

Water

OPERATING AND MAINTENANCE AGREEMENT

This is an Operating and Maintenance Agreement (the “O&M Agreement”), having an **effective date of July 1, 2017, 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 District”; and the **PRESTONSBURG CITY’S UTILITIES COMMISSION**, 2560 South Lake Drive, Prestonsburg, Kentucky 41653, hereinafter referred to as “PCUC”;

WITNESSETH

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

WHEREAS, Southern District currently owns and operates both 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 Utilities 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, the Parties executed an Asset Purchase Agreement (the “Agreement”), effective January 1, 2017, whereby Southern District agreed to transfer and convey its entire Wastewater System and certain water system assets described in paragraph 3 of the Agreement (the “Designated Water Assets”) to PCUC and PCUC agreed to acquire Southern District’s entire Wastewater System and the Designated Water Assets, subject to the terms, conditions, and provisions set forth in the Agreement;

WHEREAS, by Order dated May 2, 2017, the Kentucky Public Service Commission (the “PSC”) authorized Southern District to transfer its entire Wastewater System and the Designated Water Assets to PCUC, subject to the terms, conditions, and provisions set forth in the Agreement;

WHEREAS, the Closing cannot take place until the Parties obtain approval of the proposed loan assumptions and transfer of Assets from Southern District’s creditors and PCUC has obtained the necessary funds from the Kentucky Rural Water Finance Corporation;

WHEREAS, the Parties were planning for the Closing to take place on or before July 1, 2017;

WHEREAS, because of unforeseen circumstances, these approvals have been delayed and will not be obtained until after July 1, 2017;

WHEREAS, it is uncertain when approval by Southern District's creditors will be obtained;

WHEREAS, Southern District and PCUC have made plans and taken certain steps for PCUC to commence, starting on July 1, 2017, managing, operating, repairing, and maintaining the Southern Wastewater System and the Designated Water Assets;

WHEREAS, KRS 74.414 authorizes the Board of Commissioners of a water district to contract with a city whereby the city will operate all or a portion of that district's water distribution system and wastewater system; and

WHEREAS, the Parties desire for PCUC to commence, starting on July 1, 2017, managing, operating, repairing, and maintaining the Southern Wastewater System and the Designated Water Assets.

NOW, THEREFORE, FOR AND IN CONSIDERATION of the mutual promises, covenants, and conditions contained herein and in the Agreement, it is agreed by and between the Parties as follows:

1. **Defined Terms.** The terms used in this O&M Agreement and not defined herein shall have the meanings assigned to them in the Agreement.

2. **Affirmation of Preamble.** The facts, recitals, and statements

contained in the foregoing preamble of this O&M Agreement are true and correct and are hereby affirmed and incorporated as a part of this O&M Agreement.

3. **General Benefits.** In accordance with KRS 74.414, Southern District'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 the Southern Wastewater System and the Designated Water Assets (collectively, the "Assets") until the Closing.

4. **Ownership of Assets.** During the term of this O&M Agreement, Southern District shall retain legal ownership of the Assets, but PCUC shall be the beneficial owner.

5. **Closing.** Conveyance of legal title to the Assets and final closing of the transaction contemplated by the Agreement (the "Closing") cannot take place until: (a) Southern District's creditors approve the proposed transfer of Assets; and (b) certain other Closing requirements have been satisfied. The Closing shall take place at a mutually convenient date, time, and place once the Closing requirements have been satisfied.

6. **Term.** This O&M Agreement is a month-to-month agreement, commencing on July 1, 2017 and ending on July 31, 2017. Thereafter, it shall be automatically renewed on a month-to-month basis until the Closing takes place.

7. **Operation and Maintenance of Assets.** During the term of this O&M Agreement, PCUC shall manage, operate, repair, and maintain the Assets, which consist of the assets described in paragraphs 2 and 3 of the Agreement. From and after the effective date of this O&M Agreement, PCUC shall be responsible for all expenses incurred in the operation, repair, and maintenance of the Assets.

8. **Revenues.** As consideration for PCUC undertaking the management, operation, repair, and maintenance of the Assets, PCUC shall receive all the water and sewer revenues for water and sewer services rendered on and after July 1, 2017.

9. **Billing and Collection.** During the term of this O&M Agreement, Southern District shall provide billing and collection services for PCUC for the wastewater customers served by the Eastern and Wayland Wastewater Treatment Plants. Southern District shall receive a billing and collection fee in an amount equal to 3% of the wastewater revenues which it actually collects. Southern District shall remit the net wastewater revenue to PCUC on a monthly basis on or before the last business day of each month.

10. **Utilities.** The Parties shall notify and instruct all applicable utility companies to transfer the electric and telephone service to the Assets from Southern District to PCUC, effective July 1, 2017. PCUC shall be responsible for

the costs of all utility services incurred on and after July 1, 2017.

11. **Debt Service.** Southern District shall be responsible for making its interest payments on all its Rural Development (the “RD”) loans on or before July 1, 2017. Thereafter, PCUC shall be responsible for assuming payment of RD Loan No. 91-05 in the approximate amount of \$489,125. As provided in paragraph 4 of the Agreement, PCUC shall be responsible for: (a) making all the required semi-annual debt service payments to the Kentucky Infrastructure Authority (the “KIA”) for KIA Loan No. A04-06 in the approximate principal amount of \$28,860, which was incurred for the Wayland WWTP; and (b) making all the required semi-annual debt service payments to KIA for KIA Loan No. A11-16 in the approximate principal amount of \$642,654, which was incurred for the Harold WWTP.

12. **Capital Improvements.** The Parties contemplate that PCUC will immediately undertake, at its own expense, major repairs, replacements, and other capital improvements (the “Capital Improvements”) to the Assets. Southern District 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 and will not seek reimbursement from Southern District for the cost of these Capital Improvements.

13. **Cooperation.** To facilitate a smooth transition of the water and wastewater customers that are being transferred to Southern District, the Parties

agree to cooperate and coordinate customer communications.

14. **Customer Deposits.** Southern District shall **not** transfer any customer deposits to PCUC during the term of this O&M Agreement. The Customer Deposits shall be transferred at the Closing pursuant to the terms of paragraph 5 of the Agreement.

15. **Insurance.** During the term of this O&M Agreement, PCUC 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. 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 District as an additional insured or certificate holder.

16. **Indemnification.** PCUC hereby agrees to indemnify Southern District for, and hold Southern District harmless from, any and all losses, liabilities, costs, and expenses (including, but not limited to, reasonable attorneys' fees) incurred by Southern District as a result of any negligence or willful misconduct by PCUC, its employees, contractors, and agents, arising from PCUC's management, operation, repair, replacement, and maintenance of the Assets pursuant to the provisions of this O&M Agreement. To that end, immediately

upon notification by Southern District, PCUC shall assume, at its own cost, the defense of any such action or suit which may be brought against Southern District because of PCUC's operation and maintenance of the Assets.

17. **Existing Operating Agreement Terminated.** PCUC has been managing, operating, repairing, and maintaining the Southern Wastewater System pursuant to an Operating Agreement dated July 1, 2016 (the "Existing Operating Agreement"). The Existing Operating Agreement is hereby terminated.

18. **No Assignment.** PCUC shall not assign this O&M Agreement.

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IN TESTIMONY WHEREOF, this O&M 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 UTILITIES COMMISSION

BY: _____
Jimmy A. Calhoun, Chairman

DATE: _____

ATTEST: _____
Edford L. Clark, Secretary

OPERATING AGREEMENT

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