

AGREEMENT

This Agreement is made and entered into the _____ day of _____, 2014, by and between the City of Eagleville, Tennessee, a Tennessee municipal corporation, by and through its duly elected officials, hereinafter referred to as “Eagleville” and Consolidated Utility District of Rutherford County, a public utility district, through its duly elected commissioners, hereinafter referred to as “CUD”.

WITNESSETH:

WHEREAS, Eagleville has an ongoing public health issue because of failing septic tank drain fields; and

WHEREAS, Eagleville desires to correct the public health issue by establishing a public sanitary sewer system; and

WHEREAS, Eagleville has secured financing to construct and own said public sanitary sewer system; and

WHEREAS, while Eagleville will own the public sanitary sewer system, Eagleville is desirous of entering into an operating Agreement with CUD for purposes of operating a portion of the public sanitary sewer system; and

WHEREAS, the operating Agreement necessitates the establishment of the following terms and conditions to protect public health and environment and to provide reliable sanitary sewer service; and

WHEREAS, CUD agrees to undertake for Eagleville pursuant to the terms and conditions set forth herein the operation of the Eagleville STEP service including the STEP service equipment as hereinafter defined but ownership of said STEP service and equipment shall remain with Eagleville; and

WHEREAS, Eagleville agrees to pay CUD for the operations on behalf of Eagleville;

NOW, therefore, the parties hereto agree as follows:

- 1) **DEFINITIONS:** Unless the contract specifically indicates otherwise, the following terms and phrases, as used in this Agreement, shall have the meanings hereinafter designated:
 - a) “*Building Sewer*” means the pipeline extending from the user dwelling, structure, or premises to the STEP tank. Building sewer is not STEP service equipment.
 - b) “STEP” shall mean an effluent sewer system, commonly referred to as a Septic Tank Effluent Pumping system in which a buried collection tank is used to separate solids from the liquid effluent portion with results that the liquid portion is pumped through pipe to further downstream treatment.
 - c) “*STEP service*” or “*STEP service equipment*” means equipment installed on private property including a watertight septic tank (STEP tank), pump, controls, electrical lines and disconnect, sewer service lines, and related appurtenances. It does not include the building sewer.
 - d) “*Sand Filter System*” shall mean the tanks, sand filters, ultraviolet disinfection equipment, and drip fields that will receive and process effluent from the STEP service equipment.
 - e) “*Sewer service lines*” means the force main that connects the STEP tank to the check valve/valve box at the right-of-way, and the force mains that deliver effluent to the Sand Filter System.

- 2) **SEWER USE ORDINANCE:** Eagleville shall establish, adopt and maintain a Sewer Use Ordinance which ordinance shall be subject to the terms and conditions of this Agreement and shall in no way conflict/interfere with the terms and conditions of this Agreement. To the extent there should be any conflict between the Eagleville Sewer Use Ordinance and this Agreement, then this Agreement shall control. The parties attach hereto the present Sewer Use Ordinance adopted by Eagleville as Exhibit 1.
- 3) **OWNERSHIP:** Eagleville shall maintain ownership of the STEP system and STEP service equipment, together with all easements necessary to perform maintenance and repair. Eagleville shall provide CUD with unfettered access to the STEP system and STEP service equipment in order for CUD to operate and maintain the same.
- 4) **OPERATION AND MAINTENANCE:** CUD agrees to operate and maintain Eagleville's Sand Filter System and STEP service equipment for an on behalf of Eagleville during the term of this Agreement, but no further or otherwise. CUD agrees to provide normal repair and maintenance of the STEP service equipment to the point of connection to the building sewer, but no further or otherwise. CUD shall exercise its responsibilities in a reasonable and workmanlike manner. CUD will perform administrative duties as necessary to ensure compliance with the Sewer Use Ordinance adopted by the City of Eagleville.
- 5) **FORCE MAJEURE:** CUD shall not be responsible for any force majeure or events beyond its ordinary control. CUD shall not be liable for failure to perform its obligations of operation, repair and maintenance if such failure is as a result of Acts of God (including but not limited to fire, flood, storm, earthquake or other natural disaster) war, invasion, acts of foreign enemies, hostilities of whatever kind or nature, civil war, rebellion, confiscation, terrorist activities, government sanctions, blockage, embargo, labor dispute, or interruption or failure of utilities of whatever kind or nature.
- 6) **CUD COSTS AND EXPENSES:** CUD shall bear and pay for its costs and expenses in the operation and maintenance of the STEP system and STEP system service equipment as set forth herein to include only CUD labor, materials and out-of-pocket expense for normal maintenance and repair as well as transportation. CUD shall not be responsible for costs or expenses involving any capital improvements such as the expansion or replacement of filter media, STEP drip lines, fencing, PLC controllers, or similar or related items.
- 7) **EAGLEVILLE COSTS AND EXPENSES:** Eagleville shall pay for all utilities including electric power necessary for the operation, repair and maintenance of the STEP system and equipment and for any permit fees or expenses. All maintenance, upkeep, repair and replacement of any and all other components of the Eagleville Sewer system shall be the sole and exclusive responsibility of Eagleville. Eagleville shall likewise be exclusively responsible for all debt service costs, capital outlay, and capital improvements of whatever kind or nature.
- 8) **WASTEWATER:** Eagleville shall be responsible for any and all waste or wastewater delivered to the Sewer service line by the STEP service and system. CUD shall have no responsibility for or on account of any waste or wastewater entered into the Sewer service line.
- 9) **COMPENSATION TO CUD BY EAGLEVILLE:** In consideration of CUD's operation, maintenance and repair of the sewer system, CUD will retain a monthly operating charge of \$20.30 per residential equivalent customer from the sewer charge to each customer. This payment shall continue as adjusted from time to time for the period from and after the date of the execution of this agreement.

- 10) BAD DEBTS:** The failure of any person to use or install a STEP system or STEP service equipment, to connect to the public sanitary sewer or to pay any indebtedness to Eagleville shall not relieve Eagleville of its obligations to pay CUD in accordance with the terms of this Agreement or shall cause any adjustment in the amounts to be paid by Eagleville to CUD under this Agreement.
- 11) BILLING:** CUD will perform sewer billing services on behalf of the City of Eagleville. Billing shall be on a monthly basis. CUD shall render monthly bills directly to customers, and after deduction of the compensation outlined in paragraph 9 above, will remit the balance of total sewer collections to the City of Eagleville no later than the 15th day of the following month. CUD shall provide a report documenting the number of customers served, consumption by sewer customers, and total sewer charges. The amount of compensation retained by CUD will be documented on the report, and the net amount will be paid to the City of Eagleville.
- 12) FORMULA FOR FUTURE PAYMENTS BY EAGLEVILLE TO CUD:** On or after January 1, 2016, and for each year thereafter, the monthly fee per customer paid by Eagleville to CUD shall be based upon CUD’s annual operating expense (the “sum”) for the previous fiscal year for its systemwide STEP system, less depreciation, electric and permit costs. This sum is then to be divided by the average number of STEP system customers of CUD, including Eagleville customers, for its systemwide STEP system for the previous calendar year multiplied by twelve (12) to determine an average monthly cost per consumer. This net shall then be increased by 10%.
- 13) CUSTOMER CHARGE:** Operation charge for customers will be a “residential equivalent” based on the meter size as follows:

Meter Size	Residential Equivalent Customers
3/4" & 1"	1
1.5"	2
2"	6
3"	14
4"	27

- 14) WARRANTIES AND REPRESENTATIONS:** Eagleville represents and warrants to CUD that:
- a) Eagleville is a municipal corporation duly organized, validly existing, and in good standing under the laws of the State of Tennessee and has the corporate power to carry out its business as is now being conducted including the terms and conditions of this Agreement.
 - b) Eagleville has the legal capacity and right to enter into and perform this Agreement and the consummation of the transactions contemplated by this Agreement will not result in the breach or termination of any provisions of, or constitute a default under any contract, Agreement, mortgage,

deed of trust or other Agreement or instrument which Eagleville is a party or by which Eagleville or any of the assets, properties and rights may be bound.

- c) Eagleville is not a party to any litigation or other proceedings pending before Courts, commissions, or bureaus affecting any of the assets, properties or rights covered by this Agreement, or any one or more of them, and, to the knowledge of Eagleville, no such other litigation or proceeding is threatened against Eagleville.
 - d) Eagleville shall have filed and paid to any and all responsible governmental authorities and agencies any and all fees, costs and expenses due with respect to any of the assets, properties or rights covered by this Agreement prior to the date of execution of this Agreement.
 - e) Eagleville is not in default under:
 - i) Any Order, writ, injunction or decree of any Court of commission or other administrative agency in any way affecting the assets, properties and rights covered by this Agreement or
 - ii) Any Agreement or obligation by which Eagleville is a party or by which Eagleville may be bound or to which CUD may be subject insofar as it affects all of any part of the assets, properties and rights covered by this Agreement.
 - f) There are no developments or threatened developments of a nature that would be materially adverse to the conduct by CUD of the business of operating and maintaining the Eagleville STEP system wherein the assets, properties and rights covered by this Agreement are utilized, and Eagleville has not withheld any material fact from CUD in respect to such business or the condition of the assets, properties and rights pursuant to this Agreement.
 - g) Eagleville is in compliance with each and every valid law, rule and regulation of any governmental authority and is not in breach or default with respect to any such law, rule or regulation of any governmental authority in respect to any such asset, property, or other right covered by this Agreement or with respect to the normal and ordinary use and operation of Eagleville's public sanitary sewer system.
 - h) The foregoing representations and warranties of Eagleville are true and correct on the date hereof and shall survive the execution and termination of this Agreement.
- 15) **SURVIVAL**: The representations and warranties and Agreements made by Eagleville hereinabove shall survive the expiration of this Agreement and shall continue in full force and effect from and after the termination of this Agreement.
- 16) **INSURANCE**: Eagleville shall provide CUD with a copy of Eagleville General Liability Insurance Policy, naming CUD and/or its designee as an additional insured during the term of this Agreement. The evidence of insurance coverage shall be endorsed to provide for thirty (30) days' notice to CUD prior to cancellation or modification of any policy. Securing and providing insurance shall not limit Eagleville's liability under this Agreement, but shall be security therefor
- 17) **INDEMNITY**: Eagleville shall indemnify CUD against any and all monetary loss, claims, damages, liabilities, and actions of whatever kind and nature on account of or arising out of the Eagleville sanitary sewer system occurring at any time hereafter including but not limited to CUD's reasonable attorney's fees and costs.
- 18) **FUTURE LIABILITY**: CUD shall incur no future liability or responsibility in any form or manner whatsoever of whatever kind and nature from and after the date of the termination of this Agreement on account of CUD's performance or non-performance under the terms of this Agreement.
- 19) **HOLD HARMLESS**: The parties agree that CUD assumes no responsibility in connection with the sanitary sewer system of Eagleville, except as to this Agreement. Eagleville shall remain solely and

exclusively liable and responsible for its public sanitary sewer service and agrees to hold CUD harmless from the same.

- 20) **NO RESPONSIBILITY**. CUD assumes no obligation for Eagleville of any kind, except as expressly set forth in this Agreement, including, without limitation, those with respect to the public sanitary sewer system of Eagleville to include the STEP system and STEP service equipment and the building sewer line except as set forth in this Agreement. Eagleville shall remain solely responsible for, shall discharge, and shall indemnify CUD against any and all obligations, liabilities, duties and responsibilities which may result or arise out of Eagleville STEP system or STEP system service equipment, on or after the date of this Agreement, whether expressed, implied or by operation of law or otherwise relating to or affecting, directly, indirectly in whole or in part, the Eagleville public sanitary sewer system and rights and responsibilities thereunder.
- 21) **COMPLIANCE**: Eagleville shall be responsible for complying with any and all applicable Federal, State, or local laws, ordinances, rules and regulations and requirements of any governmental authority relating to the operation of a public sanitary sewer system.
- 22) **FINES, PENALTIES AND COMPLIANCE**: Eagleville shall be solely and exclusively responsible for the payment of any and all fines, penalties or related charges relating to compliance with any Federal, State or local laws, rules or regulations.
- 23) **TERM OF AGREEMENT AND TERMINATION**: This Agreement shall be effective from and after the date of its execution by the parties. Thereafter, Eagleville shall have the right to cancel this Agreement upon ninety (90) days advance written notice to CUD. CUD shall have the right to cancel this Agreement upon one year advance written notice to Eagleville.
- 24) **NOTICE**: Notice to either party shall be in writing by certified mail return receipt requested to the last known address of each party with notice to Eagleville sent to the Mayor of the City of Eagleville and notice to CUD sent to the General Manager of CUD.
- 25) **MODIFICATIONS TO AGREEMENT**: All of the terms of this Agreement and understandings of the parties are set forth in this Agreement. No modifications to this Agreement shall be effective unless in writing and signed by authorized representatives of both parties.
- 26) **CONSTRUCTION**: Neither the form of this Agreement, nor any language herein, shall be interpreted or construed in favor of or against either party hereto as the sole drafter thereof.
- 27) **INTERPRETATION AND SEVERABILITY**: This Agreement is executed under current interpretation of applicable Federal, State, County municipal or other local statute, ordinance or law(s). However, each separate division (paragraph, clause, item, term, condition, covenant or agreement) herein shall have independent and severable status for the determination of legality, so that if any separate division is determined to be void or unenforceable for any reason, such determination shall have no effect upon the validity or enforceability of each other separate division, or any combination thereof.

IN WITNESS WHEREOF, the parties have signed effective the day and date first above written.

Consolidated Utility District of Rutherford County

By: _____ Date: _____

President

Attest:

By: _____ Date: _____

Secretary

Authorized and adopted by the Board of Commissioners at its meeting on the ____ day of _____, 2014.

City of Eagleville, Tennessee

By: _____ Date: _____

Mayor

Attest:

By: _____ Date: _____

City Recorder

Authorized and adopted on final reading by the Mayor and City Council at its meeting on the ____ day of _____, 2014.