LETTER OF INTENT

This LETTER OF INTENT is made as of September 24, 2014 by and between the Sanitary Board of the City of Oak Hill (the “Board”), the City of Oak Hill (the “City”) and the Arbuckle Public Service District (the “District”),(together, the “Parties”);

RECITALS

A. The District is a public service district, created pursuant to W.Va. Code ("Code") §16-13A-1 et. seq., established in Fayette County, West Virginia, which owns and operates a wastewater collection and treatment system (the “District System”).

B. The Board is a sanitary board, created pursuant to Code §16-13-1 et. seq., which owns and operates a wastewater collection and treatment system (the “Board System”).

C. The City is a West Virginia municipal corporation, created pursuant to Code §8-1-1 et. seq.,.

D. The District has submitted an application to the West Virginia Infrastructure and Jobs Development Council (the "IJDC")for funding for a project to stabilize the District’s wastewater treatment plant (“District Plant”) from deterioration and subsidence (“Emergency Project”).

E. Following the execution by all parties of this Letter of Intent, the District will submit an application to the IJDC for funding for a project to reduce inflow and infiltration (“I&I Project”) on the District's existing collectionsystem.

F. The Board intends to submit an application to the IJDC for funding for a project (“Expanded Project”) to enable the Board to decommission the District Plant, expand and upgrade the Board’s wastewater treatment plant (“Board Plant”), expand and upgrade the Board’s wastewater transmission system (“Board Mains”), including a new pump station and force main so that the Board can transmit wastewater generated in the District’s service area to the Board’s Plant for treatment, and make other improvements needed for the proficient operation of the Board’s System.

G. The Board and the District have engaged in discussions concerning the operation and maintenance of the District System by the Board, the advancement of projects, and the acquisition by the Board of the sewer utilities assets and liabilities of the District as defined herein, (collectively, the “Transactions”); and

H. The Parties desire to set forth their mutual understanding regarding the terms and conditions of the Transactions.

AGREEMENT

**NOW, THEREFORE**, in consideration of the premises and of the respective covenants and conditions contained herein, the Parties desire to enter into this Letter of Intent to establish clear guidelines for the negotiation and consummation of the Transactions, subject to the following terms and conditions. Therefore, the Parties hereby agree as follows:

# **Article 1. Definitive Agreements**. Subject to the terms and conditions set forth in this Letter of Intent, each Party agrees to negotiate in good faith toward execution of definitive agreements setting forth the terms and structure of, and pursuant to which the Parties shalleffectuate the Transactions (the “Definitive Agreements”). The Parties shall commence such negotiation promptly upon the execution of this Letter of Intent with a view to execution of the Definitive Agreements as soon as possible, and shall continue such negotiation diligently until the execution of the Definitive Agreements or until the termination of this Letter of Intent.

 **1.2. PSC Review.** The Board shall submit this Letter of Intent to the Public Service Commission of West Virginia ("PSC") for its review and approval. The Parties shallnegotiate,prepare and approve the Definitive Agreements while the PSC isreviewing this Letter of Intent. One or more Definitive Agreements may be filed with the PSC before the PSC has issued a final order on thisLetter of Intent.

 **1.3. Non-Assumption of Liability.** In entering into this Letter of Intent, none of the Parties nor any Party's respective insurer assumes liability for any acts or omissions performed by any other Party during a past, present, or subsequent period when another Party owned, operated or controlled its wastewater collection and treatment system.

# **Article 2. Projects.**

**2.1.** **District Projects.**The District shall diligently pursue funding for the I&I Project and the Emergency Project, including, but not limited to, the retention of an engineering firm, an accounting firm, and a law firm at the District’s expense as needed to advance the funding applications and projects through to closing on funding. In the event the IJDC does not provide funding for the I&I Project and/or the Emergency Project, the District shall pursue funding from federal and private sources. The District shall seek to have the terms of funding for the I&I Project readily assumableby the Board.

## **2.2.** **Emergency Project.**Upon a finding by a funding agency that the Emergency Project is technically feasible and the identification of funding sources, the District shall, within ten (10) days of receipt of such determination, file an application to the PSC for approval of such funding and a determination that the Emergency Project does not require a certificate of convenience and necessity. Upon the PSC’s issuance of a final order regarding the funding for the Emergency Project, the District shall diligently pursue implementation of the Emergency Project through to the completion of construction with engineers and contractors selected by the District.

## **2.3 I&I Project.**If the I&I Project is deemed technically feasible and a funding source acceptable to the Board is identified, Triad Engineering, the District’s engineering firm, shall prepare the final design of the I&I Project and perform services related thereto, subject to the terms of the engineering services agreement between the District and Triad Engineering. The District shall execute an agreement assigning its rights and obligations under the District’s engineering agreement with Triad Engineering for the I&I Project to the Board for $1.00, upon request of the Board. Triad Engineeringshall perform inspection during construction subject to standards approved by the Board.

## **2.4 Expanded Project.** The Board shall pursue funding for the Expanded Project.Upon a finding that the Expanded Project is technically feasible and the identification of funding sources acceptable to the Board, the Board shall take action to advance the final design of the Expanded Project.

## **2.5 PSC Application.**Upon the satisfaction of the conditions identified in Sections 2.2, 2.3 and 2.4, and the receipt of binding commitment letters for project funding, the Board shall file and prosecute application(s) to the PSC for the acquisition of the assets of the District, and the issuance of certificates of convenience and necessity for theI&I Project and the Expanded Project. The Board may file such applications as separate applications or as a consolidated application in the Board’s discretion. In the event the PSC attaches conditions in its orders granting a certificate which are unacceptable to the Board or the City, the Board and the City reserve the right to terminate this Letter of Intent and any related agreements executed or adopted pursuant to this Letter of Intent. Due to numerous uncertainties regarding the capital cost and funding terms for the I&I Project and the Expanded Project, post-project rates cannot be estimated at this time. The post-project rate to District customers will be the same as the City’s rates except that a per customer surcharge will apply to District customers for a ten year period from the date of substantial completion of the I&I Project to enable the City to pay debt service on the I&I Project during that period.

## **2.6 Rate Ordinance.**Within ten (10) days of the Board filing an application for a certificate of convenience and necessity to the PSC, the City shall consider a sewer rate increase ordinance containing the rates determined necessary by the Board to support the ownership and operation of the Board System following acquisition of the District System and following completion of construction of the I&I Project and Expanded Project, including, but not limited to, debt service, reserve and coverage requirements related to the funding for the Emergency Project, I&I Project and Expanded Project.

## **2.7 Annexation.**The City shall file an application for minor boundary adjustment with the Fayette County Commission for the annexation of the Minden area of Fayette County into the City no later than December 31, 2014. If the annexation of the Minden Area into the City is not approved by March 31, 2015, the Board may terminate this Letter of Intent and any related agreements executed or adopted pursuant to this Letter of Intent.

## **2.8 County Grant Reimbursement.**In its application for funding for the Expanded Project, the Board shall use its best efforts to obtain funding to reimburse the Fayette County Commission, without interest, for any grant contribution which the Fayette County Commission may make to the Emergency Project.

**2.9 Advisory Committee.** Following full execution of this Letter of Intent, the District may appoint two persons of its choosing and the Board may appoint one member to a three member Advisory Committee. The Advisory Committee shall meet at regularly scheduled meetings before the meetings of the Board. The Advisory Committee may make non-binding recommendations to the Board regarding implementation of the O&M Agreement, advancement of the projects, and the acquisition.The Advisory Committee shall terminate one year after the Board closes on the acquisition of the District's assets and liabilities.

# **Article 3. Operation and Maintenance Agreement.**

## **3.1 Essential Terms.** Within twenty (20) days of the date of full execution of this Letter of Intent, the Board shall present to the District an operations and maintenance agreement (“O&M Agreement”) for the comprehensive operation of the District System. By executing this Letter of Intent, the Parties represent that each Party agrees to the inclusion in the O&M Agreement of the following terms:

**(a)** **PSC Application.** The Board shall file the O&M Agreement with the PSC for approval only after all of the Projects have been deemed technically feasible and funding sources and projected post-project rates acceptable to the Boardhave been identified for each and every one of the Projects. If any of the Projects are not deemed technically feasible or the identified funding sources for any of the Projects are not acceptable to the Board, then the Board shall be under no obligation to assume any operation or maintenance responsibility for the District System. In the event the PSC attaches conditions in its orders or the application for approval of the O&M Agreement which are unacceptable to the Board or the City, the Board and the City reserve the right to terminate this Letter of Intent and any related agreements executed or adopted pursuant to this Letter of Intent.

**(b)** **Start Date.** The Board shall commence its responsibilities under the O&M Agreement thirty (30) days after the PSC’s final order approving the O&M Agreement, provided the PSC's order is acceptable to the Board and the City.

**(c)** **Transition.** The District and its employees shall cooperate and assist the Board in assuming its responsibilities under the O&M Agreement, including, but not limited to, transferring complete and current customer account information to Board employees, in hard copy and electronic formats, and performing a complete tour of the District System with Board employee and contractors.

**(d)** **Office Functions.** The Board shall assume responsibility for billing District customers, collecting payment (including, but not limited to, terminating water service for non-payment of sewer service) and other office functions, including the preparation of materials for meetings of the board of directors of the District. The Board shall deposit all revenue received from District customers into the District’s bank account on the same days as the Board deposits revenues from Board customers.

**(e)** **Field Duties.** The Board shall assume responsibility for all field maintenance activities on the District System, including, but not limited to, paying for electricity, water, gas, and insurance charges.

**(f)** **Liability.** The Board and its insurers and the City and its insurers shall have no liability for any act or omission involving the District System prior to the date of the Board's commencement of O&M services. In performing O&M services, the Board and its insurers shall only be liable for acts of gross negligence. The Board and its insurers shall have no liability for damages or injuries arising primarily from deficiencies in or malfunctions of the District System.

**(g) Employment.** As the Board does not guarantee employment for any period to its own employees, the Board shall not be obligated to hire any District employees, however, District employees are encouraged to apply for employment with the Board.

**(h)** **District Financial Responsibilities.** Unless and until otherwise agreed to in writing by the Board, the District shall remain exclusively responsible for the payment of its bond obligations, legal, accounting, engineering, District board member, and PSC fees.

**(i)** **District board Responsibilities.** The board of directors of the District shall meet at least monthly and review, approve (as appropriate), and pay all payments due under the terms of its bonds in full and on time, all accounts payable in full and on time, including but not limited to the O&M fee due to the Board. In the event the District is unable to pay any vendor (including but not limited to the Board) or meet any bond obligation, within thirty (30) days of the due date of any such payment or transfer, or fail to meet any of its bond covenants, or the Board’s six-month financial report shows that the O&M fee should be increased, the District shall, within thirty (30) days of such an occurrence, file a petition to the PSC for a rate increase. The Board may also petition the PSC for an increase to the District’s rates.

**(j)** **O&M Fee.** The initial monthly O&M fee that the District shall pay to the Board is $29,000.00 monthly, based upon the financial analysis, attached hereto as **Attachment 1**. The Board shall track its costs in providing O&M services to the District and issue a financial report every six months regarding the cost of providing O&M services. After one year of operation under the O&M Agreement, the Board shall modify the O&M fee to 105% of the previous year's O&M costs.

**(k) Capital Repairs.** Unless otherwise agreed by the Board in writing, the District shall be responsible for the cost of any capital expenditures, including, but not limited to, repair and replacement of equipment and facilities that are capitalized under generally accepted accounting practices (“GAAP”).

# **Article 4. Acquisition.**

## **4.1 Essential Terms.** Within twenty (20) days of the date of full execution of this Letter of Intent, the Board shall present to the District an asset purchase agreement ("Purchase Agreement") for the acquisition by the Board of thesewer utility assets and liabilities of the District. By execution this Letter of Intent, the Parties represent that each party agrees to the inclusion in the Purchase Agreement of the following terms:

## **a. The Sewer System Conveyance.** The Board agrees to accept and the District agrees to convey for $1.00 the sewer utility assets of the District and the liabilities of the District lists ("Acquisition Items"), subject to the terms of this Letter of Intent. Within ten days of the date of execution of this Letter, the District shall present to the Board a list of the Acquisition Items.

 **b. PSCApplication.** The Board shall file the Purchase Agreement with the PSC for approval in conjunction with the filing of one or more applications for a certificate of convenience and necessity for the I&I Project and the Expanded Project. Binding commitment letters for funding for the I&I Project and the Expanded Project on terms acceptable to the Board shall be received before the Board is obligated to file any application to the PSC or move forward with the acquisition of the Acquisition Items. In the event the PSC attaches conditions in its orders approving the acquisition which are unacceptable to the City or the Board, the City and the Board reserve the right to terminate this Letter of Intent and any related agreements executed or adopted pursuant to this Letter of Intent.The post-acquisition rate to District customers will be the same as the City’s rates except that a per 1000 gallon surcharge will apply to District customers for a ten year period from the date of closing to enable the City to pay for the title opinion required to close on the acquisition, increased expenses attributable to the District’s prior delinquencies in payment to the USDA RUS, any outstanding accounts payable of the District at the time of closing, the repayment of the Fayette County Commission grant for the Emergency Project, any deficiency in payment by the District to the City for O&M services, and any fines and the cost of any remedial actions required related to the District System. The amount of the per 1000 gallons surcharge may change over the ten year period .

 **c. Additional debt.** Following the execution of this Letter of Intent, the District shall not incur any additional indebtedness without first obtaining the consent of the Board.

**d. DEP Communications.** Following the execution of this Letter of Intent, the District shall provide the Board with a copy of all correspondence between the District and the West Virginia Department of Environmental Protection ("DEP"), including but not limited to Discharge Monitoring Reports ("DMRs"), Notice of Violation ("NOVs"), draft consent order, consent orders, and any other orders.

**e. Interim Operations.** The District shall operate the District System in the ordinary course until the O&M Agreement becomes effective.

**f. Title Opinion.** The Board shall cause to be prepared a title opinion by a licensed West Virginia Attorney identifying any and all deficiencies in title and encumbrances of any kind pertaining to all real property required for the lawful ownership and operation of the District System. The District shall, at its expense, cure any deficiencies in title identified by the Board.

##  **g. Closing**. The Definitive Agreement shallprovide that the consummation of the sewer systems conveyance (the “Closing”) shalloccur as promptly as possible after satisfaction or waiver of all conditions precedent, and that the Parties shalluse their commercially reasonable best efforts to cause the Closing to occur within sixty (60) days of PSC approval, provided the PSC's order is acceptable to the City and the Board.

## **Article 5. Conditions Precedent.** The Definitive Agreementsshallprovide that the obligations of the Parties to consummate the Transactions are contingent upon:

### **5.1. Governing Body Approval.**Acceptance and approval of the Transactions and the Definitive Agreements and all related agreements by all necessary parties, including, without limitation, each Party’s governing board;

### **5.2. Regulatory Approval.**Approval of the Transactions by, and the giving of all required notices to, all federal, state, and local governmental or regulatory entities or authorities having jurisdiction;

 **5.3 Assignment and Assumption of District debt.** Approval of the District's bondholders to the assignment by the District and the assumption by the Board of the rights and obligations arising under the District's bonds.

### **5.4. Acceptable Funding.**Identification by funding agencies offunding on terms acceptable to the Board and the City for the I&I Project and Expanded Project.

##  **Article 6. General Terms.**

## **6.1 Pursuit of Approvals.**Each Party shall take all action necessary to promptly initiate and apply for, and to diligently pursue receipt of, each of the approvals, assignments, assumptions, exemptions or waivers required to be obtained by such Party.

# **6.2. Due Diligence Review.**During the term of this Letter of Intent, each of the Parties shall cooperate fully with the other Party with respect to, and permit the authorized separate legal, financial and engineering representatives of such other Parties to conduct, a due diligence investigation for the purposes of considering, investigating, negotiating and/or consummating the Transactions. In the Definitive Agreements, each Party shall be required to make certain representations as to the accuracy and completeness of information shared with the other party as of the date of the Closing.

# **6.3. Good Faith Negotiations.**The Parties shallwork together in good faith to develop a timeline with a task list for completingnegotiations and executing the Definitive Agreements.

## **6.4. Expenses.** Unless otherwise provided herein, each Party shall bear its own expenses associated with the activities contemplated by this Letter of Intent.

## **6.5. No Third-Party Beneficiaries.** This Letter of Intent is intended solely for the benefit of the Parties hereto and not for the benefit of any other person or entity.

## **6.6. Entire Agreement.**This Letter of Intent may be amended only by a written instrument executed by the Parties. This Letter of Intent may not be assigned by any Party without the prior written consent of the other Party. This Letter of Intent shall be binding upon, and inure to the benefit of, the Parties and their respective successors and permitted assigns.

## **6.7. Notices.** Any and all notices given under this Letter of Intent shall be given by, and be deemed given when, (i) delivered by personal delivery; (ii) deposited in U.S. mail, postage prepaid return receipt requested; or (iii) sent by email with confirmation of receipt, addressed as follows:

If to the District:

If to the City:

If to the Board:

## **6.8. Counterparts; Electronic Signature.** This Letter of Intent may be executed in any number of counterparts, and each such counterpart hereof shall be deemed to be an original instrument and become effective when one or more counterparts shall have been executed by each of the Parties, but all such counterparts together shall constitute but one agreement. Signatures of the Parties to this Letter of Intent on a counterpart or any number of counterparts transmitted by facsimile or other electronic means shall be deemed original signatures for all purposes.

## **6.9.** **Governing Law.** This Letter of Intent shall be governed by and construed in accordance with the internal substantive laws of the State of West Virginia.

## **6.10. Severability.** If any of the terms or provisions of this Letter of Intent or the application thereof to any person or circumstance shall be held by a court of competent jurisdiction to be invalid or unenforceable, the remainder of this Letter of Intent and the application of such terms or provisions to other persons or circumstances shall not be affected thereby, but rather shall be enforceable to the greatest extent permitted by law.

## **6.11. No Conflict.** Each Party represents and warrants that its entry into discussions regarding the Transactions and the entry into this Letter of Intent does not constitute a default under or result in a breach of any agreement to which it is a Party.

**IN WITNESS WHEREOF**, the Parties have executed this Letter of Intent effective the day and year first set forth above.

ARBUCKLE PUBLIC SERVICE DISTRICT

By:

Its:

OAK HILL SANITARY BOARD

By:

Its:

CITY OF OAK HILL

By:

Its:

ATTACHMENT 1

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