

## **TRANSFER AGREEMENT**

This AGREEMENT, dated the \_\_\_\_ day of \_\_\_\_\_, 2007, by and between Snowshoe Mountain, Inc., a West Virginia corporation, and Snowshoe Water & Sewer, Inc., a public utility, (hereinafter referred to collectively as “Snowshoe W&S”), and the Upper Greenbrier Public Service District, a/k/a the Pocahontas County Public Service District, a public utility, (hereinafter “Pocahontas”).

WHEREAS, Snowshoe W&S currently provides wastewater services to approximately 1,800 sewer customers located at the Snowshoe Mountain Resort (“Resort”) and, in connection therewith, operates sewer collection and waste treatment facilities within the Resort in Pocahontas County, West Virginia; and

WHEREAS, Pocahontas has proposed constructing a new regional sewer system (the “Regional System”) to treat the sewage now being treated by Snowshoe W&S and to serve additional new sewer customers in Pocahontas County but in any event wishes and intends to operate as a wastewater utility that serves current and future wastewater customers at or near the Resort; and

WHEREAS, Snowshoe W&S has offered to contribute to Pocahontas all of Snowshoe W&S’ wastewater customers and associated revenues and all of its operating sewer collection and waste treatment facilities, as is where is, which facilities had a book value in excess of \$2.7 million, as of December, 2006; and

WHEREAS, Pocahontas wishes to accept Snowshoe W&S’ customers and sewer collection facilities and its waste treatment facilities; and

WHEREAS, the parties have accordingly agreed that Snowshoe will contribute all of its wastewater customers and the associated revenues, its sewer collection

facilities and its waste treatment facilities to Pocahontas, as is where is, all upon the terms and conditions and for the consideration set forth in this Agreement.

NOW, THEREFORE, WITNESS the following Agreement between Snowshoe W&S and Pocahontas:

1. This Agreement is neither binding nor effective until approved by an order of the Public Service Commission of West Virginia, (“Commission”). The effective date of this Agreement shall be a date mutually agreed to by the parties not less than one month nor more than four months following the date on which such Commission order is filed.
2. As of the effective date of this Agreement, Snowshoe W&S will transfer ownership of its sewer collection facilities and its waste treatment facilities (as described in Appendix A and Appendix B hereof, and referred to herein as the “System”), as is where is. Such transfer of the System shall include the transfer of rights-of-way for access for maintenance and repair, the transfer of Snowshoe W&S’ NPDES permits, all customers served by the System and all revenues associated therewith and (subject to paragraph 11 below) of all obligations associated with the System or the ownership or operation thereof.
3. This Agreement (including the agreements provided for herein and contemplated hereby) constitutes the entire agreement between the parties with respect to the matters addressed and may be amended only in a subsequent writing executed by both parties.

4. This Agreement may be assigned by either party, provided prior written notice is given to the other party, and such assignment shall be binding upon all purchasers, successors or assigns.
5. Snowshoe W&S has provided or will provide to Pocahontas historical data regarding billing and payment, operation and maintenance costs, and estimated customer water usage of the previous three years.
6. Snowshoe W&S has provided or will provide copies and recording information for any and all easements for the System.
7. Snowshoe W&S will not be required to provide information, including wages, about current employees of Snowshoe W&S who may be available for hire by Pocahontas.
8. Snowshoe W&S has provided or will provide Pocahontas with copies of all sewer main extensions reimbursement agreements applicable to the System, a list of which agreements is set forth in Appendix C hereto, entitled “List of Sewer Main Extension Agreements.”
9. Snowshoe W&S has provided or will provide Pocahontas with the results of any smoke tests of the System conducted by or on behalf of Snowshoe W&S prior to the date of this Agreement.
10. Snowshoe W&S paid Pocahontas’ engineers to perform a survey depicting and describing the location of the existing mainline collection System and laterals.
11. The section of sewer line located beneath the Shavers Center at the Resort shall be transferred to Pocahontas as part of Snowshoe W&S’ collection System. After

transfer of the System to Pocahontas, Snowshoe shall nevertheless remain responsible for the cost of repairing and maintaining that section of sewer line until such time as Snowshoe W&S shall have, as its sole cost and expense, relocated the same, at which time Snowshoe W&S shall simultaneously transfer to Pocahontas right-of-way for access for repair and maintenance thereof. Thereafter, Snowshoe W&S shall have no further obligation or responsibility respecting said section of sewer line. Snowshoe W&S will save and hold harmless Pocahontas from any and all costs and liabilities resulting from the location of the sewer line under the Shavers Center.

12. Pocahontas will seek and secure an Order from the Commission approving this Agreement and the transactions contemplated hereby; and ordering that, from and after the effective date of this agreement, Snowshoe W&S shall cease to be a wastewater public utility under provisions of W. Va. Code Section 24-1-1 et seq..
13. Upon the effective date hereof, Snowshoe W&S will:
  - a. Convey to Pocahontas in fee, with general warranty of title, as is where is, all land, buildings, fixtures and other interests in real estate constituting the System, including all booster pump sites, temporary construction easements, permanent easements and rights of way for the existing System. Such conveyance shall be accomplished by a Deed substantially in the form of Appendix E-1 hereof, a Deed of Easement substantially in the form of Appendix E-2 hereof, and an Assignment of Easement Right substantially in the form of Appendix E-3 hereof.

- b. Convey to Pocahontas the treatment facilities and associated NPDES permits. Such conveyance shall be accomplished by a general warranty Deed substantially in the form of Appendix E-4 hereof, a Deed of Easement substantially in the form of Appendix E-5 hereof, and an Assignment of Easement Right substantially in the form of Appendix E-6 hereof.
  - c. Convey to Pocahontas, as is where is, by bill of sale, all pipelines, pumps, tanks, equipment and other physical facilities, including fixtures and personal property, included within or constituting a part of the System, together with any transferable manufacturer's warranties associated therewith, and all records, contracts, permits and accounts associated with operation of the System. Such conveyance shall be accomplished by a Bill of Sale substantially in the form of Appendix F hereof.
14. Upon the effective date hereof, all former sewer customers, assets and operational responsibilities and utility obligations of Snowshoe W&S shall become those of Pocahontas for all purposes; and the sewer customers of Pocahontas shall be billed in accordance with Pocahontas' approved tariff.
15. Pocahontas will assume the payment of outstanding obligations under the mainline extension agreements listed in Appendix C hereof.
16. In order to assist Pocahontas in the collection of sewer charges overdue and payable to Pocahontas, Snowshoe W&S will execute a water service termination agreement substantially in the form of Appendix G hereto providing that

Snowshoe W&S will terminate water service at the request of Pocahontas to any individual sewer customer whose water service may be reasonably terminated without shutting off service to customers who are not in arrears in the payment for their water services.

17. Snowshoe W&S and Pocahontas understand and agree that after the System is transferred to Pocahontas, it will be the responsibility of Pocahontas to respond to proposals to extend the sewer mains to serve new customers. In this regard, Pocahontas will be governed by the provisions of 150 CSR §5-5.5, as amended.
18. Snowshoe W&S, to the extent it is or may in the future become a customer of Pocahontas, will agree to comply with the requirements of a standard sewer use ordinance adopted by Pocahontas pursuant to resolution, and to enter into a “Sewer Users Agreement” substantially in the form of Appendix H.
19. The parties agree to work cooperatively and in good faith to facilitate the efficient transfer of the assets of the sewer utility.
20. As provided in this Agreement, Pocahontas shall acquire “as is where is” the System upon the effective date hereof. Snowshoe W&S shall accordingly be responsible for and shall indemnify, defend and hold Pocahontas harmless from and against (i) any and all claims of whatever kind or nature arising from or relating to the condition of the System filed prior to the effective date hereof. Provided, however, that, regardless of when filed, Snowshoe W&S shall also indemnify, defend and hold Pocahontas harmless from and against claims not relating to the condition of the System transferred to Pocahontas which claims are

for personal injury (including death) or property damage arising from the negligent, grossly negligent or intentionally wrongful conduct of Snowshoe W&S occurring prior to the effective date of the Agreement.

21. This Agreement is binding upon the parties hereto and their successors and assigns.
22. The parties hereto covenant to cooperate with each other and to execute and deliver such further documents of transfer and assignment and take such further action as may be reasonable and necessary in order to accomplish and formalize the transactions provided for in the Agreement.

WITNESS the following signatures:

SNOWSHOE WATER & SEWER, INC.

By: \_\_\_\_\_  
\_\_\_\_\_, President

POCAHONTAS COUNTY PUBLIC SERVICE  
DISTRICT

By: \_\_\_\_\_  
William Rexrode, Chairman