



**KIPLEY J. McNALLY, PLC**

2525 Nelson Miller Parkway  
Suite 206  
Louisville, Kentucky 40223

(502) 245.6133  
Fax (502) 245-1974  
kjm@mcnallylaw.biz

February 26, 2018

RECEIVED

FEB 26 2018

PUBLIC SERVICE  
COMMISSION

Public Service Commission  
ATTN: Gwen R. Pinson  
P.O. Box 615  
Frankfort, Kentucky 40602

Re: Martin County Water District  
PSC Case No. 2018-00017

Dear Ms. Pinson:

Enclosed please find an original and six (6) copies of a Witness & Exhibit List regarding the above captioned matter.

Thank you for your attention to this matter.

Very truly yours,

A handwritten signature in blue ink that reads "Kipley J. McNally".

Kipley J. McNally

KJM:jlr  
Enclosures

RECEIVED

FEB 26 2018

PUBLIC SERVICE  
COMMISSION

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

THE APPLICATION OF MARTIN  
COUNTY WATER ALTERNATIVE  
RATE ADJUSTMENT

Case No. 2018-00017

WITNESS & EXHIBIT LIST

\*\*\*\*\*

Comes the Prestonsburg City's Utilities Commission ("PCUC"), by counsel, and hereby states that it will call the following witnesses and introduce the following exhibits at the hearing in this matter.

WITNESS LIST

1. Eddie Campbell, Superintendent.
2. Les Stapleton, Mayor.
3. PCUC reserves the right to amend this Witness List as necessary.

EXHIBIT LIST

1. Copy of letter to John Horne dated February 15, 2018 (Exhibit A).
2. Copy of filed Municipal Utility Lien (Exhibit B).
3. Copy of Letter of Intent to John Horne dated February 23, 2018 (Exhibit C).
4. Copy of the Joint Operation Agreement dated July 3, 2000 (Exhibit D).
5. First Amendment to the Joint Operation Agreement dated January 1, 2017 (Exhibit E).
6. PCUC reserves the right to amend this Exhibit List as necessary.

  
Kipley J. McNally, Esq.

Kipley J. McNally, PLC  
2527 Nelson Miller Parkway, Suite 104  
Louisville, Kentucky 40223  
Telephone: 502-245-6133  
Facsimile: 502-245-1974  
[kjm@mcnallylaw.biz](mailto:kjm@mcnallylaw.biz)  
*Counsel for PCUC*

**CERTIFICATE OF SERVICE**

I, Kipley J. McNally, hereby certify that on February <sup>26<sup>th</sup></sup>, 2018, a true and accurate copy of the foregoing Witness & Exhibit List was served via postage-paid U.S. mail and electronic mail to the following:

Public Service Commission  
ATTN: Gwen R. Pinson  
P.O. Box 615  
Frankfort, Kentucky 40602

Brian Cumbo  
86 W. Main St., STE 100  
P.O. Box 1844  
Inez, Kentucky 41224  
[cumbolaw@cumbolaw.com](mailto:cumbolaw@cumbolaw.com)  
Counsel for Martin County Water District

Mary Varson Cromer  
Jim Gardner  
Appalachian Citizens' Law Center, Inc.  
317 Main Street  
Whitesburg, Kentucky 41858  
[mary@appalachianlawcenter.org](mailto:mary@appalachianlawcenter.org)  
*Counsel for MCCC*

M. Todd Osterloh  
Turner, Barker & Molone, PLLC  
333 West Vine Street, Suite 1400  
Lexington, Kentucky 40507  
[tosterloh@sturgillturner.com](mailto:tosterloh@sturgillturner.com)

  
\_\_\_\_\_  
Counsel for PCUC

EXHIBIT A

LETTER

# *Prestonsburg City's Utilities Commission*

**Water, Waste Water and Natural Gas System**

(Municipally Owned)

2560 South Lake Drive

Prestonsburg, Kentucky 41653-1048

Phone (606) 886-6871 • Fax (606) 886-8779

TDD: Ky Relay #711

February 15, 2018

John Horn, Chairman  
Martin County Water District  
HC 69, Box 875  
Inez, Kentucky 41224

Re: Notice of Breach of  
Joint Operation Agreement

Dear Mr. Horn:

Pursuant to the Joint Operation Agreement dated July 3, 2000, as amended by the First Amendment dated the 1<sup>st</sup> day of January, 2017 (collectively, the "Agreements"), the parties agreed to the joint operation of certain waterworks facilities in the Honey Branch Park located in Martin County. In addition, the Agreements provided that Prestonsburg City's Utilities ("PCUC") would provide "... emergency backup water service of a non-recurring nature to the District." PCUC has provided such service on a recurring basis during the term of the Agreements. During the previous three (3) months the District has delivered 1,293,000 gallons to the jointly operated facilities, while PCUC has delivered 32,580,000 gallons. Clearly, the District has not provided fifty percent (50%) of the waterworks facilities' requirements. The District took delivery of 8,336,000 gallons of water for delivery to its customers for which PCUC has not been paid.

The Agreements provide that the District shall make payment within ten (10) working days from the date of PCUC's invoice for backup emergency water service. The following invoices to the District have not been paid and are, now, overdue:

<u>Invoice No.</u>	<u>Invoice Date</u>	<u>Amount</u>
1130 2017	December 1, 2017	\$ 5,603.00
1231 2017	January 1, 2018	13,151.50
0131 2018	February 1, 2018	<u>44,291.00</u>
	TOTAL	<u>\$63,045.50</u>

Since you have not given us the courtesy of a call relating to the status of the above unpaid invoices, we have no choice, but to request full payment in writing. We have gone above and beyond our usual billing/service disruption policies to lessen the suffering of the customers of the District. Without any communication, we do not know when to expect payment for the increasing, outstanding debt owed to PCUC. We are willing to discuss alternatives, please contact me.

If the District does not pay its past due bills and any other amount due, if any, within fourteen (14) calendar days of the date of this letter, PCUC will restrict the water from flowing into the District's eight inch water main located along Kentucky Route 3. The water restriction will be implemented on a phased-in basis by ten percent (10%) per week, during the period of non-payment.

The Commissioners of PCUC are reluctant to enter into the Tank Lease for the following reasons:

1. The Commissioners of PCUC do not want to enter into an agreement to pay the District a monthly sum, while the District is refusing to pay for water supplied by PCUC.
2. The terms of the Tank Lease as proposed by the District, by and through its attorney, were not acceptable to the Commissioners of PCUC. Of note, is that the District expressly rejected the right of "offset" requested by PCUC.
3. Due to the public comments that were made by the District's representatives that are demeaning, negative, derogatory and false, the Commissioners of PCUC do not want to enter into another long-term agreement with the District that has repeatedly failed to honor its contractual obligations. The fact is that PCUC has continued to provide a substantial portion of the District's immediate and critical need for potable water, and in return PCUC has been publicly criticized.

If you have any questions regarding this letter, please contact me.

Sincerely,



Turner E. Campbell, Superintendent

Copy: Les Stapleton, Mayor  
PCUC Board of Commissioners

Prestonsburg City Utilities Commission

2560 South Lake Drive

Prestonsburg, KY 41653

INVOICE: 1312018

February 1, 2018

Martin County Water and Sewer District  
387 East Main Street  
Suite 140  
Inez, KY 41224

Water Provided to Martin County December 26, 2017 through January 26, 2018

Total Provided	5,782,000 Gallons
First 112,000 Gallons @ \$348.50 (Minimum)	\$ 348.50
Over 112,000 @ \$7.75/1,000 Gallons	<u>43,942.50</u>
Total <u>due</u> Prestonsburg City's Utilities	<u>\$ 44,291.00</u>

Prestonsburg City Utilities Commission

2560 South Lake Drive

Prestonsburg, KY 41653

INVOICE: 12312017

January 1, 2018

Martin County Water and Sewer District  
387 East Main Street  
Suite 140  
Inez, KY 41224

Water Provided to Martin County November 27, 2017 through December 26, 2017

Total Provided	1,764,000 Gallons
First 112,000 Gallons @ \$348.50 (Minimum)	\$ 348.50
Over 112,000 @ \$7.75/1,000 Gallons	<u>12,803.00</u>
Total <u>due</u> Prestonsburg City's Utilities	<u>\$ 13,151.50</u>



Prestonsburg City Utilities Commission

2560 South Lake Drive

Prestonsburg, KY 41653

INVOICE: 11302017

December 1, 2017

Martin County Water and Sewer District  
387 East Main Street  
Suite 140  
Inez, KY 41224

Water Provided to Martin County October 26, 2017 through November 27, 2017

Total Provided	790,000 Gallons
First 112,000 Gallons @ \$348.50 (Minimum)	\$ 348.50
Over 112,000 @ \$7.75/1,000 Gallons	<u>5,254.50</u>
Total <u>due</u> Prestonsburg City's Utilities	<u>\$ 5,603.00</u>

EXHIBIT B  
MUNICIPAL UTILITY LIEN

**STATEMENT OF**  
**MUNICIPAL UTILITY LIEN**  
**PURSUANT TO KRS 376.265**

The name of the lien claimant is Prestonsburg City's Utilities Commission (Claimant) whose address is 2560 South Lake Drive, Prestonsburg, Kentucky 41653. The Affiant, Turner E. Campbell, states that he is the Superintendent of the Claimant, that he is authorized to make and file the statement on the Claimant's behalf, and that he is its agent for the service of process.

The Affiant states that a lien is hereby asserted against the property owned by the Martin County Water District, which is located off of Kentucky Hwy. 292 and is more particularly described as follows:

A certain tract or parcel of land situated, lying and being in Martin County, Kentucky, and more particularly bounded and described as follows, to-wit:

A permanent easement beginning at a point in the centerline of KY. 292; thence, leaving said centerline crossing the lands of Bowen DB. 95, PG. 454 with the centerline of a 15 foot wide access road easement for 13 calls;

S.02 deg. 40 min. 50 sec. W., 28.81 feet to a point; thence, S.06 deg. 47 min. 35 sec. W., 82.01 feet to a point; thence, S.22 deg. 58 min. 14 sec. W., 54.16 feet to a point; thence, S.43 deg. 57 min. 55 sec. W., 45.89 feet to a point; thence, S.61 deg. 47 min. 10 sec. W., 57.91 feet to a point; thence, S.41 deg. 35 min. 58 sec. W., 80.89 feet to a point; thence, S.31 deg. 32 min. 20 sec. W., 49.45 feet to a point; thence, S.45 deg. 42 min. 23 sec. W., 48.47 feet to a point; thence, S.15 deg. 49 min. 02 sec. E., 14.69 feet to a point; thence, S.23 deg. 20 min. 43 sec. E., 18.73 feet to a point; thence, S.82 deg. 39 min. 54 sec. E., 26.53 feet to a point; thence, S.63 deg. 20 min. 42 sec. E., 57.76 feet to a point; thence, N.66 deg. 41 min. 46 sec. E., 146.26 feet to a point in the south West line of the new tank site the end of this easement and the beginning point for the new tank site herewith;

A fee simple absolute title for the new tank site commencing from the tank site beginning point with 5 new calls to said Bowne, N. 28 deg. 49 min. 03 sec. W., 23.15 feet to a set iron pin with cap marked PLS 2670; thence, N. 61 deg. 10 min. 54 sec. E., 100.00 feet to a set iron pin with cap marked PLS 2670; thence, S.28 deg.

49 min. 03 sec. E. 50.00 feet to a set iron pin with cap marked PLS 2670; thence, S.61 deg. 10 min. 54 sec. W., 100.00 feet to a set iron pin with cap marked PLS 2670; thence, N.28 deg. 49 min. 03 sec. W., 16.85 feet to the point of beginning and containing 0.115 acres as surveyed by PDR Engineers, Inc. 9/05/97.

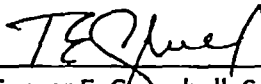
Being a portion of the property conveyed by Delsie Bowen, single, to Kermit Bowen and Joan Bowen, his wife, by deed dated July 3, 1984, and recorded in Deed Book 95, Page 454, Martin County Records. Further reference is made to the plat recorded in Plat Book \_\_\_\_\_, Page \_\_\_\_\_, Martin County Records

The real estate is more fully described in Deed Book 146 at Page 345, as found in the office of the Martin County Clerk. A true copy of which is attached hereto and incorporated herein by reference.

The Claimant, as a municipal utility, entered into the Joint Operation Agreement dated July 3, 2000 ("Agreement") with the Martin County Water District ("District") to jointly provide potable water and operate the water distribution facilities located at the Honey Branch Industrial Park. Pursuant to that Agreement, the Claimant has delivered water to the District for use by the District's customers for the billing cycles of December, 2017; January, 2018; and February, 2018.

The amount of \$51,045.50 is, now, due and owing to the Claimant after deducting all just credits and set-offs known to it. The Claimant does hereby claim and assert a Municipal Utility Lien pursuant to KRS 376.65, on all of the rights, title, and interest on the real property as described herein and the improvements thereon to secure the Claimant in the payment of said amount, plus interest, and the cost of filing this Statement, and the further cost of the enforcement of this Lien.

Prestonsburg City's Utilities Commission

By:  \_\_\_\_\_  
 Turner E. Campbell, Superintendent

COMMONWEALTH OF KENTUCKY )  
 )  
 COUNTY OF FLOYD )

I, a Notary Public within the Commonwealth of Kentucky, do hereby certify that on this the 20<sup>th</sup> day of February, 2018 the foregoing instrument was subscribed and sworn to by Turner E. Campbell for and on behalf of said Claimant.

My Commission Expires: 9/5/2021

Mary K. Noble  
NOTARY PUBLIC

This Document Prepared By:

Kipley J. McNally

Kipley J. McNally, Esq.  
Kipley J. McNally, PLC  
2527 Nelson Miller Parkway, Suite 105  
Louisville, Kentucky 40223  
(502) 245-6133

Deed Book

Page No.

Date

147  
343  
05-20-02

DEED

THIS DEED OF CONVEYANCE, made and entered into this the \_\_\_\_ day of May, 2002, by and between KERMIT BOWEN and JOAN BOWEN, husband and wife, of Buffalo Horn, Inez, Kentucky 41224, parties of the first part; and MARTIN COUNTY WATER DISTRICT, Inez, Kentucky, 41224, party of the second part.

WITNESSETH

That for and in consideration of the sum of Six Thousand Dollars (\$6,000.00), cash in hand paid, the receipt of which is hereby acknowledged, this being the full and complete consideration for this conveyance, the parties of the first part do hereby sell and convey unto the party of the second part the following described property, to-wit:

A certain tract or parcel of land situate, lying and being in Martin County, Kentucky, and more particularly bounded and described as follows, to-wit:

A permanent easement beginning at a point in the centerline of KY. 292; thence, leaving said centerline crossing the lands of Bowen DB. 95. PG. 454 with the centerline of a 15 foot wide access road easement for 13 calls;

S.02 deg. 40 min. 50 sec. W., 28.81 feet to a point; thence, S.06 deg. 47 min. 35 sec. W., 82.01 feet to a point; thence, S.22 deg. 58 min. 14 sec. W., 54.16 feet to a point; thence, S.43 deg. 57 min. 55 sec. W., 45.89 feet to a point; thence, S.61 deg. 47 min. 10 sec. W., 57.91 feet to a point; thence, S.41 deg. 35 min. 58 sec. W., 80.89 feet to a point; thence, S.31 deg. 32 min. 20 sec. W., 49.45 feet to a point; thence, S.45 deg. 42 min. 23 sec. W., 48.47 feet to a point; thence, S.15 deg. 49 min. 02 sec. E., 14.69 feet to a point; thence, S.23 deg. 20 min. 43 sec. E., 18.73 feet to a point; thence, S.82 deg. 39 min. 54 sec. E., 26.53 feet to a point; thence, N.63 deg. 20 min. 42 sec. E., 57.76 feet to a point; thence, N.66 deg. 41 min. 46 sec. E., 146.26 feet to a point in the south west line of the new tank site the end of this easement and the beginning point for the new tank site herewith;

A fee simple absolute title for the new tank site commencing from the tank site beginning point with 5 new calls to said Bowen, N.28 deg. 49 min. 03 sec. W., 23.15 feet to a set iron pin with cap marked PLS 2670; thence, N.61 deg. 10 min. 54 sec. E., 100.00 feet to a set iron pin with cap marked PLS 2670; thence, S.28 deg. 49 min. 03 sec. E., 50.00 feet to a set iron pin with cap marked PLS 2670; thence, S.61 deg. 10 min. 54 sec. W., 100.00 feet to a set iron pin with cap marked PLS 2670; thence, N.28 deg. 49 min. 03 sec. W., 26.85 feet to the point of beginning and containing 0.115 acres as surveyed by PDR Engineers, Inc. 9/05/87.

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Being a portion of the property conveyed by Delsie Bowen, single, to Kermit Bowen and Joan Bowen, his wife, by deed dated July 3, 1984, and recorded in Deed Book 95, Page 454, Martin County Records. Further reference is made to the plat recorded in Plat Book \_\_\_\_\_, Page \_\_\_\_\_, Martin County Records.

**TO HAVE AND TO HOLD** the same together with all appurtenances thereunto belonging unto the party of the second part and their successors in office. And the said parties of the first part hereby covenant with the party of the second part that they will warrant generally the title to the property hereby conveyed unto the said party of the second part and their successors in office.

The parties acknowledge that the consideration reflected in this deed is the full consideration for the property and that the party of the second part joins this deed for the sole purpose of certifying the consideration pursuant to KRS Chapter 382.

**IN TESTIMONY WHEREOF**, the parties hereto have subscribed their name the day and year aforesaid.

Kermit Bowen  
KERMIT BOWEN  
Joan Bowen  
JOAN BOWEN

PARTY OF THE FIRST PART

MARTIN COUNTY WATER DISTRICT  
BY: John R. Triplett  
JOHN R. TRIPLETT, CHAIRMAN

PARTY OF THE SECOND PART

THIS INSTRUMENT PREPARED BY:

Eldred E. Adams, Jr.  
HON. ELDRED E. ADAMS, JR.  
P.O. BOX 608  
LOUISA, KENTUCKY 41230

STATE OF KENTUCKY  
COUNTY OF MARTIN

I, Juanette Bell, a Notary Public, in and for the county and state aforesaid, do hereby certify that the foregoing Deed and Consideration Certificate was

this day produced to me in my said county and state and acknowledged by KERMIT BOWEN and JOAN BOWEN, husband and wife, parties of the first part, to be their free act and deed.

This the 18<sup>th</sup> day of May, 2002.

Jeanette Bolt  
NOTARY PUBLIC

(SEAL)

MY COMMISSION EXPIRES 10/28/05

STATE OF KENTUCKY  
COUNTY OF MARTIN

I, Thomas A. Along, a notary public in and for the county and state aforesaid, do certify that the above Deed and Consideration Certificate was this day produced to me in my said county and state an acknowledged and subscribed and sworn to before me by JOHN R. TRIPLETT, CHAIRMAN, that he acknowledges same on behalf of said Martin County Water District.

This the 20<sup>th</sup> day of May, 2002.

Jeann Deaton  
NOTARY PUBLIC

(SEAL)

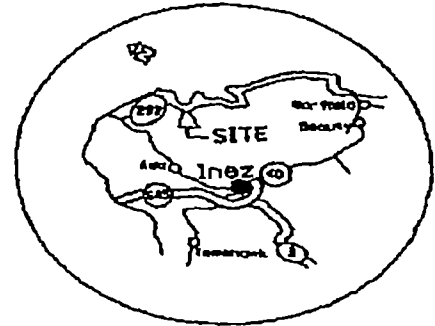
MY COMMISSION EXPIRES 8/24/03



348

SARAH & FLOYD SMITH  
DB. 72, PG. 107  
E KY. 292  
TO KY. 3

KERMIT & JOAN BOWEN  
DB. 95, PG. 454



NOTE:  
1/2" X 18" I.P.  
W/CAP MARKED  
PLS 2670, UNLESS  
OTHERWISE NOTED



15' TANK  
ACCESS ROAD

ACCESS ROAD  
CENTERLINE CALLS

- A: S02° 10' 50" W, 28.81'
- B: S08° 47' 36" W, 82.01'
- C: S22° 58' 14" W, 54.16'
- D: S43° 57' 56" W, 46.89'
- E: S61° 47' 10" W, 57.81'
- F: S41° 35' 68" W, 80.89'
- G: S31° 02' 20" W, 49.45'
- H: S45° 42' 23" W, 48.47'
- I: S16° 49' 02" E, 14.89'
- J: S23° 20' 43" E, 18.73'
- K: S82° 09' 54" E, 26.83'
- L: N63° 20' 42" E, 23.15'
- M: N68° 41' 46" E, 100'

Carol Sue Mills, Clerk of the County and I, Barry W. Robinson, do certify that on the day of May 20, 2008 at 7:45 AM the foregoing plat was lodged in my office for record, and that I truly have recorded it, together with this and the foregoing certificate, thereon endorsed. Witness my hand this the 20th day of May 2008.

CAROL SUE MILLS, Martin County Clerk  
BY Barry W. Robinson, D.C.

OWNER'S CERTIFICATION

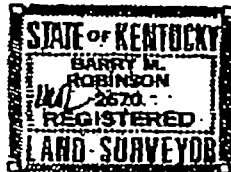
I (WE) HEREBY CERTIFY I (WE) AM (ARE) THE OWNER(S) OF THE PROPERTY SHOWN HEREON AND THAT I (WE) HEREBY ADAPT THIS PLAT OF MINOR SUBDIVISION WITH MY (OUR) FREE CONSENT. THIS DIVISION DOES NOT VIOLATE ANY PRIVATE SUBDIVISION RESTRICTIONS.

OWNER / OWNERS \_\_\_\_\_ Date \_\_\_\_\_

SURVEYOR'S CERTIFICATION

I HEREBY CERTIFY THAT THIS PLAT WAS MADE UNDER MY SUPERVISION AND IS CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF. DISTANCES AND BEARINGS AS SHOWN ON THIS PLAT HAVE NOT BEEN ADJUSTED FOR CLOSURE. THIS PLAT AND EASEMENT MEETS OR EXCEEDS THE MODERN STANDARDS OF CONFORMING AUTHORITIES.

Barry W. Robinson, PLS 2670 D618



SCALE 1" = 60'  
GRAPHIC SCALE



BEING A PART OF THE SAME PROPERTY CONVEYED TO THE GRANTEE BY DEED DATED JULY 3, 1984 RECORDED IN DEED BOOK 95 PAGE 434 IN THE OFFICE OF THE CLERK OF THE MARTIN COUNTY COURT.



800 CORPORATE DRIVE  
LEXINGTON, KENTUCKY  
TANK SITE AND ACCESS ROAD EASEMENT  
PROPERTY OF: KERMIT & JOAN BOWEN  
Rt. 5, BOX 270  
LOUISA, KY.

EXHIBIT C  
LETTER OF INTENT

# *Prestonsburg City's Utilities Commission*

Water, Waste Water and Natural Gas System

(Municipally Owned)

2560 South Lake Drive

Prestonsburg, Kentucky 41653-1048

Phone (606) 886-6871 • Fax (606) 886-8779

TDD: Ky Relay #711

February 22, 2018

Mr. John Horn, Chairman  
Martin County Water District  
387 Main Street, Suite 140  
Roy F. Collier Community Center Building  
Inez, Kentucky 41224

Re: Letter of Intent

Dear Mr. Horn:

This letter memorializes and restates our previous discussion regarding the transfer of certain water facilities located on or near the Honey Branch Industrial Park ("Honey Branch").

This letter, which sets forth our proposal, when executed and returned by both parties, will constitute the expression of the intent of Prestonsburg City's Utilities Commission (the "PCUC"), to acquire the water tank and related facilities, water distribution system and customers, including deposits (hereinafter, the "Assets") located in and near the Honey Branch along each side of Airport Road in Martin County, and the intent of Martin County Water District (the "District") to sell, transfer and assign to the PCUC the assets of the District based upon the following general terms and conditions.

With business operations at the following locations:

1. 387 Main Street, Suite 140  
Roy F. Collier Community Center Building  
Inez, Kentucky 41224

## **I. Purchase Price; Closing**

### **1.1 Purchase Price.**

(a) **Purchase Price.** The amount of the Purchase Price will be Nine Hundred Twenty-Five Thousand Dollars (\$925,000.00).

(b) **Payment Terms.** The Purchase Price will be paid, in part, in cash (via certified funds), and in part, the assumption of debt, applicable to the assets sufficient to obtain a release, if required, from the applicable lender(s) to the District at the time of closing.

**1.2 Closing.** The closing of the transactions contemplated by this letter (the "Closing") will take place on or before June 30, 2018, unless another date is determined to be more convenient to be mutually agreed upon between the parties upon the satisfaction of the conditions to closing contained in this letter and the Purchase and Sale Agreement (the "Closing Date").

**1.3 Conditions to Closing.** The following items will be resolved to the full and complete satisfaction of the PCUC (and the District) as a condition to any obligation to close the transactions contemplated by this letter, along with the other conditions customary for a transaction of this nature.

(a) The PCUC shall have completed its due diligence investigation. Such due diligence investigation shall be conducted at reasonable times and shall include but not be limited to, the detailed review of financial, legal and other business records, and inspection of assets. The District shall agree to provide reasonable access to records and people to facilitate the timely completion of the due diligence investigation.

(b) The parties will have executed the Purchase and Sale Agreement and will have reviewed and agreed upon all schedules and exhibits that are to be attached thereto, and executed all agreements incidental thereto.

(c) No material adverse changes in the business from the date of this letter to the date of closing

## **II. Transfer of Interest.**

### **2.1 Transfer of Interest.**

(a) **Interest Transferred.** This transaction is subject to the consent and approval of the Kentucky Public Service Commission and the Kentucky Rural Water Finance Corporation.

## **III. Miscellaneous**

**3.1 Exclusivity/Good Faith.** From and after the date of this letter through the Closing Date (or any other date mutually agreed upon by the parties in writing), the

District will neither discuss nor negotiate with any corporation, firm or other person, nor entertain nor consider any inquiries or proposals related to the possible acquisition of interest in the Assets, provided that PCUC and the District continue to proceed in good faith and use their best efforts to close the transaction in accordance with the terms contemplated by this letter.

**3.2 Expenses.** Each of the parties hereto will pay its own expenses in connection with this letter and the transactions contemplated herein, including, without limitation, any legal and accounting fees, whether or not the transactions contemplated herein are consummated.

**3.3 Due Diligence.** The PCUC will commence its due diligence investigation upon the receipt of an executed copy of this letter. Such due diligence investigation will be conducted at reasonable times and will include the detailed review of financial, legal and other business records related to the Assets. The District will agree to provide reasonable access to records and key employees to facilitate the timely completion of the due diligence investigation. PCUC shall not disclose such due-diligence or the terms of any Purchase and Sale Agreement and/or any other agreement incidental thereto to any third party without the prior written consent of the District. The PCUC shall not contact any current employee of the District prior to obtaining the approval of the District.

**3.4 Purchase and Sale Agreement.** The PCUC will prepare a draft of the Purchase and Sale Agreement for review by the District within fifteen (15) days of having received an executed copy of this letter. It will be the intent of the parties hereto to negotiate and sign the Purchase and Sale Agreement at the time of Closing.

**3.5 Governing Law.** The transaction will be governed by and construed in accordance with the laws of the Commonwealth of Kentucky.

**3.6 Ordinary Course.** The PCUC and the District will, from the date of this letter through the time of Closing, continue to conduct the operation of the Assets in a normal manner and will exercise every reasonable effort to preserve the Assets and the relationships with its customers, employees and suppliers. District shall notify PCUC of any action taken or occurrence that is unusual and/or not in the ordinary course of business from the date of this letter through the time of closing and District shall also notify PCUC prior to entering into any material commitment made by the District during the same period.

**3.7 Intent; Non-Binding.** It will be the intent of the parties to execute a Purchase and Sale Agreement, which agreement will incorporate the terms and conditions of this letter, as soon as is practicable. While this letter does not constitute a legally enforceable offer to purchase, nor obligation to sell the Assets or otherwise bind the parties (except for the provisions of Article III, which shall be binding upon the parties),

Mr. John Horn, Chairman  
February 22, 2018  
Page 4

this letter does evidence the good faith intentions of the parties to proceed to negotiate the transactions contemplated herein. The obligations in Sections 3.2, 3.3, 3.4, 3.6 and 3.7 will remain in effect in the event the transaction does not close by June 30, 2018.

**IV. Offsets**

**4.1** On or before the Closing Date, each party shall satisfy any outstanding invoices for water purchased.

Approved by the parties as set forth below.

MARTIN COUNTY WATER DISTRICT

PRESTONSBURG CITY'S UTILITIES  
COMMISSION

By: \_\_\_\_\_

Name:

Date: \_\_\_\_\_

By: TE Campbell

Name: Turner E. Campbell, Superintendent

Date: 2/22/2018

EXHIBIT D

JOINT OPERATION AGREEMENT

## JOINT OPERATION AGREEMENT

THIS JOINT OPERATION AGREEMENT (the "Agreement") is entered into and made effective as of the day of July 3, 2000, by and between the Martin County Water District (hereinafter "District") and Prestonsburg City's Utilities Commission (hereinafter "PCUC") and relates to and further delineates the participation of the District and PCUC (hereinafter referred to collectively as "Parties" or individually as each "Party") in the previously executed Understanding entitled "Interlocal Cooperation Understanding For The Development of Utility Infrastructure" (hereinafter referred to as "Interlocal Cooperation Understanding"), attached hereto as Attachment A.

WHEREAS, the District and PCUC are each currently working to develop the necessary water transmission lines, pumping stations, tanks, and related appurtenances to jointly provide water service to the Big Sandy Federal Prison ("Federal Prison") being constructed by the Federal Bureau of Prisons ("Bureau") at the Honey Branch Park ("Industrial Park") in Martin County; and,

WHEREAS, the District and PCUC have mutually agreed and have committed in the Interlocal Cooperation Understanding cited above, that ". . . each will share the provision of the monthly water consumption demand of the Bureau's facility equally, understanding that circumstances may require that either Party may be called upon by the other Party, from time to time, to supply a greater volume of this consumption demand than 50% and either Party may do so without prejudice or jeopardy to this Agreement . . ."; and,



WHEREAS, each party to this AGREEMENT deems it in their respective interests to further delineate and thereby clarify the physical layout of the water infrastructure components as well as to delineate and clarify the actual working relationship between the parties once the facilities subject to this Agreement are in operation;

NOW THEREFORE, contingent upon receipt of all required approvals for the location, construction and development of the Federal Prison in the Industrial Park, and contingent upon each party to this Agreement having received approval of all related infrastructure funding from federal agencies, as well as state and local agencies, and contingent upon execution of a binding water purchase agreement between PCUC and the Bureau, it is mutually agreed between the District and PCUC as follows:

## WATER INFRASTRUCTURE

### Site Map

1. All activities set out below are illustrated on the Site Map, attached hereto as Attachment B and considered part of this Agreement. Upon execution of this Agreement, any and all disagreements or misunderstandings regarding this Agreement shall be resolved as to their consistency and compliance with the content of the Site Map.

### District Facilities

2. The District shall be responsible for the construction of, and shall subsequently own, operate, and maintain an 8-inch water service main to be constructed in a southerly direction along KY Route 3 to the intersection with Airport Road, at which point the line size will be increased, becoming a 10-inch main extending in an easterly direction along Airport

Road to the entrance to the prison. At the prison entrance, the District will increase the main size to 16-inch, install a 16-inch Tee and Valve for service to the prison, and continue the 16-inch main in an southerly direction to and connecting with a ground level water storage tank as noted in paragraph 3 below. The 10-inch and 16-inch water lines from the PCUC pump station to the Honey Branch Storage Tank (as noted in Paragraph 3) shall be hereafter referred to as the Honey Branch Storage Tank Line.

3. The District shall construct a water storage tank of approximately 1,040,000 gallons capacity (hereinafter referred to as the "Honey Branch Storage Tank") as shown on the attached site map, and shall reserve storage space necessary for 300,000 gallons per day for domestic water service and 240,000 gallons per day for line protection. The District shall allow PCUC to have physical access to the Honey Branch Storage Tank for the purpose of installing and maintaining electronic telemetry controls to be used for monitoring the level of the water in the tank.

4. The District will have and maintain metering equipment located near the intersection of Airport Road and KY Route 3. The metering equipment will be located inside a booster pump station constructed by PCUC which will be described more thoroughly in paragraphs below.

#### PCUC Facilities

5. PCUC shall be responsible for the construction of, and shall subsequently own, operate, and maintain 10-inch and 12-inch service mains, including two (2) booster pump stations and one (1) water storage tank; such main shall be constructed in a northerly direction

along KY Route 3 to the intersection of Airport Road where the second PCUC pump station is located. The PCUC main will connect to the District's 10-inch main at this point.

6. PCUC will construct a booster pump station near the intersection of KY Route 3 and Airport Road to pump water into the District's Honey Branch Storage Tank Line. This station will house PCUC's pumping equipment, as well as both PCUC's and the District's metering equipment. Both parties shall have unrestricted access to this station for the purpose of operation and maintenance of their respective facilities. The metering equipment for both parties shall consist of appropriately sized meters, piping, and valves as well as appropriate pressure gauges and ports for sampling. Both parties shall be allowed to install electronic telemetry equipment on the metering equipment of both parties.

7. PCUC will install a 16-inch main from the point of connection with the District's system as described in Paragraph 2, to a meter vault on the Federal Prison's property which is the point of connection for the Federal Prison's water system. This vault shall contain an appropriately sized meter, valving, and piping to meet the Federal Prison's needs. Pressure gauges and ports for sampling, as well as telemetry equipment, shall also be included. Both Parties, as well as appropriate Federal Prison officials, shall have unrestricted access to this meter vault and the District shall be allowed to install telemetry equipment for their use to this meter. Both parties shall complete all construction set forth herein no later than February 1, 2001.

## JOINT OPERATION

8. PCUC will provide water service to the Federal Prison, as described herein, pursuant to a separate contractual agreement between the Bureau and PCUC, satisfactory in form and substance to PCUC and solely at its discretion.

9. Water services as may be provided by the District from its own water production to other tenants of the Industrial Park and all others in the service area of the District shall be provided pursuant to separate contractual agreements satisfactory in form and substance to the District and solely at its discretion.

10. While both Parties will endeavor to provide at least 50 percent of the Federal Prison's water requirements on a daily and monthly basis, the Parties understand that the actual percentage of water supplied to the Federal Prison by either the District or PCUC may vary on a daily or monthly basis.

11. Under normal operation, PCUC will pump each day into the District's Honey Branch Storage Tank Line an amount of water equal to 50 percent of the water usage of the Federal Prison for the previous day, and the District shall operate the Honey Branch Storage Tank in such a manner as to receive this water therein. The District shall pump a sufficient quantity of water into the District's Honey Branch Storage Tank to maintain an adequate level of water necessary to provide reliable service to the Federal Prison.

12. Adequate water will be maintained in the Honey Branch Storage Tank at all times to supply both the domestic water requirements and maximum fire protection for the Federal Prison. If the level of water in the Honey Branch Storage Tank is not sufficient to provide

reliable water service to the Federal Prison, then PCUC will pump into the Honey Branch Storage Tank Line a quantity of water that exceeds 50 percent of the water usage of the Federal Prison for the previous day, thus supplying more than 50 percent of water requirements of the Federal Prison. It may possible that PCUC will need to pump more than 100 percent of the water usage of the Federal Prison for the previous day, thus providing emergency backup water service to the District. Any emergency backup service supplied hereunder shall be fully interruptible at any time at PCUC's sole discretion. PCUC shall have no obligation to supply emergency backup service to the District. In no event shall the provision of emergency backup water service to the District impair PCUC's ability to serve the full requirements of the Federal Prison. In the event that the supply of emergency backup water service to the District impairs PCUC's ability to serve the full requirements of the Federal Prison or other PCUC customers, then the District shall be required to curtail end uses of the water from the Honey Branch Storage Tank and Honey Branch Storage Tank Line other than the Federal Prison's use.

13. PCUC will bill the Bureau each month at its contracted rate based on the amount of water delivered to the Federal Prison determined from monthly meter readings for service to the Federal Prison at the Prison Master Meter. PCUC will receive full remittance from the Bureau for all such water supplied. Payment to the District from remittance received from the Bureau will be calculated by applying the following rate to the amount of water provided each month by the District to serve the Federal Prison:

First 112,000 gallons per month	\$348.50 per month
All over 112,000 gallons per month	\$3.05 per 1,000 gallons

The amount of water provided each month by the District to serve the Federal Prison shall be determined by subtracting (a) the amount of water that Prestonsburg pumps into the Honey Branch Storage Tank Line for the month (based on meter readings at PCUC Meter) from (b) the amount of water delivered to the Federal Prison for the month (based on meter readings at the Prison Master Meter). To modify the rates set forth in this numbered paragraph, the District must provide PCUC a notice of any proposed rate change at least 120 days prior to filing for a rate change with the Public Service Commission; however, in no event shall any component of the District's rate be increased until a simultaneous and corresponding increase in the contract rate between PCUC and the Federal Prison actually occurs so that any such increase by the District is fully passed-through to the Federal Prison. Any change in rate by the District must be supported by a cost of service study consistent with standard industry ratemaking practices for water utilities. Payment by PCUC to the District for water supplied to the Federal Prison shall be made within ten (10) working days from receipt of remittance received from the Bureau.

14. In the event that Prestonsburg pumps an amount of water into the Honey Branch Storage Tank for the month (based on meter readings at the PCUC Meter) that exceeds the amount of water delivered to the Federal Prison for the month (based on meter readings at the Prison Master Meter), resulting in PCUC providing emergency backup water service of a non-recurring nature to the District, PCUC shall bill the District at the following rate for emergency back-up water service:

First 112,000 gallons per month	\$348.50 per month
All over 112,000 gallons per month	\$3.05 per 1,000 gallons

Payment by the District to PCUC for water supplied to the District for emergency backup water service shall be made within ten (10) working days from the date of PCUC's invoice to the District. To modify the rates set forth in this numbered paragraph, the PCUC must provide the District a notice of any proposed rate change 120 days in advance of the effective date of the proposed change in rates, except that PCUC may, without notice, increase or decrease the rate by the same percentage as any increase or decrease in the District's rate to PCUC as set forth in number paragraph 13, above. Any such change in rate that does not correspond to the percentage change in the District's rate for service to PCUC must be supported by a cost of service study consistent with standard industry ratemaking practices for water utilities.

15. PCUC and the District shall each be responsible for the loss of any water that occurs on their respective facilities.

16. Each party to this Agreement shall have unrestricted access to all meters and any electronic telemetry equipment of the other for purposes of verification and system operations. Assigned staff of both PCUC and the District shall read the meters cited in this Agreement together each month, at a mutually agreed upon time, day and date.

17. Each Party to this Agreement shall bear the expense of having its meter(s) tested annually by an independent, certified meter testing service, and a copy of the report of such test shall be forwarded to the other party. Either Party may request the other to conduct additional testing but so as not to exceed more than one such additional test in each calendar year.

18. This Agreement shall remain in full force and effect from the date written above until and at which time PCUC shall no longer provide water service to the Federal Prison.

19. Force Majeure. All obligations of either party with respect to service hereunder shall be excused without liability during the pendency of any condition of force majeure, which causes the party claiming force majeure to be unable to meet its performance obligations hereunder. Force majeure shall include any act, event or condition beyond the reasonable control of the party claiming force majeure, and shall include, but not be limited to, any act of God, fire, storm, earthquake, freezing condition, wind, flood, drought, snow, water used to fight fires, line breaks, environmental release, breakage of or delay in receiving parts, equipment or supplies, or shortage thereof, strike or lockout, or any act, event or requirement of any governmental law, regulation or entity. Force majeure shall not include routine line leakage or financial inability to pay

20. Nothing in this Agreement shall subject PCUC to regulation by the Kentucky Public Service Commission ("KYPSC"). To the extent the KYPSC exercises jurisdiction over any aspect of this Agreement, PCUC shall remain free to withdraw without penalty or other obligation from this Agreement upon providing 30 days written notice to the District.

21. Indemnification by District. District shall indemnify, defend and hold harmless PCUC and its officers, directors, employees, and agents from, against and with respect to any claim, liability, obligation, loss, damage, assessment, judgment, cost, expense (including without limitation, reasonable attorneys' fees and costs) arising out of or in any manner incident, relating or attributable to any loss, claim, action, proceeding or determination arising out of District's obligations or performance under this Agreement.

22. Indemnification by PCUC. PCUC shall indemnify, defend and hold harmless District and its officers, directors, employees and agents from, against and with respect to any



claim, liability, obligation, loss, damage, assessment, judgment, cost, expense (including without limitation, reasonable attorneys' fees and costs) attributable to any loss, claim, action, proceeding or determination arising out of PCUC's obligations or performance under this Agreement.

23. Indemnification Claims.

(a) PCUC or District, if claiming indemnity hereunder (the "Indemnified Party"), agrees to give prompt notice to the party or parties from which indemnity may be sought (the "Indemnifying Party") of the assertion of any claim or the commencement of any suit, action or proceeding in respect of which indemnity may be sought hereunder.

(b) At the request of the Indemnified Party, the Indemnifying Party shall assume the defense of any such suit, action or proceeding, including its compromise or settlement, in which the outcome would give rise to a claim for indemnification, and shall be fully responsible for the outcome hereof. The Indemnifying Party may not compromise or settle any such suit, action or proceeding without the Indemnified Party's consent which shall not be unreasonably withheld.

MISCELLANEOUS

24. Governing Law. This Agreement shall be governed by and construed and interpreted in accordance with the laws of the Commonwealth of Kentucky.

25. Entire Agreement/Amendments.

(a) This Agreement constitutes the entire Agreement among the parties pertaining to the subject matter hereof and supersedes all prior and contemporaneous agreements,

understandings, negotiations and discussions, whether oral or written, of the parties pertaining to the subject matter hereof.

(b) No amendment, supplement, modification, waiver or termination of this Agreement shall be implied or be binding unless executed in writing by a party to be bound thereby. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision hereof (whether or not similar), nor shall such waiver constitute a continuing waiver unless otherwise expressly therein provided.

26. Assignment. All of the terms and provisions of this Agreement shall be binding upon and inure to the benefit of the parties, their successors, heirs and assigns, subject to regulatory approval where required. The rights and obligations provided by this Agreement may not be assigned or transferred by a party without the written consent of the other party, which consent may not unreasonably be withheld.

27. Headings. Headings used in this Agreement are for convenience only and are in no way to be construed as part of this Agreement or as a limitation of the scope of the particular articles or sections to which they refer.

28. Counterparts. This Agreement may be executed simultaneously in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

29. Notices. All notices, requests, demands and other communications required or permitted under this Agreement shall be in writing and shall be considered to have been duly given when delivered by hand, or sent by first class certified or registered mail, postage prepaid, return receipt requested, in each case to the appropriate addresses (or to such other addresses as a

party may from time to time designate as to itself by notice similarly given to the other party in accordance with this Section):

(a) If to PCUC to: Seldon D. Home, Superintendent  
Prestonsburg City's Utilities Commission  
2560 South Lake Drive  
Prestonsburg, Kentucky 41653

with a copy to: C. Kent Hatfield  
Middleton & Reutlinger  
2500 Brown & Williamson Tower  
Louisville, Kentucky 40202

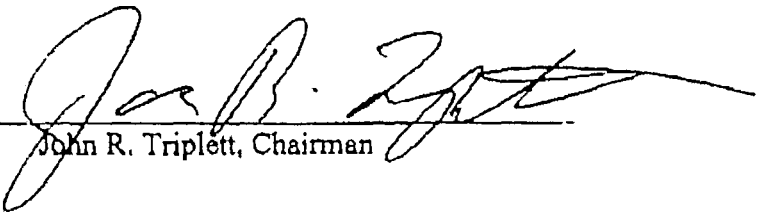
(b) If to District to: John R. Triplett  
Chairman  
Martin County Water District  
HC 69, Box 875  
Inez, Kentucky 41224

30. Specific Performance. The parties hereto agree that money damages and any other remedy available at law may be inadequate to redress or remedy any loss or damage suffered by a party hereto upon any breach of this Agreement, and the parties therefore agree that, in addition to recovery on any claim for money damages or obtaining any other remedy available at law, a party hereto also may enforce the terms of this Agreement by injunction and/or specific performance and/or may obtain any other appropriate remedy.

This Agreement is made as of the year and day 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 time or at other times.

MARTIN COUNTY WATER DISTRICT

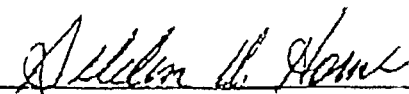
(SEAL)

BY:   
John R. Triplett, Chairman

ATTEST:

  
SECRETARY

PRESTONSBURG CITY'S UTILITIES COMMISSION

BY:   
Seldon D. Home, Superintendent

ATTEST:

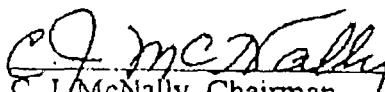
  
C. J. McNally, Chairman  
of the Prestonsburg City's  
Utilities Commission

EXHIBIT E

FIRST AMENDMENT TO THE  
JOINT OPERATION AGREEMENT

**FIRST AMENDMENT**  
**TO**  
**JOINT OPERATION AGREEMENT**

THIS FIRST AMENDMENT TO JOINT OPERATOIN AGREEMENT dated as of the 1<sup>st</sup> day of January, 2017, by and between the MARTIN COUNTY WATER DISTRICT (hereinafter "District") and PRESTONSBURG CITY'S UTILITIES COMMISSION (hereinafter "PCUC") (collectively, as "parties").

**RECITALS**

WHEREAS, the parties entered into a certain Joint Operation Agreement, dated July 3, 2000 (hereinafter "Joint Operation Agreement"), which was filed by PCUC with the Kentucky Public Service Commission (hereinafter the "Commission") on July 11, 2007.

WHEREAS, the parties desire to modify certain provisions of the Joint Operation Agreement to adjust the rate for water charged under Sections 13 and 14 thereof.

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

1. The provisions in Sections 13 and 14 setting the water rates shall be deleted in its entirety and the following is substituted therefore:

First 112,000 gallons per month	\$348.50
All over 112,000 gallons per month	\$7.75 per 1,000 gallons

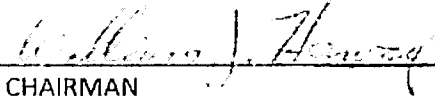
2. This First Amendment shall be filed by PCUC with the Commission, and shall be subject to the Commission's jurisdiction and review.

3. The rate adjustment set forth herein shall become effective thirty (30) days after the date the First Amendment is filed with the Commission

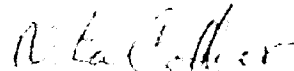
4. In all other respects, the parties hereto approve, confirm and ratify the terms and conditions of the Joint Operation Agreement.

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.

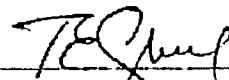
MARTIN COUNTY WATER DISTRICT

BY:   
ITS: CHAIRMAN

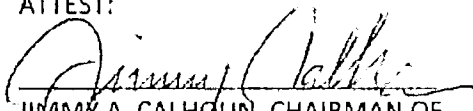
ATTEST:

  
SECRETARY 6.5.11

PRESTONSBURG CITY'S UTILITIES COMMISSION

BY:   
TURNER E. CAMPBELL, SUPERINTENDENT/CEO

ATTEST:

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