

AGREEMENT

THIS AGREEMENT, made and entered into on the 12<sup>th</sup> day of December, 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 responsible for disposing of the refuse of the residents of Fayette County, Kentucky; and

WHEREAS, the Government has established charges, known as solid waste disposal fees (hereinafter "disposal fees") to be charged for services rendered to each resident of the urban services district who receives refuse collection services (hereinafter "customers"); and

WHEREAS, the Government bills customers so served on a periodic basis with such charges being based upon the volume of refuse measured by the number of Herbies or Herbie equivalents (hereinafter "Herbies") allotted for each customer's billing address (Herbies being standardized wheeled waste receptacles provided to facilitate the removal of refuse from residents' property by centralized refuse collection services); 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

**WHEREAS**, the Government has requested the Water Company to perform billing, accounting, and collecting for disposal fees for customers of the Government; and

**WHEREAS**, the Government agrees to furnish the Water Company with data on the number and location of Herbies; and

**WHEREAS**, the Water Company agrees to provide the Government on-line, read only access to the Water Company's database so that the Government can access data regarding the number and location of Herbies at each billing address; and

**WHEREAS**, the Government agrees to provide any changes in the number and location of Herbies to the Water Company in the form of a computer file which the Water Company will use to update its customer records;

**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 should be billed for the disposal fees (the "Joint Accounts"). The Water Company shall bill all such Joint Accounts for the disposal fees on behalf of the Government. Accounts will be billed by the Water Company at a rate based on information on the location and number of Herbies at the billing address and is computed for each monthly

billing at a monthly rate or a daily rate, if applicable, based on the daily data updates provided by the Government pursuant to paragraph 8. Such daily rate will be determined using the same method as is used by the Water Company to pro rate water bills.

2. Any change in the rate to be charged to customers will be effective on the first day of the next billing cycle immediately following notice by the Government to the Water Company of such rate change and will be included on the bill for that billing cycle.

3. The disposal fees billed by the Water Company pursuant to this contract shall be billed on a cycle which is the same as the Water Company uses for the billing of its water service customers.

4. For all Joint Accounts, the Water Company agrees to observe the same diligence, policies and procedures in the billing, accounting and collecting of the disposal fees as it uses in administering the billing, accounting and collecting of its water service accounts, including but not limited to, establishment of payment plans and the preparation and mailing of delinquent notices.

5. In the case of Joint Accounts, the Water Company and the Government will take whatever action is necessary to have the payment of the disposal fees 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 tenant is billed instead of the landlord.

6. The Water Company shall (i) calculate the applicable disposal fees for each of the Government's customers identified

pursuant to paragraph 1; (ii) print a water bill including the disposal fees therefor, and (iii) deposit such bill in the United States mail, with a return envelope pre-addressed to the Water Company. If it does not interfere with the Water Company's requirement for messages and within space limitations, the Water Company shall include on the invoice a message pertaining to the disposal fee upon the Government's request, and include an informational insert one time per year regarding disposal fees or sewer user fees. The cost of the insert will be at the Government's expense and must be designed to meet the weight, dimension and fold requirements of the Water Company.

7. All of the Government's disposal fees, plus any and all applicable federal, state or local sales, use or other tax, which are 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 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. As of the date of this Agreement, the Government has determined that the disposal fees are not subject to any taxes. Should that condition change, when it is practical to

do so, the Government will notify the Water Company in writing at least ninety (90) days prior to the effective date of the change. The Government shall pay the Water Company's additional reasonable expenses to accommodate such change.

8. The Water Company shall maintain accounts receivable data for the Government's customers charged a disposal fee. The Water Company shall provide the Government with on-line, read only access to the Water Company database for the purpose of accessing individual disposal fee billing and payment information by any one of the following: name, service location of Herbies, account number. The Government shall provide a data file listing the customer account numbers and corresponding changes related to the number of Herbies. The Water Company shall, without delay, load this file onto its database to update the number of Herbies on the Joint Accounts. The Government shall, on request, also have the right to run queries related to disposal fees on the Water Company computer. The Water Company will prepare a monthly revenue summary report for the disposal fees and appropriate taxes. This revenue summary shall include the beginning balances, adjustments, payments, billings, write-offs, and ending balances. A monthly summary report shall also provide totals of receivables over thirty (30) days and over ninety (90) days. An aging listing for each account over thirty (30) days and over ninety (90) days shall also be provided monthly. The Water Company shall furnish a report each month which identifies joint accounts which have had no water service for greater than sixty (60) days and a report which identifies new water accounts established for the preceding month.

The Water Company shall furnish, twice a year, a master file of all water accounts in Fayette County listing water account number, address, name, and number of Herbie units. These reports shall be delivered to the Government by the seventh (7th) of the month following the month to which such reports relate.

9. The Government shall have the right, at the Government's request, to perform an audit on site of any records required to determine the accuracy of billing services, accounting, and monthly reports as provided pursuant to this Agreement. 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.

10. For purposes of this Agreement, the water service, sanitary sewer service charges, and disposal fees 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 shall be applied first to the water service portion of the bill. After application of the payment to the water service portion of the bill, any

remaining amounts will be applied first to the disposal fees portion of the bill and then to the sewer user fee.

11. The term of this Agreement shall be for five (5) twelve (12) month periods beginning on April 1, 1997, subject to sufficient funds being appropriated in each fiscal year by the Government. This Agreement may be renewed on an annual basis, by the Government and the Water Company, in writing, for successive twelve month periods, upon the same terms and conditions, subject to the provisions of paragraph 12 and 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 (12) 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.

12. In consideration of the services to be provided to the Government by the Water Company pursuant hereto the Government shall pay the Water Company as follows:

(a) Costs associated with programming the Water Company's books, records and billing equipment to accommodate disposal fees billing, in an amount not to exceed \$55,768.00, which amount represents a one-time payment to the Water Company. This amount shall be paid on or before June 1, 1997. In the event the Government changes its method or rates for disposal fees 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.

(b) The Water Company will issue a bill to the Government within fourteen (14) days after the close of each month, said bill including calculations supporting the invoice amount based on a charge of twenty-four cents (24¢) for each Joint Account billed that month. The bill will be payable within fourteen (14) days of issuance. Requests for payment should be accompanied by a summary of the number of accounts billed. Said charges shall be adjustable 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 12-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 11 herein, the Water Company shall be compensated only for the services provided to the effective date of the termination.

#### **B. MISCELLANEOUS PROVISIONS**

13. 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.

14. The cost of the communication line(s) will be borne equally by both parties.



15. The Water Company shall incur no liability 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, employees, directors, or officers.

The Government agrees to defend, indemnify and hold harmless the Water Company, its employees, directors, officers, 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.

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

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

18. 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 April 1, 1997, unless it is filed with the Commission.

19. 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 April 1, 1997.

LEXINGTON-FAYETTE URBAN COUNTY  
GOVERNMENT  
BY: Pam Miller  
PAM MILLER, MAYOR

ATTEST:

Liz Danzell  
CLERK OF URBAN COUNTY COUNCIL

KENTUCKY-AMERICAN WATER COMPANY  
BY: Roy Mundy  
ROY MUNDY  
VICE-PRESIDENT AND MANAGER

WITNESSED BY:

Patricia Ballard