

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

**RECEIVED**

JUN 9 2017

PUBLIC SERVICE  
COMMISSION

IN THE MATTER OF:

JOINT APPLICATION OF FARMDALE  
DEVELOPMENT CORPORATION AND  
FARMDALE SANITATION DISTRICT FOR  
THE APPROVAL OF THE TRANSFER OF A  
WASTEWATER TREATMENT PLANT TO  
FARMDALE SANITATION DISTRICT

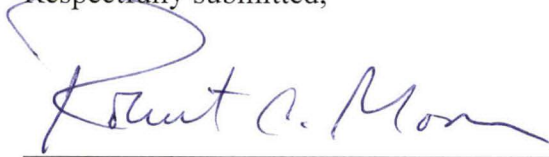
CASE NO. 2017-00204

**NOTICE OF FILING OF OPERATION AND MAINTENANCE AGREEMENT**

Comes Farmdale Development Corporation (“Farmdale Development”), by counsel, and hereby files a copy of the Operation and Maintenance Agreement (“Agreement”) entered into by Farmdale Sanitation District (“District”) and Professional Wastewater Services, LLC, reflecting that the District has employed a company capable of competently and professionally operating and maintaining the Farmdale WWTP and collection system upon its transfer to the District.

The Agreement provides that it is to commence on May 1, 2017, or such other mutually acceptable date, and includes the Farmdale WWTP and collection and transmission system as facilities to be operated and maintained pursuant to the Agreement. The Agreement sets forth the full range of services to be provided by Professional Wastewater Services, LLC, including but not limited to routine operations and preventative maintenance services, emergency callout services, regulatory compliance services and preparation of necessary records and reports.

Respectfully submitted,



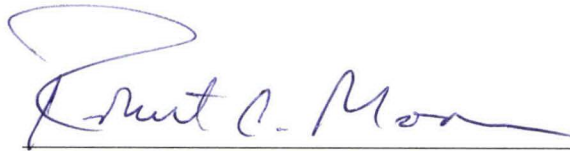
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Robert C. Moore  
STITES & HARBISON PLLC  
421 West Main Street  
P.O. Box 634  
Frankfort, KY 40602-0634  
Telephone: (502) 223-3477  
Email: rmoore@stites.com  
COUNSEL FOR JOINT APPLICANTS

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served by United States First Class Mail, postage prepaid, on this 9th day of June, 2017 upon:

Rick Sparks  
Franklin County Attorney  
222 St. Clair Street, Suite 2007  
P.O. Box 73  
Frankfort, KY 40602



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Robert C. Moore

# **OPERATION AND MAINTENANCE AGREEMENT FOR FARMDALE SANITATION DISTRICT**

This **OPERATION AND MAINTENANCE AGREEMENT** (the "Agreement"), dated May 1, 2017, between the **Farmdale Sanitation District** whose address is 313 West Main St., Frankfort, KY 40601 (the "Owner"), and Professional Wastewater Services, LLC (the "Operator"), whose address is 238 Westover Road, Frankfort, KY 40601.

## **Recitals**

WHEREAS, Farmdale Sanitation District is the owner of the sanitary sewer collection, transmission and treatment systems, this being the Edgewood, Farmgate, Meadowbrook, Coolbrook, Evergreen and Farmdale WWTP's, including the respective sanitary collection and transmission systems and the respective wastewater treatment plant, all being designed to receive and treat the sanitary sewage of the properties served, respectively, by the sanitary sewer systems and which are located on the Owners property (the "Facilities"); and

WHEREAS, the Owner desires to engage the Operator to operate and maintain the Facilities on behalf of the Owner, and the Operator desires to accept such engagement; and

WHEREAS, the Owner is authorized by law to enter into this Agreement.

NOW, THEREFORE, in consideration of the promises and the mutual covenants herein contained, the parties agree as follows:

## **Article 1**

### **Standard Services**

**1.1 Operation and Maintenance.** Commencing on May 1, 2017, or such other date mutually acceptable in writing to the Operator and the Owner (the "Effective Date"), the Operator will provide all routine maintenance of the Owner's Facilities on a 7 day per week basis within the System Capabilities of the Facilities as specified in the original plans for the system, and to include subsequent structural changes (the "System Capabilities"). For purposes of this Agreement, routine operation and maintenance shall include all activities necessary to satisfy the requirements imposed on the Owner by the existing Discharge Permits (the "Discharge Permits"), currently applicable to the Facilities and described further in Sections 1.2 through 1.8.

**1.2 Routine Operations and Preventive Maintenance Services.** The Operator will perform routine and/or repetitive activities required to operate the Facilities and to maximize the service life of the equipment and Facilities. These services include the Operator's personnel, vehicle costs, and basic tools. In general, these services are to be provided on a daily basis to include those in the Best Management Practices (the "BMP").

**1.3 Corrective Maintenance Services.** The Owner shall contract with others for specialized mechanical, electrical, and other specialized maintenance services and in doing so assumes responsibility for the replacement parts, materials, and associated component costs. The Operator will identify the need for corrective maintenance during its routine operation and either perform the corrective maintenance as needed or flag the item for attention by a third party electrical or mechanical contractor. The Operator shall consult with and obtain approval from the Owner on any single maintenance expenditure expected to exceed \$250.00; provided, however, that the Owner Liaison may approve maintenance or other expenditures exceeding \$250.00, without other Owner approval, if in reasonable judgment of the Owner Liaison such expenditures are necessary to prevent or alleviate an emergency situation. Otherwise, the Operator shall have the authority to charge lesser items to the maintenance budget as necessary and appropriate to maintain the system.

**1.4 Emergency Callout Services.** The Operator shall provide personnel to respond to emergency callouts from power outages, storm response, and alarm callouts on a 24/7 basis. Emergency callout services may be provided at any time.

**1.5 Laboratory Services.** The Owner will be responsible for contracting with a state certified laboratory for the collection of all system and groundwater samples in accordance with the frequency and parameter requirements of the Discharge Permit.

**1.6 Staffing.** The Operator will provide employees of the Operator for the staffing of the Facilities both for routine operations and on an emergency callout basis. The operator shall be deemed to be an independent contractor for purposes of applicable wage, fringe benefit, and worker compensation laws.

**1.7 Liaisons.** The Operator's primary liaison regarding decisions and other matters related to the operation of the Facilities shall be with the Owner Liaison. If requested, or necessary, the Operator will also communicate with Owner's Engineer. The Operator shall serve as the Owner's liaison to regulatory agencies in matters related to the operation of the Facilities.

**1.8 Regulatory Compliance.** Subject to the limitations of the System Capabilities, the Operator shall operate the Facilities in compliance with current state and federal regulatory requirements and the Discharge Permit.

**1.9 Reports and Records.** The Operator will prepare and sign, as appropriate, all reports required by state and federal regulatory agencies, and will maintain other records deemed useful by the Operator and Owner to monitor and control the operation of the Facilities. The Operator will cooperate with the Owner in providing records and reports in the format deemed by the Owner to be most suitable to its needs, and to include all pertinent information held by

the Operator. The Operator shall prepare and timely submit to the Owner monthly activity reports including a summary of routine preventative maintenance, corrective maintenance, and emergency callouts. The Operator shall also, annually, compile a general summary of significant events, including monthly reports, alarm callouts with the answering service log, maintenance cost reports, results of any tests, and any other concerns or situations affecting the Facilities.

## Article 2

### Responsibilities of the Operator

**2.1 Non-Routine Services.** Additional services, including the cost of labor, parts and subcontractors, not considered routine under this Agreement or required as a result of flood, fire, Act of God or other force majeure, civil disturbance, or other event or circumstance beyond the Operator's control (collectively, "Non-Routine Services"), are not included in the Standard Services as defined in Article 1. The Operator will assist the Owner in obtaining or providing, or the Operator will obtain and provide, any such services so required, and the Operator will be paid for such Non-Routine Services in accordance with Section 4.4. If such services are provided by subcontractors or other third parties, the contractors or other third parties shall bill the same directly to the Owner, except as to incidental or minor purchases.

**2.2 Performance of Duties and Obligations.** The operator shall perform the services and duties under this Agreement in accordance with the standard of care and diligence normally provided by other professionals providing similar services.

**2.3 Insurance Coverage.** The Operator will provide and maintain at all times during the term of this Agreement the following minimum coverage:

- (a) General Liability Insurance of ONE MILLION DOLLARS (\$1,000,000);
- (b) Excess Liability Insurance of ONE MILLION DOLLARS (\$1,000,000);
- (c) Automobile Liability Insurance of FIVE HUNDRED THOUSAND DOLLARS (\$500,000);

The operator will furnish the Owner with Certificates of Insurance as evidence that policies providing the required coverage and limits are in full force and effect, and shall update such certificates within thirty (30) days of any change on the policies and coverage such that the Owner shall file a copy of current and effective certificates in the Owner's office on an ongoing basis. Such policies shall provide that no less than thirty (30) days advance notice of the cancellation, termination, or material alteration shall be sent directly to the Operator and the Owner.

**2.4 Proprietary Rights.** All facility records, data, software, and information, including, but not limited to, operation reports, laboratory data, and budgetary and financial information shall remain the property of the Owner. All operating procedure guidelines, preventive maintenance

programs, and plat evaluation reports shall, upon termination of this Agreement, remain the property of the Owner.

**2.5 The Operator's Equipment.** Any temporary or portable equipment which is provided by the Operator during the term of this Agreement and which is not deemed part of the Facilities shall remain the property of the Operator upon termination of this Agreement. Any temporary or portable equipment that is part of the Facilities or, which is purchased with the Owner's funds, shall remain property of the Owner upon termination of this Agreement. The Operator shall not make any capital replacements of the Facilities or any component thereof without the prior written approval of the Owner.

**2.6 Responsibility for Testing and Monitoring.** It shall be the responsibility of the Operator to coordinate with a Third Party State Certified Lab of the Owners choice to ensure proper collection of Effluent samples for the purpose of required testing.

**2.7 Services.** The operator shall submit invoices for services hereunder on a monthly basis, following the end of each preceding month.

**2.8 Licenses.** The Operator shall maintain the appropriate licenses in accordance with regulations mandated by the State.

### Article 3

#### Responsibilities of the Owner

**3.1 Basic Owner Responsibilities.** As a part of this Agreement, the Owner agrees to perform all functions and retail all responsibilities and obligations related to the Facilities not expressly assumed herein by the Operator, including without limitation, the following:

(a) The Owner shall obtain and maintain in full force and effect all warranties, easements, permits, <sup>APAs</sup> licenses, and other approvals and consents necessary to operate and maintain the Facilities as owner of the Facilities and components parts thereof.

(b) The Owner shall be responsible for prompt payment of the Operator for any and all services rendered. Any billing adjustments shall be credited to the next billing cycle, and shall not be the basis for delay or withholding of payment.

(c) The Owner shall be responsible for expenditures for all capitol and/or replacement, corrective maintenance, and for all repairs and replacement of the Facility assets.

(d) The Owner shall enforce all property ordinances, including those pertaining to user pretreatment standards and provide for the billing and collection of all user fees and rates pertaining to the Facilities.

(e) The Owner shall, at all times, provide access to the Facilities for the Operator, its agents, and employees.

(f) The Owner shall provide security at the Facilities including keyed alike locks or other mechanisms to secure the Facilities.

(g) The Owner shall pay for phone service for automatic alarm systems, in addition to the Operator's standard services.

(h) The Owner shall provide the Operator the use of all existing equipment owned by the Owner necessary for the operation and maintenance of the Facilities.

(i) The Owner shall be responsible for damage and liability to the Facilities or components thereof caused by flood, fire, Acts of God or other force majeure, civil disturbance, Acts of War, terrorism or misuse of property caused other than by acts, errors or omissions of the Operator.

(j) The Owner shall be responsible for all fines and penalties imposed for process upsets, violation of discharge limits, and violation of Discharge Permits attributable to the operation and maintenance for the Facilities together with the related costs and expenses, except as caused by the acts, errors or omissions of the Operator.

(k) The Owner shall designate a person (Owner Liaison) to act as liaison with the Operator in connection with the performance of services by the Operator under this Agreement.

(l) The Owner shall be responsible for all claims, damages and liability resulting for the backup of wastewater in the collection system except as caused by the acts, errors or omissions of the Operator.

(m) The Owner shall contract with a third party to assist the maintaining and repairing of sewers, cleanouts, outfalls, and other appurtenances not constituting the Facilities.

(n) The owner shall be responsible for the selection and payment of a state certified laboratory.

#### **Article 4**

##### **Compensation**

**4.1 Routine Operations and Preventative Maintenance Services.** As compensation for Services, as outlined in Section 1.2, the Owner shall pay the Operator a flat rate of FOUR THOUSAND FIVE HUNDRED DOLLARS (\$4,500.00) per month.

(A) Coolbrook – ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500.00) per month.

- (B) Edgewood – ONE THOUSAND DOLLARS (1,000.00) per month.
- (C) Evergreen – TWO HUNDRED FIFTY DOLLARS (\$250.00) per month.
- (D) Farmdale – ONE THOUSAND DOLLARS (\$1000.00) per month.
- (E) Farmgate – FIVE HUNDRED DOLLARS (\$500.00) per month.
- (F) Meadowbrook – TWO HUNDRED FIFTY DOLLARS (\$250.00) per month.

**4.2 Corrective Maintenance Services.** As compensation for Services as outlined in Section 1.3, the Owner shall pay the Operator on a Time and Materials base rate of \$50.00 per man-hour for maintenance services.

**4.3 Emergency Callout Services.** As compensation for Services as outlined in Section 1.4, the Owner shall pay the Operator on a Time and Materials base rate of \$50.00 per man-hour for callout services.

**4.4 Locating Services.** As compensation for locating sewer lines in the Owner's collection system the Owner shall pay the Operator on a Time and Materials base rate of \$50.00 per man-hour for locating services.

**4.4 Non-Routine Services.** Cost for Non-Routine Services provided by the Operator pursuant to Section 2.1 shall be paid by the Owner to the Operator separately on a Time and Materials basis. Time shall be billed within accordance with the Operator's standard published rates at the times services are rendered, or by lump sum, or by project specific quote.

**4.5 Other Contractors.** Any services provided directly to the Owner by others are not covered under this Agreement.

**4.6 Rates Frozen.** The Operator agrees to freeze the base rates outlined in Section 4.1, 4.2 and 4.3 for the term of this Agreement.

## **Article 5**

### **Term of Agreement**

**5.1 Term.** This Agreement shall remain in full force and effect for 12 months from the Effective Date and is subject to all of the terms hereof. Not less than three months prior to the expiration of 12 months after the Effective Date, the Operator may present a proposal to the Owner to extend or renew this Agreement, for the Owner's consideration, in the Owner's sole discretion.

## **Article 6**



## Termination

**6.1 Termination by the Owner.** This Agreement may be terminated upon 30 days written notice given by the Owner to the Operator for default by the Operator. In the event of a default by the Operator, this Agreement shall not be terminated if the Operator fully cures the default within such 30 day period.

**6.2 Termination by the Operator.** This Agreement may be terminated upon 30 days written notice given by the Operator to the Owner for default by the Owner. In the event of default by the Owner, this Agreement shall not be terminated in the Owner fully cures the default within such 30 day period.

**6.3 Termination Without Cause.** This Agreement may be terminated by either the Operator or the Owner for any reason by giving 90 days written notice to the other party.

## Article 7

### Miscellaneous

**7.1 Assignment.** This Agreement may not be assigned by either party hereto except with the written consent of the other party.

**7.2 Previous Agreements.** This contract shall be the only agreement between the parties for the services described herein, and this agreement shall supersede and replace any previous agreements for similar services.

**7.3 Entire Agreement.** This Agreement represents the entire agreement of the parties and may only be modified or amended in writing signed by both parties.

**7.4 Notices.** Written notices required to be given under this Agreement shall be deemed given when mailed by first class mail to the Operator, Attention: Kenneth Hogsten, and to the Owner, Attention: Susan, Owner Liaison at the address set forth for each in the opening paragraph of this Agreement.

**7.5 Claims and Rights.** No waiver, discharge, or renunciation of any claim or right of the Operator arising out of breach of this Agreement by the Owner shall be effective unless in writing signed by the Operator and supported by separate consideration.

**7.6 Captions.** The captions or headings of the various articles and sections of the Agreement are for convenience only and they shall be ignored in interpreting the Agreement.

**7.7 Governing Law.** This Agreement shall be deemed to have been made in Franklin County, Kentucky, and shall be governed by, and construed in accordance with, the laws of the State of Kentucky.

**7.8 Third Party Liability.** Except as specifically stated in this Agreement, this Agreement does not create any rights or benefits to parties other than the Owner and the Operator.

**7.9 Disputes.** With respect to any dispute arising under this Agreement, the parties shall have all rights and remedies available by law, including but not limited to the submission of a dispute to arbitration if both parties agree to do so and agree to be bound by the decision of the arbitrator.

**7.10 Authority to Contract.** Each party warrants and represents that it has authority to enter into this Agreement.

**7.11 Modifications.** This Agreement may not be modified or amended except in writing, signed by both parties and which expressly states that is intended to modify or amend this Agreement.

IN WITNESS WHEREOF, the Owner, by it duly authorized representative, and the Operator, by its duly authorized officer, has executed this Agreement as of the date and year first above written.

WITNESSES:

Joy C. Pease  
\_\_\_\_\_

OWNER

BY: Allan P. Pledge 4/29/2017  
(NAME) (DATE)

ITS: Chairman, Farmdale Sanitation Dist.  
(TITLE)

WITNESSES:

Joy C. Pease  
\_\_\_\_\_

OPERATOR

BY: [Signature] 4/27/2017  
(NAME) (DATE)

ITS: Owner, Professional Wastewater Services, LLC  
(TITLE)