

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

CASE NO. 2016-00164

RECEIVED

MAY 13 2016

**PUBLIC SERVICE
COMMISSION**

IN THE MATTER OF:

THE APPLICATION OF THE HARRISON COUNTY
SANITATION DISTRICT FOR APPROVAL OF TRANSFER OF
THE CEDARBROOK SUBDIVISION WASTEWATER
TREATMENT PLANT TO HARRISON COUNTY SANITATION
DISTRICT

AMENDED APPLICATION FOR APPROVAL OF TRANSFER

Whereas, the Harrison County Sanitation District (“HCS D”) has previously filed an application for approval of transfer of the Cedarbrook Treatment Plant to the applicant but has received a filing deficiency dated May 5, 2016; and

Whereas, the Harrison County Sanitation District (“HCS D”) hereby desires to correct and supplement its original application by this amended application;

Pursuant to KRS 278.020(6), Harrison County Sanitation District (“HCS D”) hereby submits to the Public Service Commission of Kentucky (“Commission”) this application for the transfer to HCS D of the Cedarbrook Subdivision Wastewater Treatment Plant and Collection System and Appurtenances (“CSWTP”) serving the Cedarbrook Subdivision in Harrison County, Kentucky. In support of their application, the HCS D states the following:

1. The waste water treatment plant currently has no owner as RA Williams Construction Co., Inc., was permitted to abandon said plant by order of the Kentucky Public Service Commission dated May 1, 2015, in Case #2014-00091, which is attached hereto and labeled as exhibit “A”. Said waste water treatment facility is currently in receivership with Franklin Circuit Court and HCS D was appointed receiver of said facility by order of Franklin

Circuit Court dated May 1, 2015. A copy of said order is attached and labeled as exhibit "B". Pursuant to agreement of R.A. Williams Construction Co., Inc. and HCSD, all assets of said plant were assigned and transferred to HCSD. The terms of said agreement are also contained in an order dated May 1, 2015, Franklin Circuit Court, Civil Action #15-CI-00417.

2. HCSD is a public body corporate created and organized pursuant to KRS Chapter 76 of the Kentucky Revised Statutes by ordinance #284 of the Harrison County Fiscal Court dated July 22, 2014. A copy of which is attached hereto as exhibit "C". The address of HCSD is 111 S. Main Street, Suite 201, Cynthiana, Harrison County, Kentucky 41031.

3. In order to carry out these responsibilities HCSD has operated the Cedarbrook facility as receiver since May 1, 2015 and does not operate any other facility at this time.

4. Pursuant to KRS 76.070 and KRS 76.110, HCSD has the legal authority to acquire land and existing facilities.

5. HCSD is not a utility as defined by KRS 278.010(3)(f).

6. HCSD has been in existence since 2014. HCSD is governed by a Board that consists of three members who are appointed by the County Judge Executive of Harrison County, Kentucky, subject to the approval of the Harrison County Fiscal Court. The procedures for establishment and adjustment of rates are contained in said ordinance.

7. Scott McCauley, as the Chairman of HCSD, is duly authorized to execute this joint application on behalf of HCSD. The HCSD also request that Scott McCauley be added to the service list at the following: Scott McCauley, C/O Harrison County Sanitation District, P.O. Box 186, Cynthiana, Kentucky 41031; email address northfield@bellsouth.net, and phone number (859) 221-2432.

8. As of the date of this application, HCSD has no employees. HCSD has contracted with Professional Wastewater Services, LLC to provide a certified waste water treatment plant operator. Professional Wastewater Services, LLC was contracted by the HCSD to operate the Cedarbrook Subdivision Wastewater Treatment Plant by agreement dated May 1, 2015 and signed May 19, 2015. Said contract is for a one-year term and is renewable for an additional twelve months. It is the intent of both parties that this contract will be extended through May 1, 2017. (A copy of which is attached hereto as exhibit "D")

9. For the year ending from its appointment on May 1, 2015 to December 28, 2015, HCSD had total operating revenues of \$31,440.21 and total operating expenses of \$24,155.72. HCSD also was recipient of a LBGT grant in the sum of \$1,000,000.00 and a CDBG Loan awarded through KIA in the sum of \$1,567,885.00.

10. The Cedarbrook waste water system serves 52 residential customers in HCSD's service area in Harrison County, Kentucky.

11. Under the Agreement, Franklin Circuit Court by and through its trustee HCSD will transfer to HCSD the WWTP and Collection System currently serving the HCSD service area located in Harrison County, Kentucky. The assets purchased by HCSD are described more fully in said agreed order, but include the treatment plant and collection system and appurtenances. The conveyance under the Agreement will occur within seven (7) business days after receipt of the approval of this Application for Transfer by the Magistrates and Franklin Circuit Court.

12. Pursuant to the Assets Purchase Agreement, the previous owner, RA Williams Construction Co., Inc., who was permitted to abandon the CSWTP has converted all real estate and collection system to HCSD. RA Williams Construction Co., Inc. has also conveyed all title

and interest in the real estate by deeds dated June 3, 2015 and June 4, 2015 related to the CSWTP to HCSD.

13. The Harrison County Fiscal Court has previously approved the operation and management of CSWTP in order to ensure the continuity of utility services to the former customers of RA Williams. Furthermore, the HCSD has proven to possess the financial, technical and managerial abilities to provide reasonable service to HCSD's present customers. Therefore, HCSD acquisition of CSWTP is in accordance with law and for a proper purpose.

14. The proposed transfer of the assets of the CSWTP collection system to HCSD will be accomplished in accordance with law, is for a proper purpose and is consistent with the public interest: (a) HCSD will be entitled to all necessary permits for the operation of the CSWTP collection system; (b) the public interest would be served by the transfer of the collection system to HCSD, as it has the technical expertise to operate the system in accordance with the requirements of the Kentucky Division of Water. As stated in Paragraphs 2 through 8, CSWTP has the requisite managerial ability to provide adequate sewer services to the customers of the CSWTP service area in Harrison County, Kentucky, consistent with the public interest.

15. As a public, municipally owned sewer district and political subdivision, HCSD is exempt from Commission oversight under KRS 278.040(2), the statutory exemption afforded special districts. HCSD is permitted to request other utilities to issue shutoff of water to any residence which is delinquent on any account.

16. That this amended application is brought by and through counsel, Bradley K. Vaughn, Attorney at Law, (KBA ID #85509) and the Harrison County Attorney who is counsel of record for Harrison County Sanitation District.

WHEREFORE, the undersigned Applicant respectfully requests the Public Service Commission to issue an Order finding that HCSD has the financial, technical and managerial abilities to provide reasonable service to the wastewater customers of Cedarbrook Subdivision; that the proposed transaction is in accordance with law, is for a proper purpose, and is consistent with the public interest; and that the proposed transfer of the CSWTP by Franklin Circuit Court to HCSD is authorized and approved. Furthermore, the HCSD requests that said transfer be effective December 28, 2015 nunc pro tunc and the applicant should not be required to submit any additional reports or accounts to the PSC for the time prior to the effective transfer date.

The HCSD furthermore requests that the Public Service Commission authorize and permit the Harrison County Water Association to recognize disconnect requests from the HCSD for non-payment and make said disconnection without the Public Service Commission approval and in the same way as it handles requests from other governmental agencies.


Respectfully submitted,

HARRISON COUNTY SANITATION DISTRICT



By and through counsel
Hon. Bradley K. Vaughn
Attorney at Law
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(859) 234-3110
harrisoncountyattorney@gmail.com

I have read the foregoing amended application and the facts stated therein are true and correct to the best of my knowledge and belief.



Scott McCauley, Chairman of
Harrison County Sanitation District
P.O. Box 186
Cynthiana, KY 41031
(859) 221-2432
northfield@bellsouth.net

COMMONWEALTH OF KENTUCKY
SCT
COUNTY OF HARRISON

The foregoing Amended Application for Approval of Transfer was subscribed, sworn to and acknowledged before me by Scott McCauley, Chairman of Harrison County Sanitation District, this the 12th day of May, 2016.

My Commission expires:

12-21-2019



Notary Public



Exhibit "a"

COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION

In the Matter of:

CEDARBROOK WASTEWATER)	CASE NO.
TREATMENT PLANT REQUEST TO CEASE)	2014-00091
OPERATIONS)	

ORDER

R.A. Williams Construction Co., Inc. d/b/a Cedarbrook Treatment Plant ("Cedarbrook") is a for-profit sewer company operating in Harrison County, Kentucky, and serving Cedarbrook subdivision.¹ Cedarbrook provides sewage service to the public for compensation and is a utility subject to the Commission's jurisdiction.²

On March 6, 2014, Cedarbrook tendered a letter to the Commission wherein it requested authorization "to cease operations of the treatment plant."³ As cause for the requested abandonment, Cedarbrook cited its inability to resolve violations noted by the Energy and Environment Cabinet's Division of Enforcement, the facility's poor overall plant condition, a delinquency totaling more than \$46,000 on accounts of 24 of its 52 customers, and the fact that the system had at that point been subsidized by an associated business entity by \$216,000.⁴ On March 31, 2014, this action was commenced to investigate Cedarbrook's request to abandon its facilities. The Attorney

¹ *Annual Report of R.A. Williams Construction Co., Inc. d/b/a Cedarbrook Treatment Plant for the Year Ending December 31, 2013* at 9.

² KRS 278.010(f).

³ Letter from Ron Osborne, Owner, Cedarbrook to George Wakim, Manager, Kentucky Public Service Commission (Mar. 3, 2014).

⁴ *Id.*

General, by and through his Office of Rate Intervention, was granted intervention in this matter on May 2, 2014. There are no other intervenors.

In late 2014, Harrison County formed the Harrison County Sanitation District ("Harrison Sanitation District"). Throughout 2014 and 2015, Commission Staff held meetings with Harrison Sanitation District regarding its intention and ability to take over Cedarbrook. In a January 20, 2015 informal conference, Harrison Sanitation District representatives stated that a grant request would be submitted in April 2015 to the Kentucky Infrastructure Authority ("KIA"), and that two requests for Community Development Block Grants ("CDBG") would also be submitted for the purpose of obtaining funding to take over and replace the Cedarbrook system, along with a second small system in Harrison County.⁵ In the course of the informal conference, Ron Osborne, Cedarbrook's owner, indicated that R.A. Williams' fiscal year would end on February 28, 2015, and that he would like to cease operating shortly thereafter. Therefore, in accordance with the request to resolve this matter, on February 4, 2015, the Commission denied Cedarbrook's previously tendered requests to withdraw and hold this matter in abeyance, and issued a procedural schedule to provide for the orderly resolution of this matter.

On February 23, 2015, in a written response to a Commission Staff Request for Information, Cedarbrook formally stated that it intended to close and cease all operations effective February 28, 2015. Subsequently, in the course of a February 24,

⁵ Intra-Agency Memorandum dated Jan. 20, 2015.

2015 informal conference, Mr. Osborne agreed to continue operating through March 2015.⁶

A public hearing was held in this matter on March 3, 2015. Mr. Osborne testified that Cedarbrook currently has monthly expenses of \$3,400, including \$1,000 per month for its certified operator. He stated that based upon Cedarbrook's current \$62 monthly rate, if all customers paid their bills, the utility would bring in \$3,200/month. However, he noted that of the 52 homes on the system, 27 customers are current on their bills and 18 are more than 90 days delinquent. The total customer arrearage is currently in excess of \$32,000.

Mr. Osborne testified that Cedarbrook is the only asset of R.A. Williams. R.A. Williams is a wholly owned subsidiary of BEX Construction, which is also owned by Mr. Osborne. R.A. Williams acquired and began operating Cedarbrook consequent to its purchase of the remaining undeveloped lots in the Cedarbrook subdivision from Highland Development. Highland Development deeded its interest in the treatment plant property to R.A. Williams. Mr. Osborne asserted that the Cedarbrook subdivision was ultimately to have formed a homeowners association which would have taken over responsibility for the treatment plant. However, he stated that an association was never formed.

Mr. Osborne alleged that BEX Construction has subsidized Cedarbrook's operations throughout the years and is currently owed \$228,000, which he does not expect to ever recover. This amount includes costs such as system repairs and sludge hauling. Mr. Osborne testified that due to the poor original construction of the lines, a significant inflow and infiltration problem exists, such that when it rains, the inflowing

⁶ Intra-Agency Memorandum dated Feb. 26, 2015.

water causes the system to far exceed its capacity of 25,000 gallons per day. This results in additional expenses incurred to clean the untreated sewage from the nearby creek. To replace the lines would cost more than \$300,000, which does not include replacement of the treatment plant itself.

Exacerbating difficulties in collecting customer payments, the Harrison County Water Association, which serves all Cedarbrook customers, stopped shutting off residents' water service for nonpayment of sewer service several years ago, Mr. Osborne stated. When questioned why Cedarbrook had not physically severed any customer sewer lines, Mr. Osborne stated that the utility could not afford the estimated \$1,500 cost to dig up and cap the sewer line. However, enforcement letters are routinely sent and liens have been placed on homes, to minimal effect. Since the commencement of this case, several customers have attempted to bring their accounts current and have negotiated settlements with Cedarbrook.

Mr. Osborne stated that R.A. Williams is currently winding down operations, but that the process need not be completed in a defined period of time. Mr. Osborne expressed a willingness to shut down the system in an orderly fashion, but stated that if the Commission denies his request to abandon the utility, R.A Williams will immediately file for bankruptcy. Cedarbrook's only outstanding debt is owed to BEX Construction.

In an effort to address the above issue regarding shutoffs, Danny Northcutt, Harrison County Water Association's general manager, was called to testify at the hearing. Mr. Northcutt stated that the water association does not provide water shut off service for non-payment of sewer service to Cedarbrook because the water association

is prohibited from doing so by Commission regulations; however, he agreed that if the Commission granted a deviation to allow the practice, the association would provide such service. The Commission has previously granted a water association a deviation to provide water shut off service for non-payment of sewer service to a private sewer utility.⁷ Pursuant to KRS 220.510, Harrison County Water Association is required to provide water shut off service for non-payment of sewer service to sanitation districts.

Mr. Northcutt stated that due to the potential cost involved, Harrison County Water Association is not currently willing to provide billing services to Cedarbrook or the Harrison Sanitation District in the event of a transfer, but that the association's board members would consider providing the service for an acceptable fee.

Finally, Scott McCaulley, chairman of the Harrison Sanitation District, was called to testify. Mr. McCaulley testified that the Harrison Sanitation District was formed for the purpose of addressing sanitation issues throughout unincorporated areas in Harrison County. He stated that it was not formed for the purpose of taking over Cedarbrook. Mr. McCaulley stated that a \$1 million to \$1.1 million funding request will be submitted to KIA within the next 90 days, as well as a request for matching CDBG funds. However, he stated that the KIA funding is to serve North Harrison Elementary School and is not intended to assist Cedarbrook. He admitted that the CDBG funds may be used for Cedarbrook. Mr. McCaulley stated that the sanitation district is currently supporting a bill in the Kentucky legislature aimed at increasing the repayment period of KIA loans from 20 to 30 years, making the loan payments more feasible. He testified that the district may consider taking over Cedarbrook in the third quarter of 2015, after

⁷ Case No. 2011-00417, *Application of Bronston Water Association, Inc. for Approval of Agreement and Deviation from 807 KAR 5:006, Section 14* (Ky. PSC July 17, 2012).

receipt of the grant funds. Until it receives such funds, he stated, Harrison Sanitation District is entirely unwilling to take over Cedarbrook. He further stated that the sanitation district will not act as a receiver for Cedarbrook under any circumstance, even if a rate increase were to be granted.

KRS 278.021 provides for the abandonment of utilities. It provides in part:

(1) If the commission, after notice and hearing, enters an order in which it finds that a utility is abandoned, the commission may bring an action in the Franklin Circuit Court for an order attaching the assets of the utility and placing those assets under the sole control and responsibility of a receiver.

(2) For purposes of this section, a utility shall be considered abandoned if it:

(a) Disclaims, renounces, relinquishes, or surrenders all property interests or all rights to utility property, real or personal, necessary to provide service;

(b) Notifies the commission of its intent to abandon the operation of the facilities used to provide service;

(c) Fails to comply with an order of the commission in which the commission determined that the utility is not rendering adequate service, specified the actions necessary for the utility to render adequate service, and fixed a reasonable time for the utility to perform such actions, and the failure of the utility to comply with the order presents a serious and imminent threat to the health or safety of a significant portion of its customers; or

(d) Fails to meet its financial obligations to its suppliers and is unable or unwilling to take necessary actions to correct the failure after receiving reasonable notice from the commission, and the failure poses an imminent threat to the continued availability of gas, water, electric, or sewer utility service to its customers.

Further, KRS 278.020(5) states:

(5) No person shall acquire or transfer ownership of, or control, or the right to control, any utility under the jurisdiction of the commission by sale of assets, transfer of

stock, or otherwise, or abandon the same, without prior approval by the commission. The commission shall grant its approval if the person acquiring the utility has the financial, technical, and managerial abilities to provide reasonable service.

KRS 278.020(5) provides that Commission approval is required prior to abandoning a utility. KRS 278.021 permits the Commission to find that a utility is abandoned, and provides that a utility may notify "the commission of its intent to abandon the operation of the facilities used to provide service."

Cedarbrook has explored all available options for transferring the utility. Due to the size and location of the for-profit system, coupled with the rate of customer delinquencies, it is not financially viable for Cedarbrook to continue operating. Cedarbrook last sought and received a rate increase in 2008.⁹ Its current rate is among the highest sewage rates in the Commonwealth. Due to the already low rate at which customers pay their bills, a further rate increase would be unlikely to alleviate the revenue shortage experienced by Cedarbrook.

The Commission notes that no customer has requested a rate increase to maintain Cedarbrook's viability, the subdivision has not come forward to form a homeowners' association to take over operation of the treatment plant, and no individual customer has come forth to take over or maintain the system. The Commission therefore finds that Cedarbrook is no longer able to provide sewage service to the public.

The only remaining viable option to maintain service and avert the loss of service for the residents of the 52 homes in the Cedarbrook subdivision is the proposed transfer

⁹ Case No. 2008-00040, *Application of the Cedarbrook Treatment Plant for an Adjustment in Rates Pursuant to the Alternative Rate Filing Procedure for Small Utilities* (Ky. PSC July 29, 2008).

to the Harrison Sanitation District. While Mr. McCaulley was unwilling to admit that the sanitation district was formed for the express purpose of solving the Cedarbrook issue, the sanitation district was formed shortly following Cedarbrook's request to abandon was tendered to the Commission. On multiple occasions, Harrison Sanitation District representatives indicated to Commission Staff that Harrison Sanitation District was requesting funding with the primary goal of replacing the Cedarbrook system and that it would likely be in a position to support an application to transfer the utility to the sanitation district in the fall of 2015.⁹ The Commission finds that, while Cedarbrook does not currently have the financial ability to continue operating as a stand-alone, for-profit sewer utility, the system continues to adequately function on a daily basis, except during rain events.

Accordingly, the Commission finds that Cedarbrook's request to abandon its facilities should be granted. However, the Commission further finds that to provide an opportunity for the Harrison Sanitation District to enter into an agreement to operate the system on a temporary basis to ensure the continuity of service for the Cedarbrook residents, R.A. Williams should continue operating the system until April 30, 2015. The loss of utility service is regrettable under any circumstance, and such loss of service is further exacerbated in this situation by the potential for the 52 homes in the Cedarbrook subdivision to be declared no longer habitable. The Commission therefore hopes that Cedarbrook and the Harrison Sanitation District can come to an acceptable agreement to provide for the continued operation of the sewage facility pending the sanitation

⁹ See, e.g., Intra-Agency Memorandum dated Jan. 20, 2015.

district's receipt of grant funding and upon receipt of that funding to formally request a transfer of the Cedarbrook system to Harrison Sanitation District.

Should the parties be unable to reach an agreement, Cedarbrook should shut down its operation in a safe and orderly fashion. It should ensure that electric service is discontinued, chemicals disposed of properly, and all facilities safely secured. Finally, Cedarbrook should submit separate financial and statistical and gross operating revenues reports for the calendar year ending December 31, 2014, and for the period of January 1, 2015, through the final date of the utility's operation.

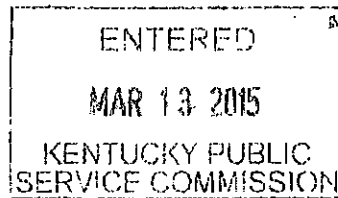
IT IS THEREFORE ORDERED that:

1. Cedarbrook shall continue operating until April 30, 2015.
2. The request of Cedarbrook to abandon its facilities is granted, to be effective April 30, 2015.
3. No later than April 15, 2015, Cedarbrook shall provide a status update detailing any agreement entered into with the Harrison Sanitation District regarding an operational agreement or transfer of the Cedarbrook system.
4. If an agreement with the Harrison Sanitation District is not reached by April 15, 2015, the Commission will bring an action in the Franklin Circuit Court and will request the appointment of the Harrison Sanitation District to act as receiver over the Cedarbrook assets.
5. No later than March 31, 2015, Cedarbrook shall submit its Gross Report and an Annual Report for the calendar year ending December 31, 2014.

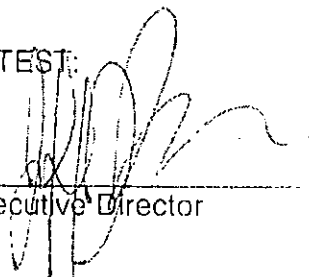
6. No later than June 1, 2015, Cedarbrook shall submit its Gross Report and an Annual Report for the period spanning January 1, 2015, through the date of abandonment.

7. A copy of this Order shall be served on the Kentucky Division of Water, Wedco District Health Department, the Harrison County Judge/Executive and Harrison Sanitation District.

By the Commission



ATTEST:



Executive Director

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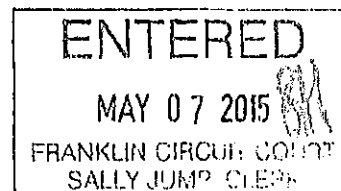
Ron Osborne
Cedarbrook Wastewater Treatment Plant
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*John M Williams
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Exhibit "b"

COMMONWEALTH OF KENTUCKY
FRANKLIN CIRCUIT COURT
DIVISION II
CIVIL ACTION NO. 15CI00417



PUBLIC SERVICE COMMISSION OF KENTUCKY

PLAINTIFF

v.

R. A. WILLIAMS CONSTRUCTION COMPANY, INC.
D/B/A CEDARBROOK TREATMENT PLANT

COMMONWEALTH OF KENTUCKY, EX REL.
JACK CONWAY, ATTORNEY GENERAL

COMMONWEALTH OF KENTUCKY, ACTING THROUGH AND BY
THE ENERGY AND ENVIRONMENT CABINET

HARRISON COUNTY SANITATION DISTRICT

DEFENDANT'S

*** **

AGREED ORDER

This matter having come before the Court of the motion of Plaintiff, Public Service Commission of Kentucky (hereinafter, "Commission") for the attachment of assets of Defendant, R.A. Williams d/b/a Cedarbrook Treatment Plant (hereinafter, "R.A. Williams") and the appointment of the Harrison County Sanitation District (hereinafter, "HCSD") as receiver with sole control and responsibility for those assets and the Court being otherwise sufficiently advised, IT IS HEREBY ORDERED AND ADJUDGED:

1. The Commission's Motion for the Attachment of Assets and Appointment of Receiver is granted.

2. HCSD is appointed receiver to take charge, preserve, operate, control, manage, maintain and care for R.A. Williams' sewage collection and treatment facilities; to collect all receivables and profits, and to exercise generally the powers conferred by this Court and such

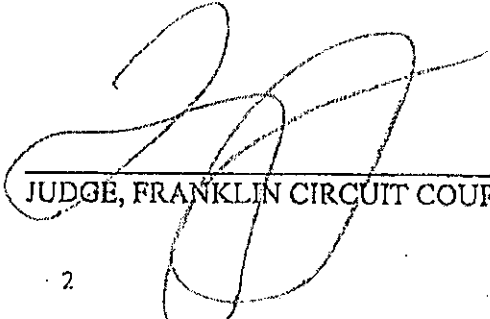
other powers as are usual and incidental to the management of a public utility providing sewage collection and treatment service to the public.

3. No later than May 1, 2015, HCSD shall take possession and control of R.A. Williams' attached assets.

4. HCSD is authorized and directed to collect all receivables and profits; to deposit all funds coming to HCSD as receiver in a separate bank account; to employ or contract with responsible personnel; to manage and maintain the property; to contract and pay for routine items of security, maintenance, and repair; to pay to insure the attached assets if they are not adequately insured; to make repairs of an emergency nature; to cause necessary improvements to be made to the assets as the Court authorizes; to pay reasonable and necessary expenses already or hereafter incurred; to pay taxes incurred on the assets; to pay all other expenses necessary to preserve and operate the assets to negotiate and contract with local, state and federal governmental entities for funds to restore R.A. Williams' sewer collection and treatment facilities; and to maintain an accurate accounting of all receivables and profits collected and expenses incurred.


5. R.A. Williams shall immediately cease any collection efforts. HCSD, as receiver, shall tender an application to the Commission to transfer ownership of R.A. Williams' accounts receivable, utility plant and associated real property to HCSD. R.A. Williams shall take all necessary steps to transfer ownership of the aforesaid assets and property to HCSD upon subsequent order of the Commission.

The 1st day of May, 2015.



JUDGE, FRANKLIN CIRCUIT COURT

Tendered by:



JONATHAN D. BEYER
COUNSEL FOR PLAINTIFF
KENTUCKY PUBLIC SERVICE COMMISSION
P.O. BOX 615
211 SOWER BOULEVARD
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502-564-7279 (fax)

HAVE SEEN AND AGREED:

John Williams by Jonathan Bayar
JOHN M. WILLIAMS *w/permissions*
RAJKOVICH, WILLIAMS, KILPATRICK & TRUE, PLLC
COUNSEL FOR DEFENDANT, R.A. WILLIAMS
D/B/A CEDARBROOK TREATMENT PLANT
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HAVE SEEN AND AGREED:

Bradley Vaughn by Jonathan Bayer
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HAVE SEEN AND AGREED:

Jennifer Black Hans by Jonathan Bayer
~~JENNIFER BLACK HANS~~ *with permission*
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GREGORY DUTTON
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HAVE SEEN AND AGREED:

Kathleen Saunier by Jonathan Beyer
w/ permission

KATHLEEN SAUNIER

DANIEL CLEVELAND

COUNSEL FOR DEFENDANT

COMMONWEALTH OF KENTUCKY, ACTING THROUGH AND BY
THE ENERGY AND ENVIRONMENT CABINET

2 HUDSON HOLLOW

FRANKFORT, KY 40601

Exhibit "c"

ORDINANCE NO. 284

AN ORDINANCE RELATING TO
ON-SITE AND CENTRALIZED WASTEWATER SYSTEMS
AND
THE CREATION OF A SANITATION DISTRICT IN HARRISON COUNTY, KENTUCKY

WHEREAS, the Harrison County Fiscal Court recognizes the need to correct and prevent the pollution of the many creeks, streams, lakes and other water resources that lie within the boundaries of Harrison County, and finds that responsive action is necessary to safeguard and improve the public health, safety, and welfare of its citizens; and

WHEREAS, the Kentucky Revised Statutes (KRS) Chapter 67.083 provides counties the authority to establish agencies which can provide necessary governmental services and Chapter 67.715 authorizes the County Judge Executive, with the approval of the Fiscal Court, to create and establish any special district / special purpose governmental entity to effect such purpose; and

WHEREAS, the Harrison County Fiscal Court finds that the establishment of a Sanitation District constitutes a valuable and necessary governmental purpose and intends to create and charge a sanitation district to resolve wastewater problems in Harrison County by working in a collaborative manner with the Wedco District Health Department, the City of Cynthiana and the City of Berry to plan for, regulate the type of wastewater systems used in housing and other multi-user developments and to assist homeowners, as requested, to properly manage on-site wastewater systems as well as to construct, acquire, own, operate and maintain on-site and centralized collection and treatment facilities for sewage and other wastewater, to the extent that the necessary resources are available, so as to protect and enhance the natural environment and economic well being of the entire County.

NOW, THEREFORE, BE IT ORDAINED BY THE FISCAL COURT OF HARRISON COUNTY, COMMONWEALTH OF KENTUCKY, AND SO ORDERED, THAT:

SECTION 1: PROHIBITED FACILITIES

From the effective date of this Ordinance, it is deemed a public nuisance, endangers the public health and is unlawful for any person owning an occupied building in the County to construct, install, use, repair or maintain a straight pipe to any body of water, or to a seepage pit, cesspool, sinkhole, or other receptacle, or rely upon a privy or outhouse for the purpose of receiving or discharging human waste and wastewater which may pollute the waters of the Commonwealth, without the written approval of the Wedco Health Department; and the owner of a building connected to such facilities and any person(s) that performs the work in making such a connection shall be subject to the penalties set out herein.

SECTION 2: WHERE PUBLIC WASTEWATER SYSTEM IS NOT AVAILABLE

- A. From the effective date of this Ordinance, where a public wastewater collection and treatment system is not available, it is the responsibility of a property owner to connect or have connected any and all newly constructed and/or substantially renovated buildings intended for occupancy to an approved, on-site wastewater treatment system. The type, capacity and location of any on-site wastewater system to serve any such building intended for occupancy shall comply with the regulations of the Wedco District Health Department regarding pollution of the waters of the Commonwealth, (902 KY Administrative Regulation (KAR) 10:081 &10:085), or the regulations of the Kentucky Division of Water, as appropriate.
- B. The property owner shall operate and maintain the on-site wastewater system in working condition at all times, or may contact the Sanitation District, created herein, to assist the property owner in locating a qualified service provider. Discharge of effluent from any on-site wastewater system to any open drain, ditch, sinkhole, stream, or well is prohibited, with the exception that holders of current NPDES/KPDES permits may discharge at permitted discharge points.
- C. Failure to connect to an approved on-site wastewater system when a public wastewater system is not accessible is hereby declared to constitute a nuisance, to endanger the public health and is unlawful (KRS 212.210).

SECTION 3: WHERE A PUBLIC WASTEWATER SYSTEM IS OR BECOMES AVAILABLE

- A.** All persons owning property in the County, upon which there is an existing, occupied building that is or becomes accessible to a public wastewater system, shall make a service connection to that system, at the owner's expense, using material and workmanship in accordance with the approved regulations of that public wastewater system, or may seek a temporary exemption from such connection, as set out in Section 4, below.
- B. Said connection shall be made within one hundred and twenty (120) days from the date that written notice is provided to the property owner that wastewater service is available. After this time, whether or not the connection to the wastewater system is made, the property owner shall be billed for wastewater service based on metered water consumption or, if the property is not served by a public water system, the system average usage charge, which ever shall apply.
- C. Occupied buildings are deemed accessible to a public wastewater system if a collection line of the wastewater system is located within five hundred (500) linear feet from an occupied building or a building to be occupied. At the discretion of the affected public wastewater system, certain building locations within the 500 linear foot distance may be declare 'not feasible to serve' after

taking into consideration geographic site characteristics, hydraulic engineering standards and affordability.

- D. Permanency of connection: Once a building is connected to a public wastewater system the owner may not remove, disconnect, or otherwise interrupt the flow of wastewater to that system for any purpose unless so directed in writing by the Wedco District Health Department or the Kentucky Division of Water.
- E. Failure to connect to a public wastewater system under the conditions outlined above is hereby declared to constitute a nuisance, endangers the public health and is unlawful.

SECTION 4: PUBLIC WASTEWATER CONNECTION TIME EXTENSION PERMIT

A person owning property in Harrison County, upon which there is any existing, occupied building that is accessible, or which becomes accessible to a public wastewater system, may apply for a 'Connection Time Extension Permit' from the District, which shall be valid for a three(3) year period from the date of notice of availability of wastewater service, if that person can document that he or she has a functioning on-site wastewater treatment system approved by the Wedco District Health Department, or the Kentucky Division of Water, which was installed within ten (10) calendar years previous to the date of public wastewater service availability. Upon presentation of appropriate documentation, the person will receive a permit affecting that specific building. If, for whatever reason during the period of the time extension, the on-site wastewater system fails, the permit is automatically revoked and the person must connect to the public system and comply in full with the provisions of this Ordinance. No additional time extension for that building shall be provided.

SECTION 5: EXCLUSION OF STORM WATER AND OTHER SURFACE WATER

- A. It is the responsibility of property owners to assure that storm water, other surface water or unpermitted discharges not enter a public wastewater system.
- B. All persons requesting to connect to any wastewater system, either an on-site or centralized system, shall provide adequate means for excluding storm water, such as from roof drains, foundation drains or other sources of surface water, from entering the wastewater system, provide supporting documentation and allow an agent of the Sanitation District right of access for timely inspection to verify compliance.
- C. Once a building is connected to a public wastewater system, no person shall subsequently connect any roof drain or foundation drain to the wastewater system or permit, allow or cause water from any source other than the sanitary plumbing of the building to enter the wastewater system.

SECTION 6: CREATION OF SANITATION DISTRICT

A. In accordance with and pursuant to the organizational structure set out in KRS Chapter 67.715 (2) and KRS Chapter 67.083 (3) (c) (h) and (r), the Harrison County Fiscal Court grants its approval for the County Judge/ Executive to establish a non-taxing, special purpose governmental entity to be known as the "Harrison County Sanitation District" (Sanitation District). Further, the Sanitation District shall be operated so as to achieve the environmental goals cited in KRS 220 and shall have all powers and duties to reasonably, efficiently and effectively implement the provisions of and carry out

the duties prescribed by KRS 220. Further, the District shall coordinate Harrison County's initial and on-going watershed planning effort to protect and enhance area water resources. The District shall serve as the County's representative in region-wide watershed planning implementation.

B. Pursuant to KRS Chapter 220.035, the Harrison County Fiscal Court reserves the power and authority to review and approve, amend or disapprove the District's annual budget. To assure timeliness in this procedure, the District shall submit its budget to the Judge Executive on or before April 1 of each year. If, after forty-five (45) days have elapse and the Fiscal Court has not taken action, the budget as submitted by the Sanitation District shall be deemed approved by the Fiscal Court.

SECTION 7: SANITATION DISTRICT PURPOSES, STRUCTURE & AUTHORITY

A. Purposes: The Sanitation District:

1) shall prepare a comprehensive wastewater services plan for the entire land area of Harrison County not presently having wastewater service. The District shall engage and work cooperatively with the existing wastewater systems as well as with the citizens in those areas of the County that currently do not have wastewater service in this planning process to assure a realistic and common sense approach to the development of on-site as well as centralized wastewater services throughout the County, where and as appropriate. The scope of the District's planning process shall include the entirety of all watersheds in the County and be on-going, in multi-year cycles.

2) shall regulate and control the development of wastewater facilities throughout the County.

3) may own, operate and maintain wastewater facilities or contract with existing wastewater systems and others to provide these services utilizing any and all types of centralized and site-appropriate on-site wastewater facilities to effect the purpose of the ordinance.

4) shall serve as directed by the Fiscal Court in matters relating to the water resources of Harrison County and shall be an active participant in the Bluegrass Area Water/ Wastewater Planning Council.

B. Structure: The Sanitation District:

1) shall be governed by a three (3) member board of directors, appointed by the County Judge/Executive and approved by the Fiscal Court, such that the initial members' terms shall be: one member for 2 years, one member for 3 years, and one member for 4 years respectively; thereafter terms shall be 4 years in duration.

2) members are hereby charged to devise and promulgate rules, regulations and procedures affecting all aspects of the planning and implementation processes for various types of wastewater service in Harrison County which may extend into neighboring counties, if warranted and so authorized by the Harrison County Fiscal Court and the fiscal court of the affected county.

3) shall work cooperatively with the Wedco District Health Department, the City of Cynthia and the City of Berry to establish a 'single point of contact' relating to centralized and on-site wastewater regulation, coordination and development for all of Harrison County.

4) board of directors shall prepare and submit its proposed plans and projects to the Harrison County Fiscal Court, to the existing wastewater systems and the Wedco District Health Department for their review and comments. After consideration of comments or recommendations from these

bodies, the Sanitation District shall approve these plans and projects by formal action of the board of directors.

5) plans and projects, together with its rules, regulations and procedures, shall be made available to all citizens of Harrison County, as well as to developers, contractors and others, upon request.

C. Authority: The Sanitation District

1) shall have the responsibility and authority to coordinate, oversee and regulate the development of wastewater facilities in Harrison County. Incident to the purposes stated above and to enable their accomplishment, the District is specifically authorized to develop, acquire, own, manage and operate wastewater facilities and to discharge the attendant duties and obligations thereof as enumerated in KRS 220.030. To this end, the District shall have the authority to inspect, approve, construct or arrange for the proper de-commissioning of both on-site and centralized wastewater management facilities, in cooperation with the Wedco District Health Department and the Division of Water. Such facilities may include but are not limited to drainage control, collection mains, laterals, filters, tanks, trunk lines, lift stations, force mains, treatment and disposal works, and all appurtenances. Further, the District shall have the responsibility and attendant authority to operate, maintain, repair and replace facilities and components thereof by hiring qualified employees or by contracting with qualified operators to provide such services, and take any and all other action necessary for the fulfillment of the purposes of KRS 220.010 to 220.520.

2) shall have the powers stated in KRS Chapter 220 including the power to sue and be sued, contract and be contracted with, incur liabilities and obligations, secure rights of way and easements, issue bonds and to perform all acts necessary and proper for carrying out the purposes for which the District is created. The District shall have the authority to execute the powers with which it is vested as provided in KRS Chapter 220.510.

3) shall have the authority to exercise the right of eminent domain, as provided and described in KRS Chapter 220.310, subject to concurrence of the Harrison County Fiscal Court.

4) shall adopt and comply with KRS 45A.343, 45A.345 to 45A.360, 45A.735, 45A.740, 45A.745 and 45A.750 of the Kentucky Model Procurement Code and conduct its business activities in accord with approved governmental fiscal procedures.

5) meetings and records shall be subject to KRS 61.805 to 61.850 and 61.870 to 61.884, respectively, the Kentucky Open Meeting and Open Records Act as well as with KRS 65A, which regulates special purpose governmental entities.

SECTION 8: SANITATION DISTRICT BOUNDARIES

The District boundaries shall be the same as those of Harrison County, with the exclusion of the wastewater service areas of the City of Cynthiana and the City of Berry. The District shall engage and work cooperatively with the wastewater systems of the City of Cynthiana and the City of Berry, together with the Wedco District Health Department in planning and implementing wastewater services improvements and extensions beneficial to citizens throughout Harrison County, and where warranted, via minor extensions into areas of neighboring counties, conditioned upon approval of the Harrison County Fiscal Court and the fiscal court of the affected county.

SECTION 9: FEES, RATES AND CHARGES

For each type of service provided by the District, such as centralized wastewater collection, on-site treatment or other service, the District shall review, devise, and publish annually its schedule of rates and charges, which shall be based on 100% of the actual cost of providing such services, as provided in KRS Chapter 220.510. The following procedure shall guide the District's rate-making process and the District is charged to adhere to this procedure or any future amendments to the procedure as may be approved by the Harrison County Fiscal Court prior to its implementation:

A. The District shall invite three customers from within each service type and designated service area to participate with the District's board for a three year period as a Rate Advisory Committee to assist in establishing rates and charges for that service, such that:

1) The initial rate and all future rates to be charged by the District to all customers, by service type and service area, shall be the same in dollar amount and shall be levied so as to recover 100% of the cost of providing the respective service. Rates shall be levied per 1,000 gallons of service provided, based on metered water service to each customer and shall be charged monthly, by invoice showing metered amounts of flow and the total dollar amount to be remitted for wastewater service. If the wastewater customer's water consumption is unmetered, the average usage of those on public water service in that area shall be applied to the wastewater customer for billing purposes.

2) If the District has no previous history related to providing a service, the Board and Committee shall establish initial rates, which shall be based on: a) the probable costs for providing such services; and b) a comparison of the probable cost with the actual cost experience of one or more comparably sized and equipped wastewater utilities in neighboring communities. The Authority shall charge this rate for the period beginning with the start of operation of the facilities required for the service and continuing through the first full fiscal year (July-June) of operation of that service by the District.

3) In February after the first full fiscal year (July-June) of operation of the facilities subject of this Ordinance, and each February thereafter, the District board and Rate Advisory Committee shall meet to review verified, historical cost information obtained from the District's records, audits, management interviews and other such informational sources as it deems appropriate, and compile this information into a cost study. The elements of the study shall generally conform to industry standards and shall include but not be limited to:

- a. personnel, electricity, chemicals, supplies, repair materials, vehicles and related operation cost, equipment and related operation cost, contract labor, contracted operations, lab testing costs, and other similar, documented costs; and
- b. timely retirement of any outstanding debt obligations secured by the Sanitation District to construct and maintain required wastewater facilities.

4) The District shall not allow charges to be calculated into the initial cost of service report or subsequent reports for capital cost of replacement equipment or repair or replacement materials or the cost of labor required to make such repairs or replacements to newly constructed or renovated facilities, due to the equipment and construction warranty period.

5) Based on the annual cost of service analysis, the District board, assisted by the Rate Advisory Committee shall present the proposed rates for service to the affected customers at a public hearing by March 1 of each year, for service to be provided for the subsequent July 1 through June 30 period. The District board shall respond to customer questions and take into consideration customer

comments prior to voting to establish the final rate determination for the respective period. The District shall provide written notification regarding any change in rates or charges to each customer affected.

B. The District shall comply with the public notification and hearing requirements for rate changes, in accord with KRS 65A, regulating special purpose governmental entities.

C. A customer's failure to pay wastewater charges, fees or penalties may result in public water being shut off to the premises or removal of wastewater service lines. The Sanitation District is authorized to contract with any public water provider to turn off and lock the water meter that serves a property in the event of non-payment for wastewater service; additional charges may be applied and payment received prior to restoring the water service.

D. Any sewer charges that are owed to the Sanitation District are the responsibility of the owner of the property. The Sanitation District shall have the right to attach a lien to the property regarding unpaid sewer charges to be placed on file in the County Clerk's Office.

SECTION 10: COMMUNICATION & COOPERATION

The Sanitation District shall actively and routinely coordinate all its planning, administration and regulatory actions as well as convey updated information regarding its facilities construction and operational activities with the Harrison County Fiscal Court, the Wedco District Health Department, the City of Cynthiana and the City of Berry to best assure full interagency communication and integrated service delivery to the citizens of Harrison County.

SECTION 11: No General Obligation or Personal Liability

A. Grants, loans, bonds or other funding assistance that may be awarded to or secured by the District, as authorized by this Ordinance, shall not carry any responsibility to, nor in any way constitute an obligation or indebtedness of the Harrison County Fiscal Court. Also, no member of the Fiscal Court, individually or collectively, shall be required or obligated to reimburse any grant or portion of a grant, as a result of a failure on the part of the District; nor shall the Fiscal Court or any member thereof, be obligated to make any loan or bond payment on behalf of the District from any general or special tax revenues, within the meaning of any constitutional provision or limitation.

B. No District director, board officer, or employee of the District shall be personally obligated, individually or collectively, to make payment, or in any way be liable for any debt, bond obligation, contract or other fiscal obligation or expense legally incurred in furtherance of the District purposes, subject of this Ordinance. However, this exclusion does not include malfeasance, misfeasance or criminal activity.

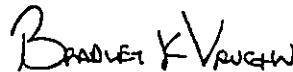
SECTION 12: CONCORDANCE

Statements contained in this Ordinance shall be construed so as not to conflict with Harrison any other Harrison County ordinances, state or federal laws or regulations.

SECTION 13: PENALTIES

Any person, entity or corporation violating any of the provisions of this ordinance, or failing or refusing to comply with the rules and regulations of the Wedco District Health Department or the District relating to this Ordinance, shall be fined not less than fifty dollars (\$50.00) nor more than five hundred dollars (\$500.00) for each offense. Each day such person, entity or corporation fails or refuses to comply with the specific provisions of this ordinance, shall constitute a separate offense.

Prepared by:



Bradley Vaughn, Attorney at Law
201 S. Main St.
Cynthiana, KY 41031

Given first reading and approved by the Fiscal Court of Harrison County, Kentucky, at a regular meeting on the 8th day of July 2014.

Given second reading and adopted by the Fiscal Court of Harrison County, Kentucky, at a regular meeting on the 22nd day of July 2014, and on the same occasion signed in open session by the County Judge Executive as evidence of its approval, attested under seal by the Harrison County Fiscal Court Clerk and declared to be in full force and effect.



Alex Barnett
Harrison County Judge Executive

ATTEST:


Linda B. Furnish
Harrison County Fiscal Court Clerk

Exhibit "d"

**OPERATION AND MAINTENANCE AGREEMENT FOR
CEDARBROOK WASTEWATER TREATMENT FACILITY**

This OPERATION AND MAINTENANCE AGREEMENT (the "Agreement"), dated May 1, 2015, between the Harrison County Sanitation District whose address is P.O. Box 186 Cynthiana, KY 41031 (the "Owner"), and Professional Wastewater Services, LLC (the "Operator"), whose address is 185 Westwoods Dr., Georgetown, KY 40324.

Recitals

WHEREAS, Harrison County Sanitation District is the owner of the sanitary sewer collection, transmission and treatment systems, this being the Cedarbrook Subdivision, including the respective sanitary collection and transmission systems and the respective wastewater treatment plant, all being designed to receive and treat the sanitary sewage of the properties served, respectively, by the sanitary sewer systems and which are located on the Owners property (the "Facilities"); and

WHEREAS, the Owner desires to engage the Operator to operate and maintain the Facilities on behalf of the Owner, and the Operator desires to accept such engagement; and

WHEREAS, the Owner is authorized by law to enter into this Agreement.

NOW, THEREFORE, in consideration of the promises and the mutual covenants herein contained, the parties agree as follows:

Article 1

Standard Services

1.1 Operation and Maintenance. Commencing on May 1, 2015, or such other date mutually acceptable in writing to the Operator and the Owner (the "Effective Date"), the Operator will provide all routine maintenance of the Owner's Facilities on a 7 day per week basis within the System Capabilities of the Facilities as specified in the original plans for the system, and to include subsequent structural changes (the "System Capabilities"). For purposes of this Agreement, routine operation and maintenance shall include all activities necessary to satisfy the requirements imposed on the Owner by the existing Discharge Permit (the "Discharge Permit"), currently applicable to the Facilities and described further in Sections 1.2 through 1.8.

- 1.2 Routine Operations and Preventive Maintenance Services.** The Operator will perform routine and/or repetitive activities required to operate the Facilities and to maximize the service life of the equipment and Facilities. These services include the Operator's personnel, vehicle costs, and basic tools. In general, these services are to be provided on a daily basis to include those in the Best Management Practices (the "BMP").
- 1.3 Corrective Maintenance Services.** The Owner contract with others for specialized mechanical, electrical, and other specialized maintenance services and in doing so assumes responsibility for the replacement parts, materials, and associated component costs. The Operator will identify the need for corrective maintenance during its routine operation and either perform the corrective maintenance as needed or flag the item for attention by a third party electrical or mechanical contractor. The Operator shall consult with and obtain approval from the Owner on any single maintenance expenditure expected to exceed \$250.00; provided, however, that the Owner Liaison may approve maintenance or other expenditures exceeding \$250.00, without other Owner approval, if in reasonable judgment of the Owner Liaison such expenditures are necessary to prevent or alleviate an emergency situation. Otherwise, the Operator shall have the authority to charge lesser items to the maintenance budget as necessary and appropriate to maintain the system.
- 1.4 Emergency Callout Services.** The Operator shall provide personnel to respond to emergency callouts from power outages, storm response, and alarm callouts on a 24/7 basis. Emergency callout services may be provided at any time.
- 1.5 Laboratory Services.** The Owner will be responsible for contracting with a state certified laboratory for the collection of all system and groundwater samples in accordance with the frequency and parameter requirements of the Discharge Permit.
- 1.6 Staffing.** The Operator will provide employees of the Operator for the staffing of the Facilities both for routine operations and on an emergency callout basis. The operator shall be deemed to be an independent contractor for purposes of applicable wage, fringe benefit, and worker compensation laws.
- 1.7 Liaisons.** The Operator's primary liaison regarding decisions and other matters related to the operation of the Facilities shall be with the Owner Liaison. If requested, or necessary, the Operator will also communicate with Owner's Engineer. The Operator shall serve as the Owner's liaison to regulatory agencies in matters related to the operation of the Facilities.
- 1.8 Regulatory Compliance.** Subject to the limitations of the System Capabilities, the Operator shall operate the Facilities in compliance with current state and federal regulatory requirements and the Discharge Permit.
- 1.9 Reports and Records.** The Operator will prepare and sign, as appropriate, all reports required by state and federal regulatory agencies, and will maintain other records deemed useful by the Operator and Owner to monitor and control the operation of the Facilities. The Operator will cooperate with the Owner in providing records and reports in the format deemed by the Owner to be most suitable to its needs, and to include all pertinent information held by

the Operator. The Operator shall prepare and timely submit to the Owner monthly activity reports including a summary of routine preventative maintenance, corrective maintenance, and emergency callouts. The Operator shall also, annually, compile a general summary of significant events, including weekly reports, alarm callouts with the answering service log, maintenance cost reports, results of any tests, and any other concerns or situations affecting the Facilities.

Article 2

Responsibilities of the Operator

2.1 Non-Routine Services. Additional services, including the cost of labor, parts and subcontractors, not considered routine under this Agreement or required as a result of flood, fire, Act of God or other force majeure, civil disturbance, or other event or circumstance beyond the Operator's control (collectively, "Non-Routine Services"), are not included in the Standard Services as defined in Article 1. The Operator will assist the Owner in obtaining or providing, or the Operator will obtain and provide, any such services so required, and the Operator will be paid for such Non-Routine Services in accordance with Section 4.4. If such services are provided by subcontractors or other third parties, the contractors or other third parties shall bill the same directly to the Owner, except as to incidental or minor purchases.

2.2 Performance of Duties and Obligations. The operator shall perform the services and duties under this Agreement in accordance with the standard of care and diligence normally provided by other professionals providing similar services.

2.3 Insurance Coverage. The Operator will provide and maintain at all times during the term of this Agreement the following minimum coverage:

- (a) Workers Compensation Insurance in compliance with the statutes of the State of Kentucky with a limit of ONE HUNDRED THOUSAND DOLLARS (\$100,000);
- (b) General Liability Insurance of ONE MILLION DOLLARS (\$1,000,000);
- (c) Excess Liability Insurance of ONE MILLION DOLLARS (\$1,000,000);
- (d) Automobile Liability Insurance of FIVE HUNDRED THOUSAND DOLLARS (\$500,000);

The operator will furnish the Owner with Certificates of Insurance as evidence that policies providing the required coverage and limits are in full force and effect, and shall update such certificates within thirty (30) days of any change on the policies and coverage such that the Owner shall file a copy of current and effective certificates in the Owner's office on an ongoing basis. Such policies shall provide that no less than thirty (30) days advance notice of the cancellation, termination, or material alteration shall be sent directly to the Operator and the Owner.

2.4 Proprietary Rights. All facility records, data, software, and information, including, but not limited to, operation reports, laboratory data, and budgetary and financial information shall remain the property of the Owner. All operating procedure guidelines, preventive maintenance programs, and plat evaluation reports shall, upon termination of this Agreement, remain the property of the Owner.

2.5 The Operator's Equipment. Any temporary or portable equipment which is provided by the Operator during the term of this Agreement and which is not deemed part of the Facilities shall remain the property of the Operator upon termination of this Agreement. Any temporary or portable equipment that is part of the Facilities or, which is purchased with the Owner's funds, shall remain property of the Owner upon termination of this Agreement. The Operator shall not make any capital replacements of the Facilities or any component thereof without the prior written approval of the Owner.

2.6 Responsibility for Testing and Monitoring. It shall be the responsibility of the Operator to collect effluent, groundwater and soil samples and arrange for the analysis thereof as follows:

(a) Collect effluent samples, submit samples to a state-certified laboratory approved by the Owner, for analysis, and prepare written reports of such analysis and submit the same to the Owner, all as required by the Discharge Permit.

(b) Conduct monitoring of groundwater, including the collection of the samples thereof, and submit such samples for analysis by a state-certified laboratory as required by the Discharge Permit.

2.7 Services. The operator shall submit invoices for services hereunder on a monthly basis, following the end of each preceding month.

2.8 Licenses. The Operator shall maintain the appropriate licenses in accordance with regulations mandated by the State.

Article 3

Responsibilities of the Owner

3.1 Basic Owner Responsibilities. As a part of this Agreement, the Owner agrees to perform all functions and retain all responsibilities and obligations related to the Facilities not expressly assumed herein by the Operator, including without limitation, the following:

(a) The Owner shall obtain and maintain in full force and effect all warranties, easements, permits, licenses, and other approvals and consents necessary to operate and maintain the Facilities as owner of the Facilities and components parts thereof.

(b) The Owner shall be responsible for prompt payment of the Operator for any and all services rendered. Any billing adjustments shall be credited to the next billing cycle, and shall not be the basis for delay or withholding of payment.

(c) The Owner shall be responsible for expenditures for all capitol and/or replacement, corrective maintenance, and for all repairs and replacement of the Facility assets.

(d) The Owner shall enforce all property ordinances, including those pertaining to user pretreatment standards and provide for the billing and collection of all user fees and rates pertaining to the Facilities.

(e) The Owner shall, at all times, provide access to the Facilities for the Operator, its agents, and employees.

(f) The Owner shall provide security at the Facilities including keyed alike locks or other mechanisms to secure the Facilities.

(g) The Owner shall pay for phone service for automatic alarm systems, in addition to the Operator's standard services.

(h) The Owner shall provide the Operator the use of all existing equipment owned by the Owner necessary for the operation and maintenance of the Facilities.

(i) The Owner shall be responsible for damage and liability to the Facilities or components thereof caused by flood, fire, Acts of God or other force majeure, civil disturbance, Acts of War, terrorism or misuse of property caused other than by acts, errors or omissions of the Operator.

(j) The Owner shall be responsible for all fines and penalties imposed for process upsets, violation of discharge limits, and violation of Discharge Permits attributable to the operation and maintenance for the Facilities together with the related costs and expenses, except as caused by the acts, errors or omissions of the Operator.

(k) The Owner shall designate a person (Owner Liaison) to act as liaison with the Operator in connection with the performance of services by the Operator under this Agreement.

(l) The Owner shall be responsible for all claims, damages and liability resulting for the backup of wastewater in the collection system except as caused by the acts, errors or omissions of the Operator.

(m) The Owner shall contract with a third party to assist the maintaining and repairing of sewers, cleanouts, outfalls, and other appurtenances not constituting the Facilities.

(n) The owner shall be responsible for the selection and payment of a state certified laboratory.

Article 4

Compensation

- 4.1 Routine Operations and Preventative Maintenance Services.** As compensation for Services, as outlined in Section 1.2, the Owner shall pay the Operator a flat rate of ONE THOUSAND DOLLARS (\$1,000) per month.
- 4.2 Corrective Maintenance Services.** As compensation for Services as outlined in Section 1.3, the Owner shall pay the Operator on a Time and Materials base rate of \$50.00 per man-hour for maintenance services.
- 4.3 Emergency Callout Services.** As compensation for Services as outlined in Section 1.4, the Owner shall pay the Operator on a Time and Materials base rate of \$50.00 per man-hour for callout services.
- 4.4 Non-Routine Services.** Cost for Non-Routine Services provided by the Operator pursuant to Section 2.1 shall be paid by the Owner to the Operator separately on a Time and Materials basis. Time shall be billed within accordance with the Operator's standard published rates at the times services are rendered, or by lump sum, or by project specific quote.
- 4.5 Other Contractors.** Any services provided directly to the Owner by others are not covered under this Agreement.
- 4.6 Rates Frozen.** The Operator agrees to freeze the base rates outlined in Section 4.1, 4.2 and 4.3 for the term of this Agreement.

Article 5

Term of Agreement

- 5.1 Term.** This Agreement shall remain in full force and effect for 12 months from the Effective Date and is subject to all of the terms hereof. Not less than three months prior to the expiration of 12 months after the Effective Date, the Operator may present a proposal to the Owner to extend or renew this Agreement, for the Owner's consideration, in the Owner's sole discretion.

Article 6

Termination

- 6.1 Termination by the Owner.** This Agreement may be terminated upon 30 days written notice given by the Owner to the Operator for default by the Operator. In the event of a default

by the Operator, this Agreement shall not be terminated if the Operator fully cures the default within such 30 day period.

6.2 Termination by the Operator. This Agreement may be terminated upon 30 days written notice given by the Operator to the Owner for default by the Owner. In the event of default by the Owner, this Agreement shall not be terminated in the Owner fully cures the default within such 30 day period.

6.3 Termination Without Cause. This Agreement may be terminated by either the Operator or the Owner for any reason by giving 90 days written notice to the other party.

Article 7

Miscellaneous

7.1 Assignment. This Agreement may not be assigned by either party hereto except with the written consent of the other party.

7.2 Previous Agreements. This contract shall be the only agreement between the parties for the services described herein, and this agreement shall supersede and replace any previous agreements for similar services.

7.3 Entire Agreement. This Agreement represents the entire agreement of the parties and may only be modified or amended in writing signed by both parties.

7.4 Notices. Written notices required to be given under this Agreement shall be deemed given when mailed by first class mail to the Operator, Attention: Kenneth Hogsten, and to the Owner, Attention: Gary Royalty, Owner Liaison at the address set forth for each in the opening paragraph of this Agreement.

7.5 Claims and Rights. No waiver, discharge, or renunciation of any claim or right of the Operator arising out of breach of this Agreement by the Owner shall be effective unless in writing signed by the Operator and supported by separate consideration.

7.6 Captions. The captions or headings of the various articles and sections of the Agreement are for convenience only and they shall be ignored in interpreting the Agreement.

7.7 Governing Law. This Agreement shall be deemed to have been made in Scott County, Kentucky, and shall be governed by, and construed in accordance with, the laws of the State of Kentucky.

7.8 Third Party Liability. Except as specifically stated in this Agreement, this Agreement does not create any rights or benefits to parties other than the Owner and the Operator.

7.9 Disputes. With respect to any dispute arising under this Agreement, the parties shall have all rights and remedies available by law, including but not limited to the submission of a

dispute to arbitration if both parties agree to do so and agree to be bound by the decision of the arbitrator.

7.10 Authority to Contract. Each party warrants and represents that it has authority to enter into this Agreement.

7.11 Modifications. This Agreement may not be modified or amended except in writing, signed by both parties and which expressly states that is intended to modify or amend this Agreement.

IN WITNESS WHEREOF, the Owner, by its duly authorized representative, and the Operator, by its duly authorized officer, has executed this Agreement as of the date and year first above written.

WITNESSES:

[Signature]
Owner

OWNER

BY: *Harry Royalty* *5/19/15*
(NAME) (DATE)

ITS: *BOARD MEMBER*
(TITLE)

WITNESSES:

Harry Royalty

OPERATOR

BY: *[Signature]* *5/18/15*
(NAME) (DATE)

ITS: *Owner*