1996 commencement date of this Agreement.

26. This Agreement is the entire agreement between the parties and may not be amended, modified or revised except by a written instrument signed by each of the parties.

**IN WITNESS WHEREOF**, the parties have executed this Agreement on the dates hereinafter set forth, but to be effective as of October 1, 1996.

LEXINGTON-FAYETTE URBAN COUNTY  
GOVERNMENT

BY: *Pam Miller*  
PAM MILLER, MAYOR

KENTUCKY-AMERICAN WATER COMPANY

BY: *Roy W. Mundy II*  
ROY W. MUNDY II  
VICE-PRESIDENT AND MANAGER

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