

ASSET PURCHASE AGREEMENT

Between

**SOUTHERN WATER
AND SEWER DISTRICT**

And

CITY OF PRESTONSBURG

For the Use and Benefit of

**PRESTONSBURG CITY'S
UTILITY COMMISSION**

January 1, 2017

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ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (the “Agreement”), effective January 1, 2017, made and entered between **SOUTHERN WATER AND SEWER DISTRICT** (the “Southern District”), P.O. Box 610, McDowell, Kentucky 41647; **PRESTONSBURG CITY’S UTILITY COMMISSION** (the “PCUC”), 2560 South Lake Drive, Prestonsburg, Kentucky 41653; and the **CITY OF PRESTONSBURG** (the “City”), 200 North Lake Drive, Prestonsburg, Kentucky 41653, (collectively, the “Parties”).

WITNESSETH:

WHEREAS, Southern District is a water district organized under the provisions of KRS Chapter 74;

WHEREAS, Southern District 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, PCUC is a duly organized and existing independent, component unit and agency of the City;

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

WHEREAS, the City has the sole authority to issue or assume debt on behalf of PCUC and its operations;

WHEREAS, certain PCUC Water System facilities are adjacent to Southern Water System facilities and certain PCUC Wastewater System facilities are adjacent to certain Southern Wastewater System facilities;

WHEREAS, Southern District is subject to administrative actions by the Division of Enforcement of the Kentucky Energy and Environment Cabinet (the “DOE”) for alleged violations of Kentucky water quality laws;

WHEREAS, the actions necessary to bring Southern Wastewater System’s facilities into compliance with Kentucky water quality laws are expected to cost hundreds of thousands of dollars;

WHEREAS, Southern District is facing substantial civil penalties for its alleged violations of Kentucky water quality laws;

WHEREAS, PCUC has a larger and more experienced workforce devoted to its wastewater operations than Southern District has for its wastewater operations;

WHEREAS, PCUC has a greater number of Wastewater Treatment Plant Certified Operators than Southern District;

WHEREAS, PCUC has greater financial resources than Southern District;

WHEREAS, since July 1, 2016, PCUC has been managing, operating, repairing, and maintaining the Southern Wastewater System pursuant to an Operating Agreement executed by PCUC and Southern District;

WHEREAS, since assuming responsibility for the management, operation, repair, and maintenance of the Southern Wastewater System, and in anticipation of administrative orders from DOE to remedy deficiencies in the Southern Wastewater System, PCUC has commenced, at its own expense, the rehabilitation of the Wayland Wastewater Treatment Plant and lift stations, and has made repairs to the Harold Wastewater Treatment Plant and the Eastern Wastewater Treatment Plant;

WHEREAS, the combination and consolidation of the Southern Wastewater System and the PCUC Wastewater System will result in greater economies of scale, enhance the reliability and quality of wastewater service presently provided to the customers of the Southern Wastewater System, substantially reduce the likelihood of the DOE's assessment of civil penalties against the Southern Wastewater System, and allow the combined wastewater systems to be managed, operated, and maintained in a more cost effective manner;

WHEREAS, that portion of the Southern Water System located along Kentucky Route 850 from the point where Southern currently interconnects with

PCUC near Kentucky Route 404 to the summit of the hill on Kentucky Route 850 (the “Pyramid Area”) is a remote portion of the Southern Water System;

WHEREAS, that portion of Southern Water Distribution System located along U.S. Highway 23 from Mare Creek at Stanville south to the Pike County line, including the areas east of U.S. Highway 23 and the areas west of U.S. Highway 23 known as Justell and Harold Bottom, is also a remote portion of the Southern Water System;

WHEREAS, PCUC can more easily provide adequate and reliable water service to the Pyramid Area and the Stanville/Betsy Layne/Harold Area than can be provided by Southern;

WHEREAS, the transfer of those portions of the Southern Water System that serve the Pyramid Area and the Stanville/Betsy Layne/Harold Area from Southern District to the City, for the use and benefit of PCUC, will result in greater economies of scale, enhance the reliability and quality of water service to the customers served by those facilities, and allow the combined systems to be managed, operated, and maintained in a more cost effective manner;

WHEREAS, the City and PCUC have the financial, technical, and managerial abilities to provide adequate and reliable water and wastewater service to Southern District’s existing customers that will be transferred to PCUC without

adversely affecting the quality of service presently afforded PCUC's existing customers;

WHEREAS, the City has the authority, pursuant to KRS Chapters 82, 96, and 106 and other applicable laws, to acquire, for the use and benefit of PCUC, the Southern Wastewater System and portions of the Southern Water System; and

WHEREAS, the transfer of the Southern Wastewater System and portions of the Southern Water System to the City, for the use and benefit of PCUC, will improve Southern District's financial position and will enable Southern District to focus its efforts on maintaining and improving the quality and reliability of service to the remaining portion of the Southern Water System.

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

1. **TRANSFER OF CERTAIN ASSETS.** Subject to the terms and conditions of this Agreement, Southern District hereby agrees to transfer and convey to the City, for the use and benefit of PCUC, and the City and PCUC hereby agree to acquire from Southern District, those assets described in Paragraphs 2, 3, and 9 of this Agreement (the "Assets") for the consideration set forth in Paragraph 4 of this Agreement.

2. **WASTEWATER SYSTEM ASSETS BEING TRANSFERRED.**
At the Closing, Southern District shall transfer to the City, for the use and benefit

of PCUC, the Southern Wastewater System in its entirety. The wastewater assets being transferred to PCUC include, but are not limited to, the following:

A. **Harold Wastewater Treatment Plant.** The in-ground, concrete basin, extended air wastewater treatment facility with a rated daily treatment capacity of 100,000 gallons and designated as the Harold Wastewater Treatment Plant (the “Harold WWTP”), the tract of real property upon which the facility is situated, and all improvements to the facility and the property on which it is situated;

B. **Harold/Betsy Layne Wastewater Collection System.** The wastewater collection system designated as the Harold/Betsy Layne Wastewater Collection System, including, but not limited to, all sewer gravity lines, all sewer force mains, all manholes, all lateral lines, all grinder pumps, all other pumps and controls, valve vaults, valves, and any and all other facilities and appurtenances used in the operation of the Harold/Betsy Layne Wastewater Collection System;

C. **Eastern Wastewater Treatment System.** The in-ground, concrete basin, extended air wastewater treatment facility with a rated daily treatment capacity of 25,000 gallons and designated as the Eastern Wastewater Treatment Plant (the “Eastern WWTP”),

the tract of real property upon which the facility is situated, and all improvements to the facility and the property on which it is situated;

D. Eastern Wastewater Collection System. The wastewater collection system designated as the Eastern Wastewater Collection System, including, but not limited to, all sewer gravity lines, all sewer force mains, all manholes, all lateral lines, all grinder pumps, all other pumps and controls, valve vaults, valves, and any and all other facilities and appurtenances used in the operation of the Eastern Wastewater Collection System;

E. Wayland Wastewater Treatment Plant. The above ground, steel basin, extended air wastewater treatment facility with a rated daily treatment capacity of 100,000 gallons and designated as the Wayland Wastewater Treatment Plant (the “Wayland WWTP”), the tract of real property upon which the facility is situated, and all improvements to the facility and the property on which it is situated;

F. Wayland Wastewater Collection System. The wastewater collection system designated as the Wayland Wastewater Collection System, including, but not limited to, all sewer gravity lines, all sewer force mains, all manholes, all lateral lines, all grinder pumps, all other pumps and controls, valve vaults, valves, and any and

all other facilities and appurtenances used in the operation of the Wayland Wastewater Collection System;

G. **Sewer Lift Stations.** All sewer lift stations, including the pumps and related appurtenances, used in the operation of the Harold/Betsy Layne Wastewater Collection System and Wayland Wastewater Collection System. **Exhibit 1** to this Agreement lists and describes each of these sewer lift stations and identifies its location;

H. **Real Property.** All of Southern District's rights and interests in the parcels or tracts of real property on which the wastewater system assets described above are located;

I. All other real estate easements and the improvements thereon, licenses, encroachment permits, rights-of-way, or other interests in real estate owned by Southern District and used in the operation of the Southern Wastewater System;

J. All maps, drawings, operating manuals, engineering reports, and "As Built" plans pertaining to the Southern Wastewater System;

K. All business records pertaining to the Southern Wastewater System, including, but not limited to, all customer records and agreements; and

L. Any and all other tangible and intangible rights, permits, licenses, or authorizations owned by Southern District and used in the operation of the Southern Wastewater System.

3. **WATER SYSTEM ASSETS BEING TRANSFERRED.** At the Closing, Southern District shall transfer to PCUC those portions of the Southern Water System that serve the Pyramid and Stanville/Betsy Layne/Harold Areas. The water system assets being transferred to PCUC include, but are not limited to, the following:

A. **Sandy Valley Water District Distribution System.** The entire water distribution system formerly known as the Floyd County portion of the Sandy Valley Water District, including, but not limited to, approximately 4.5 miles of 12-inch asbestos concrete water transmission main, approximately 5.8 miles of 3-inch to 8-inch water distribution lines of various composition (asbestos concrete, polyvinylchloride, or polyethylene), system valves, meter vaults, meters, fire hydrants, flush hydrants, and tap installations;

B. **Stanville Tank.** The 150,000 gallon water storage tank designated as the Stanville Tank, which is located at the junction of U.S. Highway 23 South and Mare Creek Road at Stanville, all of Southern District's rights and interests in the real property upon which the tank is

situated, valve vault, altitude valve, and all appurtenances associated therewith;

C. **Eagle Trace Tank.** The 150,000 gallon water storage tank designated as the Eagle Trace Tank, which is located at the head of the Right Fork of Penhook Branch in Harold just off U.S. Highway 23 South, all of Southern District's rights and interests in the property upon which the tank is situated, valve vault, altitude valve, and all appurtenances associated therewith;

D. **Mare Creek Road Booster Station.** The water booster station located on Mare Creek Road in Stanville, including the pump and all other appurtenances associated therewith;

E. **Pike-Floyd Hollow Road Booster Station.** The water booster station located on Pike-Floyd Hollow Road in Betsy Layne, including the pump and all other appurtenances associated therewith;

F. **Pyramid Distribution System.** The water distribution system serving the area in Floyd County that is known as Pyramid, and that is more specifically defined as the service area from the junction of Kentucky Routes 404 and 850 south along Kentucky Route 850 to the top of Hippo Hill, including, but not limited to, approximately 4.6 miles of 6-inch polyvinylchloride water transmission main, approximately 4.1 miles of 2-

inch to 6-inch polyvinylchloride or polyethylene water distribution lines, system valves, meter vaults, meters, fire hydrants, flush hydrants, and tap installations;

G. **Hippo Hill Tank.** The 125,000 gallon storage tank designated as the Hippo Hill Tank, which is located on Kentucky Route 850, all of Southern District's rights and interests in the property upon which the tank is situated, valve vault, altitude valve, and all appurtenances associated therewith;

H. **Real Property.** All of Southern District's rights and interests in the parcels or tracts of real property on which the water system assets described above are located;

I. All real estate easements and the improvements thereon, licenses, encroachment permits, rights-of-way or other interests in real estate owned by Southern District and used in the operation of the portions of the Southern Water System that serve the Pyramid and Stanville/Betsy Layne/Harold Areas;

J. All maps, drawings, operating manuals, engineering reports, and "As Built" plans pertaining to the portions of the Southern Water System that serve the Pyramid and Stanville/Betsy Layne/Harold Areas;

K. All business records pertaining to the portions of the Southern Water System that serve the Pyramid and Stanville/Betsy Layne/Harold Areas, including, but not limited to, all customer records and agreements; and

L. Any and all other tangible and intangible rights, permits, licenses, or authorizations owned by Southern District and used in the operation of the portions of the Southern Water System that serve the Pyramid and Stanville/Betsy Layne/Harold Areas.

4. **CONSIDERATION.** As consideration for the transfer of the Assets, the City and PCUC shall pay to Southern District **\$2,140,000.00** (the “Purchase Price”). The City and PCUC shall pay the consideration by a combination of cash payments to Southern District, the assumption or payment of certain debt obligations owed by Southern District, and expenditures incurred for the rehabilitation of the Wayland WWTP and sewer lift stations, Harold WWTP, and Eastern WWTP. PCUC has already made a series of payments totaling **\$149,260.00** to Southern District as a down payment on the purchase price. City and PCUC shall either assume or pay in full at the Closing, the following debt obligations of Southern District: (a) KIA Loan No. A04-06 in the approximate principal amount of \$34,019, which was incurred for the Wayland WWTP; (b) KIA Loan No. A11-16 in the approximate principal amount of \$696,000, which

was incurred for the Harold WWTP; and (c) USDA-RD Loan No. 91-05 in the approximate principal amount of \$512,990, which was originally incurred by the Sandy Valley Water District and later assumed by Southern District.

5. **CUSTOMER DEPOSITS.** Southern District represents that it is holding customer deposits for its customers who receive water or sewer service through the Assets listed in Paragraphs 2 and 3 of this Agreement. Prior to Closing, Southern District shall furnish PCUC a current list that shows the name, address, account number, and amount still on deposit for each of these customers. Southern District shall be responsible for paying, or crediting the customer's accounts, all accrued interest on the customer deposits through the date of Closing. After the Closing, PCUC shall be responsible for the refund of these deposits in accordance with PCUC's rules and regulations.

6. **LIABILITIES EXCLUDED.** PCUC is not assuming any Southern District liabilities or debts except for the loans described in Paragraph 4 and the customer deposits described in Paragraph 5 of this Agreement.

7. **CONSTRUCTION WORK IN PROGRESS.** Southern District is currently constructing sewer facilities in southern Floyd County along the U.S. Highway 23 Corridor to extend pressure sewer service to the areas of Lower Hollow, Store Hollow, and portions of Betsy Layne Bottom. This construction, which is known as Harold Sewer Project Phase 3 (the "Harold Phase 3 Project" or

the “Project”), consists of the installation of: approximately 136 Simplex E-1 Grinder Pump Stations; approximately 16,492 feet of 1.25-inch High Density Polyethylene (the “HDPE”) main; approximately 3,220 feet of 2-inch HDPE main; approximately 5,162 feet of 3-inch HDPE main; approximately 3,442 feet of 4-inch HDPE main; approximately 3,442 feet of 6-inch HDPE main; and approximately 199 feet of 10-inch HDPE Force Main. It is anticipated that the construction contract will be substantially completed and the wastewater collection lines will be placed into service prior to the Closing. Upon completion of the Project or the Closing, whichever occurs later, Southern District shall assign the contractor’s warranty to PCUC. In addition, Southern District shall require the contractor to provide the usual and customary Certificate of Payment certifying that the contractor has been paid in full and that all subcontractors and material providers have been paid in full. Southern District shall be responsible for making any and all remaining payments owed to the contractor and to Summit Engineering.

8. **GRANT COMPLIANCE.** Southern District is the recipient of the following grants in the following amounts: Community Development Block Grant (\$750,000); Appalachian Regional Commission (\$390,000); and Kentucky General Assembly (HB 265) Grant (\$273,000) (the “Grants”). The proceeds of the Grants shall be used to pay the costs of constructing the Project. To facilitate final

closeout of the Grants, Southern District shall be responsible for maintaining all files, books, and records regarding the Grants and the use of Grant proceeds and PCUC shall be responsible for ongoing compliance.

9. **HAROLD PHASE 3 IMPROVEMENTS.** Upon completion of the Harold Phase 3 Project or the Closing, whichever occurs later, Southern District shall transfer all the wastewater improvements installed as part of the Harold Phase 3 Project to the City for the use and benefit of PCUC.

10. **REGULATORY AGENCY APPROVALS.** PCUC shall be responsible for the following: (a) obtaining all necessary approvals from regulatory agencies, including the Kentucky Public Service Commission (the “PSC”) and the Kentucky Division of Water; (b) obtaining the transfer of Kentucky Pollutant Discharge Elimination System Permits; (c) obtaining the transfer of all other necessary permits and licenses from Southern District to PCUC; and (d) taking other necessary actions to facilitate the transfer of the Southern Wastewater System and designated portions of the Southern Water System to the City for the use and benefit of PCUC. PCUC shall initiate all proceedings to obtain these necessary approvals and transfers. Southern District pledges its full cooperation and assistance to expedite these matters and ensure a smooth transition.

11. **WATER RATES.** The schedule of Southern District’s current rates for monthly water service is attached as **Exhibit 2**. The City and PCUC agree that

following the Closing, PCUC shall charge these rates to persons in the Pyramid and Stanville/Betsy Layne/Harold Areas for water service and shall **not** increase these rates for at least three (3) years following the date of the Closing.

12. **WASTEWATER RATES.** The schedule of Southern District's current rates for monthly wastewater service is attached as **Exhibit 3**. The City and PCUC agree that following the Closing, PCUC shall charge these rates to persons in the areas currently served by the Southern Wastewater System and shall **not** increase these wastewater rates for at least three (3) years following the date of the Closing.

13. **DOE ADMINISTRATIVE ACTIONS.** Southern District is facing administrative actions by DOE for alleged violations of Kentucky water quality laws. To mitigate or eliminate any civil penalties that might be imposed by DOE, PCUC has been managing, operating, repairing, and maintaining the Southern Wastewater System since July 1, 2016. Southern District and PCUC believe the rehabilitation of the Wayland WWTP and other actions taken by PCUC have been viewed very favorably by DOE. PCUC pledges to continue working closely with Southern District and DOE to persuade DOE to resolve this matter without taking any more enforcement actions or seeking any civil penalties. Nevertheless, should DOE impose or assess any civil penalties for alleged violations that occurred prior

to July 1, 2016, Southern District shall be solely responsible for the payment of those penalties.

14. **CONTINUED OPERATION OF WATER SYSTEM.** Until the time of the Closing, Southern District shall continue to operate and maintain the portions of the Southern Water System that serve the Pyramid and Stanville/Betsy Layne/Harold Areas in substantially the same manner as it has previously been operated and maintained. Immediately following the Closing, PCUC shall commence operating and maintaining the Water and Wastewater Systems.

15. **REPRESENTATIONS AND WARRANTIES OF SOUTHERN DISTRICT.** Southern District represents and warrants to PCUC as follows:

- A. That it is a duly organized and existing water district.
- B. That the execution and delivery of this Agreement and the consummation of the transactions herein contemplated have been duly authorized by its Board of Commissioners.
- C. That its current rates for water service are set forth in **Exhibit 2.**
- D. That its current rates for wastewater service are set forth in **Exhibit 3.**
- E. The execution, delivery, performance, and the consummation of the transactions contemplated in this Agreement do

not and will not: (1) conflict with or result in a violation or breach of any of the terms, conditions, or provisions of or constitute a default of any instrument, agreement, mortgage, judgment, order, writ, award, decree, or other restriction to which either Southern District is a Party, or to which any of Southern District's Assets are subject, or by which Southern District is bound or any statute or regulatory provision affecting Southern District; (2) require the approval, consent, or authorization of any federal, state, or local court, governmental authority, or regulatory body or of any creditor of Southern District or of any other person or entity, except for Rural Development, the Kentucky Infrastructure Authority, the PSC, and the Kentucky Division of Water; nor (3) give any Party with rights under any instrument, agreement, mortgage, judgment, order, writ, award, decree or other restriction the right to terminate, modify, or otherwise change Southern District's rights or obligations thereunder.

F. Southern District has complied with all existing laws, rules, regulations, ordinances, orders, judgments, and decrees now or hereafter applicable to Southern District's Assets. Southern District is not aware of any proposed laws, rules, regulations, ordinances, orders, judgments, decrees, governmental takings, condemnations, or other

proceedings which would be applicable to Southern District's Assets or which might adversely affect Southern District's Assets either before or after the date of this Agreement.

G. Except as noted in Paragraph 13 of this Agreement, Southern District has not received any notice or notification from any court or governmental agency, authority, or body that it is in violation of, or not in compliance with, any federal, state, or local law, statute, ordinance, rule, regulation, decree, order, or permit relating to its utility business or that upon the passage of time it will be in violation of any of the foregoing. Southern District's operation of its utility business complies in all respects with all governmental requirements relating to the collection, treatment and disposal of wastewater.

H. Southern District is the true and lawful owner of the Assets and has good, marketable, and insurable title to all of the Assets. None of the Assets will, after Closing, be subject to any mortgage, pledge, lien, charge, security interest, encumbrance, restriction, lease, license, easement, liability or adverse claim of any nature whatsoever, direct or indirect, whether accrued, absolute, contingent or otherwise, except for certain property interests (the "Property Interests") acquired by Floyd County, Floyd County Fiscal

Court, and the Floyd County, Kentucky Public Properties Corporation (the “Floyd County”) as a result of past financing arrangements between Floyd County and Southern District. The City and PCUC are aware of these Property Interests. Southern District acknowledges that the City and PCUC are engaged in discussions with Floyd County officials to acquire these Property Interests. All of the Assets are in operating condition and are suitable for the purposes used.

I. Upon execution and delivery of the necessary deeds, bills of sale, easements, assignments, and other instruments of transfer by Southern District pursuant to this Agreement, PCUC shall acquire good and valid title to the Assets, free and clear of all claims, liens, security interests, agreements, restrictions, charges and encumbrances of any nature whatsoever.

J. No other person or entity, except for PCUC, now has, nor at any time prior to the Closing will have, the right to purchase, own, use, or sell any of the Assets.

K. Southern District is not insolvent as of the date of this Agreement. Southern District is able to meet all business obligations as they become due and will not be insolvent or unable to meet its

business obligations as a result of completing the transactions described herein.

L. Except as noted in this Agreement, there is no claim, legal action, suit, arbitration, governmental investigation, or other legal or administrative proceeding, nor any order, decree or judgment in progress, pending or in effect, or threatened, against or relating to the Southern District, its officers, commissioners, employees or utility business, the Assets, or the transactions contemplated by this Agreement, and Southern District neither knows nor has reason to be aware of any basis for the same.

M. Between the date of this Agreement and the Closing, Southern District shall operate its Water System diligently and substantially in the same manner as heretofore conducted prior to the date of this Agreement. Prior to the Closing, the Southern District shall not, without PCUC's prior written approval, change its rates or charges, institute any new methods of accounting or operation, or engage in any transaction or activity, enter into any agreement, or make any commitment, except in the ordinary course of business and consistent with past practice.

N. Prior to the Closing, the Southern District shall not permit any of the Assets to be subjected to a mortgage, pledge, lien or encumbrance, without notice to, and approval of, PCUC, and further shall not dispose of any of the Assets.

O. Southern District shall maintain until the Closing the insurance policies presently in effect on the Assets.

P. Southern District shall not perform any act or omit to perform any act or perform any act or omission that will cause a breach or default in this Agreement.

Q. No representation or warranty by Southern District in this Agreement, nor any statement or certificate furnished or to be furnished by it to PCUC or its representatives in connection herewith or pursuant hereto, contains or will contain any untrue statement of material fact or will omit a statement of any material fact required to make the statements herein or therein contained not misleading. Southern District has disclosed to PCUC in writing all material adverse facts known to it relating to the Southern District, its utility business, or the Assets. Southern District is not aware of any circumstances or facts which could be detrimental to its utility business other than those disclosed to PCUC in writing.

R. All minute books, books and records, and other documents maintained by Southern District with respect to the Assets are true, complete, and accurate.

S. All representations and warranties of Southern District contained in this Agreement or in any certificate or other writing delivered pursuant hereto or in connection herewith shall be true as of the Closing as well as of the date of this Agreement.

16. PCUC'S REPRESENTATIONS AND WARRANTIES. PCUC represents and warrants to Southern District as follows:

A. PCUC is a duly organized and validly existing independent component unit and agency of the City. It has the requisite right, power, and authority: (1) to carry on its utility business as it is now being conducted; and (2) to manage and operate the facilities which it currently manages and operates.

B. PCUC has full capacity, right, power, and authority to enter into, deliver, and perform this Agreement. This Agreement has been approved by its Board of Commissioners and the Prestonsburg City Council. All other consents, approvals, authorizations, or other requirements prescribed by law, rule, or regulation which must be obtained or satisfied by PCUC and which are necessary in order for it

to enter into and perform this Agreement have been satisfied. This Agreement has been duly executed and delivered by PCUC and constitutes a legal, valid, and binding obligation, enforceable against it in accordance with its terms.

C. It has the financial, technical, and managerial abilities to provide reasonable water service and wastewater collection and treatment services to the customers of the Southern Wastewater System and the designated portions of the Southern Water System to be transferred to PCUC.

17. CITY'S REPRESENTATIONS AND WARRANTIES. The City represents to Southern District:

A. The City is a duly organized and validly existing municipal corporation and city of the home rule class of the Commonwealth of Kentucky.

B. This Agreement has been approved by its City Council. All other consents, approvals, authorizations, or other requirements prescribed by law, rule, or regulation which must be obtained or satisfied by the City or PCUC and which are necessary in order for it to enter into and perform this Agreement have been satisfied. This Agreement has been duly executed and delivered by the City and

constitutes a legal, valid, and binding obligation, enforceable against it in accordance with its terms.

C. It has the financial, technical, and managerial abilities to provide reasonable water service and wastewater collection and treatment services to the customers of the Southern Wastewater System and the designated portions of the Southern Water System to be transferred to the City for the use and benefit of PCUC.

18. **CLOSING.** The closing of this transaction (the “Closing”) shall take place at a mutually convenient date, time, and place.

19. **ACCESS TO BOOKS.** Between the date of this Agreement and the Closing, PCUC and the City and their authorized representatives shall have the right to examine and to obtain copies of any and all pertinent books, plats, maps, plans, and records of Southern District upon reasonable notice and mutually convenient times.

20. **FINAL BILLING.** No later than two (2) weeks prior to the Closing, Southern District shall provide PCUC with a current list of all names, addresses, meter identification numbers, and account numbers of Southern District’s water and wastewater customers that are being transferred to PCUC. At Closing, Southern District shall also provide PCUC with the last meter reading for each customer. Southern District shall bill all its customers for water and wastewater

services rendered prior to the Closing. Southern District shall be entitled to all revenue derived from the final bill it sends its customers. PCUC shall be entitled to all revenue derived from water and wastewater services rendered on and after the date of the Closing.

21. **CLOSING REQUIREMENTS.** The obligations of the Parties are expressly conditioned on the following, each of which is a condition precedent to the validity and enforcement of this Agreement:

A. The representations and warranties of each of the Parties shall be true and correct as of the Closing, as though such representations and warranties were made at, and as of the Closing;

B. Each of the Parties shall have performed and complied in all material respects with all of its obligations under this Agreement that are due to be performed or complied with by such Party prior to or at the Closing;

C. At and as of the Closing, no litigation, proceedings, investigations, or inquiries shall be pending or threatened by any person, firm, corporation, government agency, or governmental official to enjoin or prevent the consummation of this transaction;

D. The PSC shall have entered an order in which it approves the transfer of the Wastewater Assets and Water Assets from Southern

District to the City, for the use and benefit of PCUC, without the addition of any requirement or condition which the City or PCUC deems objectionable;

E. USDA-Rural Development shall have either issued a Letter of Conditions to the City authorizing USDA-RD Loan No. 91-05, which is owed by Southern District, to be assumed by the City or granted written approval for Southern District to convey the Assets to the City upon payment in full of Loan No. 91-05; and

F. Kentucky Infrastructure Authority shall have given written approval for KIA Loan No. A04-06 and KIA Loan No. A11-16, which are owed by Southern District, to be assumed by the City.

22. **CONVEYANCE AND TRANSFERS.** Southern District shall not convey, lease, or in any other way dispose of the Wastewater Assets or the Water Assets until the Closing. At the Closing, Southern District shall execute and deliver to PCUC and the City such leases, deeds, assignments, bills of sale, and other instruments of transfer as are necessary or requested by PCUC and the City to vest PCUC and the City with good and marketable, unencumbered title to the Wastewater Assets and the Water Assets, without the need for further approval or consent by any other person or entity.

23. DUE AT CLOSING.

A. DUE FROM SOUTHERN DISTRICT TO PCUC.

Unless PCUC provides a written waiver of any item listed herein,

Southern District shall deliver to PCUC at Closing the following:

- (1) General warranty deeds and an Assignment of Easements conveying Southern District's ownership interests in the real property described in Paragraphs 2 and 3 of this Agreement;
- (2) Such bills of sale, assignments and other instruments of transfer, all dated the Closing Date, as shall be necessary or requested by PCUC to vest PCUC with good and marketable, unencumbered title to the Assets;
- (3) A schedule which contains a current listing of the name, address, account number, meter identification number, meter reading, and amount still on deposit for each customer;
- (4) Duly certified copy of the resolution of the Board of Commissioners authorizing the execution, delivery and performance of this Agreement by Southern District, which ordinance shall be in full force and effect at, and as of, the Closing;
- (5) An opinion from Southern District's counsel, dated the Closing Date and in a form satisfactory to PCUC and the City, as to the representations, warranties, and other matters set forth in Paragraph 15 of this Agreement;
- (6) A certificate, signed by Southern District's Chairperson and dated as of the Closing Date, representing and warranting to the PCUC (i) that the representations, warranties and other matters set forth in Paragraph 15 of this Agreement are true and correct as of the Closing, as though such representations and warranties were made at, and as of, the Closing, and (ii) that the Closing

Requirements set forth in Paragraph 21 of this Agreement have been fully satisfied;

- (7) All records for the utility customers;
- (8) Possession of the Assets;
- (9) A list of any Pre-paid Connection Fees and a certified or cashier's check for the amount of any Pre-paid Connection Fees held by the Southern District;
- (10) An assignment of the contractor's warranty on the construction contract referred to in Paragraph 7 of this Agreement; and
- (11) Such other documents as may be necessary to effectuate the transactions contemplated by this Agreement.

B. DUE FROM PCUC TO SOUTHERN DISTRICT.

Unless Southern District provides a written waiver of any item listed herein, PCUC shall deliver to Southern District at Closing the following:

- (1) A certified or cashier's check for the balance of the Purchase Price;
- (2) A certified copy of the PCUC's resolution approving this Agreement, authorizing the Chairman to execute and deliver this Agreement, and further authorizing the appropriate officials to take all actions necessary to consummate the transactions contemplated by this Agreement;
- (3) An opinion from Stoll Keenon Ogden PLLC, special counsel to PCUC, dated the Closing Date and in a form satisfactory to Southern District, as to the representations, warranties, and other matters set forth in Paragraph 16 of this Agreement; and

- (4) Such receipts as may be reasonably requested by Southern District and such other documents as may be necessary to effectuate the transactions contemplated by this Agreement.

C. DUE FROM CITY TO SOUTHERN DISTRICT.

Unless Southern District provides a written waiver of any item listed herein, PCUC shall deliver to Southern District at Closing the following:

- (1) A certified copy of the City's resolution approving this Agreement, authorizing the Mayor to execute and deliver this Agreement, and further authorizing the appropriate officials to take all actions necessary to consummate the transactions contemplated by this Agreement; and
- (2) An opinion from the City Attorney, dated the Closing Date and in a form satisfactory to Southern District, as to the representations, warranties, and other matters set forth in Paragraph 17 of this Agreement.

24. SURVIVAL OF REPRESENTATIONS AND WARRANTIES.

The representations, warranties, and agreements of the Parties contained in this Agreement, or in any certificate or other writing delivered pursuant hereto, shall survive the making of this Agreement and the Closing.

25. RESPONSIBLE PARTIES.

A. SOUTHERN DISTRICT. Southern District shall be solely responsible for any loss, claim, action, suit, proceeding deficiency, or expense, including reasonable attorneys' fees, relating to or arising from or in connection with (a) any misrepresentation,

breach of representation, warranty or obligation, covenant or agreement, or default by Southern District under this Agreement, including the exhibits, or any documents delivered to PCUC in connection with this Agreement; (b) claims of negligence or strict liability arising from operation of the transferred Wastewater Assets prior to July 1, 2016, and the transferred Water Assets prior to the Closing; and (c) all contingent liabilities relating to Southern District or the Water and Wastewater Assets with respect to any state of facts or occurrences existing at or prior to the Closing.

B. PCUC AND THE CITY. PCUC and the City shall be solely responsible for any loss, claim, action, suit, proceeding deficiency, or expense, including reasonable attorneys' fees, relating to or arising from or in connection with (a) any misrepresentation, breach of representation, warranty or obligation, covenant or agreement, or default by PCUC or the City under this Agreement, including the exhibits, or any documents delivered to Southern District in connection with this Agreement; (b) claims of negligence or strict liability arising from operation of the transferred Wastewater Assets after July 1, 2016, and the transferred Water Assets after the Closing; and (c) all contingent liabilities relating to Southern District

or the Water and Wastewater Assets with respect to any state of facts or occurrences existing at or prior to the Closing.

26. **ENTIRE AGREEMENT.** This Agreement, including all of its exhibits hereto, constitutes the entire agreement of the Parties with respect to the subject matter hereof and may not be modified or amended or terminated except by written agreement specifically referring to this Agreement, and signed by all of the Parties.

[Remainder of page intentionally left blank.]

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


SOUTHERN WATER AND SEWER DISTRICT

BY: 
Paula Johnson, Chairperson

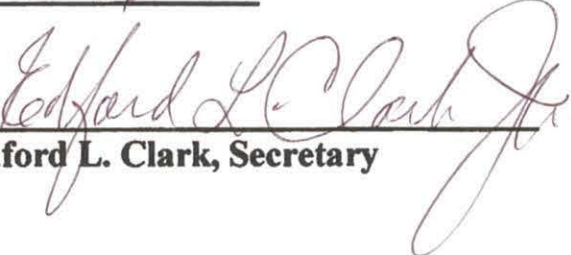
DATE: 12-19-16

ATTEST: 
Barry Hall, Secretary

PRESTONSBURG CITY'S UTILITY COMMISSION

BY: 
Jimmy A. Calhoun, Chairman

DATE: 12-20-16

ATTEST: 
Edford L. Clark, Secretary

CITY OF PRESTONSBURG, KENTUCKY

BY: 
Les Stapleton, Mayor

DATE: 12/20/16

ATTEST: 
Sharon Setser, City Clerk

EXHIBIT 1
SEWER LIFT STATIONS TO BE TRANSFERRED

ID Number	Wastewater Collection System	Name	Type and HP	Location
SLS 1	Harold/Betsy Layne	Stanville	Myers 10HP	Bobcat Boulevard
SLS 2	Wayland	Wayland	Myers 20HP	Wayland City Park
SLS 3	Wayland	Estill Hill	Myers 15HP	Clearwater Road
SLS 4	Wayland	Estill Bottom	Myers 15HP	Estill Bottom Road
SLS 5	Wayland	Pumpkin Center	Myers 20HP	Pumpkin Center Road

EXHIBIT 2

**SOUTHERN WATER AND SEWER DISTRICT'S RATES
FOR WATER SERVICE AS OF JANUARY 1, 2017**

All Meters:

First 2,000 Gallons
Over 2,000 Gallons

\$24.60 Minimum Bill
8.40 Per 1,000 Gallons

EXHIBIT 3

**SOUTHERN WATER AND SEWER DISTRICT'S RATES
FOR SEWER SERVICE AS OF JANUARY 1, 2017**

All Meters:

First 2,000 Gallons
Over 2,000 Gallons

\$28.38 Minimum Bill
9.52 Per 1,000 Gallons