

**AGREEMENT FOR THE OPERATION AND
MANAGEMENT OF THE SANITARY SEWER
COLLECTION SYSTEM OF THE TOWN OF
UNICOI, TENNESSEE, PENDING THE TRANSFER AND
CONVEYANCE OF SAME, AND AGREEMENT FOR
THE TRANSFER AND CONVEYANCE (WITHOUT
WARRANTIES EXCEPT AS SET FORTH HEREIN)
OF SUCH SANITARY SEWER COLLECTION SYSTEM**

(Hereinafter Referred To As "The Agreement")

THIS AGREEMENT made and entered into on this the 21st day of June, 2004, by and between The Town of Unicoi, Tennessee, a municipal corporation organized and existing pursuant to the Laws of the State of Tennessee, hereinafter referred to as "the Town," and The Board Of Public Utilities Of The Town of Erwin, Tennessee, a municipal utility system created and existing pursuant to "The Municipal Electric Plant Law of 1935," (T.C.A. § 7-52-101, et seq.), hereinafter referred to as "Erwin Utilities";

WITNESSETH:

WHEREAS, the Town has developed and owns a sanitary sewer collection system, which serves portions of the geographical area encompassed by the Town;

WHEREAS, Erwin Utilities owns and operates various utility systems including, but not limited to, a sanitary sewer collection system and a sewage treatment plant, which serve the geographical area encompassed by the Town of Erwin, Tennessee, and which serves areas beyond the geographical area encompassed by the Town of Erwin, Tennessee, within Unicoi County, Tennessee;

WHEREAS, Erwin Utilities presently owns the sanitary sewer main line/lines within the geographical area encompassed by the Town of Unicoi, Tennessee, and the



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sanitary sewer main line which transports the sewage from the sanitary sewer collection system owned by the Town to the sanitary sewer system of Erwin Utilities;

WHEREAS, Erwin Utilities, by way of the aforesaid sanitary sewer main line, is presently providing the sewer treatment services for and with respect to the sanitary sewer collection system presently owned by the Town;

WHEREAS, Erwin Utilities is presently providing electrical service to most, if not all, of those individuals and/or entities served by the sanitary sewer collection system presently owned by the Town;

WHEREAS, it is anticipated, as a result of experience and efficiencies of scale, Erwin Utilities can operate and manage the sanitary sewer collection system presently owned by the Town at less cost than the Town; and

WHEREAS, the Town and Erwin Utilities have reached certain agreements, which they wish to reduce to writing, concerning the operation and management of the sanitary sewer collection system presently owned by the Town and concerning the transfer and conveyance (without warranties except as set forth herein) of such sanitary sewer collection system to Erwin Utilities;

NOW, THEREFORE, for and in consideration of the premises and the covenants and agreements hereinafter stated, the Town and Erwin Utilities do covenant, contract and agree as follows:

I.

(A) The term of the agreements provided in paragraph I of this Agreement shall commence at midnight on July 1, 2004, and shall endure until those debts listed and described on Exhibit A to this Agreement (which Exhibit A is attached

hereto and incorporated herein by and for reference) are paid in full. During the term Erwin Utilities shall assume the total, full, complete and exclusive operation of the sanitary sewer collection system presently owned by the Town including, but not limited to, the management thereof, the making of any repairs thereto, the maintenance thereto, the billing of those individuals and/or entities served thereby, the collection of funds generated thereby, the disbursement of such funds as Erwin Utilities deems appropriate, etc. No other person or entity including, but not limited to the Town, shall have any control over the operation of the sanitary sewer collection system presently owned by the Town.

(B) During the term Erwin Utilities shall have the sole and exclusive right to determine and set the charges, fees and rates with respect to usage of the sanitary sewer collection system presently owned by the Town including, but not limited to, tapping fees, extension fees, usage rates, repair fees, etc.

(C) During the term Erwin Utilities shall be entitled to and shall own any and all funds generated by and/or resulting from the operation of the sanitary sewer collection system presently owned by the Town.

II.

Upon the payment in full of those indebtednesses, as and when same become due or otherwise, listed and described on Exhibit A to this Agreement, and after any and all appropriate public hearings held upon the giving of due and proper notice, the Town shall, pursuant to that authority granted in and by T.C.A. §6-2-201 (8) and (11), transfer and convey (without warranties except as set forth herein) unto Erwin Utilities any and all right, title, claim and interest (whether legal, equitable or otherwise) of the Town in

and to the complete and total sanitary sewer collection system owned by the Town and those items and things listed and described on Exhibit B to this Agreement (which Exhibit B is attached hereto and incorporated herein by and for reference).

Erwin Utilities shall accept ownership, management, operation and responsibility for the sanitary sewer collection system, which is transferred and conveyed unto Erwin Utilities, pursuant to the provisions of this Paragraph of this Agreement.

III.

(A) The Town may make or allow other entities to make additions and extensions to the sanitary sewer collection system presently owned and hereafter owned by the Town; however, such additions and extensions, to the extent that such are connected in any manner to any portion of the sanitary sewer collection system managed and/or owned by Erwin Utilities, must be approved by Erwin Utilities and the making of such additions and extensions shall be subject to the provisions of Paragraph III (B) and (C) of this Agreement.

(B) Erwin Utilities shall have the right, but not the duty or obligation, except as provided in Paragraph III (C) of this Agreement, to approve, disapprove, accept, reject, amend, change and/or modify any and all aspects and stages of the construction process with respect to any additions and extensions connected in any manner to the sanitary sewer collection system presently owned and hereafter owned by the Town including, but not limited to, the following:

- (a) The selection of any engineers, geologists, consultants, contractors, subcontractors, workers, etc., with regard thereto;

- (b) The location, both general and specific, of any and all parts thereof;
- (c) The planning and design thereof;
- (d) The construction methods utilized with regard thereto; and
- (e) The materials contained and used therein.

(C) Erwin Utilities shall not have any duty or obligation to participate in the planning, development and/or construction of additions and extensions to the sanitary sewer collection system presently owned and hereafter owned by the Town, but shall respond in a timely manner to any request by the Town to review the plans with respect to such additions and extensions and shall not unreasonably withhold its consent to such additions and extensions.

(D) Erwin Utilities shall not have any duty or obligation to accept any additions and extensions to the sanitary sewer collection system to the extent that such may extend or offer service beyond the Nolichucky River water shed (north of that area known as "Byrd Hill"). Erwin Utilities shall not have any duty or obligation to receive sewage beyond the Nolichucky River watershed (north of that area known as "Byrd Hill").

IV.

Except as provided and authorized in Paragraph III of this Agreement, the Town shall not:

- (a) Construct or operate a utility service which would provide a service similar to that service provided by the sanitary sewer collection system to the customers presently or hereafter served by the sanitary sewer collection system presently or hereafter managed or owned by Erwin Utilities;

(b) Allow the construction or operation of a utility service which would provide a service similar to that service provided by the sanitary sewer collection system to the customers presently or hereafter served by the sanitary sewer collection system presently or hereafter managed or owned by Erwin Utilities;

(c) Grant to any person, firm, association, corporation or any other type of entity, a franchise, authorization or permit to construct or operate a utility service which would provide a service similar to that service provided by the sanitary sewer collection system to the customers presently or hereafter served by the sanitary sewer collection system presently or hereafter managed or owned by Erwin Utilities;

V.

(A) During the term of this Agreement, as provided in Paragraph I(A) of this Agreement, Erwin Utilities shall have and enjoy the exclusive franchise, authorization and permit to operate a sanitary sewer collection system or similar system within the geographical areas served by the sanitary sewer collection system presently owned by the Town, and any additions and extensions thereto; and, shall have and enjoy the right to occupy any and all of the public roads, streets, highways, alleys, ditches and rights-of-way within the geographical areas served by the sanitary sewer collection system presently owned by the Town, and any additions and extensions thereto, so as to enable Erwin Utilities to operate and maintain the sanitary sewer collection system.

(B) Upon the transfer and conveyance, as provided in Paragraph II of this Agreement, Erwin Utilities shall have and enjoy in perpetuity the exclusive franchise, authorization and permit to operate a sanitary sewer collection system or similar system

within the geographical areas served by the sanitary sewer collection system presently owned by the Town, and any additions and extensions thereto; and, shall have and enjoy the right to occupy any and all of the public roads, streets, highways, alleys, ditches and rights-of-way within the geographical areas served by the sanitary sewer collection system presently owned by the Town, and any additions and extensions thereto, so as to enable Erwin Utilities to operate and maintain the sanitary sewer collection system.

VI.

The Town agrees and covenants that it will not now or hereafter, at any point in time, charge to, assess upon, impose upon, levy upon, collect from, receive from and/or cause to be collected from Erwin Utilities any value including, but not limited to, money, whether such is designated as a tax, in lieu of tax, fee, assessment, charge, etc., which is based upon the existence of the sanitary sewer collection system, the property constituting the sanitary sewer collection system, the services rendered by the sanitary sewer collection system, the charges based on use of the sanitary sewer collection system, the revenue of the sanitary sewer collection system, etc.

VII.

The Town warrants and covenants as follows:

- (a) It has good right, full power and lawful authority to make the transfers and conveyances provided for in Paragraph II of this Agreement;
- (b) That it will warrant and defend the title to that which is transferred and conveyed (as provided in Paragraph II of this Agreement) against any and all claims; and

(c) That it is lawfully seized and possessed of that which is transferred and conveyed (as provided in Paragraph II of this Agreement) and that the same is free and clear of all taxes, liens and encumbrances whatsoever, except for those as set forth and described on Exhibit A to this Agreement.

VIII.

Upon the request of Erwin Utilities, the Town shall institute, conduct and conclude any actions, proceedings and/or hearings which are presently or hereafter deemed necessary by Erwin Utilities so as to effectuate the transfers and conveyances provided for in Paragraph II of this Agreement and so as to accomplish the goals and purposes of this Agreement. Upon the request of Erwin Utilities, the Town shall enter into any instruments and documents which are presently or hereafter deemed necessary by Erwin Utilities so as to effectuate the transfers and conveyances provided for in Paragraph II of this Agreement and so as to accomplish the goals and purposes of this Agreement.

IX.

Upon the due execution of this Agreement, the Agreement For Sewer Service Between Town Of Unicoi, Tennessee And Board Of Public Utilities Of The Town Of Erwin, Tennessee dated May 29, 1998, shall be null, void and of no effect.

X.

This Agreement represents and sets forth the entire agreement between the parties hereto and shall not be changed, modified or supplemented unless such is done in writing and properly entered into by the party charged by such change, modification or supplementation.

XI.

This Agreement shall be interpreted and governed by the Laws of the State of Tennessee.

This Agreement shall be executed in sextuple, and each shall be considered an original, on this the date first above written.

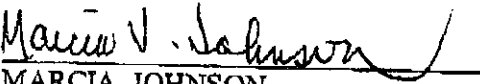
TOWN OF UNICOI, TENNESSEE

By:


KENNETH L. LEWIS
MAYOR

ATTEST:

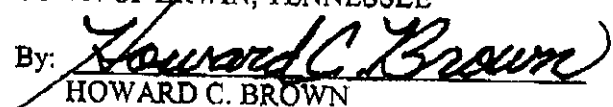
TOWN OF UNICOI


MARCIA JOHNSON
CITY RECORDER

(Seal)

THE BOARD OF PUBLIC UTILITIES OF THE
TOWN OF ERWIN, TENNESSEE

By:


HOWARD C. BROWN
GENERAL MANAGER

ATTEST:

Patricia A. Vanover
PATRICIA A. VANOVER
SECRETARY TO THE BOARD
OF PUBLIC UTILITIES OF THE TOWN
OF ERWIN, TENNESSEE

(SEAL)

THE BOARD OF PUBLIC UTILITIES
OF THE TOWN OF ERWIN, TENNESSEE

By: Eugene Price
EUGENE PRICE
CHAIRMAN OF THE BOARD OF
PUBLIC UTILITIES OF THE TOWN
OF ERWIN, TENNESSEE

EXHIBIT A

Division of Bond Finance

Principal balance of \$220,445.00

EXHIBIT B

Any and all property, of whatsoever nature, type or kind, associated with or related to the sanitary sewer collection system owned by the Town.

Any and all property, whether real, personal or mixed, associated with or related to the sanitary sewer collection system owned by the Town.

Any and all property, whether tangible or intangible, associated with or related to the sanitary sewer collection system owned by the Town.

Any and all lines, pipes and/or tiles, whether in ground or out of ground, of the sanitary sewer collection system (including, but not limited to, main lines, lateral lines, connecting lines, spur lines, etc.), manholes, valves, fittings, meters, etc.; and, any and all equipment, machinery and tools; and, any and all easements which have been acquired by the Town (whether acquired by grant, prescription or otherwise) and any and all rights-of-way which have been acquired by the Town (whether acquired by grant, prescription or otherwise) in connection with the sanitary sewer collection system.