

**AGREEMENT FOR OPERATIONS,
MAINTENANCE AND MANAGEMENT SERVICES** RECEIVED

JAN 28 2002

THIS AGREEMENT is entered into on the 9th day of January, 2002, by and between ^{PUBLIC SERVICE} ~~between~~ COMMISSION

The CITY OF PINEVILLE, KENTUCKY, a city of the Fourth Class, with its principal address at Oak Street & Virginia Avenue, Pineville, Kentucky 40977 and the PINEVILLE UTILITIES COMMISSION, a Kentucky Municipal Corporation, with its principal address at P.O. Box 277, Pineville, Kentucky 40977 (hereinafter, collectively, "PUC"),

AND

KENTUCKY AMERICAN WATER COMPANY, Inc., a Kentucky Corporation, with its principal address at 2300 Richmond Road, Lexington, Kentucky 40502 (hereinafter, "KAWC").

Pineville, PUC and KAWC may be collectively referred to in this Agreement as the "PARTIES",

WHEREAS, The PUC owns and provides for the operation of wastewater treatment plant & collection system (WWTP) and the water treatment plant & distribution system (WTP) that are more particularly described on attached **Appendix A** (the "Project"); and

WHEREAS, The PUC desires to employ the services of KAWC in the operation, maintenance and management of the Project, and KAWC desires to perform such services in consideration for the compensation provided for herein.

NOW, THEREFORE, in consideration of the mutual covenants and agreements hereinafter set forth, PUC and KAWC agree as follows:

1. GENERAL PROVISIONS:

- 1.1 The definitions of words and phrases used in this Agreement (and the attachments) are contained in **Appendix B**.
- 1.2 All land, buildings, facilities, easements, licenses, rights-of-way, equipment and vehicles presently or hereafter acquired, or owned, by the PUC shall remain the exclusive property of the PUC, unless specifically provided for otherwise in this Agreement.

- 1.3 This Agreement shall be governed by and interpreted in accordance with the laws of the Commonwealth of Kentucky.
- 1.4 This Agreement shall be binding upon the successors and assigns of each of the PARTIES, but neither party shall assign this Agreement without the prior written consent of the other party, but such consent shall not be unreasonably withheld. Provided, however, the PARTIES may assign this Agreement, or any part thereof to any affiliate, wholly owned subsidiary, or other unit of government wholly controlled by the PARTIES.
- 1.5 All notices shall be in writing and transmitted to the party's address stated above. All notices shall be deemed effectively given:
 - 1.5.1 If delivered personally, or by courier mail service (e.g., Federal Express or Airborne Express), upon delivery;
 - 1.5.2 If mailed by certified or registered U.S. mail, return receipt requested, upon deposit in the United States mail, postage prepaid.
 - 1.5.3 If in any other manner, upon actual receipt.
- 1.6 This Agreement, including appendices, is the entire Agreement between the PARTIES. This Agreement may be modified only by subsequent written agreement signed by both PARTIES. Wherever used, the terms "KAWC" and "PUC" shall include the respective officers, agents, directors, elected or appointed officials and employees and, where appropriate, subcontractors, or anyone acting on their behalf.
- 1.7 If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remainder of the provisions shall remain in full force and effect and shall in no way be affected, impaired or invalidated.
- 1.8 It is understood and agreed by the PARTIES that the relationship of KAWC to PUC is that of independent contractor. The services provided for under this Agreement are of a professional nature, and shall be performed in accordance with good and accepted industry practices for professional contract operators similarly situated in the Commonwealth of Kentucky, and at the same time.
- 1.9 The PUC and KAWC are the only parties to this Agreement. No third party rights or benefits are intended to, or shall arise by, reason of this Agreement.

- 1.10 If any litigation is necessary to enforce the terms of this Agreement, the prevailing party shall be entitled to reasonable attorney's fees, which are directly attributed to such litigation in addition to any other relief to which it may be entitled.
- 1.11 The PUC represents that it has the authority to enter into this Agreement, and believes that it has complied with all governmental action necessary to bind it to the terms hereof.

2. KAWC'S SCOPE OF SERVICES – GENERAL:

- 2.1 For the purposes of this Agreement, all personnel of the PUC assigned full-time to the Project as of the effective date of this Agreement will remain the employees of the PUC. It is understood and agreed by the Parties that the PUC, as of the effective date of this Agreement, does hereby appoint it's independent contractor, KAWC, as exclusive "Agent" to act on it's behalf with respect to all employee matters in compliance with the PUC's Personnel Manual, (PAP), adopted June 15, 1999, as specified in Appendix H, pertaining to those employed by either the City of Pineville, or the Pineville Utility Commission in the provision of water or sewer services. On the effective date of this Agreement, and that as Agent, during the term of this Agreement, KAWC shall pay all cost of the employee compensation and related benefits currently in effect and required by the PAP.
- 2.2 Within a reasonable time after startup, KAWC will staff the Project with employees who have met appropriate licensing and certification requirements of the Commonwealth of Kentucky.
- 2.3 KAWC shall provide ongoing training and education for appropriate personnel in all necessary areas of modern water and wastewater process control, operations, maintenance, safety and supervisory skills.
- 2.4 KAWC shall develop and/or supply and utilize computerized programs for maintenance, process monitoring and financial control.
- 2.5 Within forty-five (45) days after KAWC begins service under this Agreement, KAWC will provide a physical inventory of PUC'S and the City of PINEVILLE'S vehicles and equipment in use at the Project and a general statement as to the condition of each vehicle or piece of equipment.
- 2.6 KAWC will provide PUC with a physical inventory of chemicals and other consumables on hand when KAWC begins services under this

consideration to the Water Company, 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.

9. 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.

10. 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 and by responding to questions or requests for information from the public.

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

12. 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 negligent acts, or other improper conduct on the part of the Water Company, its contractors, agents or employees.

The Government hereby releases and 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 such water service termination or of the intentional or negligent acts, or other improper conduct on the part of the Government, its contractors, agents or employees.

13. 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. The Government and the Water Company agree that this is an exclusive remedy for failure to discontinue water service pursuant to this Agreement.

PUBLIC SERVICE COMMISSION
OF KENTUCKY
EFFECTIVE
SEP 09 2001

PURSUANT TO 807 KAR 5.011,
SECTION 8 (1)
BY: Stephen D. Bell
SECRETARY OF THE COMMISSION

- 2.15 KAWC will provide laboratory testing and sampling presently required by plant performance portions of the NPDES permit, the Clean Water Act, the Safe Drinking Water Act and/or any federal, state or local rules and regulations, statutes or ordinances, permit or license requirements, or judicial and regulatory orders and decrees.
- 2.16 KAWC will provide for the collection and hauling of solid waste, screenings, grit, sludge and scum ("Waste") to PUC'S existing or approved disposal sites. It shall be the sole right and responsibility of PUC to obtain, maintain, designate, approve or select disposal sites to be used by KAWC for PUC'S Waste. All Waste and/or byproduct treated and/or generated during KAWC's performance of services is and shall remain the sole and exclusive property of the PUC.
- 2.17 KAWC will each month submit to the PUC reports of Project activities in accordance with the PUC policies and procedures. KAWC shall each month provide PUC a reasonably detailed Financial Report on the Water and Sewer Systems that presents in all material respects the financial position of the Water and Sewer Systems. The Financial Report shall contain a balance sheet and related statements of income, cash flow and capital investment by the Company that conform to accounting principles generally accepted in the United States of America. KAWC shall each month provide PUC a reasonably detailed Operational Report including but not limited to reports on customer inquiries, bad debt, conservation activities, meter replacements, water testing results, system leaks and other pertinent Operations and Maintenance activities and data related to the Water and Sewer Systems.
- 2.18 KAWC may provide additional services beyond the scope of this Agreement at PUC request, subject to mutually agreeable terms and conditions.

3. KAWC'S SCOPE OF SERVICES – WASTEWATER TREATMENT:

- 3.1 This Section shall apply to KAWC's operation and maintenance (O&M) services for the PUC wastewater treatment system.
- 3.2 Within the existing design capacity and capabilities of the Wastewater Treatment Plant described in Appendix A, KAWC will manage, operate and maintain the plant so that effluent discharged from the plant outfall meets the requirements specified in **Appendix C-1**.
- 3.3 KAWC shall maintain the PUC present industrial waste sampling and laboratory analysis program, as described in **Appendix D**. Results of all

industrial sampling and testing shall be reported to the PUC in a timely manner.

- 3.4 KAWC will perform all Maintenance and Repairs for the Project, and submit a monthly accounting to the PUC, along with a detailed invoice if Maintenance and Repair expenditures for the Project exceed the Maintenance and Repair Limit specified in Section 6.1.
- 3.5 KAWC will pay all Costs incurred in normal wastewater operations specified in **Appendix B** items 7 & 8.

4. **KAWC'S SCOPE OF SERVICES – WATER PRODUCTION AND TREATMENT:**

- 4.1 This Article shall apply to KAWC's O&M services for the PUC's potable water production and treatment facilities.
- 4.2 Within the existing design capacity and capabilities of the water production and treatment facilities described in Appendix A, KAWC will manage, operate and maintain such facilities so that water produced meets the requirements specified in **Appendix C-2**.
- 4.3 KAWC will perform all Maintenance and Repairs for the Project, and submit a monthly accounting to the PUC, along with a detailed invoice, if Maintenance and Repair expenditures for the Project exceed the Maintenance and Repair Limit specified in Section 6.1.
- 4.4 KAWC will pay all Costs incurred in normal water production and treatment operations specified in **Appendix B** items 7 & 8.

5. **PUC'S REPRESENTATIONS AND DUTIES:**

- 5.1 The PUC shall fund all necessary capital expenditures. Priority shall be given to capital expenditures deemed needed to rectify safety concerns. Any loss, damage, or injury resulting from the PUC's failure to provide capital improvements and/or funds in excess of the Maintenance and Repair Limit, when reasonably required by KAWC, shall be the sole responsibility of the PUC.
- 5.2 The PUC shall keep in force all Project warranties, guarantees, easements and licenses that have been granted to the PUC and are not transferred to KAWC under this Agreement.

- 5.3 The PUC shall pay all *ad valorem*, property, franchise, occupational and disposal taxes, or other taxes, if any, associated with the Project, other than taxes imposed upon KAWC's net income and/or payroll taxes for KAWC employees. In the event that KAWC is required to pay any sales tax or use taxes on the value of the services provided by KAWC hereunder, or the services provided by any subcontractor of KAWC, such payments shall be reimbursed by the PUC unless PUC furnishes a valid and properly executed exemption certificate relieving the PUC and KAWC of the obligation for such taxes.
- 5.4 The PUC shall provide KAWC, on an "as available" basis, with the temporary use of any piece of the PUC's heavy equipment that is available so that KAWC may discharge its obligations under this Agreement in the most cost-effective manner.
- 5.5 The PUC shall provide all registrations, licenses and appropriate proof of insurance for the PUC's vehicles used in connection with the Project.
- 5.6 The PUC shall provide for KAWC's exclusive use of all of the vehicles and equipment presently in full time use at the Project.
- 5.7 The PUC shall provide for KAWC's entry into existing disposal facilities for screenings, grit, sludge and scum.
- 5.8 The PUC represents and warrants that during the interim period between the initial Project inspection by KAWC and the Commencement Date specified in Section 10.1, the plant(s), facilities and other Project equipment have been operated only in the normal course of business, that all scheduled and proper maintenance has been performed, and that there are no issues known to the PUC regarding the Project, specifically including as to the condition of the facilities composing the Project, and/or any equipment used by the Project, that have not been disclosed to KAWC.

6. **COMPENSATION:**

- 6.1 KAWC's compensation under this Agreement shall consist of an Annual Fee. For the first year of this Agreement, KAWC's Total Annual Fee shall be \$1,350,000, representing \$1,110,000 for the management and operation of the Water system and \$240,000 for the management and operation of the Sewer system. The Maintenance and Repair Limit included in the Total Annual Fee is \$128,250, representing \$108,500 for the water system and \$20,250 for the Sewer system.

6.2 If actual Maintenance and Repair expenditures are less than the Maintenance and Repair Limit for any Agreement year, KAWC will rebate the entire difference to the PUC in accordance with Section 7.3. If actual maintenance and repair expenditures exceed the Maintenance and Repair Limit, the PUC will pay the excess to KAWC in accordance with Section 7.2. KAWC will notify the PUC when actual maintenance and repair expenditures equal eighty percent (80%) of the Maintenance and Repair Limit.

6.3 The Annual Fee shall be adjusted each year, to become effective as of the anniversary of this Agreement's Commencement Date. The Adjusted Annual Fee shall consist of the Annual Fee for the previous year of the contract, increased or decreased by the following items which shall be accurately reflected in the cumulative reports provided by KAWC pursuant to paragraph 2.17 hereof:

- (1) Scope changes specified in Section 8 of the contract;
- (2) Cost changes associated with employee compensation and benefits;
- (3) Cost savings realized as a result of KAWC's management and operation over the previous twelve (12) months, which savings shall be shared equally (50/50) between KAWC and PUC; and
- (4) Cost savings realized as a result of a combination of both capital investment by PUC and the professional management and advice of KAWC, which savings shall be shared 75 percent by the PUC and 25 percent by KAWC.

Where savings result from a capital investment initiated prior to the contract date or where additional revenues are generated as a result of any capital improvement (including those initiated after the contract date) such savings and additional revenues shall not be subject to any division hereunder, but shall belong solely to PUC.

6.4 Should the PUC and KAWC fail to agree, the Annual Fee will be determined by the application of the procedures in **Appendix E**. In the event of the adjustment of the Annual Fee in accordance with **Appendix E**, the Maintenance and Repair Limit shall also increase, or decrease, by a percentage equal to the percentage change in the Annual Fee.

7. PAYMENT OF COMPENSATION:

- 7.1 One-twelfth (1/12) of the Annual Fee for the current year shall be due and payable on the 15th day of the month for each month that services are provided.
- 7.2 All other compensation to KAWC is due upon receipt of KAWC's invoice and payable within thirty (30) days.
- 7.3 Any monies payable to the PUC pursuant to Section 6.2 will be paid within sixty (60) calendar days after the end of each Agreement year.
- 7.4 The PUC shall pay interest at an annual rate equal to the prime rate established by BB&T Bank plus two percent (2.0%) on payments not paid and received within fifteen (15) calendar days of the due date, such interest being calculated from the due date of the payment. In the event that the interest charges under this Section 7.4 might exceed any limitation provided by law, such charges shall be reduced to the highest statutory rate.

8. SCOPE CHANGES:

- 8.1 A Change in the Scope of Services shall occur when and as KAWC's costs of providing services under this Agreement change as a result of:
 - 8.1.1 Any change in Project operations, personnel qualifications or staffing, or other costs which is mandated or otherwise required by a change in law, rule or regulation, or an action or forbearance, of any governmental body having jurisdiction to order, dictate or require such change;
 - 8.1.2 Increases or decreases of not less than ten percent (10%) in the influent flow or loadings as demonstrated by a twelve-month floating average, compared to the twelve month period ending on the effective date of this Agreement (baseline flow and loading information is located in **Appendix C-1 AND C-2**;
 - 8.1.3 Any increase in employee compensation rates and related rate increases associated with employee benefits shall constitute a change in scope;
 - 8.1.4 Any increased operational cost associated with capital projects entered into prior to the contract date, such as the new Water Treatment Plant under construction shall constitute a change in scope.

8.1.5 The PUC's request and KAWC's consent to provide additional services beyond the scope of this Agreement.

8.2 For Changes in Scope described in Sections 8.1.1 through and including 8.1.2, the Annual Fee shall be increased (or decreased) by an amount equal to KAWC's additional or reduced Cost associated with the change in Scope. Modifications of the Annual Fee as a result of conditions described in Section 8.1.2, 8.1.3, and 8.1.4 shall be retroactive to the beginning of the twelve-month comparison period.

8.3 Utility Rates:

8.3.1 The PUC will pay as additional compensation to KAWC any increases in Electrical Cost Plant and/or Natural Gas Cost Plant that are a result of Average Electrical Rate Plant and/or Average Natural Gas Rate Plant increases that occur during any Agreement year. The additional compensation will be calculated based upon \$0.0398 KWH of energy per year and/or \$10.4574 per MCF thousand cubic feet of gas per year, respectively.

8.3.2 KAWC will rebate one hundred percent (100%) of any decrease in Electrical Cost Plant and/or Natural Gas Cost Plant caused by Average Electrical Rate Plant, and/or Average Natural Gas Rate Plant decreases, subject to the above KWH cap and MCF cap.

9. INDEMNITY, LIABILITY AND INSURANCE:

9.1 KAWC hereby agrees to indemnify and hold PUC harmless from any liability or damages for bodily injury, including death, which may arise from KAWC's negligence or willful misconduct under this Agreement, provided KAWC shall be liable only for that percentage of total damages that corresponds to its percentage of total negligence or fault.

9.2 The PUC agrees to indemnify and hold KAWC harmless from any liability or damage or bodily injury, including death, which may arise from all causes of any kind other than KAWC's negligence or willful misconduct including, but not limited to, breach of a PUC warranty.

9.3 KAWC shall be liable for those fines or civil penalties imposed by a regulatory or enforcement agency for violations occurring on or after the Commencement Date of the effluent quality requirements provided for in Appendix C-1. The PUC will assist KAWC in contesting any such fines in administrative proceedings, and/or in court, prior to any payment by KAWC. KAWC shall pay the cost of any such contest.

- 9.4 The PUC shall be liable for those fines or civil penalties imposed by any regulatory or enforcement agencies on the PUC which are directly related to the ownership of the Project, and shall indemnify and hold KAWC harmless from the payment of any such fines and/or penalties.
- 9.5 Indemnity obligations provided for in this Agreement shall survive the termination of the Agreement.
- 9.6 Each party shall obtain and maintain insurance coverage of a type and in the amounts described in **Appendix F**. Each party shall provide the other party with satisfactory proof of insurance.

10. TERM, TERMINATION AND DEFAULT:

TERM

- 10.1 The term of this contract shall be for a period of five (5) years commencing on January 1, 2002 and expiring on December 31, 2006.

TERMINATION AND DEFAULT

- 10.2 Either party may terminate this Agreement prior to its expiration on December 31, 2006 by reason of a material breach of the Agreement by the other party, but only after giving written notice of breach and allowing the party in default thirty (30) days to cure same or commence taking reasonable steps to cure the breach.
- 10.3 Upon notice of termination by the PUC, KAWC shall assist PUC in assuming operation of the Project. If additional Cost is incurred by KAWC at the request of the PUC, the PUC shall pay KAWC such Cost within 15 days of invoice receipt.
- 10.4 Upon termination of this Agreement and all renewals and extensions of same, KAWC will return the Project to the PUC in the same or similar condition, as it was upon the effective date of this Agreement, ordinary wear and tear accepted. Equipment and other personal property purchased by KAWC for use in the operation or maintenance of the Project shall remain the property of KAWC upon termination of this Agreement, unless the property was directly paid for by the PUC, or the PUC specifically reimbursed KAWC for the cost incurred to purchase the property, or this Agreement specifically provides to the contrary.
- 10.5 No person(s) shall be hired for employment by the PUC, KAWC or its affiliates during the initial five year term of Agreement who shall have

been an elected or appointed official of the City of Pineville, or a member of the PUC, during the negotiations for, and approval of, this agreement.

11. DISPUTES AND FORCE MAJEURE:

11.1 In the event that activities by employee groups or unions unrelated to KAWC cause a disruption in KAWC's ability to perform at the Project, the PUC, with KAWC's assistance, or KAWC at its own option, may seek appropriate injunctive court orders. During any such disruption, KAWC shall operate the facilities on a best-efforts basis until any such disruption ceases.

11.2 Neither party shall be liable for its failure to perform its obligations under this Agreement if such failure is due to any Unforeseen Circumstances beyond its reasonable control, or force majeure. However, this section may not be used by either party to avoid, delay or otherwise affect any payments due to the other party.

[END OF TEXT THIS PAGE]

Each of the Parties indicates their approval of this Agreement by their signatures below, and each party warrants that all corporate action necessary to bind the Parties to the terms of this Agreement has been and will be taken.

CITY OF PINEVILLE, KENTUCKY COMMISSION:

By: Robert L. Madon
Name: Robert L. Madon
Title: Mayor

PINEVILLE UTILITIES COMMISSION:

By: _____
Name: Patricia M. Bingham
Title: Chairperson

KAWC, INC.

By: Roy W. Mundy II
Name: Roy W. Mundy II
Title: President

APPENDIX A

DESCRIPTION OF THE "PROJECT"

KAWC agrees to provide the services necessary for the management, operation and maintenance of the following.

- a. All equipment, vehicles, grounds and facilities now being used to operate the PUC's Wastewater Treatment Plant. The Pineville Wastewater Treatment Plant is located approximately 0.75 miles north of the City of Pineville, on Stewart Branch Road in Wallsend Section, in Bell County, Kentucky. The wastewater treatment plant is authorized to discharge into the Cumberland River at mile point 652.7. The plant collects and treats wastewater from the City of Pineville, Wallsend, Newtown, Pine Mountain State Resort Park, Clear Creek Baptist Bible College and Bell County High School. It presently treats an average of 0.240 MGD.

- b. All equipment, vehicles, grounds and facilities now existing within the present property boundaries of, or being used to operate the PUC's Water Treatment Plant. The Pineville Water Treatment Plant is located approximately 5.5 miles south of the City of Pineville on the west side of US Highway 25E at Ferndale, in Bell County, Kentucky. The existing water treatment plant has a rated capacity of 2.0 MGD and presently serves over 5,000 customers with over 800 miles of distribution mains throughout the City of Pineville, and Bell County. The new water treatment plant now under construction will initially have a rated capacity of 2.4 MGD with the potential of being rated to 4.8 MGD just by increasing the flow rate through the filters. The new plant will be able to be expanded to a total rated capacity of 9.6 MGD with the addition of two more Pacer 2 Units being installed. The distribution system currently has 25 tanks, 23 pump stations, and one master meter connection with the City of Middlesborough.

APPENDIX B

DEFINITIONS

1. ***"Adequate Nutrients"*** means plant influent nitrogen, phosphorus and iron contents proportional to BOD₅ in the ratio of five (5) parts nitrogen, one (1) part phosphorus, and one-half (0.5) part iron for each one hundred (100) parts BOD₅.
2. ***"Annual Fee"*** means a predetermined, fixed sum for KAWC's services. The Annual Fee includes Cost and profit.
3. ***"Average Electrical Rate Plant"*** means the average cost per kilowatt hour as calculated by dividing the total kilowatt hours of energy consumed by the plant into the total dollars of plant electric cost for the twelve (12) month period ending three (3) months prior to the end of the current Agreement year. The Average Electrical Rate Plant for the period of July 1, 2000 to June 30, 2001 is \$0.0398 cents per KWH.
4. ***"Average Natural Gas Rate Plant"*** means the average cost per thousand cubic feet as calculated by dividing the total thousand cubic feet of gas consumed by the plant into the total dollars of plant gas cost for the twelve (12) month period ending three (3) months prior to the end of the current Agreement year. The Average Gas Rate Plant for the period of July 1, 2000 to June 30, 2001 is \$10.4574 per MCF.
5. ***"Biologically Toxic Substances"*** means any substance or combination of substances contained in the plant influent in sufficiently high concentration so as to interfere with the biological processes necessary for the removal of the organic and chemical constituents of the wastewater required to meet the discharge requirements of the PUC's NPDES Permit. Biologically toxic substances include, but are not limited to, heavy metals, phenols, cyanides, pesticides and herbicides.
6. ***"Capital Expenditures"*** means the total "Cost" of any expenditures for (1) the purchase of new equipment or facility items that cost more than Two Thousand Dollars (\$2,000); or (2) major repairs which significantly extend equipment or facility service life and which costs more than Two Thousand Dollars (\$2,000), or (3) expenditures that are planned, non-routine and budgeted by PUC.
7. ***"Cost"*** means all direct cost and indirect cost determined on an accrual basis in accordance with generally accepted accounting principles.
8. ***"Direct Cost"*** means the actual cost incurred for the direct benefit of the Project, including, but not limited to, expenditures for project management and labor, employee benefits, chemicals, power, outside contract labor and services, lab supplies, repairs, repair parts, maintenance parts, safety supplies, gasoline, oil, equipment rental, legal and professional services, quality assurance, travel, office

supplies, other supplies, uniforms, telephone, postage, utilities, tools, memberships and training supplies.

9. ***“Electrical Cost Plant”*** means the total electricity cost as calculated by multiplying the Average Electrical Rate Plant by the total KWH.
10. ***“Natural Gas Cost Plant”*** means the total gas cost as calculated by multiplying the Average Gas Rate Plant by the total MCF.
11. ***“Maintenance”*** means the total “cost” of those routine and/or repetitive activities required or recommended by the equipment or facility manufacturer, or by KAWC, to maximize the service life of the equipment, sewer, vehicles and facilities.
12. ***“Maintenance and Repair Limit”*** means the “cost” of the total maintenance and repair expenditures that KAWC has included in the Annual Fee. Such expenditures exclude any labor costs for KAWC’s staff assigned to the Project. KAWC or its affiliates specialized maintenance personnel and outside contract labor and services, not assigned at the Project, who provide such specialized services such as, but not limited to, vibration, thermographic and electrical analyses, instrumentation maintenance and repair will be charged to the Maintenance and Repair Limit.
13. ***“Project”*** means all equipment, vehicles, grounds, rights-of-way, sewers and facilities described in Appendix A and, where appropriate, the management, operations and maintenance of such.
14. ***“Repairs”*** means those non-routine/non-repetitive activities required for operational continuity, safety and performance generally due to failure, or to avert a failure of the equipment, sewer, vehicles or facilities or some component thereof.
15. ***“Unforeseen Circumstances”*** shall mean any event or condition which has an effect on the rights or obligations of the Parties under this Agreement, or upon the Project, which is beyond the reasonable control of the party relying thereon, and constitutes a justification for a delay in, or non-performance of, action required by this Agreement, including, but not limited to (i) an Act of God, landslide, lightning, earthquake, tornado, fire, explosion, flood, failure to possess sufficient property rights, acts of the public enemy, war, blockade, sabotage, insurrection, riot or civil disturbance, (ii) preliminary or final order of any local, province, administrative agency or governmental body of competent jurisdiction, (iii) any change in law, regulation, rule, requirement, interpretation or statute adopted, promulgated, issued or otherwise specifically modified or changed by any local, state or other governmental body, (iv) loss of, or inability to obtain service from, a utility necessary to furnish power for the operation and maintenance of the

Project, or (v) the failure of the PUC to make any Capital Expenditure previously identified as necessary for the Project to attain applicable performance standards.

APPENDIX C-1

**NPDES PERMIT AND
PROJECT'S WASTEWATER CHARACTERISTICS**

1. KAWC will operate the Project so that effluent will meet the requirements of NPDES permit No. KY0024058 (issued on August 1, 2001) a full and complete copy of which is adopted by reference herein, as of the date hereof. KAWC shall be responsible for meeting the effluent quality requirements of the Permit unless one or more of the following occurs: (1) the Project influent does not contain Adequate Nutrients to support operation of Project biological processes and/or contains Biologically Toxic Substances which cannot be removed by the existing process and facilities; (2) dischargers into the PUC's sewer system violate any or all regulations as stated in the PUC's Industrial Water and Sewer Ordinance(s) or as required by law; (3) the flow or influent BOD₅ and/or suspended solids exceeds the Project design parameters, which are 0.724 million gallons of flow per day, 272 pounds of BOD₅ per day, 272 pounds of suspended solids and a daily peaking factor of 2.62 times flow; (4) if the Project is inoperable, or can operate only at a reduced capacity on account of construction activities, fire, flood, adverse weather conditions, labor disputes or other causes beyond KAWC's control.
2. In the event that any one of the Project influent characteristics, suspended solids, BOD₅ or flow exceeds the design parameters stated above, KAWC shall return the plant effluent to the characteristics required by NPDES in accordance with the following schedule after Project influent characteristics return to within design parameters.

Characteristics Exceeding Design Parameters By	Recovery Period Maximum
▪ 10% or Less	5 days
▪ Above 10% Less than 20%	10 days
▪ 20% and Above	30 days

Notwithstanding the above schedule, if the failure to meet effluent quality limitations is caused by the presence of Biologically Toxic Substances or the lack of Adequate Nutrients in the influent, then KAWC will have a thirty (30) day recovery period after the influent is free from said substances or contains Adequate Nutrients.

3. KAWC shall not be responsible for fines or legal action as a result of discharge violations within the period that influent exceeds design parameters, does not contain Adequate Nutrients, contains Biologically Toxic Substances or is inoperable, and the subsequent recovery period.

4. The Annual Fee for services under this Agreement is based upon the following:

a. Project influent characteristics:

Flow 0.301 million gallons per day
BOD₅ 123.8 pounds per day
TSS 148.2 pounds per day
DHS* N/A mg/L
PH 6.71
NH₃ 12.49

*DHS means Dissolved Hydrogen Sulfide concentration. No historical data is available as of the date of this Agreement.

The above characteristics are the actual twelve (12) months' average for the period ended September 30, 2001. Any change of 10 percent (10%) or more in any of these characteristics, based upon a twelve (12) month moving average, will constitute a Change in Scope as provided in Article 8 of the Agreement.

b. KAWC's expenses for hauling by truck and disposing of Waste shall give rise to a Change in Scope and the additional costs shall be added to the Annual Fee, if any. At this time Pineville Wastewater System has not had to waste anything. It is typical for the BIOLAC Systems to go around 10 to 15 years without wasting/sludge removal. When it does come time to do so, they have an agreement with Middlesborough to haul it there and use their thickeners and belt filter press and then haul it to the landfill.

APPENDIX C-2

PROJECT'S WATER CHARACTERISTICS

1. The Project has the following design characteristics:

A capacity of 2.0 MGD of finished water production with ability for chemical additions, flocculation, sedimentation and filtration based on 3.8 gallons per minute per square foot of filter area. The Project has the capability for post treatment by chlorination and fluoridation.

2. KAWC will operate the Project so that water treated will meet the current drinking water standards as established by applicable state or federal law. KAWC's Annual Fee includes all costs for treating an average daily flow of 1.7 MGD of raw water per day to the standards specified below.

Turbidity	1.0 to 2.5 NTU
Iron	<0.3 mg/L
Manganese	<0.05 mg/L
Fluoride	0.8 average mg/L
PH	6.9 to 7.3
Color	<15 color units
Corrosivity	Non-corrosive
Odor	<3.0 TON
E. Coli	Negative
Hardness	12 PPM
Alkalinity	6 to 10 PPM

APPENDIX D

WATER QUALITY TESTING OBLIGATIONS

KAWC shall have the following water quality testing obligations while the Contract is in effect: performing, or causing to be performed, by a Kentucky-certified laboratory, all water and wastewater sampling, analysis, testing and reporting required for water sources, distribution mains, collection mains or customer premises, or required by the U.S. Environmental Protection Agency, the Kentucky Division of Water, or future acts of the U.S. Congress, or Kentucky Legislature; scheduling and collecting water and wastewater samples to test for microbiological, inorganic and organic constituents; transportation to a certified lab; preparing monitoring plans; sample collection training; reporting to appropriate regulators; record keeping; analysis interpretation; special or emergency sample collection and analysis, and emergency notification to affected customers, if required; preparing and distributing all published and distributed customer reports on water quality; water source sampling and analysis; response to customer inquiries on water quality; coordination of cross-connection control and potential contamination issues; conducting an annual system survey with the Kentucky Division of Water; obtaining any necessary permits and compliance with appropriate air district regulations; providing hazardous materials control program, and ensuring all operator certification compliance with Kentucky and Federal requirements. Now existing, or which may be implemented during the Term of this Agreement.

APPENDIX E

ANNUAL FEE ADJUSTMENT FORMULA

$$AAF = AF_0 \left(X \frac{C}{C_0} + Y \frac{E}{E_0} \right)$$

Where

- AF₀ = Annual Fee specified in Section 6.1 before any annual modification.
- AAF = Adjusted Annual Fee.
- C₀ = Consumer Price Index for All Urban Consumers (U.S. City Average) as published by the U.S. Department of Labor, Bureau of Labor Statistics in the CPI Detailed Report for the month three (3) months prior to KAWC beginning service under this Agreement.
- C = Consumer Price Index for All Urban Consumers (U.S. City Average) as published by the U.S. Department of Labor, Bureau of Labor Statistics in the CPI Detailed Report for the month three (3) months prior to the beginning of the period for which an adjusted base fee is being calculated.
- E₀ = Average Electrical Rate Plant is \$.0398 cents per kWh for the initial year of this Agreement.
- E = Average Electrical Rate Plant for the twelve (12) months prior to the beginning of the period for which an Adjusted Annual Fee is being calculated.
- X = 1.0 - (Y)
- Y = Total budgeted Electrical Cost Plant for first contract year divided by total budgeted Direct Cost for first contract year.]

APPENDIX F

INSURANCE COVERAGE

KAWC SHALL MAINTAIN:

1. Statutory Workers' Compensation insurance coverage for all of KAWC's employees at the Project as required by the Commonwealth of Kentucky.
2. Comprehensive general liability insurance, insuring KAWC's negligence, in an amount not less than One Million Dollars (\$1,000,000) combined single limits for bodily injury and/or property damage.

PUC SHALL MAINTAIN:

1. Statutory Workers' Compensation insurance coverage for all of PUC'S employees associated with the Project as required by the Commonwealth of Kentucky.
2. Property damage insurance for all property, including vehicles owned by PUC and operated by KAWC under this Agreement. Any property, including vehicles not properly or fully insured, shall be the financial responsibility of the PUC.
3. Automobile liability insurance for collision, comprehensive, and bodily injury on all motor vehicles owned by the PUC and used in furtherance of the Project, as required by the Commonwealth of Kentucky.

PARTIES will provide each other at least thirty (30) days notice of the cancellation of any policy it is required to maintain under this Agreement. KAWC may self-insure reasonable deductible amounts under the policies it is required to maintain to the extent permitted by law, but only if such action does not invalidate the property insurance of PUC. The PARTIES, on behalf of themselves and their insurers, waive their rights of subrogation with respect to losses occurring to property dedicated to this PROJECT.

APPENDIX G

**AMORTIZATION SCHEDULE FOR
KAWC STARTUP AND CAPITAL EXPENDITURES**

The PARTIES mutually agree that for all purposes, the beginning principal shall be \$ _____. The interest rate applied shall be calculated at ____%. The amortization term shall be ____ years.

NONE

APPENDIX H

PUC PERSONNEL MANUAL, (PAP)