

# INTERLOCAL AGREEMENT

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between

The City of Morehead  
Morehead Utility Plant Board  
Rowan Water Incorporated  
Bath County Water District

November 2000

PUBLIC SERVICE COMMISSION  
OF KENTUCKY  
EFFECTIVE

JAN 01 2003

PURSUANT TO 807 KAR 5:011  
SECTION 9 (1)

BY   
EXECUTIVE DIRECTOR

## INTERLOCAL AGREEMENT

This INTERLOCAL AGREEMENT for the sale and purchase of water is entered into by and between The City of Morehead, Kentucky, hereinafter referred to as the "CITY", 105 E. Main Street, Morehead, KY 40351; and the Morehead Utility Plant Board, Morehead, Kentucky, hereinafter referred to as "MUPB", 135 South Wilson, Morehead, KY 40351; and Rowan Water, Inc., a Kentucky Corporation, Morehead, Kentucky, hereinafter referred to as "RWI", 110 South Hargis Avenue, Morehead, KY 40351; and Bath County Water District, Salt Lick, Kentucky, hereinafter referred to as "BCWD", Salt Lick, KY 40371.

### WITNESSETH:

WHEREAS, the City is a duly incorporated city of the Fourth Class of the Commonwealth of Kentucky, and MUPB is an agency of the City charged with operations of the City's water, sewer, and gas utilities;

WHEREAS, RWI is a Kentucky corporation, duly organized and established under the provisions of Kentucky Revised Statutes Chapter 273, for the purpose of constructing and operating a water supply distribution system serving users within the area described and designated by plans and approvals on file in the office of the Commonwealth of Kentucky Public Service Commission;

WHEREAS, BCWD is a duly organized Water District pursuant to Kentucky Revised Statutes Chapter 74 for the purpose of constructing and operating a water supply distribution system, serving water users within the area described in plans and approvals on file in the office of the Commonwealth of Kentucky, Public Service Commission;

WHEREAS, the above-mentioned parties are all presently parties to a "Water Purchase Contract" dated 11 June 1979, concerning the ownership and operation of a water purification and treatment plant by the City and MUPB; the selling of water from that plant to RWI and BCWD for resale to their respective retail and wholesale customers; and the allocation of the production capacity of the plant to RWI, BCWD and MUPB;

WHEREAS, the Parties agree that the water treatment plant owned and operated by the City and MUPB is inadequate to supply present and future water needs of the parties hereto;

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BY Charles H. Down  
EXECUTIVE DIRECTOR

WHEREAS, the Parties have entered into a Memorandum of Agreement, dated 19 May 1998, to jointly conduct a study to confirm and address the need for water treatment plant expansion, and pursuant to that agreement Commonwealth Technology, Inc. has prepared a Preliminary Engineering Report, dated 06 November 1998, that acknowledges the need for expansion, projects future water demands, outlines necessary capital improvements, and proposes a Project Cost Allocation Formula for the proposed water system expansion project, hereinafter referred to as "the Project";

WHEREAS, it is the desire and intention of all parties to continue the present relationship wherein the City, by and through MUPB, owns and operates the water treatment plant and RWI and BCWD purchase water from MUPB;

WHEREAS, the Parties have reached an agreement and understanding to continue the existing relationship of the Parties, at the same time proceed with the Project to meet the present and future water needs of the Parties, and to share in the cost of constructing and operating the Project as well as continue to share costs allocated in the previous contract of 11 June 1979; and

WHEREAS, the Parties each have determined that this agreement is in their best interests and now desire to reduce this agreement to writing in the form of an Interlocal Agreement pursuant to Kentucky Revised Statutes, Chapter 65;

NOW, THEREFORE, the forgoing Parties, the City, MUPB, RWI, and BCWD, as public agencies, in consideration of the mutual covenants, agreements contained herein, and benefits derived therefrom do hereby contract and agree as follows:

EFFECTIVE DATE.

1. This INTERLOCAL AGREEMENT shall become effective upon the date of delivery of the bonds financing the project to the purchaser of said bonds, and shall continue for a period of Forty (40) years from said date.

2. All of the provisions of the previous "Water Purchase Contract", dated 11 June 1979, shall remain in full force and effect until the effective date of this Interlocal Agreement, at which time this Interlocal Agreement will replace and supersede the previous "Water Purchase Contract" in all respects.

MANNER OF FINANCING.

3. The City and MUPB shall obtain financing for the Project. The financing may come in whole or in part from a loan or grant from the following: the United States of America, acting through the Rural Development of the U.S. Department of Agriculture, U. S. Economic Development Administration; the Appalachian Regional Commission (ARC); the Kentucky Infrastructure Authority Revolving Fund; and the sale of revenue bonds.

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BY Charlene D. Dore  
EXECUTIVE DIRECTOR

4. The City and MUPB shall act as the sole applicant, grantee, loan recipient, and bond seller. RWI and BCWD shall participate in the repayment of the loans and bonds for the Project by making regular capital payments to MUPB as set forth in this INTERLOCAL AGREEMENT.

COST AND PAYMENT.

5. MUPB, RWI, and BCWD accept and agree to the Project Cost Allocation Formula prepared by Commonwealth Technology, Inc. (hereinafter referred to as "CTI") as set forth in Appendix C of the Preliminary Engineering Report dated 6 November 1998.

6. RWI shall pay to MUPB to following for Capitol Costs:

a. The Capitol Costs calculated from the 1979 Water Purchase Contract that continue until their complete satisfaction as follows:

- i. \$3,378.75 per month in capitol costs until December 2021;
- ii. \$1,370.60 per month in capitol costs incurred in raw water intake until December 2023;
- iii. \$604.93 per month in debt service for the sludge de-watering project until June 2013;
- iv. \$60.29 per month in debt reserve for the sludge de-watering project until June 2001 and

v. An additional monthly amount for existing or future unfunded capitol expenditures adjusted annually based on the depreciation expense calculated for assets that were or will be purchased without a bond issue or other debt service, provided said expenditures were not paid from a depreciation account, as follows: annual depreciation expense amount for unfunded capitol expenditures x 35.3671% (percentage of new plant capacity adjusted for internal water usage) ÷ 12. Unfunded capitol expenditures shall include the actual cost of any asset replacements, additions, upgrades and/or improvements to the facilities contemplated by this Interlocal Agreement, including but not limited to the raw water intake, raw water transmission main, water treatment plant, water storage facilities (i.e. US 60 tank, MSU tank, new MSU tank, and Divide Hill tank), and the sludge line to the sewage treatment plant. Any additional unfunded capitol expenditures, including but not limited to expenditures for lines, that would benefit more than one entity shall be allocated by and between the entities involved. MUPB shall pay said costs initially and shall establish the depreciation schedule based upon the capitol asset's useful life.

b. The Capitol Costs calculated from the new water plant and system expansion as follows:

- i. Monthly Capitol Costs calculated by dividing by ~~the~~ average annual amortized amount of the construction costs (as

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BY Charles L. Dorn  
EXECUTIVE DIRECTOR

- identified in Table C-8 of the engineering report of CTI and as adjusted by final project cost), based on the terms of the new debt service incurred for the water plant and system expansion and multiplying by the percentage of construction costs allocated to RWI without regard to the EDA Grant funds; and
- ii Monthly Debt Service Reserve costs calculated by using the new debt issue amount  $\times 5\% \div 120$  and then multiplying by the percentage of the construction costs allocated to RWI for 120 months.

7. BCWD shall pay to MUPB to following:

- a. The Capitol Costs calculated from the 1979 Water Purchase Contract that continue until their complete satisfaction as follows:
  - i. 1,822.25 per month in capitol costs until December 2021;
  - ii. \$ 84.13 per month in capitol costs incurred in raw water intake until December 2023;
  - iii. \$403.29 per month in debt service for the sludge de-watering project until June 2013;
  - iv. 40.33 per month in debt reserve for the sludge de-watering project until June 2001 and
  - v. An additional monthly amount for existing or future unfunded capitol expenditures adjusted annually based on the depreciation expense calculated for assets that were or will be purchased without a bond issue or other debt service, provided said expenditures were not paid from a depreciation account, as follows: annual depreciation expense amount for unfunded capitol expenditures  $\times 27.0323\%$  (percentage of new plant capacity adjusted for internal water usage)  $\div 12$ . Unfunded capitol expenditures shall include the actual cost of any asset replacements, additions, upgrades and/or improvements to the facilities contemplated by this Interlocal Agreement, including but not limited to the raw water intake, raw water transmission main, water treatment plant, water storage facilities (i.e. US 60 tank, MSU tank, new MSU tank, and Divide Hill tank), and the sludge line to the sewage treatment plant. Any additional unfunded capitol expenditures, including but not limited to expenditures for lines, that would benefit more than one entity shall be allocated by and between the entities involved. MUPB shall pay said costs initially and shall establish the depreciation schedule based upon the capitol asset's useful life.
- b. The Capitol Costs calculated from the new water plant and system expansion as follows:
  - i. Monthly Capitol Costs calculated by dividing by the average annual amortized amount of the construction costs (as identified in Table C-8 of the engineering report of CTI and as

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adjusted by final project cost), based on the terms of the new debt service incurred for the water plant and system expansion and multiplying by the percentage of construction costs allocated to BCWD without regard to the EDA Grant funds; and

- ii. Monthly Debt Service Reserve costs calculated by using the new debt issue amount  $\times 5\% \div 120$  and then multiplying by the percentage of the construction costs allocated to BCWD for 120 months.

8. RWI and BCWD shall pay to MUPB the following monthly amounts for Cash Operation and Maintenance Expense:

- a. Water Utility Operating Expense. Expense amounts to be taken from the annual audited financial statements  $\times 74\% \div$  total water consumption billed for all users in gallons (1,000s) furnished by MUPB during the previous fiscal year = rate per 1,000 gallons.
- b. General and Administrative Expenses. Expense amounts to be taken from the annual audited financial statements  $\times 30\% \div$  water consumption for each individual customer, RWI and BCWD, in total billed gallons (1,000s) furnished by MUPB during the previous fiscal year = rate per 1,000 gallons.

During the initial calendar year for this Interlocal Agreement the monthly amount for Cash Operation and Maintenance Expense shall be \$ .60 per 1,000 gallons. The initial calendar year for this Interlocal Agreement shall end on December 31 following the effective date. Thereafter, the payments for Cash Operation and Maintenance Expense shall be calculated pursuant to subparagraphs a and b above.

Each year prior to the beginning of a new calendar year (January 1) MUPB shall determine the rate per 1,000 gallons for Cash Operation and Maintenance Expense for the next calendar year. MUPB shall give notice to RWI and BCWD of the new rate including a copy of the computation at least 60 days prior to the next calendar year. Such rate shall be calculated pursuant to paragraphs a and b above based upon expense amounts taken from the Annual Audited Financial Statement of MUPB for the most recently concluded fiscal year.

Any of the parties hereto may request that a special study be conducted by a firm of consulting engineers, certified public accountants, or other utility rate consultants to review the continuing applicability and equity of the rates determined based upon the formulas set forth in paragraphs a and b above. Provided, that all parties shall agree upon the consultant for this purpose. The cost of the study will be born by the party requesting such study or as agreed upon by all parties.

9. RWI and BCWD shall pay to MUPB the following monthly amount for Meter and Billing: \$10 per meter. Currently RWI has 6 meters and BCWD has 1 meter.

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BY Thomas H. Jones  
EXECUTIVE DIRECTOR

10. The monthly payment date for the payments set forth above shall be established by MUPB in accordance with any applicable laws, rules, regulations, or procedures governing normal service and billing charges. RWI and BCWD agree to pay not later than the established date for Capitol Costs, Meter and Billing and Cash Operation and Maintenance for the preceding month.

RIGHTS, DUTIES AND OBLIGATIONS.

11. The City and MUPB shall own and operate the facilities included in the Project. MUPB will, at all times, operate and maintain the Project facilities, in an efficient manner and will take such action as may be necessary for furnish RWI and BCWD the quantities of water required by them, subject to the provisions of Paragraph Number 14 herein. However, RWI and BCWD acknowledge and agree that the new expanded water treatment plant, treated water storage, and water transmission facilities are partially for their benefit. Due to this recognition, RWI and BCWD will be responsible for and pay for their proportionate share of capital, operation, and maintenance costs for those facilities.

12. MUPB shall furnish to RWI, at the same points and places MUPB presently furnishes treated water to RWI, during the term of this INTERLOCAL AGREEMENT or any renewal or extension thereof, potable treated water meeting applicable purity standards of the Kentucky Division of Water in such quantity as may be required by RWI, not, to exceed the quota specified in Paragraph Number 14 hereof.

13. MUPB shall furnish to BCWD, at the same points and places MUPB presently furnishes purified water to BCWD, during the term of this INTERLOCAL AGREEMENT or any renewal or extension thereof, potable treated water meeting applicable purity standards of the Kentucky Division of Water in such quantity as may be required by BCWD, not, to exceed the quota specified in Paragraph Number 14 hereof.

14. The Parties are each allocated the following quotas of water as peak capacity to be furnished by MUPB from the new water treatment plant:

RWI	2.703 million gallons per day
BCWD	2.066 million gallons per day
MUPB	2.857 million gallons per day

It is acknowledged and understood that the new expanded water treatment plant is designed to produce 8.0 million gallons of water per day and that 0.374 million gallons per day is necessary for the operation of the plant for filter back-washing, chemical dilution, and other in-plant needs.

Further, it is acknowledged and agreed by the parties that the above referenced quotas are based upon the anticipated plant capacity of 8.0 million gallons per day peak capacity as per the design. However, in the event the plant's actual peak capacity is more or less than 8.0 million gallons per day, then each parties' quota shall be

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based upon the following percentages of the actual plant capacity: RWI 33.7875%; BCWD 25.825%; MUPB 35.7125%; and Plant Operation 4.675%.

15. MUPB, RWI, and BCWD acknowledge and agree that as a result of the Project, a portion of the storage capacity in the MUPB system (US 60 Tank, University Tank, Divide Hill Tank, and a proposed New University Tank) will be allocated to RWI and BCWD as follows:

RWI	433,000 gallons
BCWD	331,000 gallons

16. MUPB, RWI, and BCWD acknowledge and agree that the design of the transmission and storage improvements portion of the Project has been based in part upon the projected future water demands of RWI and BCWD, specifically at each of their master meter points. In the future should the actual demand at a specific master meter exceed the design amount to the extent that the Project improvements are no longer adequate, then the party whose master meter point is exceeding the design amount as set forth in the Preliminary Engineering Report of Commonwealth Technology, Inc., dated 06 November 1998, shall either restrict the demand to the design amount, or shall pay for cost of improvements needed to meet the increased demand. In no event is this provision to void the capacity allocation provision of Paragraph Number 14.

17. In the event any party shall increase its requirements for treated water to the extent that its water requirements or desired water plant capacity exceed its' quotas established in Paragraph Number 14 herein, or in the event that any party requires or desires additional capacity for transmission and storage of treated water as set out in Paragraph Number 11, the party with such a requirement shall have the right to:

- a. Pay all costs and incidental expenses of expansion of the capacity of said production and/or delivery and storage facilities, in which case the party paying said expansion costs and expenses shall be entitled to the benefit of all increased capacity resulting from said expansion; and/or
- b. Continue to purchase water under this INTERLOCAL AGREEMENT to its allocated capacity and obtain additional water from other sources.

18. Temporary or partial failures to deliver water shall be remedied with all possible dispatch. In the event the supply of raw water available to the treatment plant is diminished over an extended period of time or in the event that production capacity of said plant is substantially diminished or reduced over an extended period of time resulting in inability of said plant to produce the quantity of purified water required by all parties hereto, the total available supply of treated water shall be distributed among the parties in accordance with the percentages set forth in Paragraph Number 14 herein.

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BY Thomas L. Edmon  
EXECUTIVE DIRECTOR



19. Failure of pressure to the main supply, line breaks, power failure, flood, fire, earthquake, or other catastrophes shall excuse MUPB from complying with the terms of this INTERLOCAL AGREEMENT until such time as the cause of the reduction of pressure or supply of water has been removed or remedied; provided, however, that such purified water, if any, as is produced and/or available for distribution during such emergencies or catastrophes shall be made available to each party in accordance with the percentages as set forth in Paragraph Number 14.

20. In the event that the customers of any party hereto require unusually large quantities of water for a period of time not to exceed twenty-four (24) hours, for the purpose of extinguishing unusual and extreme fires, MUPB shall have the right, but not the obligation, to supply said water to the party whose customers so require said water, even though the same may result in diminished or terminated service of water to all other parties hereto.

21. Upon reasonable request RWI and/or BCWD shall have the right to inspect or review the books and records of MUPB. I desired RWI and/or BCWD may request an independent audit of the books of MUPB as they pertain to the cost of treating and supplying water, and the Parties shall agree upon a Certified Public Accountant for this purpose. The cost of such an audit shall be borne by the requesting party or parties.

#### ADMINISTRATION AND OPERATION.

22. The entire Project, including construction and operation, shall be administrated by MUPB subject only to the terms and conditions set forth herein and in accordance with all applicable laws and regulations.

23. This INTERLOCAL AGREEMENT shall not be deemed to have created a legal or administrative entity.

24. MUPB as administrator shall be charged with the acquisition, holding, and disposing of all property, both real and personal, associated with the Project and shall do so in accordance with all applicable laws and regulations.

25. MUPB is charged with management of the storage capacity and volume allocated to RWI and BCWD in the MUPB water system. The parties will jointly develop a storage operation and management plan, which will address management of the storage volume in the event of a power failure, treatment plant breakdown, and other similar events which may interrupt normal operation and management.

26. RWI and BCWD shall continue to own and operate, at said points of delivery, the necessary metering equipment, including, but not limited to meter houses or pits, and required devices of standard type for properly measuring the quantity of water furnished by MUPB to RWI and BCWD. Said meters shall be checked and maintained at the expenses of the owners, by a qualified agent satisfactory to all parties hereto, at least once

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BY Charles L. Dow  
EXECUTIVE DIRECTOR

every twelve (12) months. A meter registering no more than two (2%) percent above or below the test results shall be deemed to be accurate. The previous reading of any meter disclosed by the test results shall be deemed to be accurate. The previous reading of any meter disclosed by the test to be inaccurate shall be corrected for the six (6) months previous to such test in accordance with the percentage of inaccuracy found by such tests. If any meter fails to register for any period, the amount of water furnished during such period shall be deemed to be the amount delivered in the corresponding period immediately prior to the failure, unless MUPB and the owner of said meter agree upon a different amount. The metering equipment shall be read by MUPB and the owner of said meter on or about the fifteenth (15<sup>th</sup>) day of each month.

27. MUPB shall maintain its accounting system, pursuant to generally accepted accounting procedures, which shall facilitate the identification of costs annually incurred in calculating the costs per one thousand (1,000) gallons of producing and delivering water to RWI and BCWD.

#### TERMINATION AND WITHDRAWAL.

28. This INTERLOCAL AGREEMENT shall have a duration of Forty (40) years and shall terminate at the conclusion of that term.

29. Each party acknowledges that upon entering into this INTERLOCAL AGREEMENT they have committed themselves to pay their share of capital cost and additional capital cost as set forth in this agreement Paragraph Numbers 6 and 7, and that all other parties have relied upon that commitment as a material inducement to enter into this INTERLOCAL AGREEMENT.

Should any RWI and/or BCWD wish to withdraw from this INTERLOCAL AGREEMENT, prior to its' expiration date then the following procedures shall be followed:

- a. The party wishing to withdraw from this agreement said Party shall give written notice to all other parties containing the effective date of the withdrawal, which shall not be less than One Hundred Twenty (120) calendar days from the last date the notice is received other parties.
- b. MUPB shall within Sixty (60) days of receipt of the calculate the withdrawing Party's total remaining capital cost under Paragraph Number 6 remaining for the agreed duration of this INTERLOCAL AGREEMENT as set out in Paragraph Number 1 and submit to the withdrawing Party an invoice for said remaining capital cost.
- c. The withdrawing party shall then pay the entire invoice prior to the effective date of withdrawal.

MUPB shall apply said payment of capital cost by the withdrawing party to the outstanding indebtedness on the Project.

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Further, upon the withdrawal of either RWI or BCWD, the withdrawing Party's allotted production, transmission, and storage capacity as set out in Paragraph Numbers 14 and 15 shall on the effective date of the withdrawal be released and forfeited to MUPB and MUPB's obligations to that Party shall terminate and specifically, MUPB shall have no obligation to continue to furnish water to that Party.

30. Withdrawal of either RWI or BCWD from this INTERLOCAL AGREEMENT will not terminate this INTERLOCAL AGREEMENT. However, withdrawal by both RWI and BCWD shall terminate this INTERLOCAL AGREEMENT.

31. Upon termination all property both real and personal shall remain the property of the City and MUPB.

#### REPLACEMENT OF PROJECT FACILITIES.

32. In the event that the Project facilities shall become inadequate to serve the needs of the Parties hereto pursuant to this INTERLOCAL AGREEMENT due to government regulation, technological or physical obsolescence, or because all parties hereto require treated water in excess of their allotted capacities, the Parties agree to jointly participate financially in any reasonably necessary study to determine the most appropriate corrective measures and if necessary to participate financially in the cost of any improvement, expansion, or replacement. At such time this INTERLOCAL AGREEMENT may be renegotiated.

However, this provision shall not be construed in any fashion as allowing termination and this INTERLOCAL AGREEMENT shall during its term always remain in full force and effect terminated as set forth in Paragraph 28 above or until superseded by a subsequent agreement in writing signed by all Parties.

#### RATIFICATION OF AGREEMENT.

33. This INTERLOCAL AGREEMENT shall become binding and enforceable upon duly authorized execution by all Parties, written approval United States Department of Agriculture Rural Development, and upon approval by the Office of the Kentucky Attorney General.

#### MISCELLANEOUS PROVISIONS.

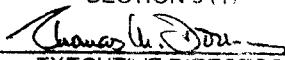
34. Any rights, obligations, or duties arising from this INTERLOCAL AGREEMENT are non-assignable.

35. This INTERLOCAL AGREEMENT may be amended only by written agreement in conformity with all applicable law.

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BY   
EXECUTIVE DIRECTOR

IN WITNESS WHEREOF, the Parties hereto, acting under authority of their respective governing bodies, have caused this INTERLOCAL AGREEMENT to be duly executed in Ten (10) counterparts, each of which shall constitute an original.

DATE: 1/11/01

ATTEST:

Diana Lindsey  
CITY CLERK

CITY OF MOREHEAD, KENTUCKY  
By: [Signature]  
Brad Collins, Mayor

DATE: 11/30/00

ATTEST:

David W. Messer  
SECRETARY

MOREHEAD UTILITY PLANT BOARD  
By: [Signature]  
Ewell Scott, Chairman

DATE: 11/16/00

ATTEST:

[Signature]  
SECRETARY

ROWAN WATER INC.  
By: [Signature]

DATE: 11/17/00

ATTEST:

[Signature]  
SECRETARY

BATH COUNTY WATER DISTRICT  
By: [Signature]

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BY: [Signature]  
EXECUTIVE DIRECTOR

This Interlocal Agreement is in proper form compatible with the laws and regulations of the Commonwealth of Kentucky and is hereby approved.

DATE: \_\_\_\_\_

BEN CHANDLER, ATTORNEY GENERAL  
COMMONWEALTH OF KENTUCKY

This Interlocal Agreement is approved on behalf of the U.S. Department of Agriculture, Rural Utilities Service, this the \_\_\_\_ day of \_\_\_\_\_, 2000.

DATE: \_\_\_\_\_

BY: \_\_\_\_\_  
TITLE: \_\_\_\_\_

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BY Thomas W. Brown  
EXECUTIVE DIRECTOR