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November 21, 2014

RECEIVED

NOV 21 2014

PUBLIC SERVICE  
COMMISSION

**Via Hand Delivery**

Ms. Linda Faulkner  
Kentucky Public Service Commission  
211 Sower Boulevard  
P. O. Box 615  
Frankfort, Kentucky 40602-0615

Re: Application of Bullitt Utilities, Inc. (Bullitt Utilities”), for a Certificate of Convenience and Necessity, and for Surcharge for Same (“Application”) PSC Case No. 2014-0255

Dear Ms. Faulkner:

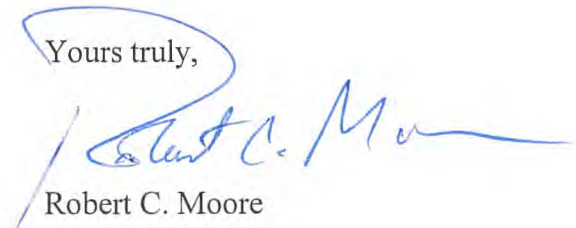
Please find enclosed a copy of the Agreed Order prepared by the Kentucky Energy and Environment Cabinet (“Cabinet”) that has been executed by Bullitt Utilities concerning, among other things, the failure of the Hunters Hollow Wastewater Treatment Plant (“WWTP”). The failure of this WWTP is the subject of the above-referenced Application. This Agreed Order is being circulated for execution by the representatives of the Cabinet.

I have also enclosed a copy of the executed contract between Bullitt Utilities and the Bullitt County Sanitation District (“BCSD”). This contract provides for BCSD to treat the flow from the Hunters Hollow collection system.

Now that I have these documents, I will be able to prepare an amended application that will respond to your request to provide the PSC with certain information in connection with above-referenced Application. Accordingly, Bullitt Utilities is requesting an extension of time until December 1, 2014, to respond to your request.

Thank you for your attention to this matter, and please let me know if I need to take any further action with respect to this matter at this time.

Yours truly,



Robert C. Moore

RCM/neb  
Enclosures

cc: Ann Ramser - via electronic mail  
Chris Cogan - via electronic mail

COMMONWEALTH OF KENTUCKY  
ENERGY AND ENVIRONMENT CABINET  
FILE NO. DOW - 34022

ENERGY AND ENVIRONMENT CABINET

PLAINTIFF

VS.

AGREED ORDER

BULLITT UTILITIES, INC.

DEFENDANT

\*\*\*\*\*

WHEREAS, the parties to this Agreed Order, the Energy and Environment Cabinet (“Cabinet”) and Bullitt Utilities, Inc. (“BUI”), state:

1. The Cabinet is charged with the statutory duty of protecting human health and the environment by enforcing KRS Chapter 224 and the regulations promulgated pursuant thereto.
2. BUI is a Kentucky for-profit corporation, in good standing, that owns a sewage system, as defined in KRS 224.01-010(25), that included a residential wastewater treatment plant and collection lines located on Blue Lick Road, Hunters Hollow, Kentucky, Hunters Hollow Subdivision (“Hunters Hollow WWTP”), providing sewer service to the residents of the cities of Hunters Hollow and Hillview in Bullitt County, Kentucky.
3. BUI holds Kentucky Pollutant Discharge Elimination System (“KPDES”) permit No. KY0038610 issued by the Cabinet’s Division of Water (“DOW”) which became effective on December 1, 2008. A permit renewal application was submitted in a timely manner to DOW on September 13, 2013.
4. The Hunters Hollow WWTP is designed to treat up to 0.250 million gallons per day of sanitary sewage before discharging the treated effluent to an unnamed tributary of Brooks Run from the Hunters Hollow WWTP.

5. BUI estimates the dry weather wastewater flow at the Hunters Hollow WWTP to be 160,000 gallons per day ("Dry Weather Flow"). Due to inflow and infiltration ("I&I") issues with the Hunters Hollow WWTP collection system, the wet weather wastewater flow at the Hunters Hollow WWTP increased significantly ("Wet Weather Flow"). The Wet Weather Flow can exceed the Hunters Hollow WWTP's treatment capacity and lead to bypasses of the treatment process during rain events.

6. From April 16, 2009, until October 25, 2013, Cabinet personnel inspected the Hunters Hollow WWTP and reviewed required discharge monitoring reports multiple times which resulted in the Cabinet issuing Notices of Violation ("NOVs") on April 16, 2009; January 25, 2010; September 17, 2010; March 24, 2011; December 12, 2011; February 21, 2012; July 24, 2012; July 2, 2013; and November 12, 2013, citing violations of the following regulations;

- a. 401 KAR 5:005 Section 11 - Failure to provide for proper disinfection.
- b. 401 KAR 5:015 Section 2 - Failure to report a spill. (8 Counts)
- c. 401 KAR 5:065 Section 1(5) - Failure to provide proper operation and maintenance (O&M)
- d. 401 KAR 5:065 Section 2(1) - Failure to report a spill. (13 Counts)
- e. 401 KAR 10:031 Section 2 - Degradation of the waters of the Commonwealth. (9 Counts)
- f. KRS 224.70-110- Discharging a pollutant into the waters of the Commonwealth. (7 Counts)

7. On March 29, 2014, the Hunters Hollow WWTP suffered a catastrophic tank failure and discharged more than 250,000 gallons of untreated and undertreated wastewater into the receiving stream.

8. The discharge of untreated wastewater continued unabated until April 2, 2014, when BUI established an initial temporary treatment system referred to as the "Pecco WWTP". The initial temporary treatment system had capacity to provide treatment of the Dry Weather Flow, but could not abate the bypasses caused by the Wet Weather Flow.

9. On or about July 17, 2014, BUI established a second temporary treatment system referred to as the "Veolia WWTP", capable of treating the Dry Weather Flow and abating the bypasses caused by the Wet Weather Flow.

10. Since March 29, 2014, Cabinet personnel have conducted multiple inspections of the Hunters Hollow WWTP site and reviewed required discharge monitoring reports which resulted in the Cabinet issuing NOVs on April 2, 2014; May 16, 2014; June 19, 2014; and August 18, 2014, citing violations of the following regulations;

- a. 401 KAR 10:031 Section 2 - Degradation of the waters of the Commonwealth. (3 Counts)
- b. KRS 224.70-110 - Discharging a pollutant into the waters of the Commonwealth. (11 Counts)
- c. 401 KAR 5:065 Section 2(1) - Failure to report a spill. (3 Counts)
- d. 401 KAR 5:005 Section 11 - Failure to provide for proper disinfection. (2 Counts)
- e. 401 KAR 5:045 Section 1 - Failure to provide for secondary treatment.
- f. 401 KAR 5:065 Section 2 - Failure to comply with the terms of the KPDES Permit.

11. The current cash receipts generated by the Public Service Commission authorized rate associated with BUI's operation of the Hunters Hollow WWTP are insufficient to operate

and maintain the Veolia WWTP for an extended period of time.

12. BUI does not admit the alleged violations described herein, but agrees to the entry of this Agreed Order to fully and finally resolve the violations alleged, as well as any other violations that occurred prior to the date of the entry of this Agreed Order.

**NOW THEREFORE**, in the interest of fully and finally settling all claims and controversies involving the alleged violations described above, the parties hereby consent to the entry of this Agreed Order and agree as follows:

**REMEDIAL MEASURES**

13. At all times, BUI shall report to the Cabinet all spills, bypass discharges, upset condition discharges and other releases of substances from its WWTP and sewer collection system which would result in or contribute to the pollution of the waters of the Commonwealth, including emergency and accidental releases, in accordance with KRS 224.1-400, and 401 KAR Chapter 5. BUI shall make its initial report of the above discharges or releases by telephone to the Louisville Regional Office at 502-429-7122, or the Cabinet's 24-hour notification number, 800-928-2380 or 502-564-2380.

14. BUI shall immediately perform any necessary remedial actions upon discovery of a spill, discharge, bypass or upset condition.

15. While BUI owns the Hunters Hollow collection system, defined herein as the system of pipes, pumps, pump stations, manholes, the wet-well, flow meters and other appurtenances owned by BUI and which are used to serve the customers of the Hunters Hollow WWTP, BUI shall provide for regular operation and maintenance of the Hunters Hollow collection system including any structures which should be added to prevent solids and floatables from entering into the unnamed tributary of the Brooks Run. BUI shall also provide for the



operation and maintenance of the Veolia temporary WWTP while it is on site and prior to any connection of the Hunters Hollow collection system to the Bullitt County Sanitary District (“BCSD”) sewer system.

16. BUI shall immediately begin implementing steps to correct I&I into the Hunters Hollow collection system, and, beginning January 1, 2015, BUI shall spend no less than \$30,000 per year to address this I&I until it conveys the Hunters Hollow collection system to another entity, or until the Cabinet concurs in writing that I&I into the Hunters Hollow collection system has been substantially corrected. Corrective steps shall minimally include the following:

- a) On or before December 1, 2014, BUI shall submit to the Cabinet’s Division of Enforcement (DENF) for review and acceptance the report of the I&I Study of the Hunters Hollow WWTP collection system previously completed by BUI’s contract engineer;
- b) On or before March 1, 2015, BUI shall submit to the DENF for review and acceptance, a written Corrective Action Plan (CAP) with a schedule of implementation. The CAP shall identify specific actions BUI will implement to address I&I into the Hunters Hollow WWTP collection system.
- c) Upon reviewing the CAP submitted by BUI, DENF may, in whole or in part, (1) approve, (2) disapprove or (3) provide comments to BUI identifying any deficiencies in the CAP.
  - i) Upon written notification by DENF that the CAP is accepted, BUI shall immediately begin implementing the CAP.
  - ii) Upon written notification by DENF that the CAP is deficient, BUI shall have thirty (30) days from the date of written notification to submit an amended

CAP addressing DENF's comments. If any part of the CAP is disapproved after it has been submitted a second time, the Cabinet may, in its reasonable discretion, deem BUI to be out of compliance with the Agreed Order for failure to timely submit a CAP and may assess stipulated penalties pursuant to this Agreed Order.

iii) If BUI receives no response from DENF within sixty (60) days of DENF's receipt of a CAP, such CAP shall be deemed approved effective upon the expiration of that sixty (60) day period.

d) Beginning January 15, 2015, BUI shall submit quarterly progress reports for compliance with the Agreed Order by the fifteenth (15<sup>th</sup>) day of the first month following each quarter to DENF and the DOW Frankfort Regional Office;

17. Unless otherwise stated by a specific paragraph, all correspondence, documents, notices, and/or requests required to be sent or submitted to the Cabinet by this Agreed Order shall be sent to the Director, Division of Enforcement, 300 Fair Oaks Lane, Frankfort, KY 40601.

#### **PENALTIES AND COST RECOVERY**

18. BUI shall be liable for civil penalties in the amount of thirty thousand dollars (\$30,000) for the violations described in paragraph six (6) above. Payment shall be due fifteen (15) days after this Agreed Order is entered by the Secretary or his designee, unless BUI provides DENF written notice of its intent to implement a Supplemental Environmental Project as outlined in paragraph twenty-five (25) below.

19. BUI shall be liable for civil penalties in the amount of one hundred twenty-five thousand dollars (\$125,000) for the violations described in paragraph ten (10) above. Payment shall be due ninety (90) days after this Agreed Order is entered by the Secretary or his designee.

20. As of October 1, 2014, the Cabinet has expended thirteen thousand six hundred six dollars and fifteen cents (\$13,606.15) in oversight and response costs related to the environmental emergency following the failure of the Hunters Hollow WWTP. BUI shall reimburse the Cabinet for the full amount of the response costs as stated herein. Payment shall be due on the fifteenth (15<sup>th</sup>) day of the month after this Agreed Order is entered by the Secretary or his designee.

21. The Cabinet may assess against BUI a stipulated penalty of five hundred dollars (\$500) for each failure to comply with the remedial measures contained in paragraphs thirteen (13) through seventeen (17) above. The stipulated penalty shall be due and payable in full within thirty (30) days of the Cabinet issuing written notice demanding stipulated penalty. This penalty is in addition to, and not in lieu of, any other penalty that could be assessed as specifically stated in this Agreed Order.

22. Notwithstanding the language of paragraph twenty-one (21) above, a stipulated penalty of one hundred dollars (\$100) may be assessed for each violation of BUI's KPDES permit and each bypass, spill, discharge bypass discharge, upset condition discharge and other releases of substances originating from BUI's collection system, as "collection system" is defined in paragraph fifteen (15) of this Agreed Order, including any bypasses occurring at the former Hunters Hollow WWTP site, which results in or contributes to the pollution of the waters of the Commonwealth. This penalty is in addition to, and not in lieu of, any other penalty that could be assessed as specifically stated in this Agreed Order.

23. If BUI believes the demand for payment of a stipulated penalty is erroneous or contrary to law, BUI may request a hearing in accordance with KRS 224.10-420(2). The request for hearing does not excuse timely payment of the stipulated penalty. If an order is entered



pursuant to KRS 224.10-440 that excuses payment, the Cabinet will refund the payment. Failure to make timely payment shall constitute an additional violation.

24. Payment of civil penalty and stipulated penalties shall be by cashiers check, certified check, or money order, made payable to "Kentucky State Treasurer" and sent to the attention of Accounts Payable, Office of Administrative Hearings, Energy and Environment Cabinet, 35-36 Fountain Place, Frankfort, Kentucky 40601. Please note "Case No. DOW - 34022" on all instruments of payment.

#### SUPPLEMENTAL ENVIRONMENTAL PROJECTS

25. In lieu of payment of the civil penalties set forth in paragraph eighteen (18) BUI shall allocate thirty thousand dollars (\$30,000) toward the performance of a Supplemental Environmental Project ("SEP") as set forth below:

- a) BUI shall fully implement the SEP within twelve (12) months of the Secretary executing this Agreed Order.
- b) BUI shall develop and implement a CAP to eliminate sources of I&I within the customers' portions of the sewer lines that connect to the Hunters Hollow WWTP collection system as determined through smoke testing, dye testing, television or visual inspection;
- c) Items scheduled for repair and/or replacement can include, but need not be limited to, defective lateral lines, illegal downspout connections, clean out traps, and illegal sump pumps; and
- d) BUI shall notify the DOW Louisville Regional Office prior to initiating any remediation of a private source of I&I.

BUI may satisfy its obligations under this SEP by entering into an agreement with an appropriate

local government or agency requiring it to comply with the requirements of this paragraph twenty-five (25). The Cabinet shall have the right to review and accept any such agreement to perform the SEP set forth by this paragraph.

26. In the event that BUI fails to complete the SEP as described in paragraph twenty-five (25) above, BUI shall pay in full the civil penalties described or assessed in paragraph eighteen (18) within fifteen (15) days of written notice from the Cabinet. Payment shall be made as described in paragraph twenty-four (24) above.

27. In lieu of payment of the civil penalties set forth in paragraph nineteen (19) above, BUI shall perform the following SEP. No later than sixty (60) days after the date the Secretary executes this Agreed Order, BUI shall connect its collection system to the BCSD sanitary sewer system to divert the Dry Weather Flow and as much of the Wet Weather Flow as possible, under terms of an agreement negotiated between BCSD and BUI generally in the form of Attachment "A" to this Agreed Order, and disconnect the Pecco WWTP and the Veolia WWTP. BUI shall minimally comply with the provisions set forth in said Agreement, which include but are not limited to the payment of \$125,000 to BCSD and the payment of the cost to design and construct that part of the pipeline connecting the Hunters Hollow WWTP collection system to the BCSD sanitary sewer system, which part consists of the pumps, pipeline and two (2) flow meters from the Hunters Hollow WWTP site to the location where the flow meters are reasonably installed as agreed to by BUI and BCSD.

28. In the event that BUI fails to complete the SEP as described in paragraph twenty-seven (27) above, BUI shall pay in full the civil penalties described or assessed in paragraph nineteen (19) above within fifteen (15) days of written notice from the Cabinet. Payment shall be made as described in paragraph twenty-four (24) above.

MISCELLANEOUS PROVISIONS

29. This Agreed Order only addresses violations specified or addressed in this Agreed Order. Except as otherwise provided herein, nothing contained in this Agreed Order shall be construed to waive or limit any remedy or cause of action by the Cabinet based on statutes or regulations under its jurisdiction, and the Defendant reserves its defenses thereto. The Cabinet expressly reserves its right at any time to issue administrative orders and to take any other action it deems necessary, that is consistent with this Agreed Order. However, provided that the Defendant complies with all provisions of this Agreed Order, including but not limited to paying all response costs, performing all required remedial actions, paying all civil penalties or completing any SEPs, the Cabinet shall release the Defendant, and its successors and assigns, predecessors, parent companies, officers, agents, representatives and shareholders from any claims arising under KRS 224.70 and 401 KAR Chapters 5, 10, and 11 or out of the matters addressed in paragraphs one (1) through twelve (12) of the Agreed Order herein, up to and through and including the effective date of this Agreed Order.

30. This Agreed Order shall not prevent the Cabinet from issuing, reissuing, renewing, modifying, revoking, suspending, denying, terminating, or reopening any permit to BUI. BUI reserves its rights and defenses thereto, except that BUI shall not use this Agreed Order as a defense.

31. BUI waives its right to any hearing on the matters admitted herein. However, failure by BUI to comply strictly with any or all of the terms of this Agreed Order shall be grounds for the Cabinet to seek enforcement of this Agreed Order in Franklin Circuit Court and to pursue any other appropriate administrative or judicial action under KRS Chapter 224, and the regulations promulgated pursuant thereto.

32. The Agreed Order may not be amended except by a written order of the Cabinet's Secretary or his designee. BUI may request an amendment by writing the Director of the Division of Enforcement at 300 Fair Oaks Lane, Frankfort, Kentucky 40601 and stating the reasons for the request. If granted, the amended Agreed Order shall not affect any provision of this Agreed Order unless expressly provided in the amended Agreed Order.

33. The Cabinet does not, by its consent to the entry of this Agreed Order, warrant or aver in any manner that BUI's complete compliance with this Agreed Order will result in compliance with the provisions of KRS Chapter 224, and the regulations promulgated pursuant thereto. Notwithstanding the Cabinet's review and approval of any plans formulated pursuant to this Agreed Order, BUI shall remain responsible for compliance with the terms of KRS Chapter 224 and the regulations promulgated pursuant thereto, this Agreed Order and any permit and compliance schedule requirements.

34. The Cabinet agrees to allow the performance of the above-listed remedial measures, above listed SEPs and/or payment of civil penalties by BUI to satisfy its obligations to the Cabinet generated by the violations described above.

35. The Cabinet and BUI agree that the remedial measures agreed to herein are facility specific and designed to comply with the statutes and regulations cited herein. This Agreed Order applies specifically and exclusively to the unique facility referenced herein and is inapplicable to any other site or facility owned and/or operated by BUI.

36. BUI shall give notice of this Agreed Order to any purchaser, lessee or successor in interest prior to the transfer of ownership and/or operation of any part of its now-existing facility occurring prior to termination of this Agreed Order, shall notify the Cabinet that such notice has been given, and shall follow all statutory and regulatory requirements for a transfer. Whether or

not a transfer takes place, BUI shall remain fully responsible for completing any SEP, payment of any stipulated penalties and for performance of all remedial measures identified in this Agreed Order.

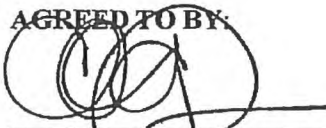
37. Compliance with this Agreed Order is not conditional on the receipt of any federal, state, or local funds, or upon the approval of rate increases or surcharges by local or state boards, commissions, or other agencies that regulate private utilities.

38. This Agreed Order shall be of no force and effect unless and until it is entered by the Secretary or his designee as evidenced by his signature thereon. If this Agreed Order contains any date by which BUI is to take any action or cease any activity, and the Secretary enters the Agreed Order after that date, then BUI is nonetheless obligated to have taken the action or ceased the activity by the date contained in this Agreed Order.

**TERMINATION**

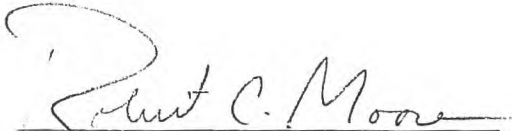
39. This Agreed Order shall terminate upon BUI's completion of all requirements described in this Agreed Order. BUI may submit written notice to the Cabinet when they believe all requirements have been performed. The Cabinet will notify BUI in writing of whether it intends to agree with or object to termination. The Cabinet reserves its right to enforce this Agreed Order, and BUI reserves its right to file a petition for hearing pursuant to KRS 224.10-420(2) contesting the Cabinet's determination.

AGREED TO BY:



Mr. Chris Cogán, AS POWER OF ATTORNEY  
Bullitt Utilities, Inc. FOR CARROLL F. COGAN,  
ITS PRESIDENT

Nov 3, 2014  
Date

  
Robert C. Moore, Esq.  
Attorney for the Defendant

11/7/14  
Date

**APPROVAL RECOMMENDED BY:**

\_\_\_\_\_  
Daniel Clark Cleveland, Attorney  
Office of General Counsel

\_\_\_\_\_  
Date

\_\_\_\_\_  
Jeffrey A. Cummins, Director  
Division of Enforcement

\_\_\_\_\_  
Date

\_\_\_\_\_  
C. Michael Haines, Executive Director  
Office of General Counsel

\_\_\_\_\_  
Date

**HAVE SEEN:**

\_\_\_\_\_  
Hon. Susan Rose Green, Hearing Officer  
Office of Administrative Hearing

\_\_\_\_\_  
Date

**ORDER**

Wherefore, the foregoing Agreed Order is entered as the final Order of the Energy and Environment Cabinet this \_\_\_ day of \_\_\_\_\_, 2014.

ENERGY AND ENVIRONMENT CABINET

\_\_\_\_\_



LEONARD K. PETERS, SECRETARY

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of the foregoing **AGREED ORDER** was mailed, postage prepaid, to the following this \_\_\_\_\_ day of \_\_\_\_\_, 2014.

Hon. Robert Moore  
Hazelrigg and Cox, LLP  
P.O. Box 676  
415 West Main Street  
Frankfort, KY 40602

and hand delivered to:

Hon. Daniel C. Cleveland  
Office of General Counsel  
200 Fair Oaks Lane, 1<sup>st</sup> Floor  
Frankfort, Kentucky 40601

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DOCKET COORDINATOR

Distribution:

DOW

DENF – Philip Kejzlar

AGREEMENT BETWEEN BULLITT COUNTY SANITATION DISTRICT AND  
BULLITT UTILITIES, INC.

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DATED 10/01/14

Come Bullitt County Sanitation District ("BCSD") and Bullitt Utilities, Inc. ("Bullitt Utilities"), on this the 10 day of October, 2014 and hereby enter into this Agreement.

WHEREAS, Bullitt Utilities is a privately owned wastewater utility that owns the Hunters Hollow wastewater treatment plant ("WWTP") and collection system located in Bullitt County, Kentucky. The Hunters Hollow WWTP was a 250,000 gallon per day ("gpd") WWTP providing service for approximately 696 residential and commercial customers at a residential rate of \$26.83 per month. On or about March 29, 2014, the Hunters Hollow WWTP suffered a catastrophic failure.

WHEREAS, Bullitt Utilities has provided treatment for the wastewater generated by the Hunters Hollow collection system ("Collection System") since March 29, 2014 through the use of a Pecco temporary WWTP and a Veolia temporary WWTP. The cost to operate these temporary WWTPS is exorbitant, and a short term and long term solution to the failure of the Hunters Hollow WWTP is needed in order to provide treatment for the wastewater generated by the Collection System.

WHEREAS, in order to avoid an environmental emergency, BCSD is willing to provide short term emergency treatment for the wastewater generated by the Collection System until a permanent solution to the failure of the Hunters Hollow WWTP can be implemented which is expected to be on or before December 31, 2016.

NOW THEREFORE, in consideration of the premises set forth herein, BCSD and Bullitt Utilities hereby agree to the following terms:

1. BCSD agrees to make any and all reasonable efforts to accept the wastewater flow from the Collection System within sixty (60) days of the execution of this Agreement. BCSD shall not be responsible for failure to complete the construction of the proposed facilities due to state or federal permitting requirements (Division of Water, Department of Transportation, etc.), acquisition of easements or any other delay due to causes beyond the control of BCSD.
2. BCSD agrees to provide treatment for the wastewater generated by the Collection System until December 31, 2016.
3. Bullitt Utilities will purchase and install two (2) magnetic flow meters, and BCSD shall maintain the two (2) flow meters. One meter will be provided for the Collection System's flow diverted to Union Tool (divided between Plant Three and Willabrook), and the second meter will be provided for the Collection System's flow diverted to Pioneer Village.
4. BCSD shall make every reasonable attempt to accept from the Collection System an average daily flow of 160,000 gallons with a maximum peak daily flow of up to 300,000 gallons. The amount of maximum peak day flow accepted shall be dependent upon performance of BCSD

- treatment facilities. BCSD shall have all authority to make adjustments to the pump rates from the Collection System.
5. Any overflows from the Collection System caused by flows in excess of those stated in paragraph 4 above, shall be reported to the Kentucky Division of Water by Bullitt Utilities, and shall be the responsibility of Bullitt Utilities until the Collection System is conveyed to BCSD or another entity.
  6. BCSD shall only be responsible for the portion of the pipeline from the flow meters installed by Bullitt Utilities to the BCSD's treatment plants.
  7. Bullitt Utilities shall be responsible for maintaining the Hunters Hollow Collection System and for the operation and maintenance of the pumps at the site of the former Hunters Hollow WWTP.
  8. Bullitt Utilities agrees to pay BCSD for treatment of wastewater from the Collection System an amount equal to eighty percent (80%) of the gross revenue, excluding surcharge receipts, received by Bullitt Utilities from its customers per month. Bullitt Utilities shall request the Louisville Water Company to, if possible, pay this eighty percent of monthly gross revenue, excluding surcharge receipts, directly to BCSD.
  9. BCSD shall engineer the pipeline from BCSD's existing facilities up to the two (2) new flow meters for the Hunters Hollow Collection System and shall engineer upgrades required at BCSD pump stations to accept the increased flows from the Collection System. Bullitt Utilities shall engineer the two (2) new flow meters, and the pumping and piping systems from its existing facilities to said flow meters. BCSD shall have review authority of Bullitt Utilities' pumping system engineering design to the two (2) new flow metering points, including the flow meters, to assure that flow rates can be controlled during peak day flow events. Bullitt Utilities' pumps shall have variable rate adjustment for controlling flow rates.
  10. BCSD shall require a contribution in aid of construction in the amount of \$125,000.00. The \$125,000 is to be paid directly to BCSD upon execution of this Agreement.
  11. Due to the unusual situation that this customer connection is for short term emergency treatment only, the tap fee required by BCSD Resolution Number 2012-08 will be waived for connection of Bullitt Utilities to BCSD in exchange for the engineering and construction contribution provided by Bullitt Utilities.
  12. Bullitt Utilities agrees to pledge as security for fulfilling its duties under this agreement, until December 31, 2016, its interest in any surcharge proceeds that the Public Service Commission ("PSC") may authorize, that exceeds the surcharge proceeds authorized to pay for services and/or equipment provided by Veolia, Pecco and other individuals or entities to Bullitt Utilities to respond to the failure of the Hunters Hollow WWTP.
  13. BCSD and Bullitt Utilities agree to work to develop a long term solution to the failure of the Hunters Hollow WWTP.
  14. At any time during the term of this agreement, BCSD may purchase from Bullitt Utilities the Hunters Hollow Collection System, including its piping, manholes, pump stations, pumps and appurtenances for the amount of One Dollar (\$1.00), contingent upon and subject to, the PSC's authorization of the payment of a surcharge to Bullitt Utilities and the surcharge proceeds will continue to be paid to Bullitt Utilities or its assignee(s) after the sale of the Collection System. Should the PSC authorize the payment of a surcharge to Bullitt Utilities, but not the right to

continue to receive the surcharge proceeds after Bullitt Utilities' sale of the Collection System, the BCSD shall have the right to purchase the Collection System for the amount of One Dollar (\$1.00) upon the expiration of the surcharge.

15. General provisions

- 15.1 Successors and Assigns. No party shall assign, sublet or transfer its interest in this Agreement without the prior written consent of the other parties. Nothing herein shall be construed as creating any personal liability on the part of any officer or agent of any public or private body which may be a party thereto, nor shall it be construed as giving any rights or benefits hereunder to anyone other than the parties to the Agreement.
- 15.2 Mediation. Claims, disputes or other matter in question between the parties to this Agreement shall be first subject to pre-suit mediation prior to the filing of any legal claims or litigation. Pre-suit mediation is a condition precedent to litigation. The obligation to mediate is a material and essential provision of this Agreement. Unless otherwise agreed to in writing, the parties shall continue to provide and/or make the treatment, work and payments to be performed pursuant to this Agreement during any mediation or litigation, except for payments for items or work in dispute. Either party may initiate a mediation proceeding by submitting a request in writing to the other party within a reasonable time after the claim, dispute or other matter in question has arisen, but in no event after the applicable statute of limitations has expired. The parties shall endeavor in good faith to mutually agree upon an acceptable mediator. Each party is to bear its own fees, costs and expenses of said mediation. In the event that mediation is unsuccessful, all claims, disputes, or other matters in question shall be resolved in the Circuit or District Courts of Bullitt County, Kentucky and shall be governed by the laws of the Commonwealth of Kentucky.
- 15.3 This Agreement may be executed in two or more original or facsimile counterparts, each of which shall be deemed an original and all of which shall constitute but one and the same Agreement.
- 15.4 Construction. Should any provision of this Agreement require interpretation or construction, it is agreed by the parties hereto that the Court, administrative body or other entity interpreting or construing this Agreement shall not apply the presumption that the provisions hereof shall be more strictly construed against one party than another by reason of the rule of construction that a document is to be more strictly construed against the party who itself or through its agent prepared the same. The headings of sections and subsections are for convenience only and shall not affect or control the meaning or construction of any of the provisions of this Agreement.
- 15.5 Notices. All notices, requests, demands, or other communications required under this Agreement shall be made in writing and shall be served by hand delivery or by placing such in the United States Mail, certified mail, return receipt requested and bearing adequate postage or by overnight mail. Each notice shall be effective upon receipt.
- 15.6 Waiver. No waiver by any party of any default or non-performance by either party shall be considered a waiver of any subsequent default or non-performance.

15.7 Severability. In the event that any term, provision or covenant hereunder shall be held invalid or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall remain valid and enforceable by any party to the Agreement and the invalid unenforceable covenant shall automatically be deemed modified and amended to provide the maximum rights available under applicable law to the party who is the beneficiary of the term, provision, or covenant in question.

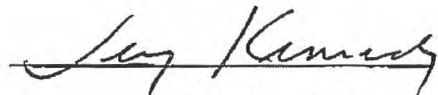
15.8 Authority of Parties. The individuals who have executed this Agreement on behalf of the respective parties expressly represent and warrant that they are authorized to sign on behalf of such entities for the purpose of duly binding such entities to this Agreement.


15.9 IN THE EVENT THAT EITHER THE BCSD AND/OR BULLITT UTILITIES IS UNABLE TO NEGOTIATE AN AGREED ORDER WITH THE ENERGY AND ENVIRONMENT CABINET THAT IS NOT ACCEPTABLE TO THE PARTY TO THE AGREED ORDER, THIS AGREEMENT SHALL BECOME NULL AND VOID AND UNENFORCEABLE.

15.10 Entire Agreement. This Agreement sets forth the entire Agreement between the parties hereto and, except as otherwise expressly provided, fully replaces, cancels and supersedes any and all prior Agreements or understandings between the parties hereto pursuant to the subject matter hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement the day and year first above written.

Bullitt County Sanitation District

  
JERRY KENNEDY  
DISTRICT MGR 11-10-14  
Print name and title

Bullitt Utilities, Inc.  
  
CHRISTOPHER G. COGAN, AS:  
POWER OF ATTORNEY FOR:  
CARROLL F. COGAN, ITS:  
Print name and title PRESIDENT

HAZELRIGG & COX, LLP  
ESCROW ACCOUNT  
415 W MAIN ST  
FRANKFORT, KENTUCKY 40601

1345


73-416-421

DATE 11-7-14

PAY TO THE ORDER OF Bullitt County Sanitation District

\$ 125,000.<sup>00</sup>/<sub>100</sub>

One hundred twenty five thousand <sup>00</sup>/<sub>100</sub> DOLLARS

**Whitaker Bank**  
A Subsidiary of WHITAKER Bank Corporation of Kentucky  
130 West Main Street  
Frankfort, Kentucky 40601  
Member FDIC

FOR Bullitt Utilities / BLSB Agreement

*Robert C. Moon*



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