

FIRST AMENDMENT
TO
ASSET PURCHASE AGREEMENT

This First Amendment to the Asset Purchase Agreement dated as of the 1st day of January, 2017 (“APA”), by and between the Southern Water and Sewer District, P.O. Box 610, McDowell, Kentucky 41647, hereinafter referred to as “Southern District”; and Prestonsburg City’s Utilities Commission, 2560 South Lake Drive, Prestonsburg, Kentucky 41653, hereinafter referred to as “PCUC”.

WITNESSETH:

WHEREAS, Southern District and PCUC entered into an Operating Agreement effective July 1, 2016 (“Initial O & M Agreement”), which provided that PCUC would commence the “... managing, operating, repairing, and maintaining Southern’s Wastewater System while they negotiate the detailed terms of the Asset Purchase Agreement ...” in exchange for a monthly fee of \$3,000.00. The Initial O & M Agreement was entered into by the parties to forestall enforcement action by the Division of Enforcement of the Kentucky Energy and Environment Cabinet for numerous violations of Kentucky water quality laws. The initial O & M Agreement was attached as Exhibit 1 to the Joint Application dated February 6, 2017;

WHEREAS, the term of the Initial O & M Agreement was due to expire on the closing of the Assets under an Asset Purchase Agreement yet to be negotiated, but not later than June 30, 2018;

WHEREAS, the parties entered into the Asset Purchase Agreement effective January 1, 2017 (“APA”), but executed on December 20, 2016 by PCUC, pursuant to which Southern

District agreed to convey and transfer to PCUC Southern District's wastewater system, and a portion of Southern District's potable water system (collectively, the "Assets");

WHEREAS, on May 2, 2017, the Public Service Commission (hereinafter the "Commission") entered an Order ("Order") approving the transfer of the Assets by Southern District to PCUC, which stated inter alia, that:

1. Approved the transfer of ownership and control of the Assets by Southern District to PCUC;
2. Within ten (10) days of the transfer of the Assets, Southern District and PCUC shall notify the Commission in writing of the occurrence of the asset transfer; and
3. Any material revisions of the proposed transaction must be approved by the Commission in order for the amendment to be effective.

WHEREAS, the parties entered into a second Operating & Maintenance Agreement effective July 1, 2017 ("Water O & M Agreement"), but executed after the date of the Commission's Order in December of 2017 to provide that PCUC would manage, operate, repair, and maintain Southern District's Designated Water Assets as described in paragraph 3 of the APA;

WHEREAS, on June 28, 2018, Southern District transferred only the wastewater assets to PCUC;

WHEREAS, by letter dated July 20, 2018, Damon Talley, joint counsel for Southern District and PCUC stated that "... the Closing of this transaction and the transfer of the District's Wastewater Assets to PCUC took place on June 28, 2018";

WHEREAS, none of the water distribution assets have been transferred to PCUC, nor has the consent and release from Rural Development been obtained;

WHEREAS, Southern District and PCUC have been unable to consummate the transfer of the Designated Water Assets and Southern District has retained ownership of the Designated Water Assets, while PCUC has been operating and maintaining the Designated Water Assets;

WHEREAS, the parties desire to modify certain provisions of the APA to obtain the consent and release for the water distribution assets from Rural Development ("RD").

NOW, THEREFORE, in consideration of the covenants and agreements set forth in this First Amendment, and for other good and reasonable consideration, the receipt and adequacy of which are hereby acknowledged, the parties agree as follows:

1. Southern District shall apply for the consent and release from USDA Rural Development's ("RD") lien against the portion of the water distribution assets that are scheduled to be transferred to PCUC. Upon receipt of RD's Agreement to consent to the transfer of water assets and release thereof, PCUC shall pay directly to RD an amount, not to exceed One Million Six Hundred Thousand Dollars (\$1,600,000.00) (hereinafter the "Payoff") in exchange for the release.

2. Immediately prior to the payment of Payoff by PCUC, the duly authorized representative of Southern District shall execute such transfer documents, as PCUC's counsel deems necessary, appropriate or helpful, to perfect title to all water assets described, directly, or indirectly, in the APA.

3. Southern District acknowledges that it is indebted to PCUC in the sum of \$275,000.00, for earned, but unpaid sewer service fees collected from Southern District's water

customers in the Wayland and Eastern service area that are sewer customers of PCUC, as of July 1, 2020.

4. PCUC will forgive the sum of One Hundred Thirty-Seven Thousand Five Hundred Dollars (\$137,500.00) of the outstanding balance of the sewer user fees after the closing to transfer the foregoing water assets. Southern District shall pay the remaining unpaid balance in monthly installments on the tenth (10th) day, without interest, of Two Thousand Five Hundred Dollars (\$2,500.00) per month until said remaining balance is paid in full; PROVIDED, HOWEVER, if said sum is not paid in full by August 1, 2026, the remaining balance shall become immediately due and payable. The remaining unpaid balance as of August 1, 2026, shall bear interest at four percent (4%) per annum payable monthly. The monthly payment amount shall remain Two Thousand Five Hundred Dollars (\$2,500.00), but the payment shall be applied to any accrued, but unpaid interest first. If any monthly payment is not made by the tenth (10th) day of the month, a penalty of five percent (5%) shall be added to the payment for each month the payment is late.

5. Southern District acknowledges and states that it has already refunded all customer deposits provided to Southern District by water customers that will be transferred to PCUC. Therefore, PCUC has no obligation to make refunds to former customers that provided deposits to Southern District. Prior to the Closing for the water assets, Southern District shall furnish the PCUC a current list that shows the name, address, account number, and amount still on deposit for each of these customers.

6. Pursuant to Section 3 (F) and 3 (G) of the APA, certain water distribution assets were scheduled to be transferred to PCUC known as the "Pyramid Distribution System", but have not

been transferred. Therefore, PCUC hereby releases its claim or right to have the Pyramid Distribution System transferred to it.

7. RD agrees that on the Closing Date for the water distribution assets, it will deliver its consent and release for those water distribution assets described in Section 3 of the APA, except for the Pyramid Distribution System, in exchange for PCUC delivery of cash funds in the amount of \$1,600,000.00, and for the other consideration delivered directly to Southern as provided herein. RD enters into this Agreement for the limited purpose to agree to release its lien on the transferred water assets in exchange for a cash payment by PCUC.

8. Southern District acknowledges the receipt from PCUC the consideration described in Section 4 of the APA totaling \$2,140,000.00.

9. Southern District has caused this Contract to be executed in its name and on its behalf by the Chairman of its Commission, and has caused its seal to be affixed, attested by the Secretary of its Commission, and represents that due authority has been vested in the Chairman by a Resolution of the Commission of the District, now in full force and effect.

10. PCUC has caused this Contract to be executed in its name and on its behalf by its Superintendent, attested by the Chairman of its Commission, and represents that due authority has been vested in such Superintendent by a Resolution of its Commission, now in full force and effect.

11. RD has caused this Contract to be executed by its State Director, and represents that said State Director is vested with full authority in law to execute the same.

12. This First Amendment shall be filed by Southern District, and/or PCUC with the Public Service Commission ("PSC"), and shall become effective on the date of such approval.

13. The closing shall occur within thirty (30) days after PSC approval is received.

14. In all other respects, the parties hereto approve, confirm and ratify the terms and conditions of the APA, except as modified by a separate agreement for operation and billing for the water customers located in Wayland and Eastern served by the sewer facilities located there (the, "Financial Management Services Contract").

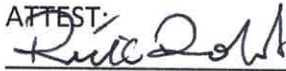
15. The Parties covenant and agree that, subsequent to the execution and delivery of this Agreement and without any additional consideration, each of the Parties will execute and deliver any further legal instruments and perform any acts which are or may become reasonably necessary to effectuate this Agreement.

This First Amendment is made as of the year and date first above written, and shall be effective as of that date without regard to the fact that execution hereof by the parties shall have been effected at the same or different times.

SOUTHERN WATER & SEWER DISTRICT

BY: _____

ITS: CHAIRMAN

ATTEST:
 9-27-20

SECRETARY

PRESTONSBURG CITY'S UTILITIES COMMISSION

BY: _____

BRIAN MUSIC, SUPERINTENDENT/CEO

ATTEST:

JIMMY A. CALHOUN, CHAIRMAN OF
THE PRESTONSBURG CITY'S
UTILITIES COMMISSION

UNITED STATES DEPARTMENT OF AGRICULTURE,
ACTING BY AND THROUGH THE RURAL
DEVELOPMENT

BY: _____

STATE DIRECTOR FOR KENTUCKY