

COMMONWEALTH OF KENTUCKY  
BEFORE THE PUBLIC SERVICE COMMISSION

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IN THE MATTER OF:

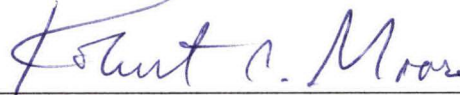
JOINT APPLICATION OF COOLBROOK  
UTILITIES, LLC AND FARMDALE  
SANITATION DISTRICT FOR THE  
APPROVAL OF THE TRANSFER OF A  
WASTEWATER TREATMENT PLANT TO  
FARMDALE SANITATION DISTRICT

CASE NO. 2017-00215

**COOLBROOK UTILITIES, LLC'S AND FARMDALE SANITATION DISTRICT'S  
RESPONSES TO COMMISSION STAFF'S FIRST REQUEST FOR INFORMATION TO  
JOINT APPLICANTS**

Come the Joint Applicants, Coolbrook Utilities, LLC ("Coolbrook"), and Farmdale Sanitation District ("Farmdale Sanitation"), by counsel, and hereby respond to the Commission Staff's First Request for Information to Joint Applicants as follows:

Respectfully submitted,

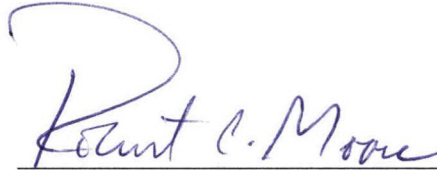


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COUNSEL FOR JOINT APPLICANTS

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was served by electronic mail, on this 6TH day of July, 2017 upon:

Rick Sparks  
Franklin County Attorney  
222 St. Clair Street, Suite 2007  
P.O. Box 73  
Frankfort, KY 40602



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Robert C. Moore

**REQUEST NO. 1**

**REQUEST NO. 1:** Refer to the Joint Application, Exhibit B, Articles of Organization for Coolbrook, and identify each member of Coolbrook and, for each member, state when the member acquired his or her interest in Coolbrook, and provide documentation of the same.

**RESPONSE:**

Lawrence W. Smither and Martin G. Cogan are the members of Coolbrook. Lawrence W. Smither and Martin G. Cogan obtained their interests in Coolbrook on July 1, 2008, the date that Coolbrook was created. The Articles of Organization attached as Exhibit B to the Joint Application reflect that there are two members of Coolbrook. Additionally, Article II, Paragraph 1 of the attached Operating Agreement of Coolbrook reflects that Lawrence W. Smither and Martin G. Cogan are the two members of Coolbrook.

Witness: Lawrence W. Smither

**OPERATING AGREEMENT OF  
COOLBROOK UTILITIES, LLC  
A KENTUCKY LIMITED LIABILITY COMPANY**

**OPERATING AGREEMENT OF  
COOLBROOK UTILITIES, LLC  
A KENTUCKY LIMITED LIABILITY COMPANY**

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**OPERATING AGREEMENT OF  
COOLBROOK UTILITIES, LLC  
A KENTUCKY LIMITED LIABILITY COMPANY**

This Operating Agreement of Coolbrook Utilities, Limited Liability Company (hereinafter referred to as "Company"), a limited liability company organized pursuant to the Kentucky Limited Liability Act, is entered into and shall be effective as of July 1, 2008, by and among the Company and the persons executing this Agreement as Members.

**ARTICLE I  
FORMATION OF COMPANY**

1. **Organization.** The Members of the Company hereby organize the Company as a liability company pursuant to the provisions of the Kentucky Limited Liability Company Act (hereinafter the "Act").

2. **Intent.** It is the intent of the Members that the Company shall always be operated in a manner consistent with its treatment as a partnership for federal and state income tax purposes. No Member shall take any action inconsistent with the express intent of the parties hereto.

3. **Company Name.** The name of the Company is Coolbrook Utilities, LLC.

4. **Registered Office and Agent.** The name and address of the registered agent of the Company and the registered office of the Company are as follows:

Robert C. Moore  
415 West Main Street, P.O. Box 676  
Frankfort, Kentucky 40602-0676

5. **Period of Existence.** The Company shall commence upon the filing of its Articles of Organization and shall continue until such time as it is dissolved and its affairs wound up in accordance with the Articles of Organization of the Company or the Act.

6. **Company Business.** The Company may engage in any lawful business permitted by the Act or the laws of any jurisdiction in which the Company has qualified to transact business. The Company shall have the authority to do all things necessary or convenient to accomplish its purpose.

7. **Principal Office.** The principal office of the Company shall be as follows:

Coolbrook Utilities, LLC  
1706 Bardstown Road  
Louisville, Kentucky, 40205.

**ARTICLE II  
COMPANY MEMBERS**

1. **Names and Addresses of Members.** The Members of the Company and their respective addresses are as set forth below:

	<u>Name</u>	<u>Address</u>
i	Martin Cogan	1706 Bardstown Road, Louisville, Kentucky, 40205.
ii	Larry Smither	1706 Bardstown Road, Louisville, Kentucky, 40205.

2. **Member's Representations.** Each Member hereby represents and warrants to the Company and each other Member that:

- i if that Member is an entity, that it is duly organized, validly existing, and in good standing under the law of its state of organization and that it has full organizational power to execute and agree to this Operating Agreement and perform its obligations and duties under same;
- ii that the Member is acquiring its Interest in the Company for the Member's own account as an investment and without an intent to distribute the Interest;
- iii the Member acknowledges that the interests have not been registered under the Securities Act of 1933 or any state securities law, and may not be resold or transferred by the Member without appropriate registration or the availability of an exemption from such registration requirements; and
- iv that each and all covenants herein contained shall be binding upon and inure to the benefit of the Member's heirs, legal representatives and assigns.

3. **Members as Agents.** Every Member of the Company shall be an agent of the Company for the purpose of its business or affairs, and the act of any Member, including, but not limited to, the execution in the name of the Company of any instrument, for apparently carrying on in the usual way the business or affairs of the Company, shall bind the Company, unless the Member so acting has, in fact, no authority to act for the Company in that particular matter, and the person with whom the Member is dealing has knowledge or has received notification of the fact that the Member has no such authority.

4. **Immunity from Personal Liability.** No Member, employee or agent of the Company shall be personally liable by reason of being a Member, employee or agent of the Company, under a judgment, decree, or order of a court, agency, or tribunal of any type, or in any other manner, in this or any other state, or on any other basis, for a debt, obligation, or liability of the Company, whether arising in contract, tort, or otherwise. The status of a person as a Member, employee, or agent of the Company shall not subject the Member, employee, or agent to personal liability for the acts or

omissions, including any negligence, wrongful act, or actionable misconduct, of any other Member, employee or agent of the Company. The failure of the Company to observe any formalities or requirements relating to the exercise of its powers or management of its business or affairs under this Operating Agreement or the Act shall not be grounds for imposing personal liability on the Members of the Company.

5. **Indemnification.** The Company shall indemnify the Members for all costs, losses, liabilities, and damages paid or accrued by such Member in connection with the business of the Company, to the fullest extent provided or allowed by the laws of the Commonwealth of Kentucky.

6. **Reimbursement of Expenses.**

Any Member of the Company shall be entitled to reimbursement from the Company of all expenses of the Company reasonably incurred and paid by such Member on behalf of the Company.

### ARTICLE III MANAGEMENT OF COMPANY

1. **Management of Company.** Management of the Company's business and affairs shall vest in the Members of the Company.

2. **Voting Rights.** Except as expressly provided elsewhere in this Operating Agreement, and subject to section 3 of this Article III, the affirmative vote, approval, or consent of more than one-half ( $\frac{1}{2}$ ) by number of the Members, shall be required to decide any matter connected with the business affairs of the Company.

3. **Major Decisions.**

No act shall be taken, sum expended, decision made or obligation incurred by the Company except by the unanimous vote, approval, or consent of all Members with respect to a matter within the scope of any of the major decisions enumerated below. The Major Decisions shall include:

- i amendment of this Operating Agreement;
- ii authorization for a Member to do any act on behalf of the Company that contravenes this Operating Agreement, including any provision thereof which expressly limits the purpose, business, or affairs of the Company or the conduct thereof;
- iii amendment of the Articles of Organization of the Company to change the management of the Company from that of Member-Governed to one of Manager-Governed.

4. **Powers of Members.**

Pursuant and subject to sections 1, 2, and 3 of this Article III, the Members of the Company shall have all necessary powers to carry out the purposes and objectives of the Company, which

general powers include, but are not limited to, the following express powers:

- i take and hold any assets of the Company in the Company name;
- ii protect and preserve the assets of the Company and incur indebtedness in the ordinary course of business;
- iii execute and deliver documents on behalf of the Company in connection with the acquisition or disposition of assets and to execute, terminate, modify, continue, or otherwise deal with any Company indebtedness and security interests, to sell Company assets, subject to the limitations of Section 3 of this Article;
- iv procure and maintain insurance as may be advisable and appropriate;
- v invest Company funds; and
- vi employ employees, agents, or consultants to act for the benefit of and on behalf of the Company.

5. **Liability for Wanton and Reckless Misconduct.** A Member shall not be held liable in damages or otherwise to the Company or the other Members of the Company for any action taken or failure to act on behalf of the Company unless the act or omission constitutes wanton or reckless misconduct.

6. **Member as Trustee of Company profit.** Each Member shall account to the Company and hold as trustee for it any profit or benefit derived by that Member without the consent of more than one-half (1/2) by number of the disinterested Members from:

- i any transaction connected with the conduct or winding up of the Company; or
- ii any use by the Member of Company property, including, but not limited to, confidential or proprietary information of the Company or other matters entrusted to the Member as a result of his or her status as a Member of the Company.

7. **Member Meetings.**

(a) Meetings of the Members may be called by any Member of the Company.

(b) The Member calling for a Members' Meeting shall personally deliver or mail written notice of the Membership Meeting stating (i) the date; (ii) the time; (iii) the place of the meeting and (iv) a description of the purposes for which the meeting is called, to each Member of the Company, at such address as appears in the records and books of the Company. Said notice is to be mailed at least ten (10), but not more than sixty (60) days before the date and time of the meeting.

(c) A Member may waive notice of any meeting, before or after the date of the meeting, by

delivering a signed waiver of notice to the Company for inclusion in the minutes of the Company. A Member's attendance at any meeting (i) waives objection to lack of notice or defective notice of the meeting.

(d) A Member may not appoint a proxy to vote or otherwise act for the Member and no such proxy shall be recognized by the Company or any of its Members.

(e) Any action required or permitted to be taken at a Membership Meeting may be taken without a meeting if the action is taken by all of the Members entitled to vote on the action. The action must be evidenced by one or more written consents describing the action to be taken, signed by all the Members entitled to vote on the action, and delivered to the Company for inclusion in the Company Minutes.

(f) Any or all Members may participate and shall be deemed present in person at the meeting by, or through the use of, any means of communication by which all Members participating may simultaneously hear each other during the meeting.

(g) At any Membership meeting, the Members shall appoint a person to act as secretary of the meeting. The secretary of the meeting shall prepare minutes of the meeting which shall be placed in the books and records of the Company.

#### **ARTICLE IV ACCOUNTING AND RECORDS OF THE COMPANY**

1. **Required Records.** The Company shall keep at its principal office the following records:
  - i A current list, and all past lists, setting forth the full name and last known mailing address of each member;
  - ii A copy of the Articles of Organization and all amendments thereto, together with executed copies of any power of attorney pursuant to which any Articles of Amendment have been executed;
  - iii Copies of the Company's federal, state, and local income tax returns and financial statements for the three (3) most recent years or, if those returns and statements were not prepared, copies of the information and statements provided to, or which should have been provided to, the Members to enable them to prepare their federal, state, and local tax returns for those years;
  - iv Copies of any effective written Operating Agreements and all amendments thereto;
  - v Copies of any written Operating Agreements no longer in effect;
  - vi A writing setting forth the amount of cash, if any, and a statement of the agreed value of other property or services, if any, contributed by each Member and the times at

which or events upon the happening of which any additional contributions are to be made.

**2. Inspection of Records by Member.** Upon reasonable written request, any Member may, at the Member's own expense, inspect and copy during ordinary business hours any Company record, where the record is located or at a reasonable location.

**3. Supplying of Pertinent Information.** Each Member shall render, to the extent the circumstances render it just and reasonable, true and full information of all matters affecting the Members and the Company to any Member, and the Member's agent, and to the legal representative of any deceased Member or of any Member under legal disability.

**4. Failure to Maintain Records.** Any failure of the Company to keep or maintain any of the records or information required pursuant to this Article IV shall not be grounds for imposing liability on any Member for the debts and obligations of the Company.

**5. Annual Report.** The Company shall deliver to the Secretary of State for the Commonwealth of Kentucky for filing an Annual Report setting forth the following:

- i The name of the Company and the state or country under whose law the Company is organized;
- ii The address of the Company's registered office and the name of the Company's registered agent at that office in the Commonwealth of Kentucky;
- iii The address of the Company's principal office; and
- iv The names and business addresses of one (1) or more designated Members.

All information in the Annual Report shall be current as of the date of the Annual Report is executed on behalf of the Company.

The Company's first Annual Report shall be delivered to the Secretary of State for the Commonwealth of Kentucky between January 1 and June 30 of the year following the calendar year in which the Company is organized. All subsequent Annual Reports shall be delivered to the Secretary of State for the Commonwealth of Kentucky between January 1 and June 30 of the following calendar years.

**6. Accounting Method.** The records of the Company shall be maintained with the \_\_\_\_\_ method of accounting.

**7. Accounting Records and Fiscal Year.** The books and records of the Company shall be kept, and the financial position and the results of its operation recorded, in accordance with the accounting method elected in section 6 of this Article IV for federal income tax purposes. The books and records of the Company shall reflect all Company transactions and shall be appropriate and adequate

for the Company's business. The fiscal year of the Company for financial reporting and federal income tax purposes shall be the calendar year.

**8. Access to Accounting Records.** All books and records of accounting shall be maintained at the Company's principal place of business, and each Member, and his duly authorized representative, shall have access to them at such office of the Company and have the right to inspect and copy them during ordinary business hours.

**9. Annual and Tax Information.** The Members of the Company shall use their best efforts to cause the Company to deliver to each Member within sixty (60) days after the end of each fiscal year all information necessary for the preparation of such Member's federal income tax return. The Members shall also use their best efforts to cause the Company to prepare, within 120 days after the end of each fiscal year, a financial report of the Company for such fiscal year, containing a balance sheet as of the last day of the year then ended, an income statement for the year then ended, a statement of sources and application of funds, and a statement of the Capital Accounts of the Members. Failure to comply with this Section shall not result in liability as to any of the Company Members or the Company.

**10. Accounting Decisions.** All decisions as to accounting matters, except as otherwise specifically set forth in this Agreement, shall be made by the Members pursuant to Article III hereof. The Members may rely upon the advice of their accountants as to whether such decisions are in accordance with the accounting methods elected to be used for federal income tax purposes.

**11. Federal Income Tax Elections.** The Company may make all elections for federal income tax purposes, including, but not limited to the following:

- i To the extent permitted by applicable law and regulations, elect to use an accelerated depreciation method on any depreciable unit of the assets of the Company, and
- ii In case of a transfer of all or part of the Company Interest of any Member, the Company may elect pursuant to Section 734, 743, and 754 of the Code as amended (or corresponding provisions of future law) to adjust the basis of the assets of the Company.

## **ARTICLE V CONTRIBUTIONS TO THE COMPANY**

**1. Obligations to Make Contribution.** A promise by a Member to contribute to the Company shall not be enforceable unless set forth in a writing signed by the Member. Each Member executing this Operating Agreement has agreed to make the capital contributions set forth on Exhibit A, which Exhibit A is attached hereto and incorporated herein by this reference. Execution of this Operating Agreement shall make enforceable the Member's promise to make the contributions set forth on Exhibit A.

**2. Failure to Make Contribution.** If any Member fails to make the required contribution of property or services as set forth on Exhibit A, that Member shall be obligated, at the option of the

Company, to contribute cash equal to that portion of value of the stated contribution that has not been made.

3. **Compromise of Obligation.** The obligation of a Member to make a contribution to the Company may be compromised only with the unanimous consent of the Members.

4. **Creditor's Rights.** Notwithstanding any compromise approved pursuant to section 3 of this Article V, a creditor of the Company who extends credit or otherwise acts in reliance on a Member's obligation to contribute after the Member executes this Operating Agreement or other writing which reflects the Member's obligation and before a compromise of that obligation may enforce the original obligation.

## ARTICLE VI ALLOCATIONS AND DISTRIBUTIONS

1. **Allocation of Profits and Losses.** All profits and losses of the Company shall be allocated among the Members on a per capita basis.

2. **Distributions of Cash or other Assets.** Each Member shall share equally in any distribution made by the Company. Each Member shall be entitled to receive distributions as set forth in this section to the extent and at the times or upon the happenings of the events specified elsewhere in this Operating Agreement or at the times determined by the Members pursuant to Article III hereof.

3. **Events of Disassociation.** Upon the occurrence of an event of disassociation as described in Article X hereof, which does not cause dissolution, a disassociating Member shall be entitled to receive any distribution which the Member was entitled to receive prior to the event of disassociation. The disassociated Member, within a reasonable time after disassociation, shall be entitled to receive the fair market value of the Member's Company interest as of the date of disassociation based on the Member's right to share in distributions of the Company.

4. **Restriction on In-kind Distributions.** Each Member, regardless of the nature of the Member's contribution, shall not have a right to demand and receive any distribution from the Company in any form other than cash. A Member shall not be compelled to accept from the Company a distribution of any asset in kind to the extent that the percentage of the asset distributed to the Member exceeds the percentage that the Member would have shared in a cash distribution equal to the value of the property at the time of distribution.

5. **Limitations on Distributions.** No distribution shall be made to any Member if, after giving effect to the distribution (1) the Company would not be able to pay its debts as they become due in the usual course of business; or (2) the Company's assets would be less than the sum of its liabilities plus the amount that would be needed, if the Company were to be dissolved at the time of the distribution, to satisfy the preferential rights of other Members upon dissolution which are superior to the rights of the Member receiving the distribution.

6. **Company Determination of Distribution.** The Company may base a determination that a



distribution is not prohibited under section 5 of this Article VI on

- i financial statements prepared on the basis of accounting practices and principles that are reasonable under the circumstances; or
- ii a fair valuation or other method that is reasonable under the circumstances.

**7. Effect of Distribution.** Except as provided in section 9 of this Article VI, the effect of a distribution shall be measured as of:

- i the date the distribution is authorized if payment occurs within one hundred twenty (120) days after the date of authorization; or
- ii the date payment is made if it occurs more than one hundred twenty (120) days after the date of authorization.

**8. Priority of Indebtedness.** The Company's indebtedness to a Member incurred by reason of a distribution made in accordance with this Operating Agreement shall be at parity with the Company's indebtedness to its general secured creditors, except to the extent subordinated by agreement.

**9. Distribution not a Liability.** If the terms of an indebtedness provide that payment of principal and interest is to be made only if, and to the extent that, payment of a distribution to Members could then be made under this Article, indebtedness of the Company, including indebtedness issued as a distribution, shall not be a liability for purposes of determinations made under section 5 of this Article VI.

**10. Indebtedness as Distribution.** If the indebtedness is issued as a distribution, each payment of principal or interest on the indebtedness shall be treated as a distribution, the effect of which shall be measured on the date the payment is actually made.

**11. Unlawful Distributions.** Any Member who votes for or assents to a distribution in violation of this Operating Agreement or the provisions of KRS Section 275.225 shall be held personally liable to the Company for the amount of the distribution that exceeds the amount that could have been distributed without violating this Operating Agreement or KRS Section 275.225 if it is established that the Member did not comply with sections 5 and 6 of Article III.

**12. Contribution.** Each Member who is held liable under section 11 of this Article VI for an unlawful distribution shall be entitled to contribution.

- i from each other Member who could be held liable under section 11 of this Article VI; and
- ii from each Member for the amount the Member received in violation of this Operating Agreement or KRS section 275.225.

13. **Status as Creditor.** At the time that a Member becomes entitled to receive a distribution, the Member shall have the status of, and shall be entitled to all remedies available to, a creditor of the Company with respect to the distribution.

## **ARTICLE VII COMPANY PROPERTY**

1. **Title of Property.** Property transferred to or otherwise acquired by the Company shall be the property of the Company and not of the Members individually. Property may be acquired, held, and conveyed in the name of the Company. Any estate in real property may be acquired in the name of the Company, and title to any interest so acquired shall vest in the Company rather than in the Members individually.

2. **Transfer of Property in Company Name.** Property of the Company held in the name of the Company may be transferred by an instrument of transfer executed by any Member in the name of the Company. Property of the Company which is held in the name of one (1) or more Members with an indication in the instrument transferring the property to them of their capacity as Members of the Company or of the existence of the Company, if the name of the Company is not indicated, may be transferred by an instrument of transfer executed by the persons in whose name title is held.

3. **Recovery of Property.** Property transferred under sections 1 or 2 of this Article VII may be recovered by the Company if the Company proves that the execution of the instrument of transfer did not bind the Company pursuant to KRS section 275.135, unless the property has been transferred by the initial transferee or person claiming through the initial transferee to a subsequent transferee who gives value without having notice that the person who executed the instrument of initial transfer lacked authority to bind the Company.

4. **Transfer of Property not in Company Name.** Property of the Company held in the name of one (1) or more persons other than the Company, without an indication in the instrument transferring title to the property to them of their capacity as Members of the Company or of the existence of the Company, may be transferred free of any claims of the Company or the Members by the persons in whose name title is held to a transferee who gives value without having notice that it is property of the Company.

## **ARTICLE VIII MEMBERSHIP INTERESTS IN COMPANY**

1. **Company Interest as Personal Property.** A Member's interest in the Company shall be the personal property of that Member.

2. **Assignment of Company Interest.** A Member's interest in the Company shall be assignable in whole or in part.

3. **Assignee's Receipt of Distributions.** An assignment of a Member's interest in the Company shall entitle the assignee to receive, to the extent assigned, only the distributions to which the

assignor would be entitled.

4. **Assignee's Management Rights.** An assignment of a Member's interest in the Company shall not dissolve the Company or entitle the assignee to participate in the management and affairs of the Company or to become or exercise any rights of a Member other than the right to receive distributions pursuant to section 3 of this Article VIII.

5. **Assignor's Continuation as Member.** Until the assignee of a Member's interest in the Company becomes a Member pursuant to the provisions of KRS section 275.265(1), the assignor shall continue to be a Member and shall have the power to exercise any rights of a Member, subject to the Members' right to remove the assignor pursuant to KRS section 280(1)(c)2.

6. **Liability of Assignee.** Until an assignee of a Member's interest in the Company becomes a Member, the assignee shall have no liability as a Member solely as a result of the assignment.

7. **Liability of Assignor.** The assignor of an interest in the Company shall not be released from liability as a Member solely as a result of such an assignment.

8. **Encumbrances Upon Interest.** The pledge of or granting of a security interest, lien, or other encumbrance in or against any or all of the Company interest of a Member shall not constitute an assignment and shall not cause the Member to cease to be a Member or cease to have the power to exercise any rights or powers of a Member.

9. **Admission of Assignee as a Member.** An assignee of an interest in the Company shall become a Member only if the other Members of the Company unanimously consent. The consent of a Member may be evidenced by one (1) or more written instruments, dated and signed by all Members.

10. **Rights and Obligations of Assignee Who Becomes Member.** An assignee who becomes a Member pursuant to this Operating Agreement shall have, to the extent assigned, the rights and powers and shall be subject to the restrictions and liabilities of a Member under the Articles of Organization, this Operating Agreement, and the Act. An assignee who becomes a Member shall also be liable for any obligations of his assignor to make contributions pursuant to this Operating Agreement. The assignee shall not be obligated for liabilities of which the assignee had no knowledge at the time he or she became a Member and which could not be ascertained from the Articles of Organization or the Company's Operating Agreement. The assignor of a Company interest shall not be released from his or her liability to the Company to make contributions whether or not an assignee of the Company interest becomes a Member.

11. **Assignment of Entire Company Interest.** A Member who assigns his or her entire Company interest shall cease to be a Member or to have the power to exercise any rights of the Member when the assignee becomes a Member with respect to the entire assigned interest.

12. **Member's Legal Representative.** If a Member who is an individual dies or a court of competent jurisdiction adjudges the Member to be incompetent to manage the Member's person or

property, the Member's executor, administrator, guardian, conservator, or other legal representative shall have all of the rights of an assignee pursuant to this Operating Agreement with respect to the Member's interest.

## **ARTICLE IX ADMISSION OF A MEMBER**

1. **Admission to Membership.** Any individual, general partnership, limited liability partnership, limited partnership, domestic or foreign limited liability company, trust, estate, association, corporation, or other legal entity may become a Member in the Company upon compliance with this Operating Agreement and written consent of all Members.
2. **Admission of Assignee as a Member.** An assignee of an interest in the Company shall become a Member only if the other Members of the Company unanimously consent. The consent of a Member may be evidenced by one (1) or more written instruments, dated and signed by all Members.
3. **Effective Date of Admission.** The effective date of admission of a Member to the Company shall be the later of:

- i the date the Company is formed; or
- ii when the person's admission is reflected in the records of the Company.

## **ARTICLE X DISASSOCIATION OF A MEMBER**

1. **Cessation of Membership.** A Company Member shall cease to be a Member of the Company upon the occurrence of one (1) or more of the following events:
  - i The Member withdraws by voluntary act from the Company by giving thirty (30) days written notice to the other Members.
  - ii The Member ceases to be a Member of the Company as provided in KRS section 275.265 and section 11 of Article VIII hereof.
  - iii The Member makes an assignment for the benefit of creditors; files a voluntary petition in bankruptcy; is adjudicated bankrupt or insolvent; files a petition or answer seeking for the Member any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any statute, law or regulation; files an answer or other pleading admitting or failing to contest the material allegations of a petition filed against the Member in any proceeding of this nature; or seeks, consents to, or acquiesces in the appointment of a trustee, receiver, or liquidator of the Member or of all or any substantial part of the Member's property.
  - iv The Member dies.

- v The entry of an order by a court of competent jurisdiction adjudicating the Member incompetent to manage his or her person or estate;
- vi In the case of a Member who is a trust or is acting as Member by virtue of being a trustee of a trust, the termination of the trust (but not merely the substitution of a new trustee).
- vii In the case of a Member that is a separate legal organization or entity other than a corporation, the dissolution and commencement of winding up of the organization or entity.
- viii In the case of a Member that is a corporation, the filing of articles of dissolution or the equivalent for the corporation or the revocation of its articles of incorporation and the lapse of ninety (90) days after notice to the corporation of revocation without a restatement of its articles of incorporation.
- ix In the case of a Member that is an estate, the distribution by the fiduciary of the estate's entire interest in the Company.

## ARTICLE XI DISSOLUTION AND WINDING UP OF COMPANY

1. **Dissolution.** The Company shall be dissolved and its affairs wound up upon the happening of the first to occur of the following:

- i At the time or upon the occurrence of events specified in the Articles of Organization of the Company.
- ii The written consent of all Company Members.
- iii Any event of disassociation of a Member as set forth in Article X of this Operating Agreement, unless the Company is continued by the consent of all the remaining Members on or before the ninetieth day following the occurrence of the event.
- iv The entry of a decree of judicial dissolution under KRS section 275.290.
- v Filing of a certificate of dissolution by the Secretary of State under KRS section 275.295.

2. **Effect of Dissolution.** Upon dissolution, the Company shall continue its existence but shall not carry on any business except that appropriate to wind up and liquidate its business and affairs.

3. **Distribution of Assets on Dissolution.** Upon the winding up of the Company, the assets shall be distributed as follows:

- First. Payment, or adequate provisions for payment, shall be made to creditors, including, to the extent permitted by law, Members who are creditors in satisfaction of liabilities of the Company.
- Second. To Members or former Members in satisfaction of liabilities for distributions under KRS section 275.210 and 275.215 and this Operating Agreement.
- Third. To Members and former Members first for the return of their contributions and second in proportion to the Member's respective rights to share in distributions from the Company prior to dissolution.

4. **Winding Up and Certificate of Dissolution.** The winding up of the Company shall be completed when all debts, liabilities and obligations of the Company have been paid and discharged or reasonably adequate provision therefor has been made, and all of the remaining property and assets of the Company have been distributed to the Members. Upon the completion of winding up of the Company, a certificate of dissolution shall be delivered to the Secretary of State for the Commonwealth of Kentucky for filing. The certificate of dissolution shall set forth the information required by KRS section 275.315.

## ARTICLE XII MISCELLANEOUS PROVISIONS

1. **Complete Agreement.** This Operating Agreement and the Articles of Organization of the Company constitute the complete and exclusive statement of agreement among the Members with respect to the subject matter hereof. This Operating Agreement and the Articles of Organization replace and supersede all prior agreements by and among the Members or any of them. This Operating Agreement and the Articles of Organization supersede all prior written and oral statements and no representation, statement, or condition or warranty not contained in this Operating Agreement or the Articles of Organization shall be binding on the Members or have any force or effect whatsoever.
2. **Governing Law.** This Agreement and the rights of the parties hereunder will be governed by, interpreted, and enforced in accordance with the laws of the Commonwealth of Kentucky.
3. **Terms.** Common nouns and pronouns will be deemed to refer to the masculine, feminine, neuter, singular and plural, as the identity of the person or persons, firm or corporation may in the context require. Any reference to the Code or other statutes or laws will include all provisions concerned.
4. **Headings.** All headings herein are inserted only for convenience and ease of reference and are not to be considered in the construction or interpretation of any provision of this Operating Agreement.
5. **Severability.** Every provision of this Operating Agreement is intended to be severable. If any term or provision is illegal or invalid for any reason whatsoever, the illegality or invalidity shall not

affect the validity of the remainder of this Operating Agreement.

6. **Amendments.** The Members of the Company may amend this Operating Agreement only by the unanimous written approval of all of the Members.

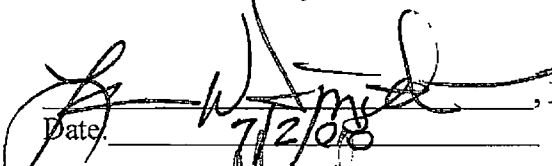
7. **Heirs, Successors and Assigns.** Each and all of the covenants, terms, provisions, and agreements herein contained shall be binding upon and inure to the benefit of the parties hereto and, to the extent permitted by this Agreement, their respective heirs, legal representatives, successors, and assigns.

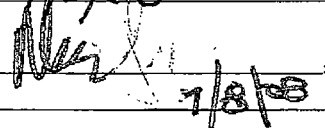
8. **Notices.** Any notice, demand, or communication required or permitted to be given by any provisions of this Operating Agreement shall be deemed to have been sufficiently given or served for all purposes if delivered personally to the party or to any executive officer of the party to whom the same is directed or, if sent by registered or certified mail, postage and charges prepaid, addressed to the Member's and/or Company's address, as appropriate, which is set forth in this Operating Agreement. Except as otherwise provided herein, any such notice shall be deemed to be given three (3) business days after the date on which the same was deposited in a regularly maintained receptacle for the deposit of the United States Mail, addressed and sent as aforesaid.

9. **Execution of Additional Instruments.** Each Member hereby agrees to execute such other and further statements of Interest and holdings, designations, powers of attorney and other instruments necessary to comply with any laws, rules, or regulations.

10. **Waiver.** The failure of any party to seek redress for violation of or to insist upon the strict performance of any covenant or condition of this Operating Agreement shall not prevent a subsequent act, which would have originally constituted a violation, from having the effect of an original violation.

11. **Counterpart Execution.** This Operating Agreement may be executed in any number of counterparts with the same effect as if all parties had signed the same document. All counterparts shall be construed together and shall constitute one Agreement.

 \_\_\_\_\_, Member  
Date: 7/2/08

 \_\_\_\_\_, Member  
Date: 7/8/08

**REQUEST NO. 2**



**REQUEST NO. 2:** Refer to Franklin County Fiscal Court Ordinance No. 4, 2004

Series attached to the Joint Application as Exhibit D.

- a. Provide a copy of each Franklin County Fiscal Court ordinance or resolution pertaining to Farmdale Sanitation approved or passed since February 6, 2004.
- b. Provide a copy of the minutes of the meeting at which the ordinance or resolution was approved.

**RESPONSE:**

- a. Franklin County Fiscal Court Ordinance 4, 2004 Series, filed with the Joint Application as part of Exhibit D, is the only ordinance pertaining to Farmdale Sanitation approved or passed since February 6, 2004. Resolution No. 18-207 pertaining to a loan made to Farmdale Sanitation by the Franklin County Fiscal Court is attached.
- b. Please see attached a certified copy of the minutes from the meeting held by the Franklin County Fiscal Court on February 6, 2004, in which Ordinance No. 4-2004 establishing the Farmdale Sewer District was approved. A certified copy of the minutes from the meeting held by the Franklin County Fiscal Court on June 30, 2017 in which Resolution No. 18-027 was approved is also attached.

Witness: Robert Hewitt, Director, Franklin County Planning, Zoning and Building Codes



# Franklin County Fiscal Court

321 West Main Street  
Frankfort, KY 40601

**Huston Wells**

*Franklin County Judge/Executive*

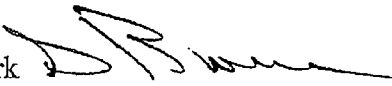
**Jennifer Wilson**

*Deputy County Judge/Executive*

June 23, 2017

## MEMORANDUM

To: Robert Hewitt, Director  
Planning & Zoning

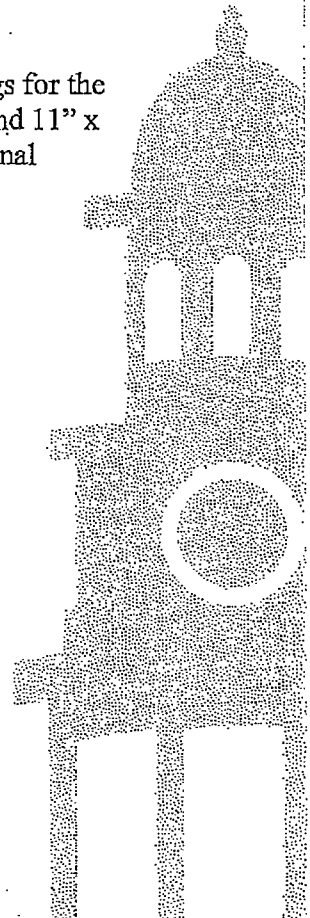
From: Shirley Brown, Fiscal Court Clerk 

Re: Your request for Fiscal Court minutes establishing Farmdale Sewer District

Reference your request to provide a copy of the minutes of the meeting of the Franklin County Fiscal Court at which Ordinance #4-2004 Establishing the Farmdale Sewer District was approved. I am attaching hereto a certified copy of the minutes from the meeting held on February 6, 2004.

In researching the minutes book, I found that the minutes recording fiscal court meetings for the period beginning June 25, 1999 thru March 21, 2005 are handwritten in pencil in a bound 11" x 16" minutes book. In an effort to preserve the integrity of the bound book and the original minutes, I submit to you the attached certified copy.

Attachment



## CERTIFIED COPY OF MINUTES

I, Shirley Brown, Clerk of the Fiscal Court of Franklin County, Kentucky, do hereby certify that the following is an accurate account of the minutes of the Franklin County Fiscal Court at a duly convened meeting held on Friday, February 6, 2004, as recorded on Page 268 in Fiscal Court Minutes Book No. 12-1997, beginning June 25, 1999, and ending December 20, 2006:

**FRANKLIN COUNTY FISCAL COURT  
FISCAL COURT ANNEX  
FRIDAY, FEBRUARY 6, 2004  
8:15 A.M. WORK SESSION/9:00 A.M. COURT  
FRANKFORT, KY**

Franklin County Fiscal Court met on Friday, February 6, 2004 in the third floor Fiscal Court Room at 315 West Main Street, Frankfort, KY. The meeting was called to order at 9:44 a.m. with Judge Teresa A. Barton, presiding. The following members of Fiscal Court were present: Squire Robinson, Squire Kring, Squire Dawson, Squire Fannin, Squire Wells, Squire Moore.

The County Judge/Executive report was given by Judge Teresa A. Barton

Presentation was given by Pete Walsh, Dave Weller, Bill Stroup, Ann Maenza and Wade Hughes of the YMCA.

1. Motion by Squire Kring, seconded by Squire Wells, for second reading and approval of Ordinance #1-2004, amending Ordinance #11, 1986 series relating to imposing license fees on business, occupations, and professions within Franklin County, Kentucky, so that said fee and payment can be administered more efficiently, pursuant to KRS.68.197. Voting in favor of the motion were Squires Robinson, Kring, Dawson, Wells and Judge Barton. Voting in opposition of the motion were Squires Fannin and Moore. Motion passed.
2. Motion by Squire Kring, seconded by Squire Dawson, for second reading and approval of Ordinance #2, 2004 amending Ordinance #8, adopted October 23, 1987, Fiscal Court Order Book 15, page 31, relating to the zoning ordinance in Franklin County to rezone Lot 15 of the Englewood Office Park subdivision from Professional Office (PO) to Highway Commercial (CH). Voting in favor of the motion were Squires Kring, Dawson, Fannin, Wells, Moore and Judge Barton. Voting in opposition of the motion was Squire Robinson. Motion passed.
3. Second reading of Ordinance #3, 2004 DENYING amending Ordinance #8, adopted October 23, 1987, Fiscal Court Order Book 15, page 31, relating to the Zoning Ordinance in Franklin County to rezone Lot 15 of the Englewood Office Park Subdivision from Professional office (PO) to Highway Commercial (CH). Failed due to lack of motion.

4. Motion by Squire Wells, seconded by Squire Dawson, for second reading and approval of Ordinance #4-2004, establishing the Farmdale Sewer District. Voting in favor of the motion were Squires Robinson, Kring, Dawson, Fannin, Wells, Moore and Judge Barton. Motion passed.
5. First reading of Ordinance #5-2004, amending Ordinance #8, adopted October 23, 1987, Fiscal Court Order Book 15, page 31, relating to the Zoning Ordinance in Franklin County, Kentucky in order to amend Article 1, General provisions, of the Ordinance removing section 1.08, provision for waivers and modifications was removed for further discussion.
6. Authorization to approve Resolution #2, 2004, accepting the Frankfort/Franklin County subdivision and site plan regulations, as approved by the Frankfort/Franklin County Planning Commission was removed for further discussion.
7. Motion by Squire Dawson, seconded by Squire Fannin, for authorization to approve Resolution #3, 2004, filing a CDBG application for Franklin County/Frankfort Industrial Park Daycare Center. Voting in favor of the motion were Squires Robinson, Kring, Dawson, Fannin, Wells, Moore and Judge Barton. Motion passed.
8. Motion by Squire Wells, seconded by Squire Kring, for authorization to appoint three (3) of four (4) people to the Stakeholder's Group for the Stormwater Phase II program-Wayne Dominick, Wes Clark and Chad Peach. Voting in favor of the motion were Squires Robinson, Kring, Dawson, Fannin, Wells, Moore and Judge Barton. Motion passed.
9. Motion by Squire Robinson, seconded by Squire Fannin, for authorization to accept quotes for plastic culvert pipe, aggregates, and guardrail (Cerf Grant) from Advanced Drainage, Harrod, Hanson, and A.W. Graham. Voting in favor of the motion were Squires Robinson, Kring, Dawson, Fannin, Wells, Moore and Judge Barton. Motion passed.
10. Motion by Squire Wells, seconded by Squire Moore, for authorization to purchase a dump truck from the State Price Contract from Peterson GMC in the amount of \$44,313. Voting in favor of the motion were Squires Robinson, Kring, Dawson, Fannin, Wells, Moore and Judge Barton. Motion passed.
11. Motion by Squire Kring, seconded by Squire Robinson, for authorization to bid related snow equipment for the new dump truck. Voting in favor of the motion were Squires Robinson, Kring, Dawson, Fannin, Wells, Moore and Judge Barton. Motion passed.

12. Motion by Squire Robinson, seconded by Squire Dawson, for authorization to approve a budget amendment for the Sheriff's Office. Voting in favor of the motion were Squires Robinson, Kring, Dawson, Fannin, Wells, Moore and Judge Barton. Motion passed.
13. Motion by Squire Fannin, seconded by Squire Wells, for authorization to pay the bills with the exception of the BFI bill and the KY. League of Cities bill. Voting in favor of the motion were Squires Robinson, Kring, Dawson, Fannin, Wells, Moore and Judge Barton. Motion passed.
14. Motion by Squire Dawson, seconded by Squire Kring, for authorization to go into closed executive session to discuss property and litigation (KRS 61.810 (b) (f)). Voting in favor of the motion were Squires Robinson, Kring, Dawson, Fannin, Wells, Moore and Judge Barton. Motion passed.

Other Business:

15. Motion by Squire Moore, seconded by Squire Wells, for authorization to approve Resolution #4, 2004 approving monthly expenses for the Choateville Sewer Project. Voting in favor of the motion were Squires Robinson, Kring, Dawson, Fannin, Wells, Moore and Judge Barton. Motion passed.
16. Motion by Squire Wells, seconded by Squire Dawson, for authorization to approve the minutes. Voting in favor of the motion were Squires Robinson, Kring, Dawson, Fannin, Wells, Moore and Judge Barton. Motion passed.
17. Motion by Squire Wells, seconded by Squire Fannin, for authorization to adjourn. Voting in favor of the motion were Squires Robinson, Kring, Dawson, Fannin, Wells, Moore and Judge Barton. Motion passed.

There being no further business, the meeting adjourned at 10:07 a.m.

S/Teresa A. Barton, County Judge/Executive  
S/Berry Hammermeister, Fiscal Court Clerk

Certified this 23 day of June, 2017.

  
Shirley Brown, Fiscal Court Clerk

Corrected  
Res # 18-2017

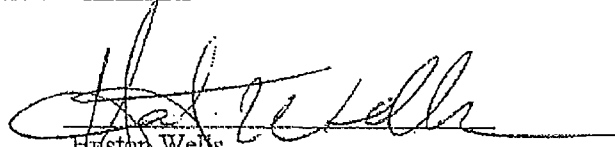
RESOLUTION NO. 18 - 2017

RESOLUTION AUTHORIZING THE COUNTY JUDGE/EXECUTIVE  
TO EXECUTE A PROMISSORY NOTE  
WITH THE FARMDALE SANITATION DISTRICT  
FOR REPAYMENT TO THE COUNTY OF LOAN

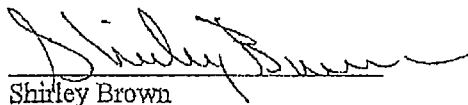
BE IT RESOLVED BY THE FRANKLIN COUNTY FISCAL COURT, that the County Judge/Executive is hereby authorized to execute a Promissory Note with the Farmdale Sanitation District, a Special District created pursuant to KRS Chapter 67, by virtue of Franklin County Fiscal Court Ordinance 04-2004 Series, for repayment of a loan in the amount of \$30,000 (thirty thousand dollars) made by the Franklin County Fiscal Court to the Farmdale Sanitation District.

A copy of the Promissory Note is attached hereto and made a part of this Resolution.

RESOLVED this 2 day of June, 2017.

  
Houston Wells  
Franklin County Judge/Executive

ATTEST:

  
Shirley Brown  
Fiscal Court Clerk

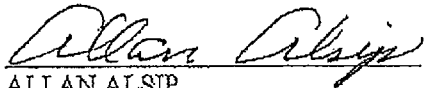
PROMISSORY NOTE

FOR VALUE RECEIVED in consideration of a loan of Thirty Thousand Dollars (\$30,000.00) to FARMDALE SANITATION DISTRICT, c/o 321 West Main Street, Frankfort, KY 40601, a Special District created pursuant to KRS Chapter 67, by virtue of Franklin County Fiscal Court Ordinance 04-2004 Series, FARMDALE SANITATION DISTRICT hereby promises and agrees to repay to the order of FRANKLIN COUNTY FISCAL COURT, a political subdivision of the Commonwealth of Kentucky, 321 West Main Street, Frankfort, Kentucky 40601, the principal sum of Thirty Thousand (\$30,000.00 ), WITHOUT INTEREST.

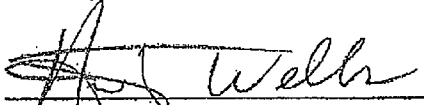
This sum shall be repaid in full, and no later than June 30, 2022, on or before said date all remaining unpaid principal on this note shall be due. There shall be no penalty for prepayment of this note. ALL payments shall be delivered to the Office of the Treasurer, Franklin County Fiscal Court, Frankfort, KY 40601.

The drawers and endorsers severally waive presentment for payment, protest and notice of protest, and notice of nonpayment of this note.

DATED: this 2 <sup>June</sup> day of 2017.



ALLAN ALSIP  
CHAIR, FARMDALE SANITATION DISTRICT



HUSTON WELLS  
FRANKLIN COUNTY JUDGE/EXECUTIVE



## Franklin County Fiscal Court

321 West Main Street  
Frankfort, KY 40601

**Huston Wells**  
*Franklin County Judge/Executive*  
**Jennifer Wilson**  
*Deputy County Judge/Executive*

### CERTIFIED EXTRACT OF MINUTES

I, Shirley Brown, Clerk of the Fiscal Court of Franklin County, Kentucky do hereby certify and declare that the following is an accurate account of a portion of the minutes of the Franklin County Fiscal Court at a meeting held Friday, June 2, 2017, and of record in Fiscal Court Order Book 28, Page 23:

Motion by Squire Turner, seconded by Squire Booth, for authorization to approve Resolution #18-2017, authorizing the County Judge/Executive to Execute a Promissory Note with the Farmdale Sanitation District for Repayment to the County of Loan. Voting in favor of the motion were Squires Turner, Goins, Sturgeon, Tracy, Booth, Moore and Judge Wells. Motion passed.

So certified this 30th day of June, 2017.

Shirley Brown  
Fiscal Court Clerk  
Franklin County, Kentucky





**REQUEST NO. 3**

**REQUEST NO. 3:** Refer to the Agreement between Coolbrook and Farmdale Sanitation dated May 18, 2017, and fully describe the process through which Coolbrook authorized the filing of a request for a transfer. Supply all related business records that document the authorization.

**RESPONSE:**

At a special meeting of the Members of Coolbrook held on May 11, 2017, the two Members of Coolbrook voted to approve a resolution authorizing Martin G. Cogan and Lawrence W. Smither, as all of the Members of Coolbrook, to enter into and execute any and all documents necessary to consummate the sale of the assets of Coolbrook to the Farmdale Sanitation District, including but not limited to the Assets Purchase Agreement, any deed(s) and the application and other documents to be filed with the Kentucky Public Service Commission. A copy of the minutes of the special meeting of the Members of Coolbrook held on May 11, 2017, was filed with the Joint Application as Exhibit C.

Witness: Lawrence W. Smither

**REQUEST NO. 4**

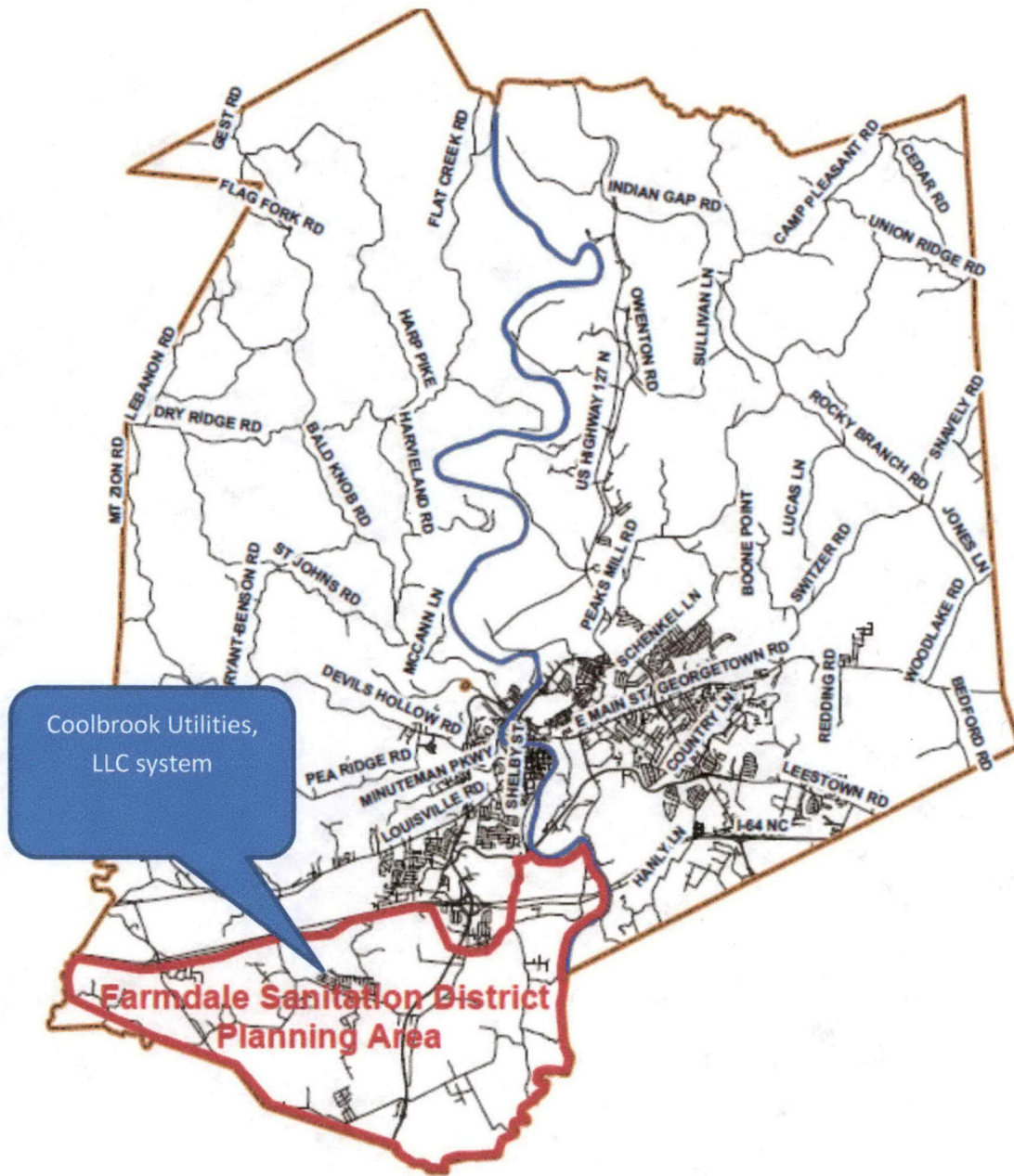
**REQUEST NO. 4:** State whether the Coolbrook system is located within the boundaries of Farmdale Sanitation.

**RESPONSE:**

As reflected by the attached map, the Coolbrook wastewater treatment plant (“Coolbrook WWTP”) and collection system is located within the boundaries of Farmdale Sanitation.

Witness: Robert Hewitt, Director, Franklin County Planning, Zoning and Building Codes

# Franklin County, KY



**REQUEST NO. 5**

**REQUEST NO. 5:** For Farmdale Sanitation, describe the following:

- a. Farmdale Sanitation's technical ability and resources to manage and operate the Coolbrook system, including, but not limited to, its employment of or contractual arrangement for a qualified and certified operator for the system.
- b. Farmdale Sanitation's financial ability and resources to manage and operate the Coolbrook system, including, but not limited to, available funds, lines of credit, loans, grants, or other financial support.
- c. Farmdale Sanitation's management ability and resources to manage and operate the Coolbrook system.

**RESPONSE:**

a. Farmdale Sanitation has entered into the attached *Operation and Maintenance Agreement for Farmdale Sanitation District* with Professional Wastewater Services, LLC dated May 1, 2017, whereby Farmdale Sanitation has engaged Professional Wastewater Services to operate and maintain the wastewater treatment plants and collection systems owned by Farmdale Sanitation, including but not limited to the Coolbrook WWTP and collection system. Furthermore, Farmdale Sanitation has entered into the attached *Agreement for Engineering Services, Continuing Services Agreement for Farmdale Sanitation District, Franklin County, Kentucky*, with Hayworth-Meyer-Boleyn Professional Engineers, Inc. ("HMB") dated June 23, 2016, whereby HMB will provide engineering services to Coolbrook, including but not limited to preliminary engineering, engineering design, advertising and bidding, construction administration, construction observation, miscellaneous meetings, plan review and any other "on-call" engineering services as requested by Farmdale Sanitation. Engineering services provided pursuant to this agreement may include, but would not be limited to, attendance at

meetings, funding assistance, general engineering consultation, plan review, minor collection system or package wastewater treatment plant study, preparation of contract documents, value engineering, easement work, construction administration, construction observation, geotechnical investigation, archeological/botanical surveys and land surveys, etc. Farmdale Sanitation has also entered into the attached contract with Pace Analytical whereby Pace will perform laboratory services for Farmdale Sanitation and the attached contract for billing services with the Farmdale Water District whereby the Water District will perform billing services for Farmdale Sanitation.

b. Farmdale Sanitation has the financial ability and resources to manage and operate the Coolbrook WWTP and collection system. As of June 22, 2017, Coolbrook's checking accounts have a balance of \$88,449.39. Furthermore, Farmdale Sanitation is to receive a grant in the amount of \$300,000 from KIA for use in repairing WWTPs. Farmdale Sanitation owns eight (8) acres of land purchased with USEPA grant funds for the location of a new sewage treatment facility, and has been awarded approximately \$873,000 in USEPA grant funds, which may be used for both the construction and planning and design of a new sewage treatment facility and/or collection system. The Franklin County Fiscal Court has loaned the amount of \$30,000 to Farmdale Sanitation to pay current operating expenses. Farmdale Sanitation has entered into a billing contract with the Farmdale Water District so that it can efficiently and effectively collect its monthly fee for providing wastewater treatment and collection services to its customers.

c. Farmdale Sanitation is governed by a 3-member board. As indicated above, the 3-member board has entered into contracts with Professional Wastewater Services, LLC, HMB, Pace Analytical and the Farmdale Water District to maintain and operate the Coolbrook WWTP and collection system. Farmdale Sanitation has established that it has the management ability



and resources to manage the Coolbrook WWTP and collection system by employing trained professionals to operate and maintain the Coolbrook WWTP and collection system and by entering into the billing contract with Farmdale Water District to ensure that it receives the funds necessary to properly operate and maintain the system.

Witness: Robert Hewitt, Director, Franklin County Planning, Zoning and Building Codes

# OPERATION AND MAINTENANCE AGREEMENT FOR FARMDALE SANITATION DISTRICT

This **OPERATION AND MAINTENANCE AGREEMENT** (the "Agreement"), dated May 1, 2017, between the **Farmdale Sanitation District** whose address is 313 West Main St., Frankfort, KY 40601 (the "Owner"), and **Professional Wastewater Services, LLC** (the "Operator"), whose address is 238 Westover Road, Frankfort, KY 40601.

## Recitals

WHEREAS, Farmdale Sanitation District is the owner of the sanitary sewer collection, transmission and treatment systems, this being the Edgewood, Farmgate, Meadowbrook, Coolbrook, Evergreen and Farmdale WWTP's, 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, 2017, 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 Permits (the "Discharge Permits"), 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 shall 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 monthly 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) General Liability Insurance of ONE MILLION DOLLARS (\$1,000,000);
- (b) Excess Liability Insurance of ONE MILLION DOLLARS (\$1,000,000);
- (c) 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 coordinate with a Third Party State Certified Lab of the Owners choice to ensure proper collection of Effluent samples for the purpose of required testing.

**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, <sup>APR 2011</sup> 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 FOUR THOUSAND FIVE HUNDRED DOLLARS (\$4,500.00) per month.

(A) Coolbrook – ONE THOUSAND FIVE HUNDRED DOLLARS (\$1,500.00) per month.

- (B) Edgewood – ONE THOUSAND DOLLARS (1,000.00) per month.
- (C) Evergreen – TWO HUNDRED FIFTY DOLLARS (\$250.00) per month.
- (D) Farmdale – ONE THOUSAND DOLLARS (\$1000.00) per month.
- (E) Farmgate – FIVE HUNDRED DOLLARS (\$500.00) per month.
- (F) Meadowbrook – TWO HUNDRED FIFTY DOLLARS (\$250.00) 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 Locating Services.** As compensation for locating sewer lines in the Owner's collection system the Owner shall pay the Operator on a Time and Materials base rate of \$50.00 per man-hour for locating 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: Susan, 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 Franklin 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:

Joy C. Pease  
\_\_\_\_\_

OWNER

BY: Allen J. Pless 4/27/2017

(NAME)

(DATE)

ITS: Chairman, Farmdale Sanitation Dist.

(TITLE)

WITNESSES:

Joy C. Pease  
\_\_\_\_\_

OPERATOR

BY: [Signature] 4/27/2017

(NAME)

(DATE)

ITS: Owner, Professional Wastewater Services, LLC

(TITLE)

## **AGREEMENT FOR ENGINEERING SERVICES**

### **CONTINUING SERVICES AGREEMENT FOR FARMDALE SANITATION DISTRICT FRANKLIN COUNTY, KENTUCKY**

This AGREEMENT FOR ENGINEERING SERVICES made and entered into in Franklin County, Kentucky by and between the Farmdale Sanitation District (hereinafter referred to as the OWNER) and Haworth-Meyer-Boleyn Professional Engineers, Inc. (hereinafter referred to as the ENGINEER).

- I. **WHEREAS**, the OWNER wishes to have an agreement with the ENGINEER for general miscellaneous work including, but not limited to: preliminary engineering, engineering design, advertising and bidding, construction administration, construction observation, miscellaneous meetings, plan review and any other "on-call" engineering services that may be requested by the OWNER involving infrastructure located within the OWNER's sanitary sewer service area located in southwest Franklin County.
  
- II. **NOW THEREFORE**, be it understood that the ENGINEER agrees to provide the engineering services required in accordance with a negotiated Scope of Work on a case-by-case basis. Such a scope may include, but would not be limited to, such items as attendance at meetings, funding assistance, general engineering consultation, plans review, minor collection system or package wastewater treatment plant study, preparation of contract documents, value engineering, easement work, construction administration, construction observation, geotechnical investigation, archaeological/botanical surveys and land surveys,



**V. COMPLETION OF ENGINEERING SERVICES .**

The ENGINEER agrees to accomplish the work necessary to satisfy a scope of work in a timely manner. The ENGINEER shall not be held responsible for delays due to changes in the "Scope of Work" made by the OWNER, or by unforeseeable causes beyond the control of the ENGINEER. Reasonable time for completion of any task requested by the OWNER under this AGREEMENT may be negotiated upon request of the OWNER.

**VI. TERMINATION**

This AGREEMENT may be terminated by either party by seven (7) days "WRITTEN NOTICE" in the event of substantial failure to perform in accordance with the terms hereof by the other party through no fault of the terminating party. If the AGREEMENT is so terminated, the ENGINEER shall be paid for any partial progress completed. Should the ENGINEER fail to perform to the terms of this AGREEMENT or otherwise break or violate contract terms, then the OWNER shall inform the ENGINEER in writing and any disputed settlement of fees shall be decided by an Arbitration Group. The Arbitration Group shall be composed of one member selected by the OWNER, one by the ENGINEER, and a third agreeable to the two appointed Arbitrators.

**VII. PERSONNEL AND FACILITIES**

The ENGINEER states that he has or will acquire at his own expense the personnel and facilities necessary to accomplish the work within the time above specified.

## **VIII. INSURANCE**

The ENGINEER agrees to maintain, at the ENGINEER'S expense, such insurance as will protect the ENGINEER and OWNER from claims under the Workman's Compensation Act and such Comprehensive General Liability Insurance as will protect the ENGINEER and OWNER from claims for bodily injury, death, or property damage which may arise from the performance by the ENGINEER or by the ENGINEER'S employees of the ENGINEER'S functions and services required under this AGREEMENT.

## **IX. LIMITS ON LIABILITY**

The OWNER agrees to limit the ENGINEER'S liability arising from negligent acts, errors or omissions such that the total aggregate liability of the ENGINEER under this AGREEMENT, shall not exceed the ENGINEER'S total fee for that particular phase of work in which the negligent act, error or omission occurred.

## **X. FUNDING**

Should the OWNER cause any of the projects to terminate or cause the funding from the various funding agencies to be lost, as a result of the OWNER'S actions, then the full amount of the Engineering Fees accumulated as a result of services rendered at that point shall be due to the ENGINEER.

## **XI. GOVERNING LAW**


This AGREEMENT shall be governed by the laws of the Commonwealth of Kentucky. This AGREEMENT is entered into at Frankfort, Kentucky and all jurisdictional matters will be decided in Franklin County, Kentucky.

IN WITNESS WHEREOF, the parties have made and executed this AGREEMENT this

23 day of June, 2016.

ENGINEER:

HMB PROFESSIONAL ENGINEERS, INC.

  
\_\_\_\_\_  
Joe Grider, PE, PLS – Principal-in-Charge

OWNER:

FARMDALE SANITATION DISTRICT

  
\_\_\_\_\_  
Allan F. Alsip - Chairman

**ATTACHMENT A**  
**HOURLY BILLING RATES**

The engineering work performed under this AGREEMENT will be billed at the hourly rates listed below. It is important to note that these rates will change annually on or about January 1. The OWNER will be notified in writing of any change in these rates and the effective date of the change.

PRINCIPAL-IN-CHARGE	\$215.00
PLANNING/TRAFFIC ENGINEER	\$185.00
SENIOR DESIGN ENGINEER	\$180.00
SENIOR ENVIRONMENTAL SCIENTIST	\$165.00
DESIGN TECHNICIAN	\$160.00
DESIGN ENGINEER	\$150.00
ADMINISTRATIVE/FUNDING SPECIALIST	\$150.00
SENIOR RIGHT OF WAY AGENT	\$140.00
CONSTRUCTION MANAGER	\$140.00
FIELD PERSONNEL	\$85.00
ENGINEER-IN-TRAINING	\$80.00
CAD TECHNICIAN	\$80.00
ENVIRONMENTAL SCIENTIST	\$75.00
GRADUATE ENGINEER	\$75.00
ACQUISITION SPECIALIST	\$75.00
EXPENSES	Actual Cost + 15%



## Standard Terms and Conditions

- 1. Controlling Provisions-** These Standard Terms and Conditions ("Terms") govern the agreed-upon services (the "Project") that Pace Analytical ("Pace") will perform on behalf of Farmdale Sanitation District ("Client") (collectively, the Parties) and supersede any other written provisions (including purchase/work orders) related to the Project, as well as all prior discussions, courses of dealing, or performance.
- 2. Warranty-** Pace hereby warrants that it will: 1) conduct all tests and observations using the protocols and laboratory procedures as specified in accepted task orders, scopes of work, proposals, or written instructions ("Contract Paperwork"); and 2) uphold the reasonable scientific and engineering standards in effect in the industry at the time the service/s is/are performed. If Client subsequently, including pursuant to an executed amendment, directs different procedures and/or protocols, which may or may not involve the use of any third-party laboratory or contractor, Pace cannot warrant the results and Client shall hold Pace harmless from all claims, damages, and expenses arising from Client's direction.
- 3. Data-** Pace will provide Client with data as specified in the Contract Paperwork. Following final report issuance, Pace will retain back-up data for up to three (3) years and final reports for up to five (5) years. Pending Client's payment in full for Pace's contracted services, Pace may retain any Client data not already released.
- 4. Intellectual Property/Ownership-** Pace shall retain sole ownership of any new method, procedure, or equipment it develops or discovers while performing services pursuant to the Contract Paperwork.
- 5. Non-competition-** Client shall not solicit or recruit Pace personnel for at least 12 months following the termination of the Project governed by these Terms.
- 6. Sample Delivery, Acceptance, and Containers-** Client shall provide Pace with at least 10 business days' prior written notice of the delivery of any sample(s). Within 72 hours following Client's notice, Pace shall issue a written rejection of the sample(s) or its acceptance may be presumed. Notwithstanding the foregoing, Client shall remain liable for any loss or damage to the sample(s) until Pace evidences its acceptance on the chain of custody documents. Pace reserves the right to charge for any sample container(s) that are: a) provided to, but not used, by Client; or b) received by Pace, but not analyzed at Client's request.
- 7. Sample Storage and Disposal-** Pace shall dispose of any non-hazardous sample(s) within 30 days following the issuance of Client's final report unless Client expressly requests otherwise. Pace may charge Client for the costs of storing and disposing of any sample(s) (including extracts) that are, pursuant to Client's request, held for more than 30 days following the issuance of Client's final report. In addition, Pace may return, and Client must accept, any/all highly hazardous, acutely toxic, or radioactive sample(s), sample containers, and residues, as well as any/all sample(s) for which no approved method of disposal exists.



8. **Non-Assignment-** Neither party may assign or transfer any rights or obligations existing under these Terms without prior written notice to the other party, except that Pace may, without notice to its Client: a) transfer the Project to another Pace laboratory; or 2) subcontract the Project to a third-party laboratory.

9. **Time of Completion: Force Majeure-** Pace shall use its best efforts to accomplish the Project within any specified time limitations. Pace shall not be responsible for any non-performance or delay caused by Client, Client's employee, agents, or contractors, or factors or events beyond Pace's control, such as government shutdowns, natural disasters, labor strikes, or acts of God.

10. **Compensation-**

- a) The pricing offered to Client by Pace is predicated upon Client's acceptance of these Terms. In most cases, the pricing includes all sample containers and preservatives as prescribed by the analytical method requested for each determination. Credit worthiness will be determined based upon an assessment of Client's payment history, credit reports, financial stability, and/or other factors. If Pace is serving as a subcontractor for Client, Pace may seek and receive information about the Prime Client prior to granting credit. If credit is not granted, Client must pay Pace prior to initiation of the Project.
- b) Client agrees to pay for services as documented by Pace and accepted by Client. Payment terms for uncontested Invoice Items are net 30 days. Client must notify Pace in writing within 15 days of its receipt of the invoice in order to suspend its payment and interest obligations for any disputed invoice items pending resolution. Beginning 30 days after the invoice date, Pace may charge interest on all unpaid and undisputed balances at the rate of 1.5% per month, not to exceed the maximum rate allowed by law. Client may ask Pace to invoice a third party, although Client shall remain ultimately responsible for the payment of any outstanding balance.
- c) Client's failure to pay within 60 days of Pace's dated Invoice shall constitute a material breach of these Terms, for which Pace may terminate all of its duties hereunder without liability. If Pace must subsequently take action to collect payment, Client shall pay all associated costs thereof, including attorneys' fees. Any significant changes to the scope of work following the submittal of a price quotation or the delivery of samples to the laboratory are subject to a renegotiation of prices and/or terms relating to the original scope of work. Qualifying changes may include, but are not limited to: QA/QC requirements and procedures; detection limits; samples received and stored, but not analyzed; a decrease in quantity of samples delivered compared to quantity quoted; and reporting and other deliverable format requirements. Pace shall not be required to comply with such changes unless Pace agrees to them in writing.

11. **Risk Allocation and Damages-** Client accepts that the Project may involve inherent risks and that Pace cannot always guarantee satisfactory results. Notwithstanding the foregoing, if a court of competent jurisdiction finds that Pace failed to meet applicable standards and if Client suffers damages as a result, Pace's aggregate liability for its negligence or unintentional breach of contract shall not exceed the total fee paid for its services.

This limitation shall not apply to losses arising from Pace's negligence or willful misconduct, so long as:

- a) Client notifies Pace within: 30 days from the date of discovery of Pace's claimed negligence or misconduct; or two years from the date of Client's claimed losses; and
- b) Pace is allowed to investigate and, insofar as possible, mitigate Client's claimed losses.

Neither Pace nor Client shall be liable to the other for special, incidental, consequential, or punitive losses, except as allowed in Section 12. Client Responsibilities below.

**12. Client Responsibilities-** Client shall:

- a) Provide Pace with full and complete information about all known or reasonably knowable factors that could affect Pace's ability to perform its obligations, and promptly notify Pace if it discovers same following Project Initiation;
- b) Enable access by Pace personnel and/or subcontractors to any site where Pace is to perform work, and to all Client personnel who are critical to the success of the Project;
- c) Obtain, on behalf of Pace, any authority or permission required by any third party;
- d) Provide Pace with at least 10 business days' notice of any known or reasonably knowable delay regarding the start-up, progress, or completion of the Project; and
- e) Pay for Pace's reasonable costs to perform any out-of-scope services, such as compliance audits, responding to subpoenas, etc.

If Client defaults on any of these responsibilities and Pace incurs labor and/or material costs as a result, Client shall reimburse Pace for its actual expenses, as well as any lost profits directly attributable to Client's default.

**13. Indemnification-** Pace shall indemnify and hold Client harmless from and against any demands, losses, damages, and expenses caused by Pace's negligence or willful misconduct, as well as by the negligence and willful misconduct by persons for whom Pace is legally responsible. Client shall likewise indemnify and hold Pace harmless from and against the demands, losses, damages, and expenses caused by Client's negligence or willful misconduct, including Client's use of Pace's name and/or registered mark for anything other than the specific purpose for which it was intended. In addition, Client shall fully indemnify Pace from and against any and all claims by a third party, as well as for all related losses, costs, fees, damages, liabilities or expenses arising out of or relating to Client's breach of these Terms or its violation of applicable laws.

**14. Insurance-** Pace carries liability insurance with limits as follows:

General liability - \$1,000,000 each occurrence; \$2,000,000 general aggregate;  
Personal and advertising injury - \$1,000,000;  
Automobile Liability - \$1,000,000 combined single limit;  
Excess Liability Umbrella - \$5,000,000 aggregate; \$5,000,000 each occurrence;  
Worker's Compensation Insurance - statutory limits; and  
Professional Liability \$5,000,000 aggregate, \$5,000,000 per claim.

Pace will, at Client's request, submit certificates of insurance showing limits of coverage.

**15. Amendments/Change Orders-** Any attempt to modify, vary, supplement, or clarify any provision of these Terms is of no effect unless reduced to writing and signed by both Parties. Any such changes may increase the amount due Pace and affect Pace's obligations towards Client (see Section 2. Warranty).

**16. Confidentiality-** Each party agrees that if, during the performance of the Project, it

becomes aware of any confidential or proprietary information of the other, it will not disclose such information except to those employees, subcontractors, or agents who have expressly agreed to maintain confidentiality.

17. Miscellaneous Provisions-

- a) These Terms supersede all prior negotiations and agreements, written or oral, between Pace and Client with respect to this matter; in no event will other terms – excepting those contained in any individual task order(s) relating to this matter – be considered part of these Terms.
- b) In the absence of an executed agreement between the Parties, the delivery of any sample(s) to a Pace laboratory will constitute acceptance of these Terms by Client.
- c) These Terms shall be construed and interpreted in accordance with the laws of the State of Minnesota without giving effect to the principles of conflicts of law thereof.
- d) Client may publically identify Pace's role as its testing laboratory so long as it immediately retracts or eliminates all such references upon termination of these Terms or Pace's written request.
- e) For purposes of these Terms, the Parties may use and rely upon electronic signatures and documents for the execution and delivery of these Terms and any amendments, notices, records, disclosures, or other documents of any type sent or received in accordance with these Terms.
- f) Pace is an independent contractor; no employer/employee relationship shall arise as a result of the Project.
- g) These Terms shall be binding upon, and inure to the benefit of, the Parties and their respective successors and assigns.

AGREED, as follows:

Ferndale Sanitation District  
Client Name

By: Allan Z. Aleip

Name: Allan Aleip

Title: Chairman

Date: 6/8/2017

Pace Analytical

By: Brooke Chandler

Name: Brooke Chandler

Title: Assistant General Manager

Date: 6/13/2017

## **CONTRACT FOR BILLING SERVICES**

**THIS CONTRACT** is hereby made and entered by and between the Farmdale Sanitation District, (the Sanitation District) a special district created by ordinance of the Franklin County Fiscal Court, and the Farmdale Water District, (the Water District) a special district created by ordinance of the Franklin County Fiscal Court, and shall be effective upon the signing of this document by the duly authorized representative of both parties.

**WHEREAS**, the Sanitation District operates and maintains one or more package treatment plants for treatment of waste water in its authorized area of coverage of Franklin County, Kentucky; and

**WHEREAS**, the Sanitation District is authorized to collect fees for services for treatment of waste water treated in its package treatment plant(s), and is otherwise in need of a billing agency to bill and collect said fees from users of its system and services; and

**WHEREAS**, Farmdale Sanitation District has set forth the fees for its customers and users of its treatment facilities; and

**WHEREAS**, Farmdale Water District shares the same customers served by Farmdale Sanitation District and has the expertise, infrastructure and experience to provide billing and collection for Farmdale Sanitation District; and

**WHEREAS**, the duly constituted Boards of the Farmdale Sanitation District and the Farmdale Water District have authorized the parties to enter into an agreement wherein the Water District shall provide billing and fee collection services on behalf of the Farmdale Sanitation District and otherwise reduce the terms of the agreement to a written Contract

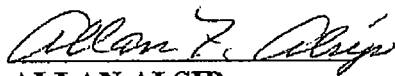
**NOW THEREFORE**, in consideration of the mutual promises contained herein, it is hereby agreed between the parties as follows:

1. Farmdale Water District will provide billing services for fees owed to Farmdale Sanitation District from the Sanitation District's customers, including collection, distribution, and enforcement of delinquencies to those customers it shares with Farmdale Sanitation District.
2. The Sanitation District will notify the Water District, in writing, of its rate schedule as of the effective date of this agreement. The Sanitation District will also notify the Water District, in writing, and within 30 days of any changes of the rates and any changes to the customer list.
3. The Water District will combine the billing for both districts, and bill all customers monthly. All bills will be due no later than the 10<sup>th</sup> of the month next immediately following the reading of the water meter.
4. The Water District shall submit to Sanitation District all fees collected, less its fees for billing, as forth herein, within thirty (30) days of receipt.
5. In consideration for billing services, collection and enforcement of nonpayment, the Water District shall be entitled to retain the sum of three Dollars (\$3.00) per monthly customer bill.
6. In the event of non-payment, the Water District may collect, at its own costs, any unpaid balances owed, and shall retain any additional fees for collection obtained, but shall in all events tender to the Sanitation District the balance owed, less the \$3.00 per monthly bill, within 30 days of receipt.

7. The books and accounting of the Water District's billing and collection shall be open for inspection by the Sanitation District at the Sanitation District's request. Said books shall be further subject to annual audit by an auditor selected by Farmdale Sanitation District at the Sanitation District's costs.
8. This agreement shall be effective for three (3) years, beginning the effective date below, and shall be automatically extended for additional two (2) year periods until terminated, unless notice is given by either party to the other, in writing, no less than sixty (60) days prior to the termination date. Either Party may terminate the matter for cause. Either Party may terminate this agreement for any reason by giving the other ninety (90) days written notice.
9. All modifications and notices to this agreement shall be made upon and between the parties in writing, at the respective addresses below.
10. This document represents the entire agreement between the parties.

This contract shall be effective the \_\_\_\_ day of \_\_\_\_\_ 2017.

Dated this 23 day of June, 2017



**ALLAN ALSIP**  
**CHAIR,**  
**FARMDALE SANITATION DISTRICT**  
c/o 321 West Main Street  
Frankfort, KY 40601

---

**CLIFFORD TOLES**  
**CHAIR**  
**FARMDALE WATER DISTRICT**  
100 Highwood Drive  
Frankfort, KY 40601

**REQUEST NO. 6**

**REQUEST NO. 6:** Refer to the Joint Applicants' Notice of Filing of Operation and Maintenance Agreement filed with the Commission on June 9, 2017.

a. What certifications and licenses are required by the state of Kentucky to operate and maintain a Wastewater Treatment Plant ("WWTP") and collection system such as Coolbrook?

b. State whether Professional Wastewater Services, LLC has all of the required certifications and licenses required by the state of Kentucky to operate and maintain a WWTP and collection system such as Coolbrook, and provide a copy of each document.

**RESPONSE:**

a. The operator of the Coolbrook WWTP and collection system is required to have a Wastewater Operator Certification, Class II. Kenneth D. Hogsten, Jr., the principal of Professional Wastewater Services, LLC, is certified as a Wastewater Treatment Plant Operator Class IV, which is a higher classification than that required for the operation of the Coolbrook WWTP and collection system.

b. Mr. Hogsten, the principal of Professional Wastewater Services, LLC, has all of the licenses required by the Commonwealth of Kentucky to operate the Coolbrook WWTP and collection system and a copy of his licenses are attached.

Witness: Robert Hewitt, Director, Franklin County Planning, Zoning and Building Codes



Agency Interest # 84369

**ENERGY AND ENVIRONMENT CABINET**

Certifies that

**Kenneth D Hogsten Jr.**

**IS A DULY LICENSED OPERATOR BY THE  
COMMONWEALTH OF KENTUCKY**

**WW Collection IV 19971**

Expiration Date:

06/30  
2019



Agency Interest # 84369

**ENERGY AND ENVIRONMENT CABINET**

Certifies that

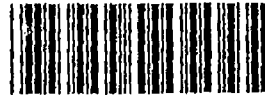
**Kenneth D Hogsten Jr.**

**IS A DULY LICENSED OPERATOR BY THE  
COMMONWEALTH OF KENTUCKY**

**WW Treatment IV 19422**

Expiration Date:

06/30  
2019



**REQUEST NO. 7**

**REQUEST NO. 7:** *The Annual Report of Coolbrook to the Public Service Commission for the Year Ended December 31, 2015* (“2015 Annual Report”) at page 13 of 44 does not contain the end-of-year balance amount for customer deposits.

- a. Confirm that Coolbrook is not holding any customer deposits.
- b. If Coolbrook is holding any customer deposits, state the monetary amount that is being held, and whether Coolbrook will return the deposits that it holds, transfer the deposited funds to Farmdale Sanitation, or apply or transfer the funds to another use. If the deposits will be applied for another use, then identify the other use.

**RESPONSE:**

- a. Coolbrook does not hold any customer deposits.
- b. Coolbrook does not hold any customer deposits.

Witness: Lawrence W. Smither

**REQUEST NO. 8**

**REQUEST NO. 8:** Reference the Application, page 3, Item 4, which states:

“Farmdale Sanitation will have the obligation to provide sanitary sewer services to its customers after the closing.”

a. State the number of customers currently served by Farmdale Sanitation, and state the rates that Farmdale Sanitation charges its customers. Provide a copy of a rate schedule.

b. State the number of customers currently served by Coolbrook, and the current rate that is charged.

c. State the rates that will be charged to all current Coolbrook customers upon completion of the transfer to Farmdale Sanitation.

d. State how the Joint Applicants will provide notice of the transfer to the customers served by the Coolbrook system.

**RESPONSE:**

a. Farmdale Sanitation currently serves approximately 40 customers and each customer is charged a flat monthly rate of \$40.00. Farmdale Sanitation has not yet issued a formal rate schedule.

b. As stated in paragraph 5 of the Joint Application, Coolbrook currently serves approximately 437 single family residents and four (4) dual-family residents. As is reflected in its tariff filed with the Public Service Commission, the current monthly rate charged by Coolbrook is \$32.31 per month.

c. \$32.31 per month until a formal rate schedule is developed.

d. Farmdale Sanitation will publish notice of the transfer in the newspaper.

Witness: Robert Hewitt, Director, Franklin County Planning, Zoning and Building Codes

**REQUEST NO. 9**

**REQUEST NO. 9:** Refer to the Application, Exhibit A, Assets Purchase Agreement.

- a. State whether Farmdale Sanitation intends to continue to operate the Coolbrook WWTP upon successful transfer of the assets.
- b. If the response to Item 8.a. is no, state the manner in which Farmdale Sanitation intends to treat the effluent created by the Coolbrook system.
- c. If Farmdale Sanitation does not intend to continue to operate the WWTP, describe the process for decommissioning the WWTP, and provide a time estimate for when this work will be completed.

**RESPONSE:**

- a. Farmdale Sanitation intends to operate the Coolbrook WWTP and collection system upon transfer of the assets. However, Farmdale Sanitation has been awarded a grant by the USEPA, which grant funds are to be used for the design and construction of a new sewage treatment facility in its jurisdiction. As is reflected in Paragraph 6a of the Joint Application, Farmdale Sanitation has previously purchased 8 acres of land with funds provided by the USEPA grant for the location of this new sewage treatment facility. The construction of the new sewage treatment facility is anticipated to be completed within the next five (5) years. Upon the completion of the construction of the new sewage treatment facility and connection to the Farmdale collection system, the Coolbrook WWTP will be decommissioned.
- b. See answer to 9a.
- c. See answer to 9a.

Witness: Robert Hewitt, Director, Franklin County Planning, Zoning and Building Codes

**REQUEST NO. 10**



**REQUEST NO. 10:** Does Coolbrook have any current notice of violations issued by the Energy and Environment Cabinet (“EEC”) or the Kentucky Division of Water (“DOW”)? If so, provide copies of each outstanding violation and explain how the violations will be resolved.

**RESPONSE:**

No notices of violation have been issued to Coolbrook by the EEC or the DOW in 2017.

Witness: Lawrence W. Smither

**REQUEST NO. 11**

**REQUEST NO. 11:** Provide documentation of any communications between the Joint Applicants and the EEC or DOW regarding the Joint Application.

**RESPONSE:**

A meeting between representatives of the Kentucky Division of Water and Farmdale Sanitation was held on May 2, 2017. This meeting included discussions concerning Farmdale Sanitation's purchase of the WWTPs and collection systems owned by Ridgelea Investments, Inc., Evergreen Sewage Disposal, Inc., Farmdale Development Corporation and Coolbrook Utilities, LLC.

Witness: Robert Hewitt, Director, Franklin County Planning, Zoning and Building Codes

Fern-dele Sanitatio Dist

Name

APPLICATOR

Phone

Philip Keizer

KY-DENT

502-782-6862

Jerry Becker

KY DOW

502 782 6887

Dennis King

Fern-dele Sanitatio

502-863-1031

Allen Alsip

" "

502-330-0077

Kenny Hogster

Professional Washer Services

502-370-7650

Don Peach

Foundry Sanitation

502-227-4811

DAVID CLERMAN

KY-OGC

502-782-6921

Jeffrey Cummins

KY-DENT

502-782-6248

Robert Bennett

52-782-6921

Daniel DeLand - Office of General Counsel

5-2-17 Meeting w/ DDCO (Review of Agency Order - Rich et al)



**Jeffrey A. Cummins**  
Director

DEPARTMENT FOR ENVIRONMENTAL PROTECTION

**Division of Enforcement**  
300 Sower Boulevard, 3rd Floor  
Frankfort, Kentucky 40601  
Environmental Emergency 24-hour (502) 564-2380 or (800) 928-2380

Phone: (502) 782-6848  
Fax: (502) 564-4245  
Call: (502) 229-3586  
Jeff.Cummins@ky.gov



**Philip E. Kejzlar**  
Environmental Scientist

DEPARTMENT FOR ENVIRONMENTAL PROTECTION


**Division of Enforcement**  
**Civil Enforcement Branch**  
300 Sower Boulevard, 3rd Floor  
Frankfort, Kentucky 40601  
Environmental Emergency 24-hour (502) 564-2380 or (800) 928-2380

Phone: (502) 782-6862  
Fax: (502) 564-4245  
philip.kejzlar@ky.gov

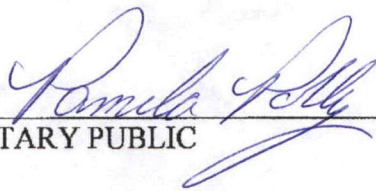
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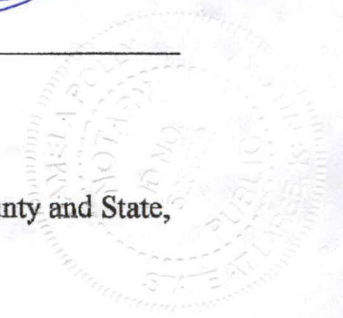
COMMONWEALTH OF KENTUCKY    )  
  )  
COUNTY OF FRANKLIN            )    SS:

The undersigned, Robert Hewitt, being duly sworn, deposes and says that he is the Director of the Franklin County Planning, Zoning & Building Codes, Frankfort, Kentucky, that he has personal knowledge of the matters set forth in the foregoing responses and exhibits, and that the answers contained therein are true and correct to the best of his information, knowledge and belief.

  
\_\_\_\_\_  
ROBERT HEWITT

Subscribed and sworn to before me, a Notary Public in and before said County and State,  
this 6<sup>th</sup> day of July, 2017.  
My Commission Expires: 12/1/18

  
\_\_\_\_\_  
NOTARY PUBLIC



VERIFICATION

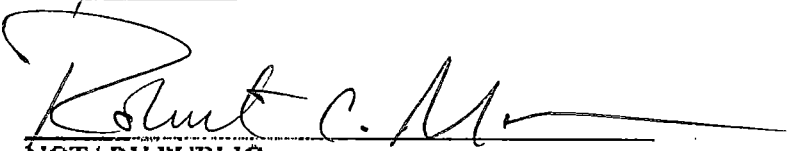
STATE OF KENTUCKY )  
COUNTY OF Jefferson ) SS:

The undersigned, Lawrence W. Smither, being duly sworn, deposes and says that he has personal knowledge of the matters set forth in the foregoing responses and exhibits, and that the answers contained therein are true and correct to the best of his information, knowledge and belief.

  
LAWRENCE W. SMITHER

Subscribed and sworn to before me, a Notary Public in and before said County and State, this 6th day of July, 2017.

My Commission Expires: 2/22/18

  
NOTARY PUBLIC

