

RESOLUTION NO. 497 - 2021

A RESOLUTION AUTHORIZING THE MAYOR, ON BEHALF OF THE URBAN COUNTY GOVERNMENT, TO EXECUTE A MULTI-YEAR AMENDED AND RESTATED AGREEMENT WITH KENTUCKY-AMERICAN WATER COMPANY TO PROVIDE WATER USAGE DATA FOR THE CALCULATION OF SANITARY SEWER BILLS AND WATER DISCONNECTION SERVICES ON DELINQUENT SEWER ACCOUNTS, FOR AN AMOUNT ESTIMATED NOT TO EXCEED \$305,000 IN FY 2022.

BE IT RESOLVED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:

Section 1 - That the Mayor, on behalf of the Lexington-Fayette Urban County Government, be and hereby is authorized to execute the multi-year Amended and Restated Agreement, which is attached hereto and incorporated herein by reference, with Kentucky-American Water Company, to provide water usage data for the calculation of sanitary sewer bills and water disconnection services on delinquent LexServ sewer accounts, for an amount estimated not to exceed \$305,000.00 in Fiscal Year 2022.

Section 2 - That an amount, not to exceed the sum of \$305,000.00 in Fiscal Year 2022, be and hereby is approved for payment to Kentucky-American Water Company from accounts 4002-202601-71299, 4121-202601-71299, and 4051-202601-71299 (estimated to be \$53,000.00) and account #4002-011001-24998 (estimated to be \$252,000.00) pursuant to the terms of the agreement.

Section 3 - That this Resolution shall become effective on the date of its passage.

PASSED URBAN COUNTY COUNCIL: September 16, 2021

Linda Gorton

MAYOR

ATTEST:

Alla

CLERK OF URBAN COUNTY COUNCIL

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WATER USAGE DATA AND SHUT-OFF AGREEMENT

THIS WATER USAGE DATA AND SHUT-OFF AGREEMENT (the "Agreement") is made effective as of the 1st day of September, 2021 (the "Effective Date"), by and between **Kentucky-American Water Company**, a Kentucky corporation, with offices located at 2300 Richmond Road, Lexington, Kentucky 40502 (the "Company"), and 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 (the "Government"). Hereinafter the Company and the Government may be referred to individually as a "Party," and collectively as the "Parties."

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

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

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

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

WHEREAS, the Company is authorized, pursuant to Chapter 96 of the Kentucky Revised Statutes, to furnish the Government with customer Water Usage Data, which is defined below; and

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

WHEREAS, the Government has requested the Company to provide customer Water Usage Data to the Government that will enable the Government to compute and bill Users the charges for sanitary sewer service; and

WHEREAS, the Government has requested the Company to perform services for the termination of water service for reason of delinquency in the payment of any sanitary sewer service

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service charge and to reconnect such water service upon repayment of all charges, including reconnect charges; and

WHEREAS, the Company is willing to furnish the requested customer Water Usage Data to the Government and to terminate and reconnect such water service pursuant to the terms and conditions hereinafter set forth; and

WHEREAS, the Parties previously entered into a September 1, 2012 Water Usage Data and Shut-Off Agreement and the Parties agreed to a March 3, 2016 Amendment to that September 1, 2012 Water Usage Data and Shut-off Agreement both of which are still in effect; and

WHEREAS, the Parties desire to restate and replace the September 1, 2012 Water Usage Data Shut-Off Agreement, as amended, in its entirety, with this September 1, 2021 Agreement.

NOW, THEREFORE, in consideration of the foregoing recitals and the mutual promises contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereto agree as follows:

1. Definitions

A. "Sewer Collection and Treatment Charges" means the charges, including any applicable fees, charges, penalties, interest, or taxes, billed by the Government to a User related to use of the Government's sewer collection and treatment system.

B. "Term" means the period of time the Agreement is in force (including any renewal) with the initial period beginning on the Effective Date and ending on the fourth anniversary thereof (the "Initial Term"), unless terminated earlier pursuant to Section 7. This Agreement shall automatically renew at the end of the Initial Term, and thereafter at the end of each twelve-month renewal term upon the same terms and conditions contained in this Agreement or applicable revised version of this Agreement.

C. "User" or "Users" means any person(s), entity(s) or premise that discharges sewage or wastewater into the Government's sewer collection and treatment system and is a customer of the Company.

D. "Water Usage Data" means customer name, mailing address, service address, account number, status of account, class of customer, days in billing period, type/size of meter, date of current meter reading, and water usage for the billing period stated in the units of measure used by the Company.

2. Customer Water Usage Data

A. The Government shall be responsible for sanitary sewer customer billing, accounting and collecting payments for Users.



B. In performance of the September 1, 2012 Water Usage Data and Shut-Off Agreement, as amended, the Company has provided, and the Government has received, a current list of the Company's water customers. Going forward, the Company will provide, on a monthly basis, a listing of all new water taps performed by the Company in Fayette County for the preceding month. Within thirty (30) days after receipt of that listing, the Government will provide a list of premises of new Users for which Water Usage Data will be provided pursuant to this Agreement. In providing this list, the Government may also provide additional premises for which it seeks Water Usage Data pursuant to this Agreement due to the addition of new Users as a result of existing water accounts with recently added sewer service. Within thirty (30) days after receipt of that listing, the Company will add the premises and start furnishing the Government Water Usage Data for the new Users. In the event the premises cannot be reconciled, the Company will notify the Government within thirty (30) days and the parties shall work together to reconcile.

C. The Company will provide Water Usage Data to the Government for all Users via a secure website maintained by the Company. The Company will maintain on the website the most recent ninety (90) days' worth of Water Usage Data which will be accessible for download by the Government. The website will also be accessible by any billing agents assigned by the Government. This most recent ninety (90) days' worth of Water Usage Data will be updated every Monday.

D. The Government agrees to pay the Company at the rate of \$0.04 (four cents) per unit each month in which the Government obtains Water Usage Data from the Company. It is understood and agreed by the Parties hereto that the word "unit" as used herein shall mean the specific current meter readings for each User and all data related to each corresponding reading. The ninety (90) days' worth of information that will be updated weekly will include Water Usage Data for the most recent month. The Government shall pay \$0.04 (four cents) per unit only for the most recent month's updated information and will not be obligated to pay again for the historical information that will range in age from greater than one month to ninety (90) days. In no case shall the Government be obligated to pay for the same Water Usage Data twice.

E. It is understood and agreed by the Parties hereto that the above unit rate shall remain in effect through September 1, 2022. Thereafter, this rate shall be subject to adjustment for each succeeding calendar year, beginning October 1, 2022, based on charges in the All Cities Consumer Price Index for All Urban Consumers published by the Bureau of Labor Statistics of the United States Department of Labor ("BLI"). The amount to be charged per bill shall be adjusted by a factor determined by averaging the monthly CPI-u published for the twelve-month period ending August 31 of the year before the adjustment. In the event that said BLI index is discontinued at any time during the term hereof, the Parties shall use the BLI index that replaces it, or another index mutually agreed upon by the Parties. The Company shall provide the Government with written notice at least thirty (30) days in advance of any such adjustment.

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F. The Company shall bill the Government for Water Usage Data furnished to the Government within fourteen (14) days of the close of each month. The Government shall pay for such information within thirty (30) days of receipt of the Company's invoice.

G. In computing and furnishing the information requested by the Government, the Company agrees to observe the same diligence, policy and procedure as is used by it in computing its water service accounts, but the Company assumes no liability for errors in the computation or furnishing of Water Usage Data.

3. Shut-off Services

A. When the Government determines, in accordance with applicable Kentucky law, that a User's Sewer Collection and Treatment Charges are in arrears after rendition to the User of a written notice of such charges, it may choose to make a specific written request to the Company to terminate water service to the Government's User. In doing so, the Government shall in a writing signed by an authorized representative, certify to the Company, at an office or location so designated by the Company, the following:

- (1) the name of the User that is in arrears in payment of Sewer Collection and Treatment Charges;
- (2) the address of the premises where such sewer service is received;
- (3) the premise number where such sewer service is received; and
- (4) that the Government has complied with its policies and procedures regarding the billing and shut-off notification process.

B. In accordance with Section 4 below, upon receipt of the written request and certification as set out above, the Company shall, within twenty (20) days, send an employee of the Company to the premises as identified by the Government and terminate the water service to such premises.

C. Notwithstanding anything to the contrary herein stated, the Company reserves the exclusive right, at its sole discretion, to process the Government's requests for termination of water service on such schedules and at such times as is convenient to the Company and are consistent with the Company's normal business practice and procedure subject to the delay penalty in Section 3(E) below.

D. The Company's actions required under this Agreement shall be excused if, due to matters beyond its control the manpower or resources that would have been devoted to shut-offs are needed elsewhere. This may include, but is not necessarily limited to employee work stoppages, strikes, inclement weather and other emergencies. A requested water shut-off will not be completed if the Kentucky Public Service Commission ("KPSC"), a local board of health, municipality, fire district, court of competent jurisdiction or other governmental entity having jurisdiction issues an instruction to the Company so stating. At such time, the Company will relay



such conflicting instructions to the Government and the Company will not knowingly take further actions toward shut-off until the appropriate governmental entity or the Government notifies the Company in writing that the conflict with the shut-off(s) has been resolved and provides written evidence thereof.

E. If the Company wrongfully fails or refuses to terminate water service in accordance with 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 Company shall be liable to the Government for any amount due from the User involved. The Parties agree that this is the exclusive remedy for the Company's failure or refusal to terminate water service pursuant to this Agreement.

F. In no event shall the Company be required to disconnect a fire line service.

4. Shut-off Services/Reconnection Procedure

A. The Government shall send a water termination notification letter to any User that is eligible for shut-off due to the nonpayment of the Government's Sewer Collection and Treatment Charges.

B. When the Government's User is different than the Company's customer of record (e.g., owners and tenants of a multifamily dwelling), the Government shall also provide appropriate notification to the Company's customer of record.

C. Any User who receives a termination notice from the Government shall be afforded a 10-day grace period to submit payment to the Government before the actual termination. It is the Government's sole responsibility to keep track of the 10-day grace period and determine whether a premise is eligible for disconnection.

D. The Company is committed to completing up to and including 100 shut-off orders per week for 50 weeks of per year for the Government.

E. The Company's Special Accounts department will perform an analysis each business day of those accounts provided by the Government for shut-off and notify the Government via a secure website maintained by the Company and any billing agent identified by the Government with the status of the account (i.e., disconnected or active) by the close of business.

F. To initiate a release for the resumption of water service after a User has paid the outstanding charges, the Government will notify the Company that the User has paid the outstanding charges and get a confirmation that the Company's Special Accounts department has received that notification via a secure website maintained by the Company.

G. Reconnection of water service by the Company will be scheduled under the standard provisions for all Company customers. A reconnection order will be scheduled for 08/16/2021



the same day if placed prior to 2 p.m. If placed after 2 p.m., the reconnection order will be scheduled for the next business day.

H. The Company will immediately update the service order noting that the account has been released for reconnection by the Government and will notify the Government and its billing agent via a secure website maintained by the Company upon doing so.

5. Shut-off Services Fees

A. The Government shall pay to the Company an annual fee in the sum of \$252,000 per year, which shall be paid in equal monthly installments within thirty (30) days of receipt of a monthly invoice from the Company. This fee covers 4,500 shut-offs per year by the Company on behalf of the Government (90 sewer-related shut-offs per week for 50 weeks x \$56.00 = \$252,000). This fee covers up to and including 90 sewer shut-offs per week for 50 weeks per year at \$56.00 each. The parties understand that the Government may request more than 90 shut-offs per week, but in no instance will the Company be obligated to perform more than 100 shut-offs in any given week. If the Company performs more than 4,500 sewer-related shut-offs per year the Government shall pay the Company for each such additional shut-off at \$56.00 or the then applicable KPSC-approved Reconnection Charge set forth in the Company's tariff on file with the KPSC at the time the shut-off occurred, whichever is greater. Any such additional amount will be reconciled by the parties and paid by the Government at the end of each year.

B. The \$56.00 rate per shut-off is based upon the Company's approved tariff for Reconnection Charge on file with the KPSC. Upon approval by the KPSC of a new Reconnection Charge greater than \$56.00 in the Company's tariff, the annual fee owed by the Government to the Company shall be recalculated from the KPSC's approval date forward using the newly approved tariff rate for the Reconnection Charge.

6. Covenants of the Government

A. The Government hereby acknowledges that it cannot unilaterally alter the terms of this Agreement through the adoption of an ordinance.

B. Pursuant to KRS 96.942, unless negligent or otherwise improper in its conduct, the Company shall not be liable for any loss, damage, or other claim asserted by the Government's users, the owner and/or tenant of the premises, the water customer, the Government or any other person, corporation or entity based upon or arising out of the termination of water service at the request of the Government.

C. Notwithstanding anything to the contrary, should a new customer who was not a User at the time the arrearage owed to the Government was incurred at a terminated premise apply for water service to that premise, the Company may provide such service and the Government will not look to such new water customer for payment of the prior sewer arrearage for that premises.



If to the Company: Kentucky-American Water Company
Attn: Vice President of Operations
2300 Richmond Road
Lexington, KY 40502

With a copy to: Kentucky-American Water Company
Attn: Corporate Counsel
2300 Richmond Road
Lexington, KY 40502

or to such other address with respect to a Party as such Party shall notify the other in writing as above provided. Except as otherwise provided in this Agreement, any such notice shall be deemed to be given on the day personally delivered, one (1) day after the date on which the same was deposited with a nationally recognized overnight delivery service, or five (5) business days after the date on which the same was deposited in a regularly maintained receptacle for the deposit of United States mail, in each case addressed and sent as aforesaid.

9. Applicable Law

This Agreement shall be construed and its performance shall be determined in accordance with the laws of the Commonwealth of Kentucky, without regard to its conflict of laws rules.

10. Successors and Assigns

This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and assigns, but shall not be assignable by any third party hereto without the prior written consent of the other Party. Any attempted assignment shall be void.

11. Severability

The invalidity of any provision or part of this Agreement shall not be deemed to affect the validity of any other provision. In the event that any provision or part hereof is held illegal, unenforceable or invalid, both Parties agree that the remaining provisions shall be and remain valid and enforceable to the fullest extent permitted by law.

12. Complete Agreement

This Agreement contains the entire agreement between the Parties hereto with respect to the obligations contained herein and supersedes all prior agreements and understandings between the Parties with respect to the subject matter thereof.



13. Amendment

This Agreement may be amended at any time by mutual agreement of the Parties that is reduced to writing and signed by all Parties.

14. Captions

The captions in this Agreement are included for purposes of convenience only and shall not be considered a part of this Agreement in construing or interpreting any provision hereof or herein contained.

15. Waiver and Other Action

The failure of any Party to exercise any right, power or option given it hereunder, or to insist upon strict compliance with the provisions hereof, shall not constitute a waiver of the terms and conditions of this Agreement with respect to any other or subsequent breach thereof, nor a waiver by such Party of its rights at any time to require exact and strict compliance with all the terms hereof. The rights and remedies under this Agreement are cumulative to any other rights or remedies which may be warranted by law.

16. Warranties as to Authority; No Conflict

The individuals executing this Agreement hereby warrant that they have the proper authority to enter into this Agreement on behalf of the Party for whom they are signing and that any and all necessary corporate actions or resolutions, if any, necessary to that Party's entry into this Agreement have been duly adopted. Neither the execution of this Agreement, nor the consummation or performance of any of the transactions contemplated hereby will, directly or indirectly (a) contravene, conflict with, or result in a violation of any resolution, ordinance or other law adopted by the Government, or (b) give any person the right to challenge any of the transactions contemplated hereby or to exercise any remedy or obtain any relief under any such resolution, ordinance or law.

17. Counterpart Execution

This Agreement may be executed in one or more counterparts, all of which taken together will constitute one and the same instrument, and this Agreement shall not be binding on the signatories hereto until all such parties have executed this Agreement.

18. Regulatory Filing

Notwithstanding any language to the contrary, after the Agreement is executed by the Parties, the Company shall file the Agreement with the KPSC.

IN WITNESS WHEREOF, the Parties have duly executed this Agreement effective as of the day and year first above written.



The Company

Kentucky-American Water Company, Inc.

By: 
David Farrar, Vice President, Operations

The Government

Lexington-Fayette Urban County Government

By: 
Linda Gorton, Mayor

