

AMENDMENT TO SEWER CONTRACT
AND
SETTLEMENT AGREEMENT

1st Amendment
June 1, 1995

EXHIBIT E

THIS AMENDMENT TO SEWER CONTRACT AND SETTLEMENT AGREEMENT is made and entered into by and between the City of Madisonville, Kentucky, P. O. Box 705, Madisonville, Kentucky 42431, ("Madisonville") and the City of Earlington, Kentucky, 103 West Main Street, Earlington, Kentucky 42410 ("Earlington") and has an effective date of June 1, 1995, irrespective of the actual date of execution;

WITNESS: THAT, WHEREAS, Madisonville and Earlington entered into a Sewer Contract dated as of February 9, 1978; and

WHEREAS, various disputes and litigation have arisen between the cities concerning said contract and the sewer user rate to be paid by Earlington to Madisonville for the treatment by Madisonville of Earlington's waste water and sewage. The two cities originally intended to execute a contract whereby Earlington would pay Madisonville for the cost incurred by Madisonville in treating Earlington's sewage. However, a dispute arose over whether the rate charged by Madisonville reflected the actual cost incurred in treatment; and

WHEREAS, Madisonville is currently constructing a new waste water treatment plant west of Madisonville on the Bean Cemetery Road with funds borrowed from the Kentucky Infrastructure Authority which requires that the City of Madisonville enact an ordinance establishing new sewer rates and fees to be charged which will generate funds sufficient to pay the expenses associated with the construction and operation of the waste water treatment plant; and

WHEREAS, it is the desire of Madisonville and Earlington to amend said Sewer Contract of February, 1978, and to settle the previous litigation and disputes between the parties relating thereto upon the terms and conditions herein stated;

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements of the parties set forth herein, the receipt and sufficiency of said consideration being hereby acknowledged, the City of Madisonville and the City of Earlington do hereby agree as follows:

The City of Earlington shall henceforth pay to the City of Madisonville the actual cost incurred by Madisonville to treat waste

water from Earlington. The parties hereby agree that at the present time the method for calculation this cost is hereinafter reflected in this amendment. This method may, as conditions or methods of treatment change become ineffective for calculating the actual cost of treatment. If this occurs the cities agree that the method of calculation shall be adjusted so as to accurately reflect the cost incurred by Madisonville in the treatment of waste water from Earlington. The current method of calculation of the cost shall be as follows:

Effective June 1, 1995, Earlington shall pay unto Madisonville a sewer user fee of \$1.95 for each 1,000 gallons of Earlington's waste water and sewage treated by the Madisonville Waste Water Treatment Plant as measured by the flow meter at the Madisonville Pump Station No. 3. The \$1.95 per thousand gallon charge was calculated based upon the following formula:

<u>1. Components</u>	<u>Earlington Allocation</u>	<u>Total</u>
Debt Service		
- New KIA Loan	\$ 1,038 ¹	\$ 1,615 ¹
- Existing	275 ²	449 ²
- Coverage	\$ 69 ³	\$ 112 ³
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Subtotal	\$ 1,382	\$ 2,176

¹Annual debt service associated with the \$15,553,000 KIA loan equals the annual debt requirement plus 0.2 percent debt service fee calculated as follows:

$$\$1,007,834 + (\$15,553,000 \times 0.002) = \$1,038,940$$

Total new annual debt service equals the debt service associated with the KIA loan plus the debt service associated with a \$6,100,000 conventional loan calculated as follows:

$$\$1,038,940 + \$575,840 = \$1,614,780$$

Earlington's allocation includes debt service associated with the KIA loan only.

²The existing annual debt service includes a Series 1977 bond issue in the amount of \$329,200 and 21.5 percent of a Series 1994 bond issue in the amount of \$555,866. Therefore, the total existing annual debt service is calculated as follows:

$$\$329,200 + (\$555,866 \times 0.215) = \$448,711$$

Earlington's allocation of existing annual debt service is 83.65 percent of the Series 1977 bond issue (pursuant to Howard K. Bell calculations based on fiscal year ending 06/30/93) calculated as follows:

$$\$329,200 \times 0.8365 = \$275,376$$

³Debt service coverage equals 25 percent of the existing debt service and is calculated as follows:

$$\text{Total Debt Service Coverage} = \$448,711 \times 0.25 = \$112,178$$

$$\text{Earlington's Allocation of Debt Service Coverage} = \$275,376 \times 0.25 = \$68,844$$

O & M Plant	\$ 1,167 ⁴	\$ 1,167 ⁴
O & M Collection	43 ⁵	674 ⁵
Depreciation/ Replacement	\$ 110 ⁶	\$ 541
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Subtotal	1,320	2,382
Total Req. Revenues	\$ 2,702 ⁷	\$ 4,558

⁴Total estimated annual operation and maintenance expense for wastewater treatment consists of all direct charges associated with the new wastewater treatment plant plus 64 percent of the unallocated wastewater system (not allocated to treatment or collection) operation and maintenance costs, specifically including: employee benefits, pension expense, property insurance, refunds/adjustments, telephone/communications, and office supplies. Direct charges associated with the new wastewater treatment plant are estimated to be \$1,036,494 in fiscal year 1996-1997. Unallocated wastewater system operation and maintenance costs are estimated to be \$205,000 in fiscal year 1996-1997. The total estimated annual wastewater treatment operation and maintenance expense is calculated as follows:

$$\$1,036,494 + (\$205,000 \times 0.64) = \$1,167,694$$

Depreciation is not included as an operation and maintenance expense.

⁵Total estimated annual operation and maintenance expense for wastewater collection consists of all direct charges associated with the collection system plus 36 percent of the unallocated (not wastewater system (not allocated to treatment or collection) operation and maintenance costs, specifically including: employee benefits, pension expense, property insurance, refunds/adjustments, telephone/communications, and office supplies. Direct charges associated with the collection system are estimated to be \$599,866 in fiscal year 1996-1997. These direct charges include the existing collection system (\$529,591), new pumping station (\$63,125), and collection system improvements (\$7,150). Unallocated wastewater system operation and maintenance costs are estimated to be \$205,000 in fiscal year 1996-1997. The total estimated annual collection system operation and maintenance expense is calculated as follows:

$$\$599,866 + (\$205,000 \times 0.36) = \$673,666$$

Earlington's percent allocation of total estimated annual operation and maintenance expense for wastewater collection is calculated by dividing the annual wastewater volume from Earlington (measured at the flow meter at Madisonville Pump Station No. 3) by the annual flow recorded at Madisonville's Wastewater Treatment Plant as follows:

$$(87,910 \times 10^3 \text{ gallons} + 1,387,730 \times 10^3 \text{ gallons}) \times 100 = 6.33\%$$

Therefore, Earlington's allocation of total estimated annual collection system operation and maintenance expense is:

$$\$673,666 \times 0.0633 = \$42,643$$

Depreciation is not included as an operation and maintenance expense.

⁶Earlington's allocation of annual depreciation/replacement expense is limited to depreciation/replacement associated with the new wastewater treatment plant and is calculated as follows:

$$(\text{Estimated Total Cost of Construction} \times 10\%) \div 10 \text{ years} = \\ (\$11,000,000 \times 0.1) \div \$110,000$$

⁷Total annual revenue requirements (operation and maintenance costs, replacement costs, debt service and coverage) for facilities used jointly by Earlington and Madisonville

2. Earlington's Rate

$$\frac{\$2,702,000}{3,802^8 \times 365} = \frac{\$2,702,000}{1,387,730^9} = \$1.95/1,000 \text{ gal. ww.}$$

The actual costs incurred by Madisonville to treat all of the waste water at the Madisonville Waste Water Treatment Plant(s) shall be annually calculated at the conclusion of each fiscal year or within a reasonable time thereafter. Madisonville shall provide Earlington with a copy of its audited financial statements within 30 days of receipt of same. The sewer rates set forth above shall remain in full force and effect until January 1, 1997, at which time the rates shall be adjusted according to the formula set forth above based upon the actual previous fiscal year's cost figures as set forth in Madisonville's audited financial statements. Thereafter the sewer rates shall be adjusted annually on January 1 of each year utilizing audit figures for the previous fiscal year ending June 30. Earlington shall have the right to inspect any facilities, instruments, meters, or any machinery connected with the metering of Earlington's waste water or the calculation of the rate to be charged Earlington by pre-arrangement with Madisonville.

Earlington shall pay for all waste water and sewage treated by the City of Madisonville as measured by the flow meter at Madisonville Pump Station No. 3. Earlington shall not be entitled to any adjustment or credit because of any difference between Earlington's metered sales of treated water and the flow meter at Pump Station No. 3, nor shall any adjustment or credit be given to Earlington because of any difference between Madisonville's infiltration and inflow and Earlington's infiltration and inflow.

All other terms of the February 9, 1978 Sewer Contract not inconsistent herewith shall remain in full force and effect.

The City of Madisonville and the City of Earlington each hereby fully releases and forever discharges the other from any and all claims for monies that the other city believes are due and payable from the other relating to the treatment of waste water and sewage

⁸Average daily wastewater flow at the Madisonville Wastewater Treatment Plant divided by 1000

⁹Total annual wastewater flows at the Madisonville Wastewater Treatment Plant

from Earlington as treated and disposed of by the Madisonville Waste Water Treatment Plant through May 1, 1995.

Each city shall pay its own costs and expenses together with all expert and attorney fees arising out of or associated with the previous litigation between the parties relating to the February 9, 1978 Sewer Contract.

All monies previously deposited by Earlington into an escrow account pursuant to an agreement and/or court order are hereby released. Said funds shall be utilized by Earlington for engineering fees and/or construction costs to reduce the Earlington infiltration and inflow either directly or indirectly, or as matching funds necessary to obtain sufficient grants and/or low interest loans by Earlington for the reduction of its infiltration and inflow.

IN WITNESS WHEREOF, the City of Madisonville and the City of Earlington have hereunto caused their duly authorized representatives to affix their names as authorized by resolutions of each governing body, the City of Madisonville on December 4, 1995, and the City of Earlington on December , 1995.

CITY OF MADISONVILLE, KENTUCKY

By: Philip H. Terry
Philip H. Terry
Mayor

Attest:

Gina Munger
Gina Munger
City Clerk

CITY OF EARLINGTON, KENTUCKY

By: Mary E. Shelton
Mary Shelton
Mayor

Attest:

Margaret Demoss
Margaret Demoss
City Clerk

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