

Sewer O&M

OPERATING AGREEMENT

This is an Operating Agreement, having an effective date of July 1, 2016, made and entered into by and between the **SOUTHERN WATER AND SEWER DISTRICT**, P. O. Box 610, McDowell, Kentucky 41647, hereinafter referred to as “Southern”; and the **PRESTONSBURG CITY’S UTILITY COMMISSION**, 2560 South Lake Drive, Prestonsburg, Kentucky 41653, hereinafter referred to as “PCUC”;

WITNESSETH

WHEREAS, the Southern Water and Sewer District (the “Southern”) is a water district organized under the provisions of KRS Chapter 74;

WHEREAS, Southern currently owns and operates water supply, treatment, and distribution facilities (the “Southern Water System”) and wastewater collection and treatment facilities (the “Southern Wastewater System”);

WHEREAS, the Prestonsburg City’s Utility Commission (the “PCUC”) is a duly organized and existing independent, component unit and agency of the City of Prestonsburg;

WHEREAS, PCUC currently owns and operates both water supply, treatment, and distribution facilities (the “PCUC Water System”) and wastewater collection and treatment facilities (the “PCUC Wastewater System”);

WHEREAS, portions of the PCUC Water System are adjacent to the Southern Water System and portions of the PCUC Wastewater System are adjacent to the Southern Wastewater System;

WHEREAS, Southern is facing imminent enforcement actions by the Division of Enforcement of the Kentucky Energy and Environment Cabinet (the “DOE”) for alleged wastewater violations;

WHEREAS, the DOE is likely to view favorably PCUC’s proposed operation and maintenance of Southern’s Wastewater System and PCUC’s proposed rehabilitation of the Wayland Wastewater Treatment Plant and lift stations;

WHEREAS, the consolidation of Southern’s Wastewater System with PCUC’s Wastewater System will achieve greater economies of scale, will mitigate any civil penalties arising from any administrative or legal proceedings concerning the operation of Southern’s Wastewater System, and will allow the combined wastewater systems to be managed, operated, and maintained in a more cost effective manner;

WHEREAS, PCUC employs more experienced, certified wastewater treatment plant operators and other wastewater personnel than does Southern;

WHEREAS, PCUC has greater financial resources than Southern;

WHEREAS, PCUC is willing to operate and maintain Southern's Wastewater System, if there is a plan in place to ultimately transfer ownership of Southern's Wastewater System to PCUC;

WHEREAS, PCUC is willing to undertake, at its own expense, the immediate rehabilitation of the Wayland Wastewater Treatment Plant and lift stations, if there is a plan in place to ultimately transfer ownership of Southern's Wastewater System to PCUC;

WHEREAS, on June 2, 2016, the Parties executed a Statement of Intent whereby Southern declared and stated its intent to transfer and convey its Wastewater System to PCUC and PCUC declared and stated its intent to acquire Southern's entire Wastewater System, subject to the terms, conditions, and provisions set forth in the Statement of Intent;

WHEREAS, as set forth in paragraph 5 of the Statement of Intent, it will be mutually advantageous to the Parties if PCUC commences, on July 1, 2016, managing, operating, repairing, and maintaining Southern's Wastewater System while they negotiate the detailed terms of the Asset Purchase Agreement (the "Agreement") and obtain approval of the proposed transfer of Assets from Southern's creditors and the Kentucky Public Service Commission (the "PSC");

WHEREAS, it is uncertain when approval of the proposed transfer by Southern's creditors and the PSC will be obtained;

WHEREAS, PCUC has made plans and taken steps to commence managing and operating Southern's Wastewater System on July 1, 2016;

WHEREAS, KRS 74.414 authorizes a water district's Board of Commissioners to contract with a city for the operation of the district's wastewater system; and

WHEREAS, the Parties desire for PCUC to manage, operate, repair, and maintain Southern's Wastewater System beginning July 1, 2016.

NOW, THEREFORE, FOR AND IN CONSIDERATION of the mutual promises, covenants, and conditions contained herein and in the Statement of Intent, the Parties agree as follows:

1. **Defined Terms.** The terms used in this Operating Agreement and not defined herein shall have the meanings assigned to them in the Statement of Intent.

2. **Affirmation of Preamble.** The facts, recitals, and statements contained in the foregoing preamble of this Operating Agreement are true and correct and are hereby affirmed and incorporated as a part of this Operating Agreement.

3. **General Benefits.** In accordance with KRS 74.414, Southern's Board of Commissioners has determined, and does hereby declare, that it is necessary, desirable, in the public interest, in the best interests of its customers, and for the general benefit of the water district itself to contract with PCUC to manage, operate, repair, and maintain Southern's Wastewater System.

4. **Ownership of Assets.** During the term of this Operating Agreement, Southern shall retain ownership of all its Water and Wastewater assets, including the Assets described in paragraph two (2) of the Statement of Intent.

5. **Closing.** Transfer of ownership of the Assets and final closing of the transaction contemplated by the Statement of Intent (the "Closing") cannot take place until: (a) the Parties negotiate and execute an Asset Purchase Agreement; (b) Southern's creditors approve the proposed transfer of Assets; (c) the PSC approves the proposed transfer of Assets; and (d) certain other Closing requirements have been satisfied.

6. **Term.** The term of this Operating Agreement shall commence on July 1, 2016, and shall continue until the Closing as defined in the preceding paragraph of this Operating Agreement; PROVIDED, HOWEVER, in the event no Closing occurs before June 30, 2018, this Operating Agreement shall expire on that date unless the Parties negotiate a new Operating Agreement.

7. **Operation and Maintenance of Assets.** During the term of this Operating Agreement, PCUC shall manage, operate, repair, and maintain Southern's Wastewater System, which consists of the Assets described in paragraph 2B of the Statement of Intent. Beginning July 1, 2016, PCUC shall be responsible, except as stated below in this Operating Agreement, for all expenses incurred in the operation, repair, and maintenance of Southern's Wastewater System.

8. **Compensation.** As consideration for PCUC undertaking the management, operation, repair, and maintenance of Southern's Wastewater System, Southern shall pay PCUC a monthly fee of \$3,000.00. This fee shall be paid on or before the last business day of the following month (e.g., July's fee shall be paid on or before August 31).

9. **Revenues.** Southern shall continue to receive all revenues for wastewater services rendered during the term of this Operating Agreement.

10. **Billing and Collection.** During the term of this Operating Agreement, Southern shall continue to read its water meters, bill for water service and wastewater service, and collect the water and wastewater revenues.

11. **Utilities.** Southern shall continue to be responsible for the costs of all utility services incurred during the term of this Operating Agreement.

12. **Debt Service.** During the term of this Operating Agreement, Southern shall remain responsible for making: (a) all its required monthly or semi-annual debt service payments; (b) all required transfers to its Depreciation Reserve Fund and other Sinking Funds; and (c) all other transfers or payments required by its Bond Resolutions and loan agreements.

13. **Capital Improvements.** PCUC shall commence, at its own expense, the immediate rehabilitation of the Wayland Wastewater Treatment Plant and lift stations, and PCUC shall undertake other major repairs and capital improvements (the "Capital Improvements") to the Assets during the term of this Operating Agreement. Southern hereby consents to, and authorizes PCUC to make, these Capital Improvements. PCUC acknowledges that it will be making these Capital Improvements at its own risk and expense. PCUC shall not seek reimbursement from Southern for the cost of these Capital Improvements.

14. **Cooperation.** Southern and PCUC shall cooperate with DOE and jointly negotiate with DOE to mitigate the scope and cost of the corrective actions that DOE may require to avoid or resolve any administrative or civil proceedings brought by DOE to enforce state and federal water quality laws and to minimize the fines and penalties that could result from such proceedings.

15. **Customer Deposits.** Southern shall **not** transfer any customer deposits to PCUC during the term of this Operating Agreement.

16. **Insurance.** During the term of this Operating Agreement, Southern shall, at its expense, keep the Assets insured with an insurance company or companies against fire and such other hazards as are included within extended coverage in an amount at least equal to the amount that Southern currently carries on the Assets. PCUC shall, at its expense, maintain comprehensive public liability insurance in an amount not less than \$1,000,000 combined single limits for each occurrence for claims for bodily injury or death and property damage along with excess liability coverage (umbrella policy) of not less than \$2,000,000. All such insurance policies shall name Southern as an additional insured or certificate holder.

17. **Indemnification.** PCUC hereby agrees to indemnify Southern for, and hold Southern harmless from, any and all losses, liabilities, costs and expenses (including, but not limited to, reasonable attorneys' fees) incurred by Southern as a result of any negligence or willful misconduct by PCUC, its employees, contractors, and agents, arising from PCUC's management, operation, repair, and maintenance of the Assets pursuant to the provisions of this Operating Agreement. To that end, immediately upon notification by Southern, PCUC shall assume, at its own cost, the defense of any such action or suit which may be brought against Southern because of PCUC's operation and maintenance of the Assets.

18. **No Transfer of Ownership or Control.** This Operating Agreement does not transfer ownership of any of Southern's Assets nor does it grant PCUC any right to control Southern as "control" is defined in KRS 278.020(6) and (7). Once the Parties negotiate the terms of the Asset Purchase Agreement and it has been approved by their respective governing bodies, the Parties shall file a joint Application with the PSC seeking approval of the transfer of ownership of Southern's entire Wastewater System and certain portions of its Water System as described in paragraph 2 of the Statement of Intent.

19. **No Assignment.** PCUC shall not assign this Operating Agreement.

[Remainder of page intentionally left blank.]

IN TESTIMONY WHEREOF, this Operating Agreement has been executed in multiple counterparts, each of which is deemed to be an original, by the duly authorized officers and officials of the Parties, as of its effective date.

SOUTHERN WATER AND SEWER DISTRICT

BY: _____
Paula Johnson, Chairperson

DATE: _____

ATTEST: _____
Barry Hall, Secretary

PRESTONSBURG CITY'S UTILITY COMMISSION

BY: _____
Jimmy A. Calhoun, Chairman

DATE: _____

ATTEST: _____
Edford L. Clark, Secretary

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