

**COMMONWEALTH OF KENTUCKY
BEFORE THE PUBLIC SERVICE COMMISSION**

In the Matter of:

ELECTRONIC APPLICATION OF)	
HARDIN COUNTY WATER)	
DISTRICT NO. 2 FOR A)	CASE NO. 2020-00207
CERTIFICATE OF PUBLIC)	
CONVENIENCE AND NECESSITY)	

VERIFIED APPLICATION

Pursuant to KRS 278.020(1) and 807 KAR 5:001, Section 15, Hardin County Water District No. 2 (“Hardin District No. 2”) applies to the Kentucky Public Service Commission (“Commission”) for an Order granting a certificate of public convenience and necessity (“Certificate”) to construct a customer service and operation facility, consisting of four buildings, in Elizabethtown, Kentucky at an estimated cost of \$8,000,000 (“the Project”).

In support of its Application, Hardin District No. 2 respectfully states:

General Information

1. The full name and post office address of Hardin District No. 2 is: Hardin County Water District No. 2, P.O. Box 970, Elizabethtown, Kentucky 42702-0970. Its electronic mail address is syouravich@hcwd2.org.
2. Hardin District No. 2 is not a corporation, limited liability company, or limited partnership. It has no articles of incorporation or partnership agreements.

3. Hardin District No. 2 is a water district organized pursuant to KRS Chapter 74.

4. Hardin District No. 2's territory includes all of Hardin County, Kentucky, except for the city of Radcliff and the northern portion of Hardin County, and portions of Larue and Hart Counties. As of December 31, 2019, Hardin District No. 2 provided retail water service to approximately 28,888 customers.¹ It commenced providing wastewater collection and conveyance service in January 2020 to portions of southern Hardin County.² It currently serves 27 wastewater customers.

5. Pursuant to 807 KAR 5:001, Section 4(8),³ copies of all orders, pleadings, and other communications related to this proceeding should be directed to:

Shaun Youravich
General Manager
P.O. Box 970
360 Ring Road
Elizabethtown, KY 42702
(270) 737-1056
syouravich@hcwd2.org

¹ *Report of Hardin County Water District No. 2 to the Kentucky Public Service Commission for the Year Ending December 31, 2019* at 49 (Ref Page 27).

² *Electronic Application of Hardin County Water District No. 2 for A Certificate of Public Convenience and Necessity*, Case No. 2017-00264, Order (Ky. PSC Nov. 1, 2017).

³ On June 25, 2020, Hardin District No. 2 gave notice pursuant to 807 KAR 5:001, Section 8, of its intent to file this application and to use electronic filing procedures.

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6. A copy of the Resolution of Hardin District No. 2's Board of Commissioners authorizing the filing of this Application is attached as **Exhibit 1**.

7. The Project involves the construction of (1) an approximate 16,000 square foot, single story Customer Service Center; (2) an approximate 3,000 square foot Field Operations Building; (3) an approximate 18,750 square foot Shop Building; and (4) an approximate 12,000 square foot Equipment Building.

8. The Project's total cost will be \$8,000,000. Hardin District No. 2 will finance the construction of the Project through the issuance of short-term debt (either a Bond Anticipation Note (BAN) or a conventional bank loan) not exceeding 23 months. The short-term debt will be partially paid by using the proceeds from the sale of two (2) tracts of land: (1) the proceeds (\$3,100,000) from the sale of 7.153 acres of land upon which Hardin District No. 2's current Customer Service Center

and other facilities are situated; and (2) the proceeds from the sale of another 10-acre tract of land located at 315 Ring Road. The 10-acre tract of land is listed with a realty company for \$1,800,000. The balance of the short-term debt, which is estimated to be approximately \$3,100,000 once the sale proceeds from both tracts of land are applied to the debt, will be refinanced through the issuance of long-term bonds. Hardin District No. 2 will apply to the Commission for authorization to issue such bonds prior to the issuance.

Existing Facilities

9. Hardin District No. 2's customer service and operation facilities are located at 360 Ring Road in Elizabethtown, Kentucky on a 7.153-acre tract ("360 Ring Road Property").⁴ The 360 Ring Road Property is bounded on the north by a municipal fire station, on the west by a municipal airport and on the east and south by public roads. An aerial photo of 360 Ring Road Property is attached to this Application as **Exhibit 2**.⁵

10. Three (3) buildings are located on the 360 Ring Road Property: a customer service building, a maintenance shop, and an unconditioned storage building. These buildings were constructed in 1997.

⁴ Hardin District operates two water treatment facilities – the White Mills Water Treatment Plant and the City Springs Water Treatment Plant. Nineteen (19) Hardin District No. 2 employees work at these plants.

⁵ For a detailed drawing of the site, see GRW, Inc., "Hardin County Water District No. 2: Existing Facilities Assessment Report" ("Assessment Report") (July 2017) (**Exhibit 3** to this Application) at 2.

a. **Customer Service Building.** The Customer Service Building is Hardin District No. 2's administrative headquarters. It was constructed in 1997 and expanded in 2013. It presently has 13,180 square feet of space. It contains Hardin District No. 2's main lobby, boardroom, crew room, and offices for its general management and administration, and houses the water district's general management and administrative, customer service, human resources, training, and water quality functions.

b. **Maintenance Shop.** The Maintenance Shop is semi-attached to the Customer Service Building. It has 7,023 square feet of space and contains tool and equipment rooms, meter testing facilities, and four (4) vehicle storage/maintenance bays.

c. **Storage Building.** The Storage Building is an unconditioned building that is used to store pipe, fittings, and other materials, along with small trailers used for various service installation and maintenance activities. It has 5,589 square feet of space.

11. Hardin District No. 2 has experienced significant growth since construction of these facilities. In 1997 Hardin District No. 2 served 10,154 customers.⁶ As of December 31, 2019, it served 28,888 customers⁷ – almost three

⁶ *Report of Hardin County Water District No. 2 to the Kentucky Public Service Commission for the Year Ending December 31, 1997* at 46 (Ref Page 27).

⁷ *Supra* note 1.

times the number of customers served in 1997. During this period, Hardin District No. 2 acquired the City of Elizabethtown's water distribution facilities⁸ and became Hardin County's principal water supplier. Recently, Hardin District No. 2 began providing sewer service to the southern portion of Hardin County.⁹ A direct result of this growth has been a 110 percent increase in Hardin District No. 2's workforce from 39 employees to 82 employees, 63 of whom currently work at the 360 Ring Road Property.

12. This growth is projected to continue. The Kentucky State Data Center projects that in the next 20 years Hardin County will experience a 19.9 percent increase in population and a 23.2 percent increase in the number of households.¹⁰ Hardin District No. 2 anticipates that this level of population growth will result in additional demands for water and sewer services and for additional utility staff.

13. In February 2017 Hardin District No. 2 retained GRW, Inc. ("GRW") to prepare a report addressing the ability of Hardin District No. 2's facilities to accommodate current staff and customer needs and assess the impact of anticipated future staff and customer growth. In July 2017, GRW issued its report, a copy of

⁸ *Application of Hardin County Water District No. 2 For Authority to Execute A Promissory Note In the Principal Amount of \$8,000,000 Pursuant To the Provisions of KRS 278.300 and 807 KAR 5:001*, Case No. 2014-00289, Order (Ky. PSC Oct. 23, 2014).

⁹ *Supra* note 2.

¹⁰ Matt Ruther, Tom Sawyer, and Sarah Ehresman, "Projections of Population and Households: State of Kentucky, Kentucky Counties, and Area Development Districts 2015-2040 (Kentucky State Data Center Oct. 2016) at 110, <http://www.ksdc.louisville.edu/wp-content/uploads/2016/10/projection-report-v16.pdf>.

which is attached as **Exhibit 3** to this Application, in which it detailed the following inadequacies:

a. **Customer Service Building.** GRW found the Customer Service Building did not meet the benchmarks for utility-sector offices established by the International Facilities Management Association (“IFMA”). IFMA recommends a mean sized standard for utility-sector office space of 442 square feet per employee. At the time of the report’s issuance, Hardin District No. 2’s Customer Service Building provided only 235 square feet per employee and with projected increases in staff its office space was expected to decrease to 171 square feet per employee, or just 38.7 percent of the recommended space.¹¹ The Customer Service Building lacked privacy for communications with customers concerning their bills. It also lacked space for a sanitary sewer department, improved accommodations for walk-in customers, additional public accommodations in the boardroom, and additional training rooms, conference rooms, and break-out rooms for in-house meetings.

b. **Parking Facilities.** GRW found the 360 Ring Road Property lacked sufficient parking for the public and staff employees. It was unable to accommodate maximum hourly customer walk-in visits to the Customer Service Building. At the time of the report, the property had 56 employee parking spaces.

¹¹ For a detailed comparison of individual office spaces with the IFMA benchmarks, see Appendix B of Assessment Report. At the time of the report’s preparation, Hardin District No. 2 employed 56 employees at the 360 Ring Road Property.

GRW estimated that 80 parking spaces were necessary to accommodate current and projected staffing.

c. **Drive-Thru.** GRW found the 360 Ring Road Property's single lane drive-thru was inadequate to handle peak demand. Vehicles waiting to make payments would frequently stack up with the line of waiting vehicles extending to the street entrance and blocking access to the staff parking area. GRW found that an additional drive-thru station was necessary to alleviate this condition. Unfortunately, construction of a second drive-thru station would significantly reduce staff parking and would interfere with the safe and orderly flow of traffic.

d. **Maintenance Compound Parking and Maneuvering.** The area surrounding the Maintenance Shop and Storage Building at the 360 Ring Road Property is fenced and gated. This area is used for vehicle fueling, service vehicle parking, storage of outdoor equipment, and bulk materials storage bins, as well as for access to the Maintenance Shop and Storage Building. GRW found that turning radii and maneuvering clearances in this area were extremely tight and made the maneuvering of vehicles very difficult. It further found that the degree of difficulty is increased by the use of some space for staff overflow parking and stacked vehicles waiting to fuel. As a result of blind corners and overcrowding, vehicle accidents were frequent. In GRW's view "[t]his area represents a significant safety issue for HCWD2, with the potential for continued workplace accidents" and that these

problems are likely to “become worse as the need for additional service vehicles grows with the customer base.”¹²

e. **Maintenance Vehicle Fueling.** The 360 Ring Road Property has a single lane vehicle fueling area, with three fuel delivery stations (unleaded, diesel, and off-road diesel). All maintenance vehicles, regardless of size or type, must wait in a single line each morning or evening to access fuel. According to GRW, this configuration created a “significant operational hindrance,” delayed the dispatch of maintenance vehicles, and resulted in constant traffic congestion at the site.¹³

f. **Maintenance Shop.** GRW found that the Maintenance Shop lacked sufficient space for vehicle maintenance or washing and to garage Hardin District No. 2’s pickup trucks and corresponding service equipment. Lack of adequate garage space required outside parking of vehicles that exacerbates traffic and vehicle maneuverability issues. GRW noted the need for two additional vehicle storage bays: (1) an 80-foot vehicle bay to allow for light vehicle and equipment maintenance and direct indoor deliveries of equipment; and (2) a dedicated vehicle and equipment wash bay.¹⁴

g. **Unconditioned Storage Building.** While finding that the Storage Building had sufficient space to meet Hardin District No. 2’s present needs,

¹² Assessment Report at 12.

¹³ *Id.* at 11.

¹⁴ *Id.* at 15-16.

GRW further found that it lacked space to accommodate additional growth of Hardin District No. 2's water operations or the anticipated needs of Hardin District No. 2's sanitary sewer operations. GRW estimated that an additional 2,500 square feet of storage space will be required to allow Hardin District No. 2 to meet these future needs.

14. GRW found the 360 Ring Road Property lacked sufficient space to make improvements to address the noted inadequacies. The property has a 60-foot setback requirement from Ring Road, the public road that runs along the east side of the property, that severely restricts the use of the available land. Expanding the size of the property through the acquisition of adjoining properties was not feasible as it is bounded on the north by a municipal fire station, on the west by a municipal airport and on the east and south by public roads.¹⁵

15. GRW also found that implementing limited measures to correct some inadequacies would likely exacerbate other inadequacies or significantly disrupt operations. For example, horizontal expansion of the Customer Service Building would significantly reduce existing staff and public parking space. The Customer Service Building is not structurally capable of supporting a vertical expansion. Therefore, to achieve anything close to the amount of space recommended by the IFMA standards would require demolition of the existing Customer Service Building

¹⁵ *Id.* at 2.

and construction of a new two-story building on the same footprint.¹⁶ Construction of an additional drive-thru station, while possible, would reduce staff parking. While noting that relocating some operations to another site was an alternative, GRW cautioned that separating these functions from the administrative building would likely result in a decrease in overall operational efficiency.¹⁷

16. GRW concluded that existing facilities at the 360 Ring Road Property were “in good, well-maintained condition,” but warned of “many identified concerns regarding the . . . [facilities] ability to meet current and projected operation needs from a size and configuration standpoint.” It cautioned that “increased space demands will place ever-mounting pressure on the existing site and buildings. At some point in the future, **it will be necessary to alleviate this pressure to avoid operational compromises that reduce staff safety and customer satisfaction.**”¹⁸

The Project

17. Directly across Ring Road from Hardin District’s existing Customer Service Center is a 23-acre tract of land (“315 Ring Road Property”). This tract was previously owned by the Remington Arms Company, which operated a firearms research and development facility on the property until 2015. A 32,000 square foot building (“Remington Building”) is located on the tract. This property has frontage

¹⁶ *Id.* 14.

¹⁷ *Id.* at 15.

¹⁸ *Id.* at 16 (emphasis added).

on both Ring Road and West Park Road. An aerial view of the site is shown in **Exhibit 2**. Finding that the 315 Ring Road Property was “a suitable and highly desirable site” to relocate its current operations and that the seller’s requested price was below the property’s market value, Hardin District No. 2’s Board of Commissioners voted to acquire the property.¹⁹ An appraisal of the 315 Ring Road Property found that the property’s fair market value was approximately \$1.0 million above the purchase price.²⁰ Using existing unrestricted cash reserves, Hardin District No. 2 acquired 315 Ring Road Property at the cost of \$2.6 million.²¹ This property has frontage on both Ring Road and West Park Road.

18. Following the purchase of the 315 Ring Road Property and completion of GRW’s facilities assessment report, Hardin District No. 2 explored renovating the Remington Building for use as a customer service and administration building and the construction of a maintenance shop and storage building on the site. In March 2018, it retained the architectural firm Brandstetter Carroll to design plans for these facilities.²² In April 2019 Hardin District No. 2 requested bids to perform the renovation and construction work. It received six (6) bids that ranged from

¹⁹ Hardin County Water District No. 2 Board of Commissioners Resolution No. 2016-05-04 (May 17, 2016). See **Exhibit 4** to this Application.

²⁰ Letter from Rick O. Baumgardner, President, Baumgardner and Associates, to James Jeffries, General Manager, Hardin County Water District No. 2, subj: Remington Arms Property (July 11, 2016). A copy of this letter is attached to this Application as **Exhibit 5**.

²¹ The deed transferring ownership of the tract to Hardin District is attached to this Application as **Exhibit 6**.

²² Minutes of Hardin County Water District No. 2 Board of Commissioners Meeting of March 20, 2018 at 3. A copy of these minutes is attached to this Application as **Exhibit 7**.

\$10,464,900 to \$13,271,000. All exceeded the project budget construction cost of \$8,000,000 and, based upon Brandstetter Carroll's recommendation, all were rejected.²³

19. Following its rejection of the bids, Hardin District No. 2 considered other options to develop the 315 Ring Road Property in a more cost-effective manner. The Remington Building is located on the western portion of the property and has considerable road frontage on Ring Road. This portion of the property is more valuable than the eastern (rear) portion of the property. Therefore, Hardin District No. 2's Board of Commissioners decided to build the proposed facilities on the rear portion of the property and sell the more valuable property fronting on Ring Road. In August 2019, the Board of Commissioners declared the Remington Building and five acres of land adjoining the building as surplus real property and listed this property with a real estate agency.²⁴ Subsequently, the Board of Commissioners approved dividing the 315 Ring Road property into two tracts.²⁵ The western tract, which faces Ring Road and on which the Remington Building sits, contains 10 acres. The eastern tract, which is accessible via West Park Road, is 13 acres in area. The plat reflecting the division of the 315 Ring Road Property and an

²³ Minutes of Hardin County Water District No. 2 Board of Commissioners Meeting of May 21, 2019 at 3. A copy of these minutes is attached to this Application as **Exhibit 8**.

²⁴ Minutes of Hardin County Water District No. 2 Board of Commissioners Meeting of August 20, 2019 at 3. A copy of these minutes is attached to this Application as **Exhibit 9**.

²⁵ Minutes of Hardin County Water District No. 2 Board of Commissioners Meeting of May 19, 2020 at 3. A copy of these minutes is attached to this Application as **Exhibit 10**.

aerial photo showing the division are attached to this Application as **Exhibits 11 and 12.**

20. In the fall of 2019, Hardin District No. 2 solicited Statements of Qualifications for a Design-Builder to design and construct the proposed facilities. Nine (9) firms submitted Statements of Qualifications. In October 2019, Hardin District No. 2 selected Jenkins-Essex Construction, Inc. (“Jenkins-Essex”) for a design-build contract to design and construct a customer service center, a field operations building, a shop building, and an equipment building, as well as develop the surrounding grounds.²⁶ On January 2, 2020, it executed an agreement with Jenkins-Essex for the design and construction of these facilities at a cost no greater than \$8,000,000. A copy of the design-build contract is attached to this Application as **Exhibit 14.**²⁷

21. The proposed facilities consist of four buildings: a customer service building; a field operations building; a shop building; and an equipment building. These buildings will be located on the eastern tract of the 315 Ring Road Property. Vehicles will access the property from West Park Road. An overview of the site

²⁶ Minutes of Hardin County Water District No. 2 Board of Commissioners Meeting of October 15, 2019 at 2. A copy of these minutes is attached to this Application as **Exhibit 13.**

²⁷ The contract is contingent upon the issuance of a Certificate for the Project.

plan for the tract is attached to this Application as **Exhibit 15**. A frontal view of these buildings is attached to this Application as **Exhibit 16**.

a. **Customer Service Building.** This building will have approximately 16,000 square feet of usable space, providing offices for 32 Hardin District No. 2 employees, and will meet IFMA-recommended standards. It will provide offices for Hardin District No. 2's administrative officers and house Hardin District No. 2's finance, mapping, human resources, accounting and billing departments. The building will contain a training room, a break/lunch room area, an information technology room to house Hardin District No. 2's computer servers, records storage room and a boardroom with sufficient space to accommodate up to 50 persons in addition to board members and Hardin District No. 2 management staff. The front portion of the building will be directly accessible to the public and contain a customer service lobby with three teller stations to receive customer payments. The customer service area will include a conference room and two private offices to permit customer account representatives to address customer complaints and inquiries and requests for service in a more private setting. A two-lane drive-thru station will be attached to the building.

b. **Field Operations Building.** This building will be attached to the Customer Service Building, will have approximately 3,000 square feet of usable

work space for approximately 11 field crew supervisors and field service technicians. It will contain a lunch room/meeting space area for field employee use.

c. **Shop Building.** This building, which is attached to the Field Operations Building, has approximately 18,750 square feet of usable space and will be working quarters for approximately 20 employees. It contains a maintenance shop, five maintenance bays for vehicle and equipment repair and one bay for vehicle washing. The maintenance bays are wider than those at Hardin District No. 2's existing maintenance shop and will accommodate Hardin District No. 2's semi-trucks and trailers. The Shop Building also contains an employee uniform room and lockers and shower facilities for field employees. Hardin District No. 2's meter testing facilities will be located in the building as well as its small fittings and meter inventory. The Shop Building will also serve as a storage area for archived files and records.

d. **Equipment Building.** This building contains 12,000 square feet of storage space, more than double the capacity of the existing storage building. It will be used for small equipment storage and will house large fittings, pipe, valve and hydrant inventories, as well as electric generators.

e. **Parking Facilities.** The site has 153 parking spaces. Thirty-seven parking spaces, six of which are handicap accessible spaces, are designated as customer parking and are located near the front entrance of the Customer Service

Building. An employee parking lot, accessible only through a separate entrance from West Park Road and containing 77 parking spaces, is located on the western side of the Customer Service Building. Thirty-nine parking spaces for Hardin District No. 2's service vehicles are available in a parking area northeast of the Customer Service Building. This area is accessible only through a separate entrance from West Park Road. To avoid traffic congestion, the parking areas are located away from the Equipment Building and fueling site area.

22. Construction of the Project will not result in the wasteful duplication of utility facilities or inefficient investment.

23. The Project will not compete with the facilities of any other public utility.

24. The Project will allow Hardin District No. 2 to replace its existing facilities on the 360 Ring Road Property with facilities that will enable Hardin District No. 2 to more efficiently and effectively provide water service to its customers. The Project will provide adequate space for Hardin District No. 2's administrative and field employees to perform their existing job functions, eliminate operational bottlenecks due to the lack of adequate physical space and facilities at

the 360 Ring Road Property, and provide additional space to allow Hardin District No. 2 to expand to meet future needs if expected customer growth continues.

25. The public convenience and necessity require the Project's construction.

Compliance with 807 KAR 5:001, Section 15

26. A copy of the Development Plan for the Project site is attached to this Application as **Exhibit 17**.

27. A copy of the plans, drawings and specifications for the Project is attached to this Application as **Exhibit 18**.

28. A description of the Project's location is attached as **Exhibit 19** to this Application. Maps depicting this location are shown at **Exhibits 2, 11 and 12** of this Application.

29. The Deed for the 315 Ring Road Property and the plat depicting the division of this tract are attached at **Exhibits 6 and 11** of this Application respectively.

30. Except for a Certificate of Public Convenience and Necessity, Hardin District No. 2 has obtained all necessary permits to construct the Project. The Elizabethtown Planning and Zoning Commission, Elizabethtown City Engineer, and Elizabethtown Storm Water Manager have approved the Project's Development

Plan. Evidence of their approval is shown on the Development Plan, which is attached as **Exhibit 17** to the Application. The Project does not require a franchise.

31. The total estimated cost of the Project is \$8,000,000. The contract between Hardin District No. 2 and Jenkins-Essex requires Jenkins-Essex to design and build these facilities at a cost no greater than \$8,000,000. A copy of the design-construct contract is attached to this Application as **Exhibit 14**.

32. As stated in Paragraph 8 of this Application, the cost of the Proposed Facilities will be financed through issuance of a short-term debt not exceeding 23 months. On March 20, 2020, Hardin District No. 2 executed a contract with Kentucky Utilities Company for the sale of the 360 Ring Road Property for \$3,100,000. A copy of the contract for sale is attached to this Application as **Exhibit 20**. The proceeds of this sale will be applied to the short-term debt. Hardin District No. 2 anticipates obtaining approximately \$1,800,000 from the sale of the western tract of the 315 Ring Road Property. Upon receipt, these proceeds shall also be applied to the short-term debt. The balance of the short-term debt, which is estimated to be approximately \$3,100,000 once the sale proceeds are applied to the debt, will be refinanced through the issuance of long-term bonds. Hardin District No. 2 will apply to the Commission for authorization to issue such bonds prior to the issuance.

33. Hardin District No. 2 anticipates the approximate annual cost of operation for the Proposed Facilities will be \$90,132. A schedule of these costs is set forth in **Exhibit 21** to the Application. This cost is only \$30,668 more than the current annual operating cost of the existing facilities at the 360 Ring Road Property.

34. Construction of the Project is expected to start approximately one week following the Commission's issuance of the requested Certificate for the Project. The estimated construction time is 15 months.

Conclusion

WHEREFORE, Hardin District No. 2 requests that the Commission:

1. Place this Application at the head of the Commission's docket and render a decision at the earliest possible date;
2. Grant Hardin District No. 2 a Certificate of Public Convenience and Necessity to construct the Project; and,
3. Grant any and all other relief to which Hardin District No. 2 may be entitled.

Dated: August 11, 2020

Respectfully submitted,



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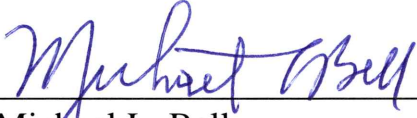
*Counsel for Hardin County Water District
No. 2*

VERIFICATION

COMMONWEALTH OF KENTUCKY)
) SS
COUNTY OF HARDIN)

The undersigned, Michael L. Bell, being duly sworn, deposes and states that he is the Chairman of Hardin County Water District No. 2, the Applicant in the above proceedings; that he has read this Application and has noted its contents; that the same is true of his own knowledge, except as to matters which are therein stated on information or belief, and as to those matters, he believes same to be true.

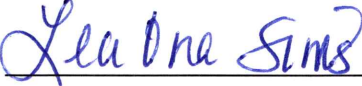
IN TESTIMONY WHEREOF, witness the signature of the undersigned on this 11 day of August 2020.



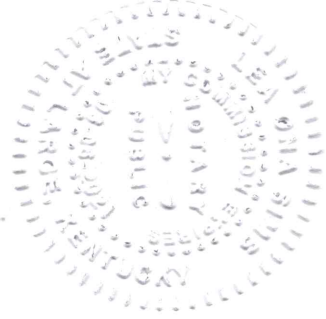
Michael L. Bell
Chairman
Hardin County Water District No. 2

Subscribed and sworn to before me by Michael L. Bell in his capacity as Chairman of Hardin County Water District No. 2 on this 11 day of August 2020.

My Commission expires: 3/6/2021



Notary Public
Notary ID: 574960



CERTIFICATE OF SERVICE

In accordance with 807 KAR 5:001, Section 8, I certify that Hardin County Water District No. 2's electronic filing of this Application is a true and accurate copy of the same document being filed in paper medium; that the electronic filing was transmitted to the Public Service Commission on August 11, 2020; that there are currently no parties that the Public Service Commission has excused from participation by electronic means in this proceeding; and that within 30 days following the end of the state of emergency announced in Executive Order 2020-215 this Application in paper medium will be delivered to the Public Service Commission.


Damon R. Talley

FILING REQUIREMENTS

FILING REQUIREMENTS FOR AN APPLICATION FOR A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY

Source Authority	Requirement	Location
807 KAR 5:001, § 14(1)	Applicant's name, mailing address and e-mail address	Page 1, Para 1
807 KAR 5:001, § 14(1)	Statutory Reference – KRS 278.020 and 807 KAR 5:001, §15	Page 1
807 KAR 5:001, § 4(3)	Signature of Applicant's Attorney	Page 21
807 KAR 5:001, § 4(3)	Name, Address, Telephone Number, Fax Number, and e-mail address of Applicant's Attorney	Page 2-3, Para 5; Page 21
807 KAR 5:001, § 14(2)	If Applicant is corporation: State and date of incorporation, attestation of good standing in state of incorporation, statement regarding authorization to transact business in Kentucky	Page 1, Para 2 Not Applicable
807 KAR 5:001, § 14(3)	If Applicant is a limited liability company: State and date of organization, attestation of good standing in state of incorporation, statement regarding authorization to transact business in Kentucky	Page 1, Para 2 Not Applicable
807 KAR 5:001, § 14(4)	If the Applicant is a limited partnership: a certified copy of limited partnership agreement and all amendments or statement identifying prior Commission proceedings in which limited partnership agreement and all amendments filed	Page 1, Para 2 Not Applicable
807 KAR 5:001, § 15(2)(a)	The facts relied upon to show that the public convenience and necessity requires the proposed construction	Pages 4-11, Para 9-16 Exhibit 3
807 KAR 5:001, § 15(2)(b)	Copies of franchises or permits for the proposed construction or extension	Pages 18-19, Para 30 Exhibit 17
807 KAR 5:001, § 15(2)(c)	A full description of the proposed location, route, or routes of the proposed construction or extension, including a description of the manner in which same will be constructed, and the names of all public utilities, corporations, or persons with whom the proposed construction or extension is likely to compete	Page 17, Para 23 Page 18, Para 28 Exhibits 2,11, 12 & 19

Source Authority	Requirement	Location
807 KAR 5:001, § 15(2)(d)(1)	Maps to suitable scale showing the location or route of the proposed construction or extension, as well as the location to scale of like facilities owned by others located anywhere within the map area with adequate identification as to the ownership of the other facilities (Only one copy submitted pursuant to Commission order of July 28, 2017)	Page 18, Para 28 Exhibits 2, 11, and 12
807 KAR 5:001, § 15(2)(d)(2)	Plans and specifications and drawings of the proposed plant, equipment, and facilities	Page 18, Para 26-27 Exhibits 17 and 18
807 KAR 5:001, § 15(2)(e)	The manner in detail in which the Applicant proposes to finance the proposed construction or extension.	Pages 19, Para 32
807 KAR 5:001, § 15(2)(f)	An estimated annual cost of operation after the proposed facilities are placed into service	Page 20, Para 33 Exhibit 21
KRS 322.340	Engineering plans, specifications, drawings, plats and reports for the proposed construction or extension prepared by a registered engineer, must be signed, sealed, and dated by an engineer registered in Kentucky Every survey plat and physical description prepared by a professional land surveyor and submitted to a any public or governmental agency shall display the certification by the professional land surveyor under whose supervision the plat or description was prepared.	Page 18, Para 26 Exhibit 17 Pages 13-14, Para 19 Exhibit 11
KRS 323.095	All working drawings, specifications, and reports prepared by, or under the supervision of licensed architect shall be imprinted with the licensed architect's seal	Page 18, Para 27 Exhibit 18

EXHIBITS

TABLE OF EXHIBITS

<u>Tab No.</u>	<u>Description</u>
1	Hardin County Water District No. 2 Resolution No. 2020-06-01: A Resolution of Hardin County Water District No. 2 Authorizing District Chairman to Apply to the Kentucky Public Service Commission for a Certificate of Public Convenience and Necessity to Construct a New Customer Service and Operations Facility
2	Aerial Photo of the Current Site and Location of Proposed Facilities
3	GRW, Inc., “Hardin County Water District No. 2: Existing Facilities Assessment Report” (July 2017)
4	Hardin County Water District No. 2 Board of Commissioners Resolution No. 2016-05-04 - Resolution of the Hardin County Water District No. 2 Approving Purchase of Real Estate Located at 315 Ring Road, Elizabethtown, Kentucky and Authorizing Officers to Execute Deed and Closing Documents
5	Appraisal Report of Remington Arms Property (with Executive Summary)
6	Deed transferring the property at 315 Ring Road, Elizabethtown, Kentucky to Hardin County Water District No. 2
7	Minutes of the March 20, 2018 Meeting of Hardin County Water District No. 2 Board of Commissioners
8	Minutes of the May 21, 2019 Meeting of Hardin County Water District No. 2 Board of Commissioners
9	Minutes of the August 20, 2019 Meeting of Hardin County Water District No. 2 Board of Commissioners
10	Minutes of the May 19, 2020 Meeting of Hardin County Water District No. 2 Board of Commissioners
11	Amended Record Plat of Hughes Commerce Center Section 2 Lot 1A (June 29, 2020)
12	Aerial Photo of the 315 Ring Road Property (depicting division of the property)

<u>Tab No.</u>	<u>Description</u>
13	Minutes of the October 15, 2019 Meeting of Hardin County Water District No. 2 Board of Commissioners
14	Agreement between Hardin County Water District No. 2 and Jenkins-Essex Construction, Inc. for HCWD2 Office, Warehouse and Shop (Jan. 2, 2020)
15	Overview of the Site Plan at 1951 West Park Road
16	Frontal Views of Proposed Buildings
17	Development Plan of Hardin County Water District No. 2 Lot 1C Hughes Commerce Center Section 2
18	Architectural Drawings of 2020 New Facility Customer Service Center-Field Operations-Shop-Equipment
19	Description of Location of Proposed Facilities
20	Contract for Purchase and Sale of 360 Ring Road Property
21	Estimate of Annual Operating Costs of Proposed Facilities

EXHIBIT 1

RESOLUTION NO. 2020-06-01

**A RESOLUTION OF HARDIN COUNTY WATER DISTRICT
NO. 2 AUTHORIZING DISTRICT CHAIRMAN TO APPLY TO
THE KENTUCKY PUBLIC SERVICE COMMISSION FOR A
CERTIFICATE OF PUBLIC CONVENIENCE AND
NECESSITY TO CONSTRUCT A NEW CUSTOMER SERVICE
AND OPERATIONS FACILITY**

WHEREAS, Hardin County Water District No. 2 (the “District”) is a water district created pursuant to KRS Chapter 74;

WHEREAS, KRS 278.015 provides that a water district is a utility and is subject to the jurisdiction of the Kentucky Public Service Commission (the “Commission”) in the same manner and to the same extent as any other utility;

WHEREAS, KRS 278.020(1) prohibits any utility from commencing the construction of any plant or facility or installing any equipment to provide utility service, except for that in the ordinary course of business, until that utility has obtained a certificate of public convenience and necessity (the “CPCN”) from the Commission;

WHEREAS, the District proposes to construct a new Customer Service and Operations Facility (the “Project”) to better serve its customers;

WHEREAS, the Project consists of the construction of: (1) an approximate 16,000 square feet, single story Customer Service Center; (2) an approximate 3,000 square feet Field Operations Building; (3) an approximate 18,750 Shop Building; and (4) an approximate 12,000 square feet Equipment Building;

WHEREAS, the District has engaged the services of Jenkins-Essex Construction, Inc. to serve as the Design-Builder for the Project; and

WHEREAS, the District has, or soon will have, obtained all the necessary approvals to construct the Project, except for a CPCN.

NOW, THEREFORE, IT IS HEREBY RESOLVED BY THE BOARD OF COMMISSIONERS OF HARDIN COUNTY WATER DISTRICT NO. 2 AS FOLLOWS:

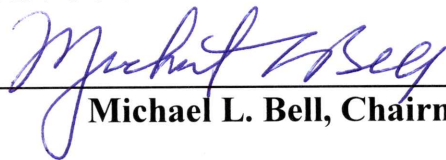
Section 1. The facts, recitals, and statements contained in the foregoing preamble of this Resolution are true and correct and are hereby affirmed and incorporated as a part of this Resolution.

Section 2. The Chairman is authorized and directed to take any and all actions reasonably necessary to prepare, execute, and submit an application to the Commission for a CPCN to construct the Project.


Section 3. This Resolution shall take effect upon its adoption.

Adopted by the Board of Commissioners of Hardin County Water District No. 2 at a meeting held on June 16, 2020, signed by the Chairman, and attested by the Secretary.

HARDIN COUNTY WATER DISTRICT NO. 2

By: 
Michael L. Bell, Chairman

ATTEST:


Morris L. Miller, Secretary

CERTIFICATION

The undersigned Secretary of Hardin County Water District No. 2 (the "District") does hereby certify that the foregoing is a true copy of a Resolution duly adopted by the District's Board of Commissioners at a meeting properly held on June 16, 2020, signed by the Chairman of the Board of Commissioners, attested by the Secretary of the Board of Commissioners, and is now in full force and effect.

WITNESS my hand this 16th day of June, 2020.



Morris L. Miller, Secretary

EXHIBIT 2



1357 Saint John Rd

Kitty Hawk Dr

Existing Customer Service Center & Related Facilities

Ring Rd
3005

Site Of Proposed Customer Service And Operations Facility

West Park Rd

West Park Rd

EXHIBIT 3

Existing Facilities Assessment Report

Hardin County Water District No.2



360 Ring Road, Elizabethtown, Kentucky

July 2017



engineering | architecture | geospatial

801 Corporate Drive, Lexington, Kentucky 40503

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Appendix A – Existing Facility Site and Floor Plans

Appendix B – Existing Facility Detailed Area Analysis

Appendix C – Existing Facility Photographs

1. INTRODUCTION

Hardin County Water District No. 2 (HCWD2) began operations in 1968 serving water to approximately 900 customers over 90 miles of water mains. HCWD2 has experienced significant growth since that time, and now serves more than 27,700 customers.

GRW Engineering|Architecture|Geospatial was retained in February 2017 to develop a facilities assessment report to evaluate the condition and adequacy of the existing site and buildings located at 360 Ring Road in Elizabethtown, KY relative to current and projected near-future needs. The 360 Ring Road location includes the HCWD2 office and customer support center, along with the primary storage and dispatch location for service vehicles and equipment.

This report includes an overview of the District's growth, an analysis of the facilities' ability to accommodate current staff and customer needs, and an assessment of potential impact of anticipated future staff and customer growth.



Figure 1

2. EXISTING PROPERTY

The existing HCWD2 property at 360 Ring Road (shown in *Figure 2*) is approximately 8 acres. It is bounded on the north by a municipal fire station, on the west by the municipal airport, and on the east and south by public roads. These bounding properties, along with a required 60 foot setback from Ring Road, essentially precludes any opportunity for on-site expansion, or for acquiring additional adjacent property.

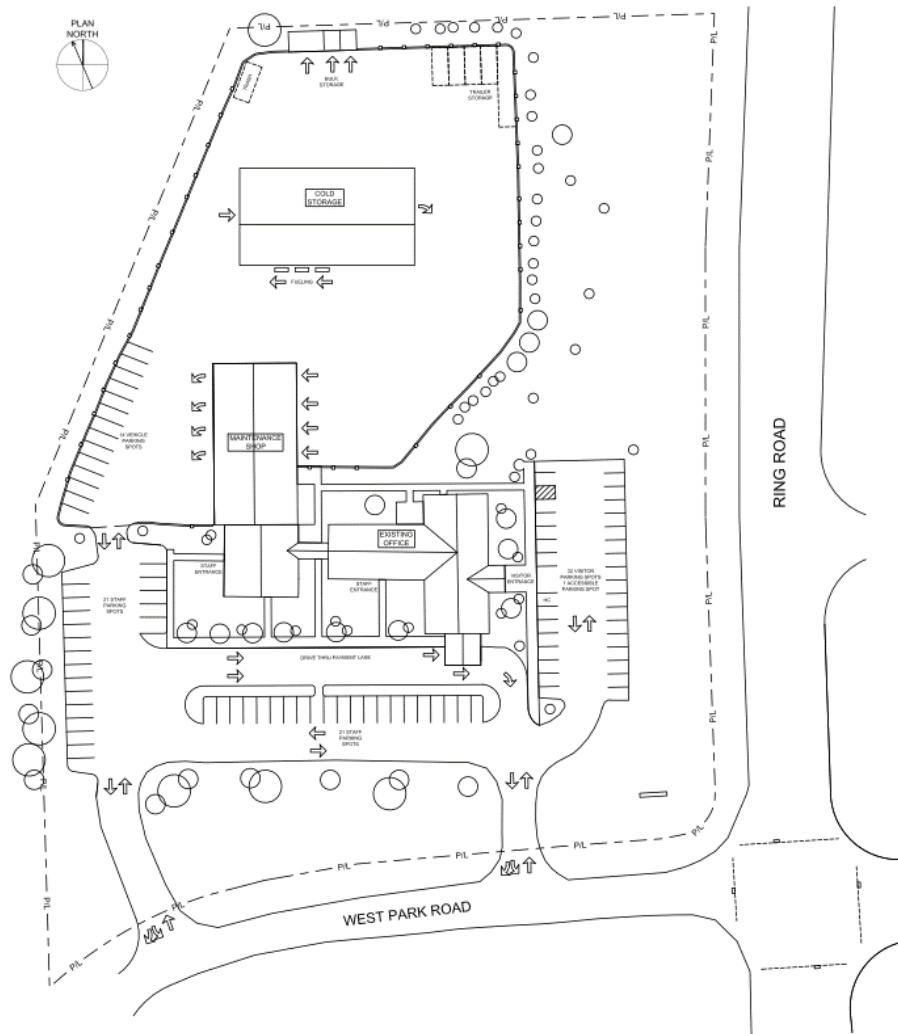


Figure 2

The existing site includes parking for walk-in customers, a single-lane drive-thru, staff parking, maintenance vehicle parking, bulk material storage, and fueling area.

3. EXISTING BUILDINGS

The 360 Ring Road complex includes several single-story buildings, including the main customer service building, a semi-attached maintenance shop, and a stand-alone storage building. Floor plans for all existing buildings are included as an appendix to this report.

3.1. Customer Service Building



This building is the administrative headquarters for the District, and is the primary point of interaction between staff and customer.

The original building was constructed in 1997, and contained 9,997 ft². It is of typical light commercial construction, using load-bearing metal stud framing, wood roof trusses, and exterior brick veneer.

This original building was expanded in 2013 to add an additional 3,183 ft², bringing the total customer service building area to 13,180 ft². (This is exclusive of the area of the semi-attached maintenance shop.) Some portions of the addition are constructed using the same materials and techniques as the original customer service building, but the crew room expansion incorporates concrete masonry for load-bearing walls in lieu of stud framing.

Departmental functions contained within this building generally include:

- Main lobby and boardroom
- General management and administration
- Customer service functions
- Water quality
- Service technicians
- Crew Room (used for training, break area, and lunchroom)
- Human resources
- IT
- Restrooms, lockers, and other staff support spaces



3.2. Maintenance Shop

This 4-bay service building was constructed in 1997 as part of the original complex. It is semi-attached to the Customer Service Building, being separated from the main customer service building by a 3-hour fire rated wall. It contains 7,023 ft². It is pre-engineered metal building construction, with metal siding and concrete masonry wainscot.

This building contains tool and equipment rooms, fittings storage, meter testing, and 4 vehicle storage/maintenance bays. One of the four bays is also used as a wash bay. There is a partial mezzanine used strictly for storage.



3.3. Unconditioned Storage Building

A stand-alone, unconditioned storage building is located just north of the maintenance shop. This building contains 5,589 ft² and is of pre-engineered metal building construction, with metal siding and concrete masonry wainscot. The building is used for storage of pipe, fittings, and other materials, along with small trailers used for various service installation and maintenance activities.



4. OVERVIEW OF DISTRICT GROWTH

Figure 3 shows the past 20 years of growth in the HCWD2 customer base. The District has experienced 175% growth over this period, serving just over 10,000 customers in 1997 compared to over 27,700 today. The customer base was significantly enlarged in 2013, when the District acquired all the customers from the City of Elizabethtown. Since 2013, the District has continued to experience steady growth as the regional population increases.

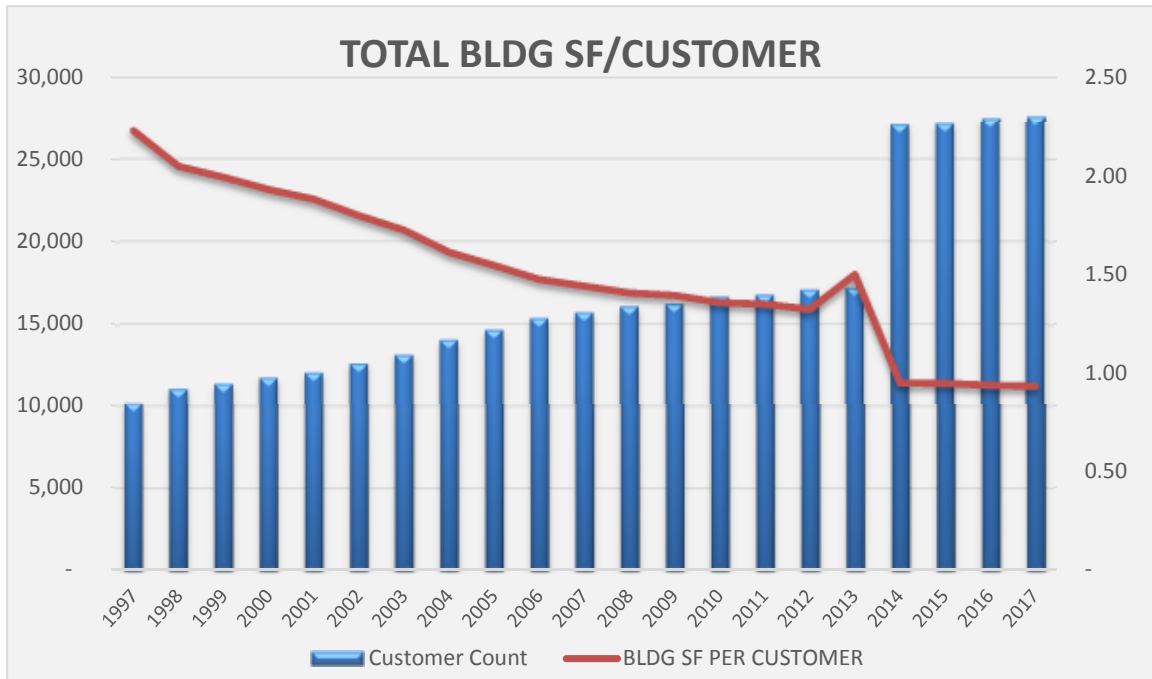


Figure 3

The red line in Figure 3 also shows that the HCWD2 facilities have not kept pace with the expanding customer base. In 1997 there was 2.23 SF/customer, compared to only 0.94 SF/customer today.

The total number of HCWD2 staff has almost doubled over this same time period – from 39 in 1997 to 70 in 2017.

4.1. Future Growth Trends

As shown in *Figure 4*, a 2016 study published by the University of Louisville's Kentucky State Data Center shows that Hardin County is projected to grow by over 28,000 persons by 2040 – a 26.7% increase from current County population levels. From a percentage standpoint, Hardin County is projected to be the 10th fastest-growing county in Kentucky over that period.

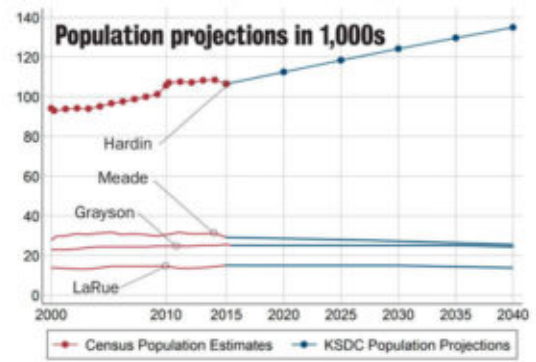


Figure 4

From this data, we project that the HCWD2 customer base will grow by approximately 14,000 over the next 20+ years, representing an approximate 51% increase over current levels.

4.2. Expansion of Services

HCWD2 is preparing to implement several new initiatives to better serve their customers, and to expand the types of services that they provide. These include:

- Establishing an in-house engineering department to streamline engineering and design operations.
- Expanding existing water quality department for better monitoring and quality control.
- Establishing a new sanitary sewer department, and develop that service as a new line of business.

It is anticipated that the expansion of services noted above will require the addition of several new staff members, with correspondingly increased space needs.

5. FACILITY CONDITION ASSESSMENT

This section assesses the 360 Ring Road facilities according to the following categories:

- Review of overall code compliance
- Review of accessibility relative to ADA compliance
- Condition of buildings and site improvements, and anticipated lifespan

5.1. Review of Overall Code Compliance

It is beyond the scope of this report to do an in-depth analysis of code compliance; however, the existing facility appears to be generally in compliance with the building codes that were in effect at the time of their construction. The Commonwealth of Kentucky does not require that an

existing building be upgraded to current code compliance unless there is a change in use or occupancy.

There have been several major re-issues of the Kentucky Building Code since the original construction of this facility in 1997, especially with regard to energy efficiency. As a result, it is likely that the existing building is not in compliance with current building codes, even though a code compliance upgrade is not mandated.

5.2. Review of ADA Compliance

Title III of the Americans with Disabilities Act (ADA) went into effect in 1991, so the construction of this facility would have been subject to the original 1991 ADA Title III regulations. The ADA regulations were significantly updated in 2010. While similar, the 2010 version of the ADA varies in some aspects from the original 1991 regulations. The 2010 ADA includes a provision called “safe harbor” stating that one does not have to make modifications to elements in an existing building that complies with the 1991 Standards, even if the 2010 Standards have different requirements for them. However, any accessible elements that are altered must comply with the 2010 ADA Standards.

The existing site and building appear to make reasonable accommodation for handicapped accessibility, such as required parking, accessible routes, restrooms, etc. While it is beyond the scope of this report to develop an in-depth ADA compliance assessment, it is unlikely that the building is in full compliance with current 2010 ADA requirements. Unless the existing building is modified, the “safe harbor” clause noted above would apply.

5.3. Condition of Buildings and Site Improvements

Site Improvements:

The existing site improvements were assessed visually, through a series of site visits, and through discussions with HCWD2 representatives. Assessed items include sidewalks, pavements, fencing, site grading, fueling stations, landscaping, and storm drainage.

Generally, the site improvements appear to be well-maintained. No significant settlement was observed. The only significant condition issue is the asphalt pavement, which is beginning to show cracking and deterioration typical of pavement that is reaching the end of its useful life.

Over the next 5 years, it is likely that the following components will require replacement:

- All asphalt pavements



Over the next 20 years, it is likely that the following additional components will require replacement:

- Security fencing and gates
- Fueling station (as needed to comply with EPA regulations and changing needs)

Buildings:

The existing buildings were assessed visually, through a series of site visits, and through discussions with HCWD2 representatives. Overall, the existing buildings appeared to be well-maintained and in good condition. Specifically assessed items include the following:

- Structural integrity: There was no observed cracking or other evidence of settlement or structural failure.
- Roof: The existing asphalt composite shingle roof appears to be in good condition. There was no observed deterioration attributable to poor attic ventilation, nor was there any observed sagging or cupping of the substrate.
- Exterior walls, windows, and doors: Exterior brick veneer appears to be in excellent condition, with no observed cracking or efflorescence. Exterior windows and doors appear to be in excellent condition.
- Interior finishes: Interior finishes are in fair condition, and are beginning to show deterioration typical for the age of the facility. Acoustical lay-in ceiling tiles are starting to discolor and sag, painted wall finishes are showing wear and tear in many areas, and floor finishes – specifically areas with VCT and carpet tile – show wear and staining.
- HVAC systems: HVAC systems appear to be functioning properly.
- Electrical systems: Building power and lighting systems appear to be functioning properly.

Over the next 5 years, it is likely that the following components will need to be repaired or replaced:

- Selective interior repainting
- Selective interior carpet replacement
- Selective interior VCT replacement

Over the next 20 years, it is likely that the following additional components will require replacement:

- HVAC equipment replacement
- Ceiling tile replacement
- Roofing
- Exterior painting



6. ASSESSMENT OF PROGRAM/SPACE ADEQUACY

This section assesses the 360 Ring Road facilities from a programming and operational standpoint – analyzing the extent to which the current facilities meet the current and projected space and operational needs of HCWD2.

6.1. Site Layout and Amenities

As stated previously, the existing 8 acre site is fully developed, including public parking, staff parking, drive-thru, vehicle fueling station, and maintenance vehicle parking. Each of these components has been reviewed for operational adequacy. For reference purposes, the Owner has advised that public traffic to the site on a monthly basis breaks out as follows:

- 2,600+ walk-in customer visits per month (average 15 visits/hour)
- 3,100+ drive-thru customer visits per month (average 18 visits/hour)
- 1,800+ night-drop customer visits per month

6.1.1. Public Parking

The existing public parking accommodates 33 vehicles (including 1 accessible space). The Owner has advised that, during peak periods each month, it is not unusual to serve 30 visitors/hour. This usage is beyond the level that can be accommodated in the current public parking area, and does not accommodate any potential for future growth of customer base.

For public walk-in parking, we would recommend a minimum of 2x the maximum hourly customer visits. For HCWD2, this would mean 60 spaces at current usage levels, plus some additional to accommodate future growth. Expansion of the public parking to this size on the current site is possible, but the expanded parking areas would be located some distance from the public entry, and thus would not offer a customer-friendly parking solution.

6.1.2. Drive-Thru

The existing single-lane drive thru has stacking for approximately 8 vehicles. The Owner has advised that, during peak periods each month, it is not unusual to serve 36 customers/hour at this drive-thru. Assuming an average transaction time of 3 minutes, this drive through will back up to its full stacking capacity and beyond during these peak periods. This has been confirmed through conversations with HCWD2 personnel, who advise that the stacking often extends out all the way to the street entrance, blocking access to portions of the staff parking areas.

This situation could be alleviated by adding a second remote drive-thru station, but implementing this is impossible on this site without further compromising some other operational aspect, such as reducing available staff parking.



6.1.3. Staff Parking



Current staffing level at this site is 56, with the anticipation of 21 additional staff to accommodate future growth, and for expansion of current services as described in 4.2. Thus, approximately 80 staff parking spaces would accommodate current and projected staffing. Current available staff parking of 56 spaces includes several designated staff parking spaces within the fenced maintenance vehicle area, exacerbating an already untenable vehicle maneuvering problem in that area. A particular safety concern is that the current configuration forces staff to cross over the drive-thru stacking area to reach the staff entrance into the Customer Service Building.

Some expansion of employee parking might be possible in the extreme northeast portion of the site, but this would place some of the employee parking over 500 feet from their workplace.

6.1.4. Maintenance Vehicle Fueling



There is currently a single-lane vehicle fueling area, with three fuel delivery stations (unleaded, diesel, and off-road diesel). As a result, all maintenance vehicles, whether they be pickup trucks, dump trucks, or backhoes, must wait in a single line each morning or evening to access fuel. This creates a significant operational hindrance due to the inevitable delays in getting maintenance vehicles dispatched, and also creates traffic snarls within the fenced maintenance compound as vehicles jockey and maneuver for access to the various surrounding buildings and outdoor storage areas.

This situation could be alleviated by adding a second remote drive-thru fueling lane, but implementing this is impossible on this site without further compromising the maneuvering space within the already overcrowded maintenance compound.

6.1.5. Maintenance Compound Parking and Maneuvering

This fenced and gated area provides for outdoor equipment storage, bulk materials storage bins, vehicle fueling as described in 6.1.4, facility shipping/receiving, access to the 4-bay Maintenance Shop, and access to the Unconditioned Storage Building. Vehicles using this area include several dump trucks with utility trailers, a tractor trailer, and numerous pickup trucks.



As shown in *Figure 2*, turning radii and maneuvering clearances in this area are extremely tight. This is worsened by staff overflow parking in this area, and by vehicles stacking to use the single-lane fueling station. The Owner reports that several vehicle accidents have occurred within this compound in the past several months as a result of overcrowding and blind corners. This situation will become worse as the need for additional service vehicles grows along with the customer base.

This area represents a significant safety issue for HCWD2, with the potential for continued workplace accidents. With site expansion being impossible, it is unlikely that there is a reasonable long-term relief to the congestion and maneuvering issues within this area of the site without moving at least some portion of the maintenance operations off-site.

6.2. Buildings and Facilities

6.2.1. Customer Service Building

This building is the administrative headquarters for the District, and is the primary point of interaction between staff and customer. As such, it is especially important for this building to be adequately size and configured to provide efficient and comfortable interactions with the public.

The International Facilities Management Association (IFMA) published a report in 2010 entitled *Space and Project Management Benchmarks* which analyzed existing office facilities across the United States for various business sectors, including utility companies. The table in *Figure 5*, excerpted from this IFMA report, indicates 442 SF/employee as a mean size standard for utility-sector office space.

SPACE PER OCCUPANT

INDUSTRY TYPE	N	INTERIOR GROSS AREA				PLANNABLE GROSS AREA			
		MEAN	MEAN	MEDIAN	MEDIAN	MEAN	MEAN	MEDIAN	MEDIAN
Services Sector	#	SF	SM	SF	SM	SF	SM	SF	SM
Banking	26	345	32.0	341	31.5	332	30.8	308	28.6
Health Care	17	452	41.7	348	33.9	414	38.2	329	31.0
Hospitality	9	248	23.0	256	23.7	231	21.4	250	23.2
Information Services	15	347	32.2	300	27.8	327	30.3	260	24.1
Insurance	38	324	30.1	313	29.1	314	29.2	298	27.7
Investment Services	10	293	27.1	269	25.0	280	26.0	266	24.7
Media	7	361	33.5	335	31.1	342	31.7	267	24.8
Professional Services	24	359	28.4	323	25.5	345	26.4	309	24.9
Trade	18	382	35.5	316	29.3	373	34.6	313	29.1
Transportation	5	337	31.3	324	30.0	317	29.4	310	28.7
Utilities	14	442	41.0	406	37.6	414	38.4	375	34.8

Figure 5

Using the IFMA-recommended size standard, and the current and projected staffing levels for HCWD2, yields the following analysis of space and program accommodation within the existing Customer Service Building.

Comparison of IFMA size recommendations with current Customer Service Building

	Staffing Level	IFMA Size Recommendation	Customer Service Building	Δ
Current	56	24,752 SF	13,180 SF	-46.8%
Projected	77	34,034 SF	13,180 SF	-61.3%

Figure 6

As shown in *Figure 6*, the current Customer Service Building falls well short of the IFMA recommendations. On-site observations of daily operations and interviews with HCWD2 staff

confirm that significant additional space is needed in order to provide optimal customer service and efficient day-to-day operations. Specific additional space needs are identified as follows:

- Area for new engineering department
- Expanded area for improved water quality operations
- Area for proposed new sanitary sewer department
- Improved accommodations for walk-in customers, including additional payment station, expansion of lobby/waiting, small break-out conference rooms for private discussion of billings and services, and increased number of customer service stations.
- Expanded public accommodation in boardroom
- Expanded support spaces such as restrooms, work rooms, and storage
- Additional training rooms, conference rooms, and break-out rooms for in-house meetings.
- Expanded office space across every department to reduce overcrowding.
- Space for additional customer service staff, as the customer base continues to grow over the next 20 years.



The anticipated growth in customer base, and the proposed expansion of services (both outlined in Part 4 of this report), will create ever increasing space pressure on the existing facility over the next 20 years. A more detailed analysis, on a space-by-space basis, is included in Appendix B of this report.

Resolving these space needs on the current site would present a significant challenge. The existing single-story Customer Service Building cannot be expanded horizontally on the current site without significant negative impact to available parking; and the expansion of the current overall site by acquiring additional property is also not possible due to

limitations described previously in this report. Vertical expansion of the existing facility (i.e. adding additional stories on to the existing structure) is not feasible structurally. To achieve anything close to the amount of space recommended by the IFMA standards, it would be necessary to demolish the existing office, and re-build it as a new two-story building on the same footprint.

6.3. Maintenance Shop:

This building provides support for HCWD2 field operations. This includes storage of materials and vehicles, shipping/delivery, light vehicle maintenance, and vehicle washing. The existing Maintenance Shop includes 3 vehicle bays, 1 vehicle wash bay, parts storage, meter maintenance, and long-term records storage.



Currently, all three vehicle bays and the wash bay are used for overnight service vehicle storage, with no bays open for vehicle maintenance or washing. Ideally, pickup trucks would be stored inside, alongside their corresponding service equipment. There is not enough space to accommodate this, so the pickups are parked out in the fenced compound, reducing the already tight turning radii and drive aisle widths in that area. All of these factors inhibit the efficient storage and dispatch of service vehicles.

To resolve these shortcomings would require a significant expansion of the Maintenance Shop. As stated previously in this report, there is insufficient space on the site to accommodate such an expansion, and there is no opportunity to acquire additional property. From the perspective of this author, the only realistic solutions is to relocate some or all of the service vehicle and/or storage operations to an off-site location. Unfortunately, separating these functions from the administrative building would result in a decrease in overall operational efficiency. The following are the defined additional programmatic/space needs for this building:

- Two additional vehicle storage bays (five total) to accommodate day to day activities and double parked vehicle storage, consisting of 1 maintenance truck and 1 maintenance truck / trailer combo. The bays would need to be approximately 80' in length to accomplish this goal.

- One additional 80' vehicle bay to accommodate anticipated future expansion of services, allow for light vehicle and equipment maintenance, and to allow for direct indoor deliveries to the meter maintenance and storage areas.
- Provide one dedicated vehicle and equipment wash bay, matching the other bays in length.
- Expand the available space for meter maintenance/storage, maintenance shop, and small parts storage.

These increased accommodations will become increasingly critical as the customer base grows over the next 20 years.

6.4. Unconditioned Storage Building:

This building provides bulk storage for large fittings, pipe, and maintenance trailers. The long center aisle is also currently used for overnight storage of maintenance vehicles.

Staff advise that this facility is meeting current demand, but that there is no unused space to accommodate future growth, nor to accommodate anticipated storage needs for sanitary sewer operations.

Over the next 20 years, it is anticipated that demand for unconditioned storage will require an estimated additional 2,500 ft² above that currently in place. The resolution of this potential shortcoming is described in section 6.3 as part of the narrative on the Maintenance Service Building.

7. CONCLUSION

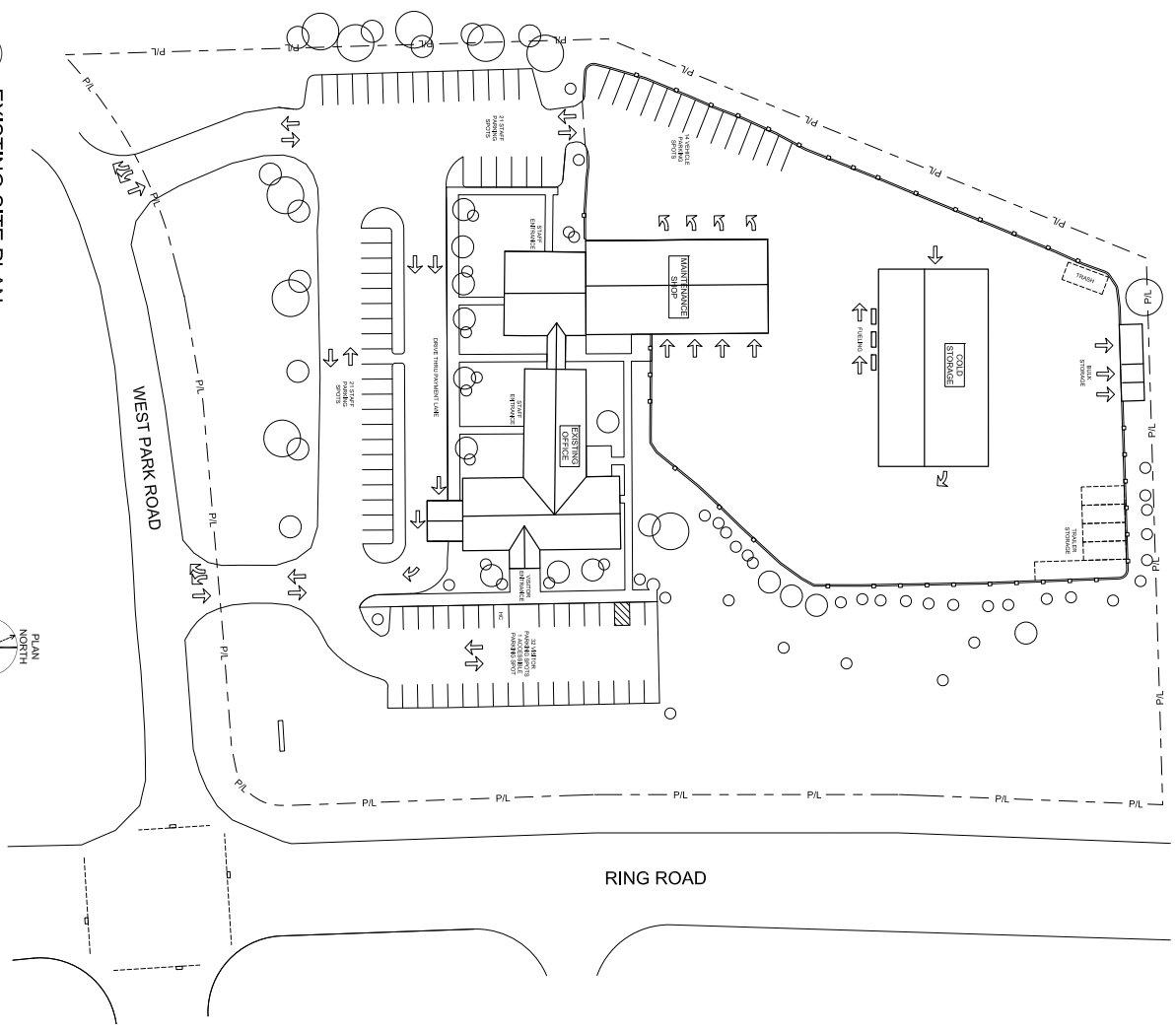
The existing facilities at 360 Ring Road are in good, well-maintained condition, with no significant recommendations regarding condition or repair. There are, however, many identified concerns regarding the facility's ability to meet current and projected operational needs from a size and configuration standpoint.

The customer base is growing, and will, in our opinion, continue to grow over the next twenty years and beyond. As this growth occurs, the increased space demands will place ever-mounting pressure on the existing site and buildings. At some point in the not too distant future, it will be necessary to alleviate this pressure to avoid operational compromises that reduce staff safety and customer satisfaction.

APPENDIX A

EXISTING FACILITY SITE AND FLOOR PLANS

1 EXISTING SITE PLAN
SCALE: 1"=40'-0"



RING ROAD

WEST PARK ROAD

REVISIONS		DATE	BY	REVISION

DESIGNED:	ARN
DRAWN:	STAFF
REVIEWED:	ARN
APPROVED:	ARN

EXISTING SITE PLAN
HCWD #2 - FACILITY ASSESSMENT
ELIZABETHTOWN, KENTUCKY



GRW PROJECT NO. 4596-01
CLIENT PROJECT NO. OWNER
ALL RIGHTS RESERVED. THIS DOCUMENT IS THE PROPERTY OF GEOSPATIAL INC. AND SHALL NOT BE REPRODUCED IN WHOLE OR IN PART OR USED FOR CONSTRUCTION OF OTHER THAN THE SPECIFIC PROJECT WITHOUT WRITTEN PERMISSION.

AE001

DATE: APRIL, 2017
SCALE: 1" = 40'-0"

1 FIRST FLOOR - ADMINISTRATION / CUSTOMER SERVICE
SCALE: 3/16" = 1'-0"



SPACE LEGEND

- OFFICES
- BOARDROOM
- CONFERENCE ROOM
- CUSTOMER SERVICE
- FINANCE SERVICES
- TRANSMISSION AND DISTRIBUTION SERVICES
- IT
- SHARED SERVICES
- UTILITIES
- RESTROOMS
- TRANSITIONAL SPACE

REVISIONS			
NO.	REVISION/DESCRIPTION	DATE	BY

DESIGNED: ARN	DATE: APRIL 2017
STAFF: ARN	SCALE: 3/16" = 1'-0"
APPROVED: ARN	PROJECT NO: AE101

EXISTING FLOOR PLAN
HCWD #2 - FACILITY ASSESSMENT
ELIZABETHTOWN, KENTUCKY



GRW PROJECT NO. 4596-01
CLIENT PROJECT NO. Owner
<small>ALL RIGHTS RESERVED. THIS DOCUMENT IS THE PROPERTY OF GRW ENGINEERING, ARCHITECTURE AND GEOSPATIAL. IT IS TO BE USED ONLY FOR THE PROJECT AND SHALL NOT BE REPRODUCED IN WHOLE OR IN PART WITHOUT WRITTEN PERMISSION FROM GRW ENGINEERING, ARCHITECTURE AND GEOSPATIAL.</small>

1 FIRST FLOOR - ADMINISTRATION / TRANSMISSION AND DISTRIBUTION
SCALE: 3/16" = 1'-0"

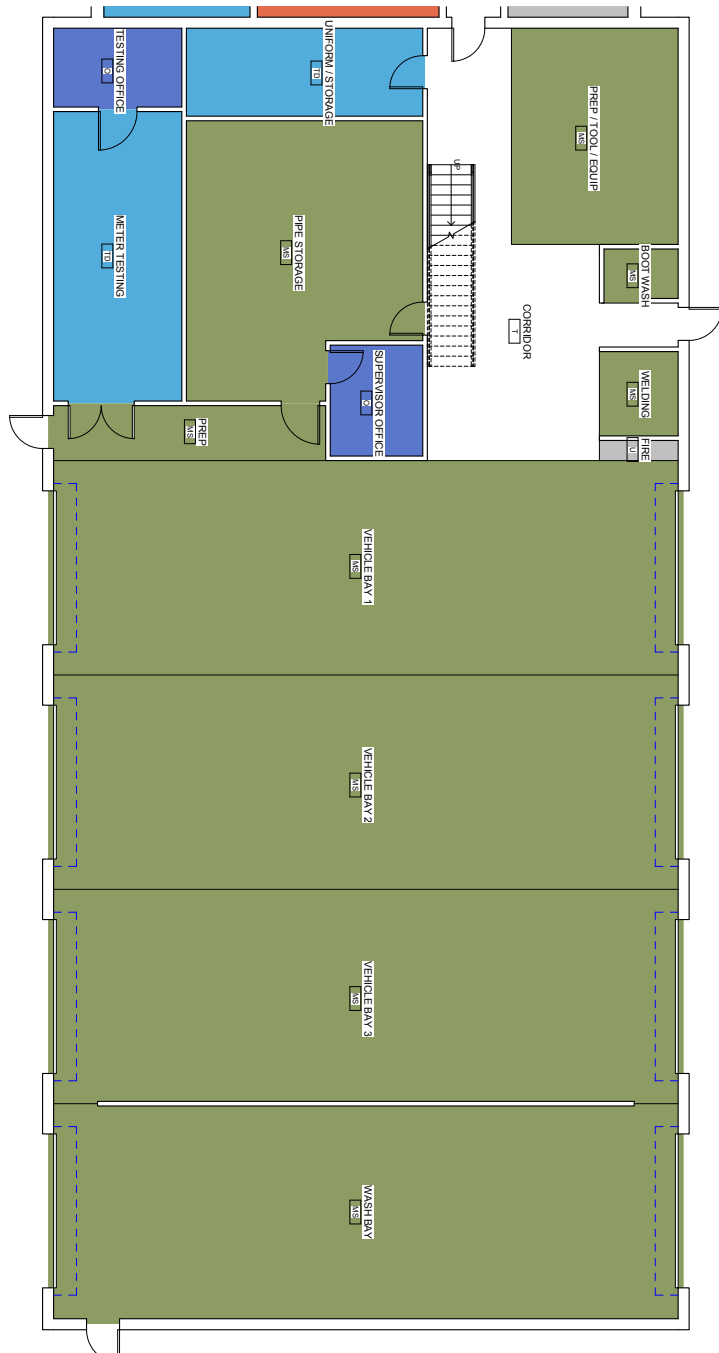


- SPACE LEGEND**
- OFFICES
 - MAINTENANCE SERVICES
 - TRANSMISSION AND DISTRIBUTION SERVICES
 - SHARED SERVICES
 - UTILITIES
 - RESTROOMS
 - TRANSITIONAL SPACE

<p>DESIGNED: ARN DRAWN: STAFF REVIEWED: ARN APPROVED: ARN</p>	<p>EXISTING FLOOR PLAN HCWD #2 - FACILITY ASSESSMENT ELIZABETHTOWN, KENTUCKY</p>	 ENGINEERING - ARCHITECTURE - GEOSPATIAL www.grwinc.com	<p>GRW PROJECT NO. 4596-01 CLIENT PROJECT NO. Owner</p> <p><small>ALL RIGHTS RESERVED. THIS DOCUMENT IS THE PROPERTY OF GRW ENGINEERING, INC. AND SHALL NOT BE REPRODUCED IN WHOLE OR IN PART OR USED FOR ANY OTHER PROJECT WITHOUT WRITTEN PERMISSION.</small></p>	<p>DATE: APRIL 2017 SCALE: 3/16" = 1'-0"</p> <p>AE102</p>																																				
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SPACE LEGEND

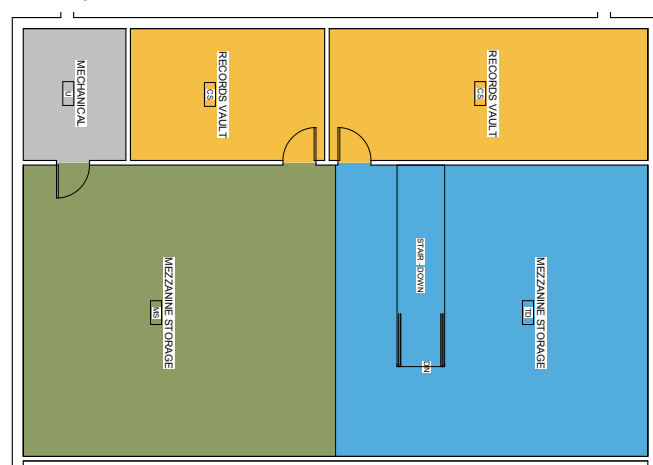
- OFFICES
- MAINTENANCE SERVICES
- TRANSMISSION AND DISTRIBUTION SERVICES
- UTILITIES
- RESTROOMS
- TRANSITIONAL SPACE



1 FIRST FLOOR - MAINTENANCE SHOP
SCALE: 3/16" = 1'-0"

SPACE LEGEND

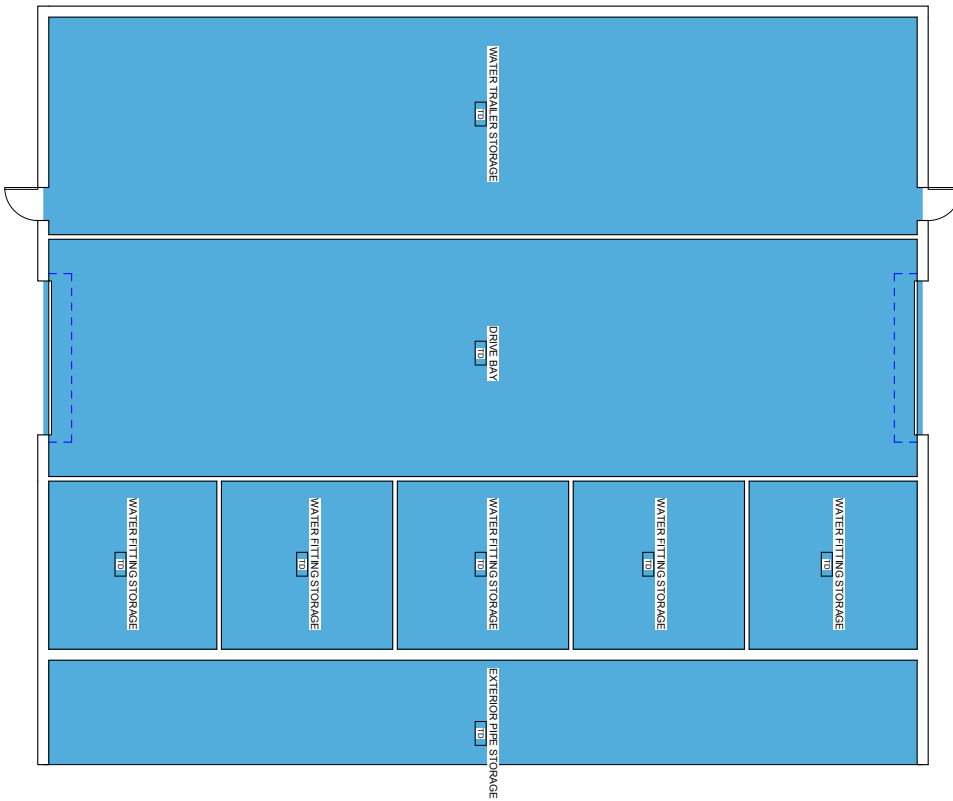
- CUSTOMER SERVICE
- MAINTENANCE SERVICES
- TRANSMISSION AND DISTRIBUTION SERVICES
- UTILITIES



2 MEZZANINE PLAN - MAINTENANCE SHOP
SCALE: 3/16" = 1'-0"

<p>DESIGNED: ARN DRAWN: STAFF REVIEWED: ARN APPROVED: ARN</p>	<p>EXISTING FLOOR PLAN HCW2 #2 - FACILITY ASSESSMENT ELIZABETHTOWN, KENTUCKY</p>	 ENGINEERING - ARCHITECTURE - GEOSPATIAL www.grwinc.com	<p>GRW PROJECT NO. 4596-01 CLIENT PROJECT NO. Owner</p> <p><small>ALL RIGHTS RESERVED. THIS DOCUMENT IS THE PROPERTY OF GRW ENGINEERING, ARCHITECTURE AND GEOSPATIAL. IT SHALL NOT BE REPRODUCED IN WHOLE OR IN PART OR USED FOR ANY OTHER PROJECT WITHOUT WRITTEN PERMISSION.</small></p>	<p>DATE: APRIL, 2017 SCALE: 3/16" = 1'-0"</p> <p>AE103</p>																								
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1 FIRST FLOOR - COLD STORAGE
SCALE: 3/16" = 1'-0"



SPACE LEGEND
■ TRANSMISSION AND DISTRIBUTION SERVICES

<p>DATE: APRIL 2017 SCALE: 3/16" = 1'-0" SHEET NO.: AE104</p>	<p>REVISIONS</p> <table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th>NO.</th> <th>REVISION/DESCRIPTION</th> <th>DATE</th> <th>BY</th> </tr> </thead> <tbody> <tr><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td></tr> <tr><td> </td><td> </td><td> </td><td> </td></tr> </tbody> </table> <p>SCALE CHECK: THIS MARK SHOULD MEASURE EXACTLY 1" WHEN PLOTTED</p>	NO.	REVISION/DESCRIPTION	DATE	BY																																	<p>DESIGNED: ARN DRAWN: STAFF REVIEWED: ARN APPROVED: ARN</p>	<p>EXISTING FLOOR PLAN HCWD #2 - FACILITY ASSESSMENT ELIZABETHTOWN, KENTUCKY</p>	<p>ENGINEERING - ARCHITECTURE - GEOSPATIAL www.grwinc.com</p>	<p>GRW PROJECT NO. 4596-01 CLIENT PROJECT NO. Owner</p> <p><small>ALL RIGHTS RESERVED. THIS DOCUMENT IS THE PROPERTY OF GRW ENGINEERING, INC. AND SHALL NOT BE REPRODUCED IN WHOLE OR IN PART OR USED FOR ANY OTHER PROJECT WITHOUT WRITTEN PERMISSION.</small></p>
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APPENDIX B

EXISTING FACILITY DETAILED AREA ANALYSIS

Existing Facilities Assessment

Hardin County Water District No.2

Space	Existing Facilities Program Area				Recommended Program Area per IFMA	Existing Facility Δ %
	Quantity	Net SF	# Occupant	Net SF Per Occupant	Net SF Per Occupant	
Offices						
General Manager	1	264	1	264	332	-20.5%
Executive Management	4	737	4	184	332	-44.5%
Chairmen's	-	-			332	-100.0%
Administrative Manager	7	874	7	125	158	-21.0%
WQ / GIS / Engineering	7	540	7	77	140	-44.9%
Flex / Tax Office	-	-			86	-100.0%
Service Technicians	5	332	5	66	86	-22.8%
Shared Crew	8	285	8	36	43	-17.2%
Boardroom						
Boardroom	1	833	35	24	25	-4.8%
Boardroom Storage	1	95				n/a
Conference Rooms						
Shared Conference	1	253	12	21	15	40.6%
Work Room - GM	1	159	6	27	15	76.7%
Work Room - HR / Acct	-	-			15	-100.0%
Library / Flex Conference	1	173	4	43	100	-56.8%
Customer Service						
Customer Service Lobby	1	550				n/a
CSR Stations	4	268	4	67	90	-25.6%
Account Services Stations	4	360	4	90	90	0.0%
Customer Stations	2	110	4	28	43	-36.0%
Billing Stations	4	338	4	85	90	-6.1%
Payment Stations	2	70	2	35	90	-61.1%
Payment Teller	1	85	1	85	180	-52.8%
Records Vault / Archive	2	559				n/a
Vehicle Drive-Thru	1	320				n/a
Finance Services						
Finance Stations	4	381	4	95	90	5.8%
Maintenance Services						
Prep / Tool Equipment	1	456				n/a
Pipe / Fittings Storage	1	500				n/a
Vehicle Bay	3	3,300				n/a
Wash Bay	1	1,100				n/a
Storage	1	752				n/a
Distribution Services						
Meter Testing / Storage	1	307				n/a
Uniform Storage	1	172				n/a
Storage	1	752				n/a
Water Fitting Storage	5	1,250				n/a
Water Trailer Storage	1	1,600				n/a
Drive Bay	1	1,800				n/a
Exterior Storage	1	900				n/a

Space	Existing Facilities Program Area				Recommended Program Area per IFMA	Existing Facility Δ %
	Quantity	Net SF	# Occupant	Net SF Per Occupant	Net SF Per Occupant	

IT

CPU	1	88				n/a
-----	---	----	--	--	--	-----

Shared Services

Kitchen	1	320				n/a
Breakroom	1	217	15	14	15	-3.6%
Dayroom	1	1,840	125	15	15	-1.9%

APPENDIX C

EXISTING FACILITY PHOTOGRAPHS

ADDITIONAL EXTERIOR VIEWS



Maintenance Compound



Drive-Thru Vehicle Stacking



Maintenance Compound Turning Radii



Employee Parking

ADDITIONAL INTERIOR VIEWS



Auditors utilizing available workspace



Uniform Storage



Training Room in use



Pipe Fitting Storage Area



Records Storage



Shop Area



Maintenance Shop



Service Technician Work Area



Training Room

EXHIBIT 4

RESOLUTION NO. 2016-05-04

RESOLUTION OF THE HARDIN COUNTY WATER DISTRICT NO. 2 APPROVING PURCHASE OF REAL ESTATE LOCATED AT 315 RING ROAD, ELIZABETHTOW , KENTUCKY AND AUTHORIZING OFFICERS TO EXECUTE DEED AND CLOSING DOCUMENTS

WHEREAS, Hardin County Water District No. 2 (the “**District**”) is a water district organized under the provisions of KRS Chapter 74;

WHEREAS, the District has determined that its present customer service center and warehouse buildings located at 360 Ring Road are no longer adequate for its future needs;

WHEREAS, the District cannot expand or enlarge its existing customer service center and warehouse buildings, nor can it construct additional facilities at its current location, because of limited acreage;

WHEREAS, the District has determined that the acquisition of additional real estate for the purpose of eventually relocating its customer service center, warehouses, and related facilities to that location is necessary and is in the public interest;

WHEREAS, the District has determined that the parcel of real estate located at 315 Ring Road, containing approximately 23 acres, and designated

as Lot 1A of the Amended Record Plat of Hughes Commerce Center, Section 2, Lot 2, as depicted on the plat of record in Plat Cabinet 1, Sheet 1615, in the office of the Hardin County Clerk (the “**Real Estate**”), is a suitable and highly desirable site for a customer service center, warehouses, and other distribution system operations and has ample acreage for future expansion; and

WHEREAS, the District has the authority, pursuant to KRS Chapters 74 and 106 and other applicable laws, to acquire the Real Estate;

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COMMISSIONERS OF THE HARDIN COUNTY WATER DISTRICT NO. 2 AS FOLLOWS:

Section 1. The facts, recitals, and statements contained in the foregoing preamble of this Resolution are true and correct and are hereby affirmed and incorporated as a part of this Resolution.

Section 2. It is hereby determined and declared to be necessary and in the public interest for the District to acquire the Real Estate for the sum of \$2,600,000.00.

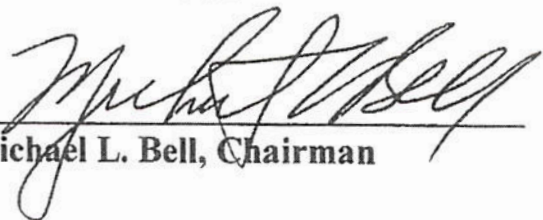
Section 3. Both the Chairman of the District, Michael L. Bell, and the Secretary-Treasurer, Morris L. Miller, acting together or alone, are hereby authorized, directed, and empowered, for and on behalf of the District, to execute the Deed, real estate Closing documents, and any and all other documents as may be reasonably necessary to effectuate the

acquisition of the Real Estate. **The signature of only one (1) of the officers listed above will be required.**

Section 4. This Resolution shall take effect upon its adoption.

The Chairman declared the foregoing Resolution duly adopted on May 17, 2016.

**HARDIN COUNTY WATER
DISTRICT NO. 2**

BY: 
Michael L. Bell, Chairman

ATT ST:



Morris L. Miller,
Secretary-Treasurer

EXHIBIT 5

**APPRAISAL REPORT
REMINGTON ARMS PROPERTY**

**LOCATED AT
315 RING ROAD
ELIZABETHTOWN, KY 42701**

**AS OF
JULY 8, 2016**

Prepared For:

*Mr. James Jeffries, BSME, MBA
General Manager
Hardin County Water District No. 2
360 Ring Road
Elizabethtown, KY 42701*

Prepared By:

*Baumgardner & Associates, P.S.C.
P.O. Box 721
Elizabethtown, KY 42702*



P.O. Box 721, 236 W. Dixie
Elizabethtown, Ky. 42702
Office (270) 765-6072
FAX (270) 769-1003

July 11, 2016

Mr. James Jeffries, BSME, MBA
General Manager
Hardin County Water District No.2
260 Ring Road
Elizabethtown, KY 42701

RE: Remington Arms Property
315 Ring Road
Elizabethtown, KY 42701

Dear Mr. Jeffries:

As requested I have personally inspected and appraised the Remington Arms building located 315 Ring Road, Elizabethtown, KY. The purpose of the Appraisal Report is to conclude an opinion of the market value of the fee simple estate of the property as of July 8, 2016. The intended use of the appraisal will be for internal use by Hardin County Water District No. 2. This appraisal is not intended for any other use or for use by others.

In accepting this assignment I disclosed that I have not provided any service regarding the subject property within the three years immediately preceding the acceptance of this assignment as an appraiser or in any other capacity.

The appraisal report is intended to comply with the reporting requirements set forth under Standards Rule 2-2(a) of the Uniform Standards of Professional Appraisal Practice. As such, it may only present summary discussions of the data, reasoning, and analyses that were used in the appraisal process to develop the opinion of value. Additional supporting documentation concerning the data, reasoning, and analyses may be retained in file.

It is my opinion and conclusion that the market value of the fee simple estate was \$3,600,000 for the herein described property as of July 8, 2016.

This transmitter letter is followed by the certification of the appraisal and the **appraisal report** containing 188 pages, further describing the subject property and containing the reasoning and pertinent data leading to the opinion of value. Your attention is directed to the “General Underlying Assumptions” and “Limiting Conditions” which are considered usual for this type of assignment and have been included at the beginning of the report.

Respectfully submitted,

A handwritten signature in blue ink that reads "Rick O. Baumgardner". The signature is written in a cursive style with a long, sweeping tail on the letter 'r'.

Rick O. Baumgardner, MAI, SRA, MRICS, GAA
Baumgardner & Associates, P.S.C.
President
State-Certified General R.E. Appraiser #000377

SLB/jkn

This letter must remain attached to the report, which contains 188 pages including related exhibits in order for the value opinion set forth to be considered valid.

EXECUTIVE SUMMARY
OF IMPORTANT FACTS AND CONCLUSIONS

Effective Date of Appraisal:		July 8, 2016
Date of Inspection:		July 8, 2016
Date of Report:		July 11, 2016
Property Appraised:		Remington Arms Building 315 Ring Road Elizabethtown, KY 42701
Value Appraised:		Market Value
Property Rights Appraised:		Fee Simple
Highest & Best Use:	As Vacant As Improved	Industrial Site Office/Light Industrial Use
Property Description:		
Site Size:		23.076 acres total
Gross Building Area:		32,250 SF Office/Research Facility
Usable Area:		32,250 SG
Age:		1995, 21 years actual
Zoning Designation:		I-2 Regional Industrial
Projected Exposure Time:		15-18 months

Value Methods

Sales Comparison Approach		\$3,638,000
Unit of Comparison	Price per SF	
Income Approach		
Overall Cap Rate	9%	
Final Indicated Value Income Approach with excess land		\$3,582,900
Final Estimate of Market Value		\$3,600,000 *

Breakdown of Value

Excess Land 18.073 Acres	\$ 703,000.00
Improvements & Five Acres +	\$2,897,000.00

*** Final value based on hypothetical condition that the excess land can be divided off the parent tract and sold at highest and best use of industrial site.**

EXHIBIT 6

Doc ID: 010094580004 Type: DEE
Kind: DEED
Recorded: 06/13/2016 at 10:56:04 AM
Receipt#: 2016-00006779
Page 1 of 4
Fees: \$20.00 Tax: \$2,600.00
Hardin County Clerk
Debbie Donnelly Clerk
BK **1425** PG **608-611**

GRANTOR: Aulbach-Pence, LLC, a Kentucky limited liability company
GRANTEE: Hardin County Water District No. 2
PVA#: 186-00-00-024
ACV: \$2,600,000.00
PROPERTY ADDRESS: 315 Ring Road, Elizabethtown, KY 42701
LEGAL DESCRIPTION: Lot 1A Hughes Commerce Center, Section 2

DEED

THIS DEED OF CONVEYANCE, made and entered into on this 13th day of June, 2016, by and between **Aulbach-Pence, LLC, a Kentucky limited liability company**, whose address is 342 E. Dixie Avenue, Elizabethtown, KY 42701, hereinafter referred to as **Grantor**; and **Hardin County Water District No. 2**, whose address is P.O. Box 970, Elizabethtown, KY 42702-0970, hereinafter referred to as **Grantee**. Pursuant to KRS 382.135 the in-care-of address to which the property tax bill for current year for the property being transferred may be sent is P.O. Box 970, Elizabethtown, KY 42702-0970.

WITNESSETH:

THAT FOR AND IN CONSIDERATION of the sum of Two Million Six Hundred Thousand and 00/100 Dollars (\$2,600,000.00), cash in hand paid to QI Escrow Funds, LLC, the qualified intermediary, the receipt of all of which is hereby acknowledged, the Grantor does hereby bargain, sell, alien, grant and convey unto the Grantee, its successors and/or assigns, that certain real property located at 315 Ring Road, Elizabethtown, Hardin County, Kentucky, and which property is more particularly described as follows:

Being Lot 1A of the Amended Record Plat of Hughes Commerce Center, Section 2, Lot 2, as shown on plat of record in Plat Cabinet 1, Sheet 1615, in the office of the Hardin County Clerk.

Being the same property conveyed to Aulbach-Pence, LLC, a Kentucky limited liability company by Deed dated May 26, 2016 from Remington Arms Company, Inc., a Delaware corporation, of record in Deed Book 1424, pages 1139-1142. The Deed from Remington Arms Company, LLC erroneously referred to Deed Book 828, page 47 instead of Deed Book 828, page 647 in its source of title.

TO HAVE AND TO HOLD, the above-described real property, together with all the improvements thereon and all the appurtenances thereunto belonging unto the Grantee, its successors and assigns, forever, with a Covenant of General Warranty, subject, however, except as against all recorded restrictions, easements and limitations as to use, and except as against all recorded restrictions, easements and limitations as to use, and except as against existing zoning regulations, and including, but not limited to, those recorded in Plat Cabinet 1, Sheet 1615; Plat Cabinet 1, Sheet 503; Plat Cabinet 1, Sheet 746 and those Protective Covenants of record in Deed Book 362, Page 273 in the office of the Hardin County Clerk.

The parties hereto state that the consideration reflected in this deed is the full consideration paid for the property. The Grantee joins in this deed for the sole purpose of certifying the consideration pursuant to KRS Chapter 382. The parties further certify their understanding that falsification of the stated consideration or sale price of the property is a Class D felony, subject to one to five years imprisonment and fines up to \$10,000.00.


The contractual rights of Aulbach-Pence, LLC, a Kentucky limited liability company, having been assigned to the Qualified Intermediary, QI Escrow Funds, LLC, this direct conveyance to Grantee is made pursuant to the authorization and direction of the Qualified Intermediary.

IN TESTIMONY WHEREOF, witness the hands of the parties hereto on this the date first above written.

[remainder of page intentionally left blank; signatures following next page]

GRANTOR:

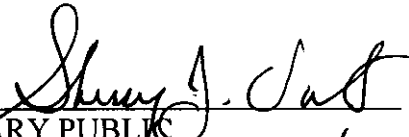
Aulbach-Pence, LLC

By: 
Tim L. Aulbach, Manager

STATE OF KENTUCKY

COUNTY OF HARDIN

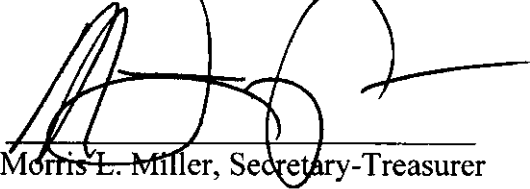
The foregoing Deed and Consideration Certificate was acknowledged, subscribed and sworn to before me this the 13th day of June, 2016, by **Tim L. Aulbach, as Manager**, for and on behalf of **Aulbach-Pence, LLC**, and is authorized to act on behalf of the said company for the purpose herein stated by resolution duly adopted.


NOTARY PUBLIC
My Commission Expires: 8/26/2019

SHERRY J. VINCENT
SHERRY J. VINCENT
Kentucky, State At Large
My Commission Expires 8/26/2019
My Commission I.D. # 539795

GRANTEE:

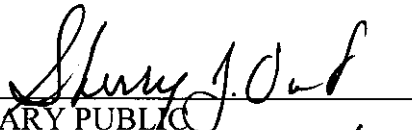
Hardin County Water District No. 2

By: 
Morris L. Miller, Secretary-Treasurer

STATE OF KENTUCKY

COUNTY OF HARDIN

The foregoing Deed and Consideration Certificate was acknowledged, subscribed and sworn to before me this the 13th day of June, 2016, by **Morris L. Miller, as Secretary-Treasurer**, for and on behalf of **Hardin County Water District No. 2**, and is authorized to act on behalf of the said company for the purpose herein stated, by resolution duly adopted.


NOTARY PUBLIC
My Commission Expires: 8/26/2019

THIS INSTRUMENT WAS PREPARED BY:

KERRICK BACHERT, P.S.C.
2413 Ring Road, Suite 117
Elizabethtown, KY 42701
(270)737-9088

SHERRY J. VINCENT
NOTARY PUBLIC
Kentucky, State At Large
ID # 539795
Commission Expires 8/26/2019


D. Michael Coyle

I, Debbie Donnelly, County Clerk of Hardin County, Kentucky, hereby certify that the foregoing instrument has been duly recorded in my office.

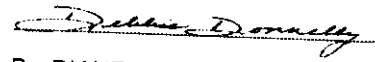

By: DIANE J NALL, dc

EXHIBIT 7

**MINUTES OF THE
HARDIN COUNTY WATER DISTRICT NO. 2
BOARD OF COMMISSIONERS' MEETING
March 20, 2018**

The Board of Commissioners of Hardin County Water District No. 2 held its regular monthly meeting on March 20, 2018 at 4:00 p.m. at the Reesor Customer Service Center, 360 Ring Road, Elizabethtown, Kentucky. Present were Commissioners Mike Bell, Tim Davis, John Effinger, Morris L. Miller, and Cordell Tabb. Also present were General Manager James R. Jeffries, Scott Clark, Kelli Lee, Shaun Youravich, Damon Talley, Mark Sneve, and Vaughn Williams. Chairman Bell declared that a quorum was present and called the meeting to order.

VISITORS

No visitors were present.

SPECIAL RECOGNITION

Chairman Bell and the other Commissioners praised the entire District Staff for its exemplary response to the water transmission main break that occurred near the I-65 Interchange on March 12, 2018.

MINUTES & FINANCIAL REPORT

The Minutes of the February 20, 2018 meeting were reviewed. Motion was made by Commissioner Tabb and seconded by Commissioner Davis to approve the Minutes as prepared. Motion carried unanimously.

The Financial Report for the month of February was reviewed. Motion was made by Commissioner Miller and seconded by Commissioner Tabb to accept the Financial Report as presented and to authorize payment of the bills that are due and payable at this time. Motion carried unanimously. The Commissioners also reviewed the status of the District's various investment accounts and the long-term debt payment requirements.

REPORTS

1. **Engineering Reports.** Vaughn Williams presented the engineering report for water. Mark Sneve presented the engineering report for wastewater.
 - A. **Engineering Reports – Water.** Vaughn Williams presented an update on the status of the White Mills WTP Rehab Project. The Project is now behind schedule because the contractors have encountered unforeseen structural issues. Both contractors have requested a 30-day extension on their contracts (**see Old Business, Item 1 for Board Action**).
 - B. **Engineering Reports – Wastewater – Nolin River Watershed.** Mark Sneve presented a status report on the Nolin River Watershed Wastewater Project. Because of the extremely wet weather that has occurred since the contractors have commenced construction on this Project, all the contractors have requested time extensions (**see Old Business, Item 2 for Board Action**).
2. **Departmental Reports.** General Manager Jeffries presented the Departmental Reports.

OLD BUSINESS

1. **White Mills WTP Rehab Project.** Upon recommendation of Vaughn Williams, motion was made by Commissioner Tabb and seconded by Commissioner Effinger to grant both the contractor performing the filter work at the White Mills WTP and the painting contractor at the White Mills WTP a 30-day extension of time. Motion carried unanimously.
2. **Nolin Wastewater Project.** Upon recommendation of Mark Sneve, motion was made by Commissioner Davis and seconded by Commissioner Tabb to grant a 30-day extension of time for Contract 1, a 30-day extension of time for Contract 2, and a 16-day extension of time for Contract 4 of the Nolin Wastewater Project. Motion carried unanimously.

3. Architectural Firm Contract Approval. General Manager Jeffries reviewed the terms of the proposed Agreement between Brandstetter Carroll, Inc. and the District for architectural services for the 315 Ring Road Project. Motion was made by Commissioner Effinger and seconded by Commissioner Tabb to approve the Proposed Agreement and to authorize Chairman Bell to execute the Agreement. Motion carried unanimously.

NEW BUSINESS

1. Draft Bill Format. Scott Clark presented a new draft bill format for review by the Commissioners. The bill format includes a new section for sewer service. The Commissioners were favorably impressed by the new format. It was not necessary to take action at this time.

2. Wholesale Inquiry. Chairman Bell and General Manager Jeffries presented an inquiry from District No. 1 to explore the feasibility of purchasing water on a wholesale basis from District No. 2. By consensus, the Commissioners authorized Chairman Bell and General Manager Jeffries to explore this opportunity with District No. 1.

3. Travel Requests. The Commissioners reviewed the Employee Travel Request Forms submitted by Scott Clark and Shaun Youravich to attend the AWWA Annual Conference from June 11 through June 14, 2018. Motion was made by Commissioner Effinger and seconded by Commissioner Davis to approval both travel requests. Motion carried unanimously.

4. Crop Lease Renewal. Upon recommendation of Shaun Youravich, motion was made by Commissioner Tabb and seconded by Commissioner Davis to renew the crop lease of the 315 Ring Road property for \$150.00 per acre for the 2018 crop season. The tenant is Kenneth Hayden. Motion carried unanimously.

5. Executive Session. Motion was made by Commissioner Tabb and seconded by Commissioner Effinger to go into Executive Session to discuss real property acquisitions, potential litigation, and personnel matters involving one or more specific employees. Motion carried unanimously.

***** EXECUTIVE SESSION DISCUSSION *****

Motion was made by Commissioner Miller and seconded by Commissioner Davis to return to open session. Motion carried unanimously. Chairman Bell announced that it would not be necessary to take action concerning any of the matters discussed in Executive Session.

ADJOURNMENT

There being no further business to come before the meeting, motion was made by Commissioner Tabb and seconded by Commissioner Miller to adjourn the meeting. Motion carried unanimously.

HARDIN COUNTY WATER DISTRICT NO. 2

BY: _____


Morris L. Miller, Secretary

Date Approved: _____

4-17-18

BY: _____

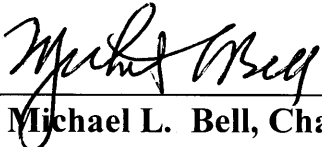

Michael L. Bell, Chairman

EXHIBIT 8

**MINUTES OF THE
HARDIN COUNTY WATER DISTRICT NO. 2
BOARD OF COMMISSIONERS' MEETING
May 21, 2019**

The Board of Commissioners of Hardin County Water District No. 2 held its regular monthly meeting on May 21, 2019 at 4:00 p.m. at the Reesor Customer Service Center, 360 Ring Road, Elizabethtown, Kentucky. Present were Commissioners Mike Bell, Tim Davis, John Effinger, Morris L. Miller, and Cordell Tabb. Also present were Amber Pike, Shaun Youravich, Damon Talley, Mark Sneve, Vaughn Williams, and Phil Schilffarth. Chairman Bell declared that a quorum was present and called the meeting to order.

VISITORS

No visitors were present.

MINUTES & FINANCIAL REPORT

The Minutes of the April 16, 2019 Regular Meeting were reviewed. Motion was made by Commissioner Miller and seconded by Commissioner Davis to approve the Minutes as prepared. Motion carried unanimously.

The Financial Report for the month of April was reviewed. Motion was made by Commissioner Miller and seconded by Commissioner Davis to accept the Financial Report as presented and to authorize payment of the bills that are due and payable at this time. Motion carried unanimously. The Commissioners also reviewed the status of the District's various investment accounts and the long-term debt payment requirements.

REPORTS

- 1. Engineering Reports.** Mark Sneve presented the engineering report for wastewater. Phil Schilffarth presented the Architectural Report.

A. Engineering Reports – Wastewater – Nolin River Watershed. Mark Sneve presented a status report on the Nolin River Watershed Wastewater Project. All contractors have performed at least 67% of their contracts and Contract 4 is over 91% complete. Mark Sneve recommended that the District approve a change order to Contract 1. (See New Business, Item 1 for Board Action)

B. Architectural Report. Phil Schilffarth with Brandstetter Carroll presented the Bid Tabulation for the bids that were opened on May 2, 2019 for the 315 Ring Road Project. He recommended that all bids be rejected because they greatly exceeded the Project Budget. (See New Business, Item 2 for Board Action)

2. **Departmental Reports.** Shaun Youravich and Amber Pike presented the Departmental Reports.

OLD BUSINESS

1. **Downtown Water Storage Tank Site Update.** Chairman Bell and Operations Manager Youravich presented a status report on the discussions with the City of Elizabethtown concerning the recommended site for the proposed Downtown Water Storage Tank. District officials plan to meet with the Mayor and Ed Poppe and, perhaps, to attend a City Council Work Session.

2. **North – South Connector Pipe Bid Award.** The Commissioners reviewed the Bid Tabulation for the materials for the North – South Connector Project. Upon recommendation of Shaun Youravich, motion was made by Commissioner Tabb and seconded by Commissioner Effinger to take the following actions: (a) to declare the bid submitted by Ferguson Waterworks in the amount of \$342,487.44 (\$31.09 per foot) for 16-inch diameter ductile iron pipe to be the lowest and best bid; (b) to award the contract for providing the ductile iron pipe to Ferguson Waterworks; and (c) to authorize Operations Manager Youravich to execute the necessary documents with Ferguson Waterworks. Motion carried unanimously.

3. **Software Update.** Shaun Youravich and Amber Pike reported that all software agreements previously approved by the Board have been executed.

4. **Revenue Forecast.** Amber Pike presented a revised revenue forecast based upon new developments and the postponement of some capital projects.

5. **Handbook Review.** Amber Pike reported that HR Affiliates has completed its review of the draft version of the District's revised Employee Handbook. A copy of the Employee handbook has been placed in Dropbox for the Commissioners to review.

NEW BUSINESS

1. **Nolin Wastewater Project – Change Order for Contract 1.** Upon recommendation of Strand Associates, motion was made by Commissioner Miller and seconded by Commissioner Effinger to approve the proposed Change Order for Contract 1 of the Nolin Wastewater Project. This Change Order adds \$1,050 to the contract amount because the contractor encountered buried concrete construction debris and had to excavate the debris. Motion carried unanimously.

2. **315 Ring Road Project.** Upon recommendation of Brandstetter Carroll, motion was made by Commissioner Davis and seconded by Commissioner Tabb to reject all the bids that were received on May 2, 2019 for the 315 Ring Road Project because all the bids greatly exceeded the Project Budget. Motion carried unanimously.

3. **City Springs Raw Water Rehab Project.** Vaughn Williams and Shaun Youravich presented an overview of the City Springs Raw Water Rehab Project. This Project should eliminate the taste and odor problem that occurred during 2018. No action is necessary at this time.

4. **Meter Bid Authorization.** Upon recommendation of Shaun Youravich, motion was made by Commissioner Tabb and seconded by Commissioner Effinger to authorize District Staff to advertise for bids for water meters that will be needed during the next 12 months. Motion carried unanimously.

5. **Surplus Vehicles.** Upon recommendation of District Staff, motion was made by Commissioner Miller and seconded by Commissioner Davis to take the following actions: (a) to declare the two (2) vehicles listed in Shaun Youravich's memo dated May 16, 2019 as surplus vehicles; and (b) to solicit sealed bids for the purchase of the surplus vehicles. Motion carried unanimously.

6. **RD Project.** The Commissioners reviewed the proposed list of capital projects that are eligible for funding by Rural Development (RD). Motion was made by Commissioner Miller and seconded by Commissioner Davis to authorize District Staff to take the necessary preliminary steps to facilitate submitting an Application to RD for funding. Motion carried unanimously.

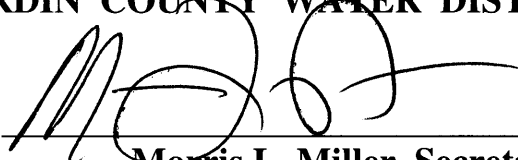
7. **Engineering Agreement Amendment.** Mark Sneve presented a written request for an amendment to the Engineering Agreement between the District and Strand Associates, Inc. (Strand). The reason for the request is the significant delays in completion of the Nolin Wastewater Project caused by the excessive wet weather, other construction delays, and the additional construction authorized by the District. Strand is requesting an increase of \$30,000 for General Observation Services and \$60,000 for Resident Project Representative Services (Resident Inspection). Motion was made by Commissioner Miller and seconded by Commissioner Tabb to approve Strand's request and to authorize Chairman Bell to execute the proposed amendment to the Engineering Agreement. Motion carried unanimously.

8. **Langley Family Foundation Scholarships.** Chairman Bell provided an update on the Langley Family Foundation Scholarship Program and presented the Scholarship Committee's Report. Motion was made by Commissioner Miller and seconded by Commissioner Davis to accept the Scholarship Committee's Report and to award 32 scholarships (31 for \$1,000 and one (1) for \$500) to the persons recommended by the Scholarship Committee. Motion carried unanimously.

ADJOURNMENT

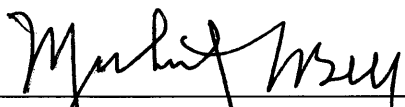
There being no further business to come before the meeting, motion was made by Commissioner Tabb and seconded by Commissioner Davis to adjourn the meeting. Motion carried unanimously.

HARDIN COUNTY WATER DISTRICT NO. 2

BY: 

Morris L. Miller, Secretary

Date Approved: 6-18-2009

BY: 

Michael L. Bell, Chairman

EXHIBIT 9

**MINUTES OF THE
HARDIN COUNTY WATER DISTRICT NO. 2
BOARD OF COMMISSIONERS' MEETING
August 20, 2019**

The Board of Commissioners of Hardin County Water District No. 2 held its regular monthly meeting on August 20, 2019 at 4:00 p.m. at the Reesor Customer Service Center, 360 Ring Road, Elizabethtown, Kentucky. Present were Commissioners Mike Bell, Tim Davis, John Effinger, Morris L. Miller, and Cordell Tabb. Also present were Amber Pike, Shaun Youravich, Damon Talley, Mark Sneve, and Vaughn Williams. Chairman Bell declared that a quorum was present and called the meeting to order.

VISITORS

No visitors were present.

MINUTES & FINANCIAL REPORT

The Minutes of the July 16, 2019 Board meeting were reviewed. Motion was made by Commissioner Davis and seconded by Commissioner Miller to approve the Minutes as prepared. Motion carried unanimously.

The Financial Report for the month of July was reviewed. Motion was made by Commissioner Tabb and seconded by Commissioner Effinger to accept the Financial Report as presented and to authorize payment of the bills that are due and payable at this time. Motion carried unanimously. The Commissioners also reviewed the status of the District's various investment accounts and the long-term debt payment requirements.

REPORTS

1. **Engineering Reports.** Vaughn Williams presented the engineering report for water. Mark Sneve presented the engineering report for wastewater.

- A. Engineering Report – Wastewater.** Mark Sneve presented a status report on the Nolin River Watershed Wastewater Project. He estimates that the pump stations should be ready to commence “start-up” operations by mid to late September, 2019. Once the pump stations are operable, the other contractors can finish their remaining work.
 - B. Engineering Reports – Water.** Vaughn Williams with Kenvirons presented a status report on the proposed City Springs Raw Water Rehab Project. He also discussed the proposed Downtown Water Storage Tank Project.
- 2. Departmental Reports.** Shaun Youravich and Amber Pike presented the Departmental Reports.

OLD BUSINESS

- 1. Engineering Agreement.** Shaun Youravich reported that the District has successfully negotiated an Engineering Agreement with Kenvirons, Inc. for the proposed RD Project. Kenvirons, Inc. has proposed to be compensated by using the RD Fee Schedule. Motion was made by Commissioner Tabb and seconded by Commissioner Miller to approve the Engineering Agreement between Kenvirons, Inc. and the District and to authorize Chairman Bell to execute the Engineering Agreement for and on behalf of the District. Motion carried unanimously.
- 2. Nolin Wastewater Project – Excess Pipe.** Mark Sneve discussed the disposition of the excess pipe from the Nolin Wastewater Project. The Commissioners discussed this matter at length, but no action was taken.

NEW BUSINESS

- 1. Re-Sealing Customer Service Center Parking Lot.** The Commissioners reviewed the Bid Tabulation for re-sealing and re-stripping the Customer Service Center parking lot. Motion was made by Commissioner Miller and seconded by Commissioner Davis to take the following actions: (a) to declare

the bid of Quality Sealing & Striping in the amount of \$12,500 to be the lowest and best bid; (b) to award the re-sealing and re-striping contract to Quality Sealing & Striping; and (c) and to authorize District Staff to execute the necessary documents with Quality Sealing & Striping. Motion carried unanimously.

2. Request to Bid Re-Surfacing WM WTP Parking Area. Shaun Youravich requested permission to advertise for bids for re-surfacing the existing areas that are paved with asphalt at the White Mills WTP. Motion was made by Commissioner Effinger and seconded by Commissioner Tabb to authorize District Staff to advertise for bids. Motion carried unanimously.

3. Purchase of Capital Items. Shaun Youravich presented a list of equipment with detailed pricing information that needs to be purchased for the White Mills and City Springs Water Treatment Plants. Motion was made by Commissioner Davis and seconded by Commissioner Miller to accept the recommendation of Shaun Youravich and to authorize the purchase of the itemized list of equipment. Motion carried unanimously.

4. Buckles Road Extension Project. The Commissioners reviewed the information worksheet for the proposed Buckles Road Water Line Extension Project. Motion was made by Commissioner Davis and seconded by Commissioner Tabb to approve the proposed Buckles Road Water Line Extension Project. Motion carried unanimously.


5. Surplus Real Property Declaration. Motion was made by Commissioner Davis and seconded by Commissioner Miller to declare the former Remington Building located at 315 Ring Road and the adjoining parcel of real estate containing approximately five (5) acres as surplus real property. Motion carried unanimously.

6. Remington Building Listing Contract. Motion was made by Commissioner Miller and seconded by Commissioner Davis to authorize Chairman Bell to list the surplus real property (Remington Building and adjoining parcel) with Gold Star Realty for its appraised price. Motion carried unanimously.

ADJOURNMENT

There being no further business to come before the meeting, motion was made by Commissioner Effinger and seconded by Commissioner Miller to adjourn the meeting. Motion carried unanimously.

HARDIN COUNTY WATER DISTRICT NO. 2

BY:  _____
Morris L. Miller, Secretary

Date Approved: 9-17-19

BY:  _____
Michael L. Bell, Chairman

EXHIBIT 10

**MINUTES OF THE
HARDIN COUNTY WATER DISTRICT NO. 2
BOARD OF COMMISSIONERS' MEETING**

May 19, 2020

The Board of Commissioners of Hardin County Water District No. 2 held its regular monthly meeting on May 19, 2020 at 4:00 p.m. at the Reesor Customer Service Center, 360 Ring Road, Elizabethtown, Kentucky. Present were Commissioners Mike Bell, Tim Davis, John Effinger, Morris L. Miller, and Cordell Tabb. Also present were Amber Pike and Shaun Youravich. Damon Talley and Vaughn Williams attended via conference call. Chairman Bell declared that a quorum was present and called the meeting to order.

VISITORS

There were no visitors.

MINUTES & FINANCIAL REPORT

The Minutes of the April 21, 2020 Board meeting were reviewed. Motion was made by Commissioner Davis and seconded by Commissioner Tabb to approve the Minutes as prepared. Motion carried unanimously.

The Financial Report for the month of April was reviewed. Motion was made by Commissioner Effinger and seconded by Commissioner Davis to accept the Financial Report as presented and to authorize payment of the bills that are due and payable at this time. Motion carried unanimously. The Commissioners also reviewed the status of the District's various investment accounts and the long-term debt payment requirements.

REPORTS

- 1. Engineering Report – Water.** Vaughn Williams with Kenvirons presented a status report for the City Springs Raw Water Intake Project and the Downtown Tank Project.
- 2. Departmental Reports.** Shaun Youravich and Amber Pike presented the Departmental Reports.

OLD BUSINESS

1. Pear Orchard Access Road. General Manager Youravich reported that the new access road to the Pear Orchard Tank Site property was recently completed at a cost of approximately \$28,000. Bluegrass Cellular has agreed to reimburse the District for one-half of this cost.

2. White Mills WTP Exterior Rehab. The Commissioners reviewed the Bid Tabulations for the White Mills Water Treatment Plant Exterior Rehabilitation Project. Upon recommendation of Jay L. Hoffman and District Staff, motion was made by Commissioner Tabb and seconded by Commissioner Effinger to take the following actions:

- a) To declare the bid submitted by Howell & Howell in the amount of \$119,925.00 to paint the exterior of the White Mills WTP to be the lowest and best bid for the White Mills WTP Exterior Rehab Project;
- b) To award the bid for the White Mills WTP Exterior Rehab Project to Howell & Howell; and
- c) To authorize General Manager Youravich to execute the necessary documents with Howell & Howell to facilitate the commencement of the White Mills WTP Exterior Rehab Project.

Motion carried unanimously.

3. Valley Creek Tank Rehab. The Commissioners reviewed the Bid Tabulations for the Valley Creek Tank Interior Rehabilitation Project (Valley Creek Tank Rehab Project). Upon recommendation of Jay L. Hoffman and District Staff, motion was made by Commissioner Davis and seconded by Commissioner Tabb to take the following actions:

- a) To reject the bid submitted by Preferred Sandblasting & Painting, LLC because it failed to contain all of the information required by the Instructions to Bidders and, consequently, it was an incomplete bid;
- b) To declare the bid submitted by Sam Estes Painting, Inc. in the amount of \$45,925.00 to paint the interior of the Valley Creek Tank to be the lowest and best bid for the Valley Creek Tank Rehab Project;

- c) To award the bid for the Valley Creek Tank Rehab Project to Sam Estes Painting, Inc.; and
- d) To authorize General Manager Youravich to execute the necessary documents with Sam Estes Painting, Inc. to facilitate the commencement of the Valley Creek Tank Rehab Project.

Motion carried unanimously.

4. COVID-19 Update. Shaun Youravich and Amber Pike updated the Commissioners on the changes they have implemented to protect the health and safety of the District's employees and customers during the COVID-19 pandemic. The lobby of the Customer Service Center is still closed to the public.

NEW BUSINESS

1. Nolin River Wastewater Grant. Amber Pike presented a summary of the Nolin River Watershed Wastewater Project expenditures to date, anticipated expenditures, and the remaining Grant funds.

2. Sewer Connection Extension of Time. Upon recommendation of District Staff, motion was made by Commissioner Tabb and seconded by Commissioner Miller to extend the deadline for prospective customers to connect to the sewer system until August 31, 2020 without having to pay the Capacity Fee. Motion carried unanimously.

3. 315 Ring Road Subdivision Plat. The Commissioners reviewed the proposed division of the 315 Ring Road Property into two (2) parcels: the front lot facing Ring Road will contain 10 acres and the rear property with access from West Park Road will contain approximately 13 acres. Motion was made by Commissioner Davis and seconded by Commissioner Tabb to approve the proposed subdivision and to authorize Engineering Design Group to take the necessary steps to have the proposed subdivision approved. Motion carried unanimously.

4. Executive Session. Motion was made by Commissioner Davis and seconded by Commissioner Miller to go into Executive Session to discuss real property acquisition and sale, potential litigation, and personnel matters involving one or more specific employees. Motion carried unanimously.

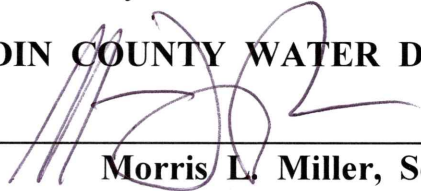
*** * * EXECUTIVE SESSION DISCUSSION * * ***

Motion was made by Commissioner Davis and seconded by Commissioner Miller to return to open session. Motion carried unanimously. Chairman Bell announced that it would not be necessary to take action concerning any of the matters discussed in Executive Session.

ADJOURNMENT

There being no further business to come before the meeting, motion was made by Commissioner Davis and seconded by Commissioner Miller to adjourn the meeting. Motion carried unanimously.

HARDIN COUNTY WATER DISTRICT NO. 2

BY: 

Morris L. Miller, Secretary

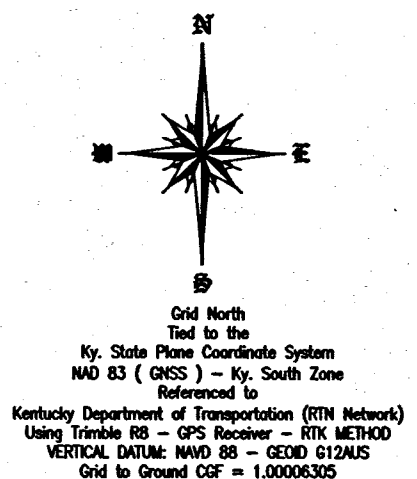
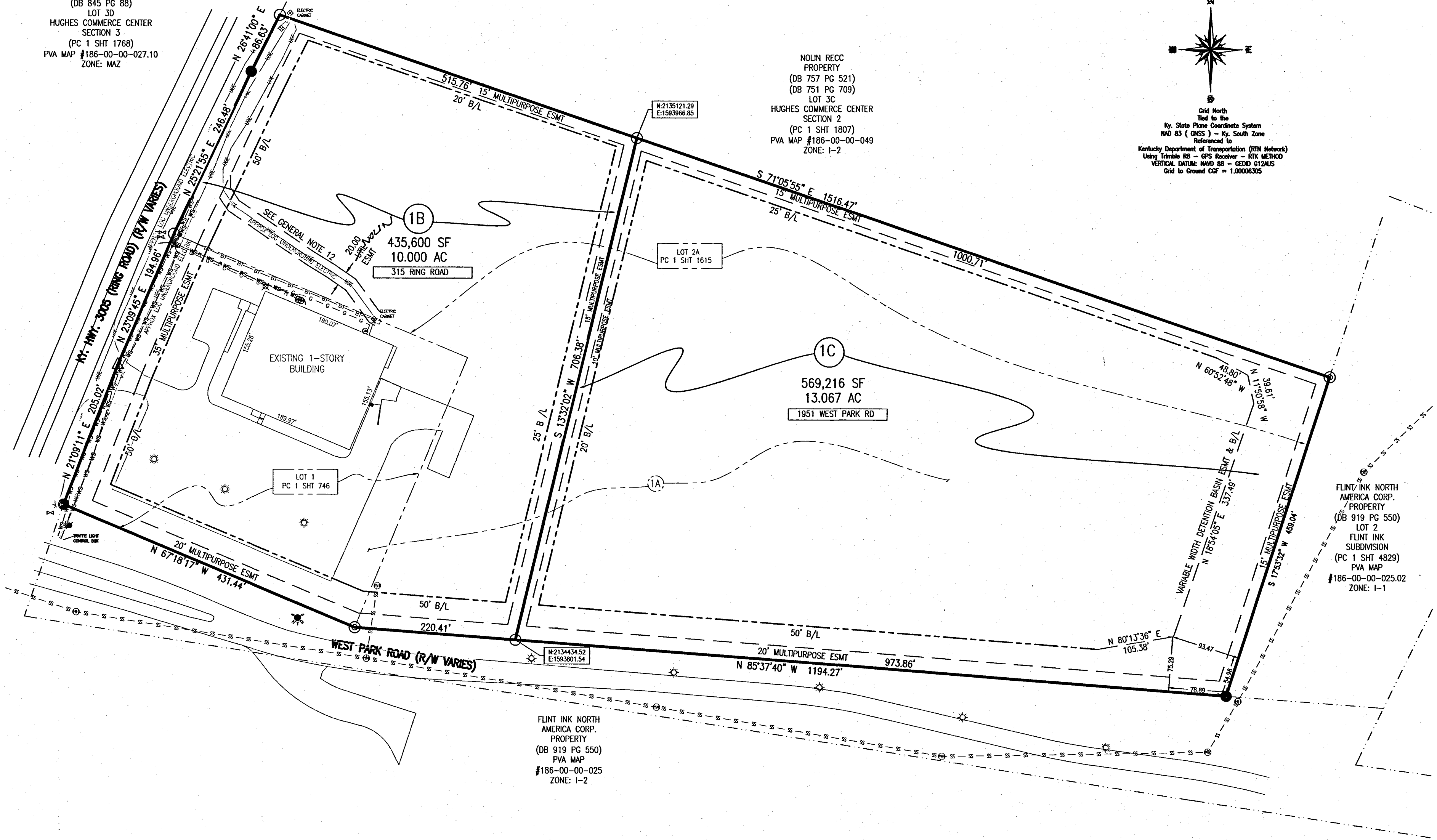
Date Approved: June 16, 2020

BY: 

Michael L. Bell, Chairman

EXHIBIT 11

HARDIN COUNTY WATER DISTRICT #2
PROPERTY
(DB 845 PG 88)
LOT 30
HUGHES COMMERCE CENTER
SECTION 2
(PC 1 SHT 1768)
PVA MAP #186-00-00-027.10
ZONE: MAZ



LEGEND	
○ SET 1/2" DIA x 18" LONG IRON PIN WITH YELLOW SURVEYORS IDENTIFYING CAP STAMPED "BILLINGS L.S. 3472"	✱ EXISTING FIRE HYDRANT W/ ISOLATION VALVE
● FOUND 1/2" DIA IRON PIN WITH YELLOW SURVEYORS IDENTIFYING CAP STAMPED "HAWKINS L.S. 2511"	⊠ EXISTING WATER VALVE
⊙ FOUND 1/2" DIA IRON PIN WITH NO SURVEYORS IDENTIFYING CAP	⊕ EXISTING WATER METER
△ CALCULATED POINT IN RING ROAD RIGHT OF WAY (NOT MONUMENTED)	⊗ EXISTING WATER SPICOT
— — — — — PROPERTY LINE	— W — W — W — EXISTING HCWD #2 WATER LINE
— — — — — ADJOINING PROPERTY LINE	— SS — SS — SS — EXISTING SANITARY SEWER MANHOLE
— — — — — MULTIPURPOSE EASEMENT	— BT — BT — BT — EXISTING SANITARY SEWER LINE
— — — — — BUILDING LINE SETBACK (B/L)	⊕ EXISTING BRANDENBURG TELEPHONE UTILITY PEDESTAL
⊕ EXISTING GAS VALVE	⊕ EXISTING UNDERGROUND BRANDENBURG TELEPHONE LINE
⊕ EXISTING GAS METER	⊕ EXISTING WINDSTREAM UTILITY PEDESTAL
— G — G — G — EXISTING CITY OF ETOWN GAS LINE	— WS — WS — WS — EXISTING UNDERGROUND WINDSTREAM LINE
	⊕ EXISTING LIGHT POLE
	— UGE — EXISTING UNDERGROUND UTILITY LINE
	⊕ EXISTING TRAFFIC LIGHT POLE

AMENDMENT NOTE
THE PURPOSE OF THIS AMENDED RECORD PLAT IS TO SUBDIVIDE LOT 1A OF SECTION 2 OF HUGHES COMMERCE CENTER SUBDIVISION AS RECORDED IN PLAT CABINET 1 SHEET 1615 IN THE OFFICE OF THE HARDIN COUNTY CLERK. PER "SPECIAL NOTE" ON THE PLAT RECORDED IN PLAT CABINET 1, SHEET 1615, LOT 1 OF SECTION 2 OF THE HUGHES COMMERCE CENTER SUBDIVISION AS RECORDED IN PLAT CABINET 1 SHEET 746 AND LOT 2A OF SECTION 2 OF THE HUGHES COMMERCE CENTER SUBDIVISION AS RECORDED IN PLAT CABINET 1, SHEET 1615 STATES THAT WHEN LOT 1 AND 2A ARE IN THE SAME OWNERSHIP, THEY SHALL BE CONSOLIDATED TO FORM A NEW LOT HENCEFORTH TO BE KNOWN AS LOT 1A. LOT 1A IS HEREBY SUBDIVIDED TO FORM NEW LOTS 1B & 1C.
THIS PLAT RELEASES THE PREVIOUS EASEMENTS THAT WERE DEDICATED ALONG THE PREVIOUS LOT LINES AND DEDICATES MULTIPURPOSE UTILITY EASEMENTS AND DRAINAGE EASEMENTS FOR THE PROPER PROVISION OF UTILITY SERVICES AND THE PROPER HANDLING OF STORMWATER FOR THESE LOTS. FUTURE CONVEYANCES SHALL BE BY HUGHES COMMERCE CENTER SUBDIVISION, SECTION 2 LOTS 1B & 1C AND NOT BY THE PREVIOUS DEED DESCRIPTIONS.

SURVEYOR'S CERTIFICATION
I HEREBY CERTIFY THAT THE SURVEY DEPICTED BY THIS PLAT WAS DONE BY PERSONS UNDER MY DIRECT SUPERVISION BY THE METHOD OF RANDOM TRAVERSE AND GPS METHODS USING A TRIMBLE R-8 SERIES (RTK METHOD) RECEIVER. 100% OF THE BOUNDARY CORNERS ESTABLISHED ON THE SURVEY SHOWN HEREON WERE SET USING TOTAL STATION METHODS. THE ACCURACY OF THIS SURVEY IS CLASSIFIED AS URBAN AND MEETS ALL THE ACCURACY & PRECISION SPECIFICATIONS OF THIS CLASS. +/- 0.05 FT. + (100 PPM). THE DIMENSIONS AND COORDINATES AS SHOWN HEREON ARE GRID DISTANCES AND COORDINATES. THE ANGULAR AND LINEAR MEASUREMENTS HAVE NOT BEEN ADJUSTED FOR CLOSURE AND ARE CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF. I ALSO CERTIFY THAT ALL MONUMENTS INDICATED HEREON DO ACTUALLY EXIST AND THAT THEIR LOCATIONS, SIZE, AND MATERIAL ARE CORRECTLY INDICATED AND THAT THE INFORMATION SHOWN HEREON IS CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF.

Michael P. Billings
MICHAEL P. BILLINGS KY PLS 3472
JUNE 16, 2020
DATE

STATE OF KENTUCKY
MICHAEL P. BILLINGS
PLS 3472
LICENSED PROFESSIONAL LAND SURVEYOR
JUNE 16, 2020

GENERAL NOTE
1) THIS PROPERTY IS SUBJECT TO ANY AND ALL RIGHTS-OF-WAY, APPURTENANCES, RESTRICTS AND/OR EASEMENTS IN EFFECT TO DATE.
2) SURVEYOR HAS MADE NO INVESTIGATION OR INDEPENDENT SEARCH FOR EASEMENTS OF RECORD, ENCUMBRANCES, RESTRICTIVE COVENANTS, OWNERSHIP TITLE EVIDENCE, OR ANY OTHER FACTS THAT AN ACCURATE AND CURRENT TITLE SEARCH MAY DISCLOSE.
3) ADJOINING PROPERTY OWNERS ARE ACCORDING TO THE HARDIN COUNTY PROPERTY VALUATION OFFICE.
4) THE FIELD SURVEY FOR THIS PROPERTY WAS PERFORMED: MAY 2020.
5) THIS PROPERTY IS LOCATED ALONG THE EASTERN RIGHT OF WAY OF RING ROAD, (KY. HWY. 3005), AND ALONG THE NORTHERN RIGHT OF WAY OF WEST PARK ROAD, IN THE COMMUNITY OF ELIZABETHTOWN, HARDIN COUNTY, KY.
6) THIS SURVEY IS REFERENCED KENTUCKY SOUTH ZONE STATE PLANE COORDINATES, HORIZONTAL DATUM: NAD83 AND VERTICAL DATUM: NAVD83.
7) PRIOR TO ANY NEW CONSTRUCTION ON THIS PROPERTY THE CURRENT OWNER SHALL CONTACT THE APPLICABLE UTILITY COMPANIES TO VERIFY THE UTILITY EASEMENT LOCATIONS AND WIDTHS TO ENSURE AS NOT TO ENCRUCH ONTO ANY EXISTING EASEMENTS.
8) THIS SURVEY CONFORMS WITH 201 KAR 18.150.
9) METHOD OF SURVEY: RTK GPS AND RANDOM TRAVERSE WITH SIDESHOTS.
10) THIS SURVEY DOES NOT GUARANTEE ACCESS RIGHTS TO ANY LAND SHOWN HEREON FROM ANY STATE, COUNTY, CITY, OR OTHER ROADWAY OF ANY KIND.
11) THE RECORD SOURCE OF RIGHT OF WAY:
KY HWY 3005 (RING ROAD) - KYTC PROJECT ARCHIVES (p0116.PDF), (P.C. 1 SHT. 503)
WEST PARK ROAD - (P.C. 1 SHT. 1615), (D.B. 1426 PG. 1520)
12) IF EXISTING UTILITY LINES ARE REMOVED THE ASSOCIATED EASEMENT SHALL BE RELINQUISHED BY THE RESPECTIVE UTILITY EASEMENT AGENCY AND SHALL CEASE TO EXIST. THIS DOES NOT APPLY TO EASEMENTS ALONG THE PERIMETER OF THE LOTS SHOWN HEREON.

FLOOD HAZARD AREA NOTE
AS INDICATED ON THE FLOOD INSURANCE RATE MAPS (FIRM), EFFECTIVE AUGUST 16, 2007, SPECIFICALLY MAP NUMBER 21093C2830, THE PROPERTY SHOWN ON THIS PLAT IS SHOWN TO BE WITHIN ZONE X WHICH HAS BEEN DETERMINED TO BE OUTSIDE A SPECIAL FLOOD HAZARD AREA SUBJECT TO THE 100 YEAR FLOODPLAIN (1% ANNUAL CHANCE FLOOD) OR THE 500 YEAR FLOODPLAIN (0.2% ANNUAL CHANCE FLOOD). FLOOD HAZARD AREA DETERMINATION IS RESTRICTED TO A REVIEW OF THE FIRM AND SHALL NOT BE CONSTRUED AS A CONFIRMATION OR DENIAL OF FLOODING POTENTIAL OR HAZARDS.

MAINTENANCE NOTE
ALL LOT OWNERS ARE RESPONSIBLE FOR THE MAINTENANCE OF EASEMENTS ON THEIR LOT, INCLUDING EASEMENT SURFACE MATERIALS SUCH AS PAVEMENT AND GRASSES. UTILITY EASEMENTS ARE DEDICATED TO PROVIDE PUBLIC UTILITY COMPANIES THE RIGHT TO BUILD, OPERATE, MAINTAIN AND EXPAND THEIR RESPECTIVE PUBLIC UTILITY. EASEMENTS SHOWN ON THIS PLAT SHALL BE MAINTAINED BY THE LOT OWNER AND PRESERVED IN THEIR APPROVED CONDITION INCLUDING ANY AND ALL DRAINAGE FEATURES, SUCH AS SWALES, DITCHES, PIPES, INLET/JUNCTION BOXES, BASINS, AND OUTLET STRUCTURES AND NO ENCROACHMENT THEREIN AND NO CHANGE IN THE GRADE OR ELEVATION SHALL BE MADE BY ANY PERSON OR LOT OWNER WITHOUT THE CONSENT AND APPROVAL OF THE CITY OF ELIZABETHTOWN AND THE APPROPRIATE UTILITY COMPANY.

COMMISSION'S CERTIFICATION
I CERTIFY THAT THIS RECORD PLAT HAS BEEN APPROVED IN ACCORDANCE WITH THE REGULATIONS ADMINISTERED BY THE ELIZABETHTOWN PLANNING COMMISSION, AND THAT THIS PLAT IS NOW ELIGIBLE FOR RECORDING. I FURTHER CERTIFY THAT A FINANCIAL SURETY IN THE AMOUNT OF \$ NA HAS BEEN POSTED TO ASSURE COMPLETION OF ALL REQUIRED IMPROVEMENTS IN CASE OF DEFAULT.

CHAIRMAN/OR AUTHORIZED AGENT [Signature] DATE 6/12/2020

STORMWATER & DRAINAGE IMPROVEMENT CERTIFICATION
I CERTIFY THAT THE STORMWATER IMPROVEMENT PLANS FOR THIS SUBDIVISION HAVE BEEN REVIEWED AND ARE IN CONFORMANCE WITH ALL APPROPRIATE REGULATIONS. I ALSO CERTIFY THAT THE GRADING & DRAINAGE SYSTEMS INSTALLED OR PROPOSED FOR INSTALLATION IN THIS SUBDIVISION FULLY MEET THE REQUIREMENTS OF THIS JURISDICTION AND ARE APPROVED.

JURISDICTIONAL OFFICIAL [Signature] DATE 6/17/2020

SANITARY SEWER & FIRE PROTECTION IMPROVEMENT CERTIFICATION
I CERTIFY THAT THE STREET IMPROVEMENT PLANS FOR THIS SUBDIVISION HAVE BEEN REVIEWED AND ARE IN CONFORMANCE WITH ALL APPROPRIATE REGULATIONS. I FURTHER CERTIFY THAT THE WATER SUPPLY SYSTEM FOR FIRE PROTECTION PURPOSES AND THE SEWAGE DISPOSAL SYSTEM INSTALLED OR PROPOSED FOR INSTALLATION IN THIS SUBDIVISION HAVE BEEN REVIEWED AND FULLY MEET THE REQUIREMENTS OF THIS JURISDICTION AND ARE APPROVED.

JURISDICTIONAL OFFICIAL [Signature] DATE 6-17-2020

(HCWD#2) IMPROVEMENT WATER CERTIFICATION
I CERTIFY THAT THE WATER SUPPLY SYSTEM INSTALLED OR PROPOSED FOR INSTALLATION IN THIS SUBDIVISION FULLY MEETS THE REQUIREMENTS OF THIS JURISDICTION AND ARE APPROVED.

HCWD#2 REPRESENTATIVE [Signature] DATE 6-15-20

PVA#	OWNER	DB PG
186-00-00-024	HARDIN COUNTY WATER DISTRICT NO 2	1425 608
		PC 1 SHT 1615

OWNER:
HARDIN COUNTY WATER DISTRICT No 2
PO BOX 970
ELIZABETHTOWN KY 42702-0970
(270) 737-1056

TOTAL AREA: 23.067
TOTAL # LOTS: 2

SURVEYOR:
ENGINEERING DESIGN GROUP, INC
515 SOUTH MULBERRY ST
PO BOX 2484
ELIZABETHTOWN KY 42702-2484
(270) 769-1436 (270) 765-9908 FX
MBILLINGS@ENGDESGRP.COM

Engineering Design Group
EDG
LAND SURVEYING • SITE DESIGN • ENGINEERING

DATE: JUNE 12, 2020 SCALE: 1"= 100'



VICINITY MAP

OWNERS CERTIFICATION
I/WE CERTIFY THAT I AM/WE ARE THE OWNER(S) OF THIS PROPERTY, AS RECORDED IN THE HARDIN COUNTY CLERK'S OFFICE (SEE DEED SOURCE BELOW), AND THAT WE ADOPT THIS PLAN OF DEVELOPMENT WITH OUR FREE CONSENT, ESTABLISH THE MINIMUM BUILDING LINES, AND DEDICATE ALL STREETS, DRAINAGE WAYS, WALKS, PUBLIC UTILITY LINES, PARKS AND OTHER OPEN SPACES TO PUBLIC USE AS NOTED AND ILLUSTRATED. FURTHER, I/WE GRANT UNTO THE APPLICABLE UTILITY COMPANIES, THEIR SUCCESSORS AND ASSIGNS, AN EXCLUSIVE EASEMENT (MARKED AND INTENDED FOR USE BY ONE OR MORE SPECIFIC UTILITY SERVICE PROVIDER(S)) OR MULTIPURPOSE (EASEMENT MARKED AND INTENDED FOR USE BY ALL UTILITY PROVIDERS) EASEMENT OVER THE SPACES INDICATED BY DASHED LINES AND MARKED ACCORDING TO THEIR PURPOSE. UTILITY COMPANIES THAT MAY UTILIZE THE EASEMENTS ESTABLISHED BY THIS PLAT INCLUDE:

- 1) THE RIGHT TO CONSTRUCT, MAINTAIN, OPERATE, REPLACE, UPGRADE, OR REBUILD POLE LINES AND OR PIPES, AND / OR UNDERGROUND CABLE SYSTEMS AND ALL APPURTENANCES THERETO;
 - 2) THE RIGHT OF INGRESS & EGRESS OVER ALL LOTS TO AND FROM SAID EASEMENTS INDICATED;
 - 3) THE RIGHT TO TRIM OR REMOVE ANY TREE NECESSARY TO MAINTAIN PROPER SERVICE;
 - 4) THE RIGHT TO KEEP SAID EASEMENTS FREE OF ANY STRUCTURES OR OBSTACLES THE COMPANY DEEMS A HAZARD TO THE SAID POLE LINES, PIPES OR CABLES;
 - 5) THE RIGHT TO PROHIBIT ANY EXCAVATION WITHIN FIVE FEET OF ANY BURIED PIPE AND / OR CABLE HEREIN MENTIONED, OR CHANGE OF GRADE THAT INTERFERES WITH OVERHEAD POLE LINES.
- THE UNDERSIGNED GRANTS THE FURTHER RIGHT, TO THE APPLICABLE ELECTRIC UTILITY COMPANY TO INSTALL, EITHER OVERHEAD OR UNDERGROUND, NECESSARY WIRING FOR STREET LIGHTING, THAT IS REQUESTED AND / OR REQUIRED, BUT IN NO CASE SHALL WIRING BE INSTALLED MORE THAN FIVE FEET FROM ANY LOT LINE. LOT OWNERS ARE TO USE AND ENJOY SAID LANDS INCLUDED IN EASEMENT SHOWN HEREIN, BUT SUCH USE SHALL NOT INTERFERE WITH THE RIGHT HEREIN GRANTED.

HCWD#2 AUTHORIZED SIGNATURE [Signature] DATE 6/16/20

CERTIFICATE OF ACKNOWLEDGEMENT
STATE OF KY
COUNTY OF HARDIN
THE FOREGOING INSTRUMENT WAS ACKNOWLEDGED BEFORE ME THIS DATE 6-16-20 BY
Shawn Youravich as General Manager
FOR & ON BEHALF OF HARDIN COUNTY WATER DISTRICT NO 2 AND IS AUTHORIZED TO ACT ON BEHALF OF THE SAID COMPANY FOR THE PURPOSE HEREIN STATED.

[Signature] 574960 3/6/21
SIGNATURE OF NOTARY SERIAL # DATE COMMISSION EXPIRES

UTILITY / EASEMENT CERTIFICATION
I, BEING A DULY AUTHORIZED AGENT OF THE CITED UTILITY COMPANY, ACCEPT THE EASEMENTS SHOWN ON THIS RECORD PLAT ON BEHALF OF MY COMPANY. I ALSO RELEASE ANY EASEMENTS PREVIOUSLY APPROVED.

DATE 6-15-20 NOLIN RECC REPRESENTATIVE [Signature]
DATE 6-16-20 WINDSTREAM REPRESENTATIVE [Signature]
DATE 6-15-20 BRANDENBURG TELECOM REPRESENTATIVE [Signature]
DATE 6-15-20 CITY REPRESENTATIVE [Signature]

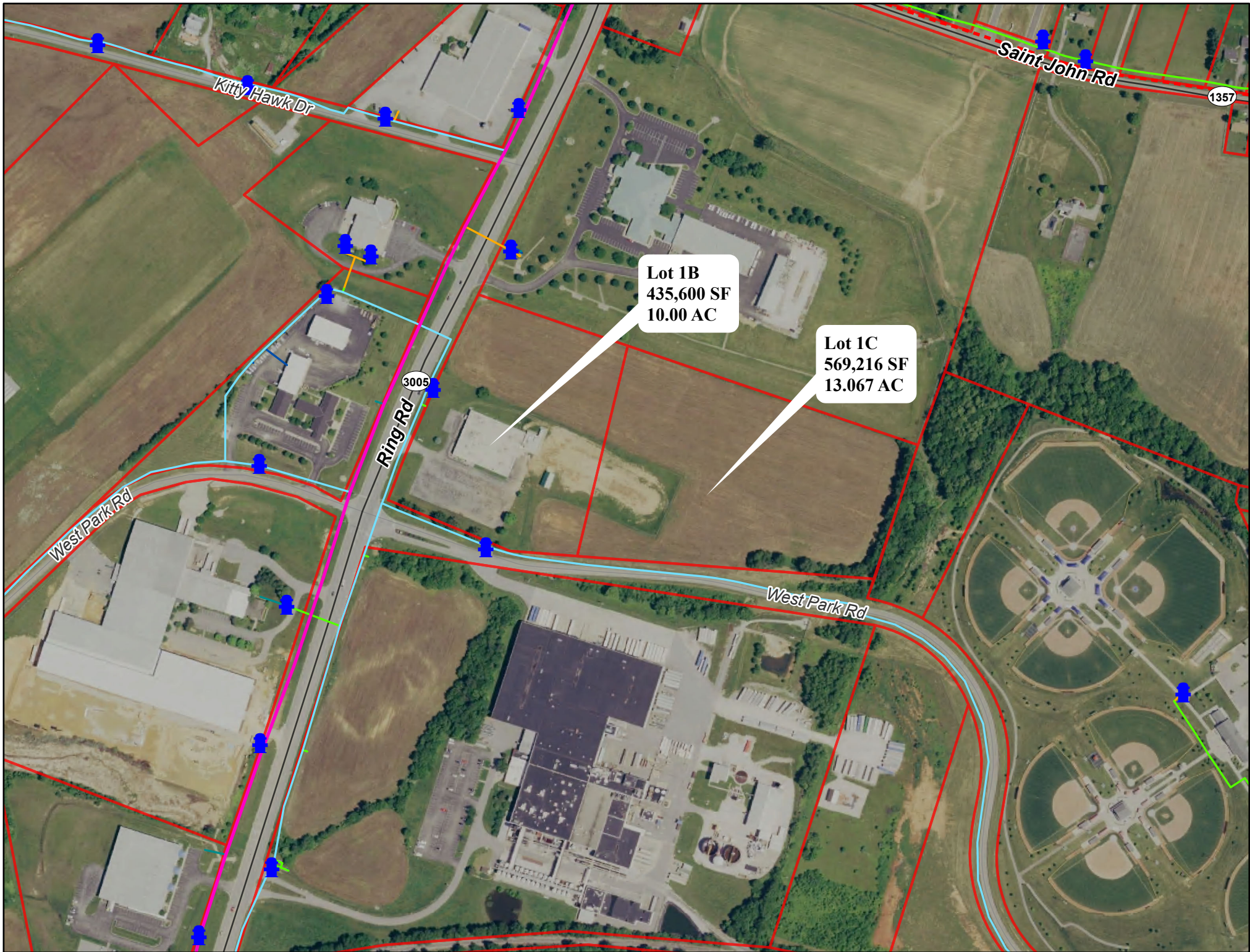
AMENDED RECORD PLAT
OF
HUGHES COMMERCE CENTER SECTION 2 LOT 1A
315 RING ROAD
ELIZABETHTOWN HARDIN COUNTY KY

Doc ID: 01138792001 Type: PLA
Kind: PLAT AMEND
Recorded: 06/29/2020 at 02:23:33 PM
Rec'd: 2020-0008984
Page 1 of 1
Fee: \$50.00
Hardin County Clerk
Debbie Donnelly Clerk
File # 6619

I, Debbie Donnelly, County Clerk of Hardin County, Kentucky, hereby certify that the foregoing instrument has been duly recorded in my office.

[Signature]
By: ANITA G GOODIN, dc

EXHIBIT 12



Lot 1B
435,600 SF
10.00 AC

Lot 1C
569,216 SF
13.067 AC

Kitty Hawk Dr

Saint John Rd

1357

3005

Ring Rd

West Park Rd

West Park Rd

EXHIBIT 13

**MINUTES OF THE
HARDIN COUNTY WATER DISTRICT NO. 2
BOARD OF COMMISSIONERS' MEETING
October 15, 2019**

The Board of Commissioners of Hardin County Water District No. 2 held its regular monthly meeting on October 15, 2019 at 4:00 p.m. at the Reesor Customer Service Center, 360 Ring Road, Elizabethtown, Kentucky. Present were Commissioners Mike Bell, Tim Davis, John Effinger, Morris L. Miller, and Cordell Tabb. Also present were Amber Pike, Shaun Youravich, Damon Talley, Mark Sneve, and Vaughn Williams. Chairman Bell declared that a quorum was present and called the meeting to order.

VISITORS

None

MINUTES & FINANCIAL REPORT

The Minutes of the September 17, 2019 Board meeting were reviewed. Motion was made by Commissioner Miller and seconded by Commissioner Effinger to approve the Minutes as prepared. Motion carried unanimously.

The Financial Report for the month of September was reviewed. Motion was made by Commissioner Miller and seconded by Commissioner Davis to accept the Financial Report as presented and to authorize payment of the bills that are due and payable at this time. Motion carried unanimously. The Commissioners also reviewed the status of the District's various investment accounts and the long-term debt payment requirements.

REPORTS

1. **Engineering Reports.** Vaughn Williams presented the engineering report for water. Mark Sneve presented the engineering report for wastewater.

- A. Engineering Report – Wastewater.** Mark Sneve presented a status report on the Nolin River Watershed Wastewater Project. The pump stations have commenced “start-up” operations. There are numerous “punch” list items to be resolved. He estimates that Contracts 1 and 2 will be substantially completed by October 31, 2019. He recommended that the District approve a Change Order on Contract 1 and Contract 2 to extend the substantial and final completion dates. **(See New Business, Item 1 and 2 for Board Action)**
- B. Engineering Reports – Water.** Vaughn Williams with Kenvirons stated that the Plans for the proposed City Springs Raw Water Rehab Project have been submitted to the DOW. He also discussed the proposed Downtown Water Storage Tank Project.
- 2. Departmental Reports.** Shaun Youravich and Amber Pike presented the Departmental Reports.

OLD BUSINESS

1. Tariff Review. Chairman Bell requested that the Commissioners review the District’s existing Tariff. This topic will be discussed in more depth at a future meeting.

2. Design-Build Services. District Staff stated that nine (9) firms submitted qualifications in response to the District’s Request for Qualifications to perform design-build services for the 315 Ring Road Project. The Commissioners had been provided copies of all the qualifications well in advance of the meeting. Motion was made by Commissioner Tabb and seconded by Commissioner Miller to take the following actions: (a) to declare the firm of Jenkins-Essex Construction, Inc. to be the best qualified firm to perform design-build services for the 315 Ring Road Project; and (b) to authorize Chairman Bell and District Staff to enter into contract negotiations with Jenkins-Essex Construction, Inc. Motion carried unanimously. Once the terms of the Design-Build Contract have been negotiated, the proposed Design-Build Contract will be presented to the Board for review and approval.

NEW BUSINESS

1. **Nolin Wastewater Project – Change Order Contract 1.** Upon recommendation of Strand Associates, motion was made by Commissioner Davis and seconded by Commissioner Miller to extend the substantial completion date on Contract 1 to October 31, 2019 and to extend the final completion date to November 30, 2019. Motion carried unanimously.

2. **Nolin Wastewater Project – Change Order Contract 2.** Upon recommendation of Strand Associates, motion was made by Commissioner Davis and seconded by Commissioner Miller to extend the substantial completion date on Contract 2 to October 31, 2019 and to extend the final completion date to November 30, 2019. Motion carried unanimously.

3. **Executive Session.** Motion was made by Commissioner Davis and seconded by Commissioner Effinger to go into Executive Session to discuss real property acquisition and sale, potential litigation, and personnel matters involving one or more specific employees. Motion carried unanimously.

* * * EXECUTIVE SESSION DISCUSSION * * *

Motion was made by Commissioner Davis and seconded by Commissioner Effinger to return to open session. Motion carried unanimously. Chairman Bell announced that it would be necessary to take action concerning one (1) of the matters discussed in Executive Session.

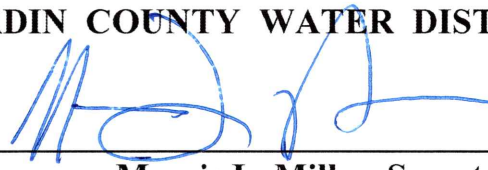
4. **Remington Building.** Motion was made by Commissioner Effinger and seconded by Commissioner Miller to authorize Chairman Bell to make a counter-offer to sell the former Remington Building within the parameters set by the Board. Motion carried unanimously.

ADJOURNMENT

There being no further business to come before the meeting, motion was made by Commissioner Davis and seconded by Commissioner Tabb to adjourn the meeting. Motion carried unanimously.

HARDIN COUNTY WATER DISTRICT NO. 2

BY:



Morris L. Miller, Secretary

Date Approved: 11-19-19

BY:



Michael L. Bell, Chairman

EXHIBIT 14



AIA[®] Document A141[™] – 2014

Standard Form of Agreement Between Owner and Design-Builder

AGREEMENT made as of the 2nd day of January
in the year 2020
(In words, indicate day, month and year.)

BETWEEN the Owner:
(Name, legal status, address and other information)
Hardin County Water District No. 2
360 Ring Rd.
Elizabethtown, KY 42701

and the Design-Builder:
(Name, legal status, address and other information)
Jenkins-Essex Construction, Inc.
PO Box 1088
Elizabethtown, KY 42702-1088

for the following Project:
(Name, location and detailed description)
HCWD No. 2 Office, Warehouse and Shop
Lot 1A, Hughes Commerce Center, Section 2
Elizabethtown, KY 42701

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification. Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

The Owner and Design-Builder agree as follows.

Init.
/

TABLE OF ARTICLES

- 1 GENERAL PROVISIONS
- 2 COMPENSATION AND PROGRESS PAYMENTS
- 3 GENERAL REQUIREMENTS OF THE WORK OF THE DESIGN-BUILD CONTRACT
- 4 WORK PRIOR TO EXECUTION OF THE DESIGN-BUILD AMENDMENT
- 5 WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT
- 6 CHANGES IN THE WORK
- 7 OWNER'S RESPONSIBILITIES
- 8 TIME
- 9 PAYMENT APPLICATIONS AND PROJECT COMPLETION
- 10 PROTECTION OF PERSONS AND PROPERTY
- 11 UNCOVERING AND CORRECTION OF WORK
- 12 COPYRIGHTS AND LICENSES
- 13 TERMINATION OR SUSPENSION
- 14 CLAIMS AND DISPUTE RESOLUTION
- 15 MISCELLANEOUS PROVISIONS
- 16 SCOPE OF THE AGREEMENT

TABLE OF EXHIBITS

- A DESIGN-BUILD AMENDMENT
- B INSURANCE AND BONDS
- ~~C SUSTAINABLE PROJECTS~~
- D Arbitration Agreement
- E Letter of Intent
- F Equipment Usage Rates
- G Copyrights and Licenses

ARTICLE 1 GENERAL PROVISIONS

§ 1.1 Owner's Criteria

This Agreement is based on the Owner's Criteria set forth in this Section 1.1.

(Note the disposition for the following items by inserting the requested information or a statement such as "not applicable" or "unknown at time of execution." If the Owner intends to provide a set of design documents, and the requested information is contained in the design documents, identify the design documents and insert "see Owner's design documents" where appropriate.)

§ 1.1.1 The Owner's program for the Project:

(Set forth the program, identify documentation in which the program is set forth, or state the manner in which the program will be developed.)

Request for Qualifications for Design-Build Services issued by Hardin County Water District #2

§ 1.1.2 The Owner's design requirements for the Project and related documentation:

(Identify below, or in an attached exhibit, the documentation that contains the Owner's design requirements, including any performance specifications for the Project.)

Not applicable

§ 1.1.3 The Project's physical characteristics:

(Identify or describe, if appropriate, size, location, dimensions, or other pertinent information, such as geotechnical reports; site, boundary and topographic surveys; traffic and utility studies; availability of public and private utilities and services; legal description of the site; etc.)

Construction including site development, site utilities, parking and an approximate 16,000 s.f. single story Customer Service Center, an approximate 3,000 s.f. Field Operations Building, an approximate 18,750 s.f. Shop Building and an approximate 12,000 s.f. Equipment Building with mezzanine.

§ 1.1.4 The Owner's anticipated Sustainable Objective for the Project, if any:

(Identify the Owner's Sustainable Objective for the Project such as Sustainability Certification, benefit to the environment, enhancement to the health and well-being of building occupants, or improvement of energy efficiency. If the Owner identifies a Sustainable Objective, incorporate AIA Document A141™-2014, Exhibit C, Sustainable Projects, into this Agreement to define the terms, conditions and Work related to the Owner's Sustainable Objective.)

Not applicable

§ 1.1.5 Incentive programs the Owner intends to pursue for the Project, including those related to the Sustainable Objective, and any deadlines for receiving the incentives that are dependent on, or related to, the Design-Builder's services, are as follows:

(Identify incentive programs the Owner intends to pursue for the Project and deadlines for submitting or applying for the incentive programs.)

Not applicable

§ 1.1.6 The Owner's budget for the Work to be provided by the Design-Builder is set forth below:

(Provide total for Owner's budget, and if known, a line item breakdown of costs.)

Eight Million Dollars (\$8,000,000.00)

§ 1.1.7 The Owner's design and construction milestone dates:

- .1 Design phase milestone dates:
Permit Drawings - July 1, 2020
- .2 Submission of Design-Builder Proposal:
Not Applicable

- .3 Phased completion dates:
Not Applicable
- .4 Substantial Completion date:
Fifteen (15) months after receipt by the Owner from the Public Service Commission of a Certificate of Public Convenience and Necessity.
- .5 Other milestone dates:
Final Completion Date: Thirty (30) days after Substantial Completions

§ 1.1.8 The Owner requires the Design-Builder to retain the following Architect, Consultants and Contractors at the Design-Builder's cost:
(List name, legal status, address and other information.)

- .1 Architect
Jamie Lake, AIA
J. Lake Architecture & Design
129 Quartermaster Court
Jeffersonville, IN 47130
- .2 Consultants
Mike Billings PE, PLS
Engineering Design Group
315 S. Mulberry St.
Elizabethtown, KY 42701
- .3 Contractors

§ 1.1.9 Additional Owner's Criteria upon which the Agreement is based:
(Identify special characteristics or needs of the Project not identified elsewhere, such as historic preservation requirements.)

Owner may elect not to move forward with the Project if the Kentucky Public Service Commission (the "PSC") does not grant the Owner a Certificate of Public Convenience and Necessity (the "CPCN") by September 30, 2020 or if the CPCN issued by the PSC significantly modifies the Project. The Owner shall have the sole discretion in determining whether the CPCN significantly modifies the Project. In such case, Design-Builder shall be paid as stated in the Letter of Intent except that overhead and profit will be paid at 8.5%.

§ 1.1.10 The Design-Builder shall confirm that the information included in the Owner's Criteria complies with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities.

§ 1.1.10.1 If the Owner's Criteria conflicts with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner of the conflict.

§ 1.1.11 If there is a change in the Owner's Criteria, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6 .

§ 1.1.12 If the Owner and Design-Builder intend to transmit Instruments of Service or any other information or documentation in digital form, they shall endeavor to establish necessary protocols governing such transmissions. Unless otherwise agreed, the parties will use AIA Document E203™-2013 to establish the protocols for the development, use, transmission, and exchange of digital data and building information modeling.

§ 1.2 Project Team

§ 1.2.1 The Owner identifies the following representative in accordance with Section 7.1.1:
(List name, address and other information.)

Mr. Morris L. Miller
Mr. Tim Davis
Commissioners
Hardin County Water District No. 2
360 Ring Rd.
Elizabethtown, KY 42701

§ 1.2.2 The persons or entities, in addition to the Owner's representative, who are required to review the Design-Builder's Submittals are as follows:
(List name, address and other information.)

§ 1.2.3 The Owner will retain the following consultants and separate contractors:
(List discipline, scope of work, and, if known, identify by name and address.)

§ 1.2.4 The Design-Builder identifies the following representative in accordance with Section 3.1.2:
(List name, address and other information.)

Corey Shive
Project Manager
Jenkins-Essex Construction, Inc.
136 Howell Dr.
Elizabethtown, KY 42701

§ 1.2.5 Neither the Owner's nor the Design-Builder's representative shall be changed without ten days' written notice to the other party.

§ 1.3 Binding Dispute Resolution

For any Claim subject to, but not resolved by, mediation pursuant to Section 14.3, the method of binding dispute resolution shall be the following:

(Check the appropriate box. If the Owner and Design-Builder do not select a method of binding dispute resolution below, or do not subsequently agree in writing to a binding dispute resolution other than litigation, Claims will be resolved by litigation in a court of competent jurisdiction.)

- Arbitration pursuant to Section 14.4
- Litigation in a court of competent jurisdiction
- Other: *(Specify)*

Arbitration shall be the method of dispute resolution as more particularly described in Exhibit "D" attached hereto. Mediation shall be a condition precedent to Arbitration.

§ 1.4 Definitions

§ 1.4.1 **Design-Build Documents.** The Design-Build Documents consist of this Agreement between Owner and Design-Builder and its attached Exhibits (hereinafter, the “Agreement”); other documents listed in this Agreement; and Modifications issued after execution of this Agreement. A Modification is (1) a written amendment to the Contract signed by both parties, including the Design-Build Amendment, (2) a Change Order, or (3) a Change Directive.

§ 1.4.2 **The Contract.** The Design-Build Documents form the Contract. The Contract represents the entire and integrated agreement between the parties and supersedes prior negotiations, representations or agreements, either written or oral. The Contract may be amended or modified only by a Modification. The Design-Build Documents shall not be construed to create a contractual relationship of any kind between any persons or entities other than the Owner and the Design-Builder.

§ 1.4.3 **The Work.** The term “Work” means the design, construction and related services required to fulfill the Design-Builder’s obligations under the Design-Build Documents, whether completed or partially completed, and includes all labor, materials, equipment and services provided or to be provided by the Design-Builder. The Work may constitute the whole or a part of the Project.

§ 1.4.4 **The Project.** The Project is the total design and construction of which the Work performed under the Design-Build Documents may be the whole or a part, and may include design and construction by the Owner and by separate contractors.

§ 1.4.5 **Instruments of Service.** Instruments of Service are representations, in any medium of expression now known or later developed, of the tangible and intangible creative work performed by the Design-Builder, Contractor(s), Architect, and Consultant(s) under their respective agreements. Instruments of Service may include, without limitation, studies, surveys, models, sketches, drawings, specifications, digital models and other similar materials.

§ 1.4.6 **Submittal.** A Submittal is any submission to the Owner for review and approval demonstrating how the Design-Builder proposes to conform to the Design-Build Documents for those portions of the Work for which the Design-Build Documents require Submittals. Submittals include, but are not limited to, shop drawings, product data, and samples. Submittals are not Design-Build Documents unless incorporated into a Modification.

§ 1.4.7 **Owner.** The Owner is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term “Owner” means the Owner or the Owner’s authorized representative.

§ 1.4.8 **Design-Builder.** The Design-Builder is the person or entity identified as such in the Agreement and is referred to throughout the Design-Build Documents as if singular in number. The term “Design-Builder” means the Design-Builder or the Design-Builder’s authorized representative.

§ 1.4.9 **Consultant.** A Consultant is a person or entity providing professional services for the Design-Builder for all or a portion of the Work, and is referred to throughout the Design-Build Documents as if singular in number. To the extent required by the relevant jurisdiction, the Consultant shall be lawfully licensed to provide the required professional services.

§ 1.4.10 **Architect.** The Architect is a person or entity providing design services for the Design-Builder for all or a portion of the Work, and is lawfully licensed to practice architecture in the applicable jurisdiction. The Architect is referred to throughout the Design-Build Documents as if singular in number.

§ 1.4.11 **Contractor.** A Contractor is a person or entity performing all or a portion of the construction, required in connection with the Work, for the Design-Builder. The Contractor shall be lawfully licensed, if required in the jurisdiction where the Project is located. The Contractor is referred to throughout the Design-Build Documents as if singular in number and means a Contractor or an authorized representative of the Contractor.

§ 1.4.12 **Confidential Information.** Confidential Information is information containing confidential or business proprietary information that is clearly marked as “confidential.”

§ 1.4.13 **Contract Time.** Unless otherwise provided, Contract Time is the period of time, including authorized adjustments, as set forth in the Design-Build Amendment for Substantial Completion of the Work.

§ 1.4.14 **Day.** The term “day” as used in the Design-Build Documents shall mean calendar day unless otherwise specifically defined.

§ 1.4.15 **Contract Sum.** The Contract Sum is the amount to be paid to the Design-Builder for performance of the Work after execution of the Design-Build Amendment, as identified in Article A.1 of the Design-Build Amendment.

ARTICLE 2 COMPENSATION AND PROGRESS PAYMENTS

§ 2.1 **Compensation for Work Performed Prior To Execution of Design-Build Amendment**

§ 2.1.1 Unless otherwise agreed, payments for Work performed prior to Execution of the Design-Build Amendment shall be made monthly. For the Design-Builder's performance of Work prior to the execution of the Design-Build Amendment, the Owner shall compensate the Design-Builder as follows:

(Insert amount of, or basis for, compensation, including compensation for any Sustainability Services, or indicate the exhibit in which the information is provided. If there will be a limit on the total amount of compensation for Work performed prior to the execution of the Design-Build Amendment, state the amount of the limit.)

Compensation is defined in a Letter of Intent dated 10/31/2019 executed by Owner and Design-Builder attached hereto as Exhibit "E". To the extent there is a conflict between any provision in the Letter of Intent labeled Exhibit "E" and this agreement, this Agreement controls and the Letter of Intent is superseded.

§ 2.1.2 The hourly billing rates for services of the Design-Builder and the Design-Builder's Architect, Consultants and Contractors, if any, are set forth below.

(If applicable, attach an exhibit of hourly billing rates or insert them below.)

Individual or Position

Rate

§ 2.1.3 **Compensation for Reimbursable Expenses Prior To Execution of Design-Build Amendment**

§ 2.1.3.1 Reimbursable Expenses are in addition to compensation set forth in Section 2.1.1 and 2.1.2 and include expenses, directly related to the Project, incurred by the Design-Builder and the Design-Builder's Architect, Consultants, and Contractors, as follows:

- .1 Transportation and authorized out-of-town travel and subsistence;
- .2 Dedicated data and communication services, teleconferences, Project web sites, and extranets;
- .3 Fees paid for securing approval of authorities having jurisdiction over the Project;
- .4 Printing, reproductions, plots, standard form documents;
- .5 Postage, handling and delivery;
- .6 Expense of overtime work requiring higher than regular rates, if authorized in advance by the Owner;
- .7 Renderings, physical models, mock-ups, professional photography, and presentation materials requested by the Owner;
- .8 All taxes levied on professional services and on reimbursable expenses; and
- .9 Other Project-related expenditures, if authorized in advance by the Owner.

§ 2.1.3.2 For Reimbursable Expenses, the compensation shall be the expenses the Design-Builder and the Design-Builder's Architect, Consultants and Contractors incurred, plus an administrative fee of eight and one-half percent (8.50 %) of the expenses incurred.

§ 2.1.4 **Payments to the Design-Builder Prior To Execution of Design-Build Amendment**

§ 2.1.4.1 Payments are due and payable upon presentation of the Design-Builder's invoice. Amounts unpaid thirty (30) days after the invoice date shall bear interest at the rate entered below, or in the absence thereof at the legal rate prevailing from time to time at the principal place of business of the Design-Builder.

(Insert rate of monthly or annual interest agreed upon.)

Prime +2%

§ 2.1.4.2 Records of Reimbursable Expenses and services performed on the basis of hourly rates shall be available to the Owner at mutually convenient times for a period of two years following execution of the Design-Build Amendment or termination of this Agreement, whichever occurs first.

§ 2.2 Contract Sum and Payment for Work Performed After Execution of Design-Build Amendment

For the Design-Builder's performance of the Work after execution of the Design-Build Amendment, the Owner shall pay to the Design-Builder the Contract Sum in current funds as agreed in the Design-Build Amendment.

ARTICLE 3 GENERAL REQUIREMENTS OF THE WORK OF THE DESIGN-BUILD CONTRACT

§ 3.1 General

§ 3.1.1 The Design-Builder shall comply with any applicable licensing requirements in the jurisdiction where the Project is located.

§ 3.1.2 The Design-Builder shall designate in writing a representative who is authorized to act on the Design-Builder's behalf with respect to the Project.

§ 3.1.3 The Design-Builder shall perform the Work in accordance with the Design-Build Documents. The Design-Builder shall not be relieved of the obligation to perform the Work in accordance with the Design-Build Documents by the activities, tests, inspections or approvals of the Owner.

§ 3.1.3.1 The Design-Builder shall perform the Work in compliance with applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities. If the Design-Builder performs Work contrary to applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall assume responsibility for such Work and shall bear the costs attributable to correction.

§ 3.1.3.2 Neither the Design-Builder nor any Contractor, Consultant, or Architect shall be obligated to perform any act which they believe will violate any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities. If the Design-Builder determines that implementation of any instruction received from the Owner, including those in the Owner's Criteria, would cause a violation of any applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities, the Design-Builder shall notify the Owner in writing. Upon verification by the Owner that a change to the Owner's Criteria is required to remedy the violation, the Owner and the Design-Builder shall execute a Modification in accordance with Article 6.

§ 3.1.4 The Design-Builder shall be responsible to the Owner for acts and omissions of the Design-Builder's employees, Architect, Consultants, Contractors, and their agents and employees, and other persons or entities performing portions of the Work.

§ 3.1.5 **General Consultation.** The Design-Builder shall schedule and conduct periodic meetings with the Owner to review matters such as procedures, progress, coordination, and scheduling of the Work.

§ 3.1.6 When applicable law requires that services be performed by licensed professionals, the Design-Builder shall provide those services through qualified, licensed professionals. The Owner understands and agrees that the services of the Design-Builder's Architect and the Design-Builder's other Consultants are performed in the sole interest of, and for the exclusive benefit of, the Design-Builder.

§ 3.1.7 The Design-Builder, with the assistance of the Owner, shall prepare and file documents required to obtain necessary approvals of governmental authorities having jurisdiction over the Project.

§ 3.1.8 Progress Reports

§ 3.1.8.1 The Design-Builder shall keep the Owner informed of the progress and quality of the Work. On a monthly basis, or otherwise as agreed to by the Owner and Design-Builder, the Design-Builder shall submit written progress reports to the Owner, showing estimated percentages of completion and other information identified below:

- .1 Work completed for the period;
- .2 Project schedule status;
- .3 Submittal schedule and status report, including a summary of outstanding Submittals;
- .4 Responses to requests for information to be provided by the Owner;
- .5 Approved Change Orders and Change Directives;
- .6 Pending Change Order and Change Directive status reports;
- .7 Tests and inspection reports;

- .8 Status report of Work rejected by the Owner;
- .9 Status of Claims previously submitted in accordance with Article 14;
- .10 Cumulative total of the Cost of the Work to date including the Design-Builder's compensation and Reimbursable Expenses, if any;
- .11 Current Project cash-flow and forecast reports; and
- .12 Additional information as agreed to by the Owner and Design-Builder.

§ 3.1.8.2 In addition, where the Contract Sum is the Cost of the Work with or without a Guaranteed Maximum Price, the Design-Builder shall include the following additional information in its progress reports:

- .1 Design-Builder's work force report;
- .2 Equipment utilization report; and
- .3 Cost summary, comparing actual costs to updated cost estimates.

§ 3.1.9 Design-Builder's Schedules

§ 3.1.9.1 The Design-Builder, promptly after execution of this Agreement, shall prepare and submit for the Owner's information a schedule for the Work. The schedule, including the time required for design and construction, shall not exceed time limits current under the Design-Build Documents, shall be revised at appropriate intervals as required by the conditions of the Work and Project, shall be related to the entire Project to the extent required by the Design-Build Documents, shall provide for expeditious and practicable execution of the Work, and shall include allowances for periods of time required for the Owner's review and for approval of submissions by authorities having jurisdiction over the Project.

§ 3.1.9.2 The Design-Builder shall perform the Work in general accordance with the most recent schedules submitted to the Owner.

§ 3.1.10 **Certifications.** Upon the Owner's written request, the Design-Builder shall obtain from the Architect, Consultants, and Contractors, and furnish to the Owner, certifications with respect to the documents and services provided by the Architect, Consultants, and Contractors (a) that, to the best of their knowledge, information and belief, the documents or services to which the certifications relate (i) are consistent with the Design-Build Documents, except to the extent specifically identified in the certificate, and (ii) comply with applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of public authorities governing the design of the Project; and (b) that the Owner and its consultants shall be entitled to rely upon the accuracy of the representations and statements contained in the certifications. The Design-Builder's Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

§ 3.1.11 Design-Builder's Submittals

§ 3.1.11.1 Prior to submission of any Submittals, the Design-Builder shall prepare a Submittal schedule, and shall submit the schedule for the Owner's approval. The Owner's approval shall not unreasonably be delayed or withheld. The Submittal schedule shall (1) be coordinated with the Design-Builder's schedule provided in Section 3.1.9.1, (2) allow the Owner reasonable time to review Submittals, and (3) be periodically updated to reflect the progress of the Work. If the Design-Builder fails to submit a Submittal schedule, the Design-Builder shall not be entitled to any increase in Contract Sum or extension of Contract Time based on the time required for review of Submittals.

§ 3.1.11.2 By providing Submittals the Design-Builder represents to the Owner that it has (1) reviewed and approved them, (2) determined and verified materials, field measurements and field construction criteria related thereto, or will do so and (3) checked and coordinated the information contained within such Submittals with the requirements of the Work and of the Design-Build Documents.

§ 3.1.11.3 The Design-Builder shall perform no portion of the Work for which the Design-Build Documents require Submittals until the Owner has approved the respective Submittal.

§ 3.1.11.4 The Work shall be in accordance with approved Submittals except that the Design-Builder shall not be relieved of its responsibility to perform the Work consistent with the requirements of the Design-Build Documents. The Work may deviate from the Design-Build Documents only if the Design-Builder has notified the Owner in writing of a deviation from the Design-Build Documents at the time of the Submittal and a Modification is executed authorizing the identified deviation. The Design-Builder shall not be relieved of responsibility for errors or omissions in Submittals by the Owner's approval of the Submittals.

§ 3.1.11.5 All professional design services or certifications to be provided by the Design-Builder, including all drawings, calculations, specifications, certifications, shop drawings and other Submittals, shall contain the signature and

seal of the licensed design professional preparing them. Submittals related to the Work designed or certified by the licensed design professionals, if prepared by others, shall bear the licensed design professional's written approval. The Owner and its consultants shall be entitled to rely upon the adequacy, accuracy and completeness of the services, certifications or approvals performed by such design professionals.

§ 3.1.12 Warranty. The Design-Builder warrants to the Owner that materials and equipment furnished under the Contract will be of good quality and new unless the Design-Build Documents require or permit otherwise. The Design-Builder further warrants that the Work will conform to the requirements of the Design-Build Documents and will be free from defects, except for those inherent in the quality of the Work or otherwise expressly permitted by the Design-Build Documents. Work, materials, or equipment not conforming to these requirements may be considered defective. The Design-Builder's warranty excludes remedy for damage or defect caused by abuse, alterations to the Work not executed by the Design-Builder, improper or insufficient maintenance, improper operation, or normal wear and tear and normal usage. If required by the Owner, the Design-Builder shall furnish satisfactory evidence as to the kind and quality of materials and equipment.

§ 3.1.13 Royalties, Patents and Copyrights

§ 3.1.13.1 The Design-Builder shall pay all royalties and license fees.

§ 3.1.13.2 The Design-Builder shall defend suits or claims for infringement of copyrights and patent rights and shall hold the Owner and its separate contractors and consultants harmless from loss on account thereof, but shall not be responsible for such defense or loss when a particular design, process or product of a particular manufacturer or manufacturers is required by the Owner, or where the copyright violations are required in the Owner's Criteria. However, if the Design-Builder has reason to believe that the design, process or product required in the Owner's Criteria is an infringement of a copyright or a patent, the Design-Builder shall be responsible for such loss unless such information is promptly furnished to the Owner. If the Owner receives notice from a patent or copyright owner of an alleged violation of a patent or copyright, attributable to the Design-Builder, the Owner shall give prompt written notice to the Design-Builder.

§ 3.1.14 Indemnification

§ 3.1.14.1 To the fullest extent permitted by law, the Design-Builder shall indemnify and hold harmless the Owner, including the Owner's agents and employees, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work, but only to the extent caused by the negligent acts or omissions of the Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them or anyone for whose acts they may be liable. Such obligation shall not be construed to negate, abridge, or reduce other rights or obligations of indemnity that would otherwise exist as to a party or person described in this Section 3.1.14.

§ 3.1.14.2 The indemnification obligation under this Section 3.1.14 shall not be limited by a limitation on amount or type of damages, compensation, or benefits payable by or for Design-Builder, Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by them, under workers' compensation acts, disability benefit acts or other employee benefit acts.

§ 3.1.15 Contingent Assignment of Agreements

§ 3.1.15.1 Each agreement for a portion of the Work is assigned by the Design-Builder to the Owner, provided that

- .1 assignment is effective only after termination of the Contract by the Owner for cause, pursuant to Sections 13.1.4 or 13.2.2, and only for those agreements that the Owner accepts by written notification to the Design-Builder and the Architect, Consultants, and Contractors whose agreements are accepted for assignment; and
- .2 assignment is subject to the prior rights of the surety, if any, obligated under bond relating to the Contract.

When the Owner accepts the assignment of an agreement, the Owner assumes the Design-Builder's rights and obligations under the agreement.

§ 3.1.15.2 Upon such assignment, if the Work has been suspended for more than 30 days, the compensation under the assigned agreement shall be equitably adjusted for increases in cost resulting from the suspension.

§ 3.1.15.3 Upon such assignment to the Owner under this Section 3.1.15, the Owner may further assign the agreement to a successor design-builder or other entity. If the Owner assigns the agreement to a successor design-builder or other entity, the Owner shall nevertheless remain legally responsible for all of the successor design-builder's or other entity's obligations under the agreement.

§ 3.1.16 **Design-Builder's Insurance and Bonds.** The Design-Builder shall purchase and maintain insurance and provide bonds as set forth in Exhibit B.

ARTICLE 4 WORK PRIOR TO EXECUTION OF THE DESIGN-BUILD AMENDMENT

§ 4.1 General

§ 4.1.1 Any information submitted by the Design-Builder, and any interim decisions made by the Owner, shall be for the purpose of facilitating the design process and shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

§ 4.1.2 The Design-Builder shall advise the Owner on proposed site use and improvements, selection of materials, and building systems and equipment. The Design-Builder shall also provide the Owner with recommendations, consistent with the Owner's Criteria, on constructability; availability of materials and labor; time requirements for procurement, installation and construction; and factors related to construction cost including, but not limited to, costs of alternative designs or materials, preliminary budgets, life-cycle data, and possible cost reductions.

§ 4.2 Evaluation of the Owner's Criteria

§ 4.2.1 The Design-Builder shall schedule and conduct meetings with the Owner and any other necessary individuals or entities to discuss and review the Owner's Criteria as set forth in Section 1.1. The Design-Builder shall thereafter again meet with the Owner to discuss a preliminary evaluation of the Owner's Criteria. The preliminary evaluation shall address possible alternative approaches to design and construction of the Project and include the Design-Builder's recommendations, if any, with regard to accelerated or fast-track scheduling, procurement, or phased construction. The preliminary evaluation shall consider cost information, constructability, and procurement and construction scheduling issues.

§ 4.2.2 After the Design-Builder meets with the Owner and presents the preliminary evaluation, the Design-Builder shall provide a written report to the Owner, summarizing the Design-Builder's evaluation of the Owner's Criteria. The report shall also include

- .1 allocations of program functions, detailing each function and their square foot areas;
- .2 a preliminary estimate of the Cost of the Work, and, if necessary, recommendations to adjust the Owner's Criteria to conform to the Owner's budget;
- .3 a preliminary schedule, which shall include proposed design milestones; dates for receiving additional information from, or for work to be completed by, the Owner; anticipated date for the Design-Builder's Proposal; and dates of periodic design review sessions with the Owner; and
- .4 the following:
(List additional information, if any, to be included in the Design-Builder's written report.)

§ 4.2.3 The Owner shall review the Design-Builder's written report and, if acceptable, provide the Design-Builder with written consent to proceed to the development of the Preliminary Design as described in Section 4.3. The consent to proceed shall not be understood to modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

§ 4.3 Preliminary Design

§ 4.3.1 Upon the Owner's issuance of a written consent to proceed under Section 4.2.3, the Design-Builder shall prepare and submit a Preliminary Design to the Owner. The Preliminary Design shall include a report identifying any deviations from the Owner's Criteria, and shall include the following:

- .1 Confirmation of the allocations of program functions;
- .2 Site plan;
- .3 Building plans, sections and elevations;
- .4 Structural system;
- .5 Selections of major building systems, including but not limited to mechanical, electrical and plumbing systems; and
- .6 Outline specifications or sufficient drawing notes describing construction materials.

The Preliminary Design may include some combination of physical study models, perspective sketches, or digital modeling.

§ 4.3.2 The Owner shall review the Preliminary Design and, if acceptable, provide the Design-Builder with written consent to proceed to development of the Design-Builder's Proposal. The Preliminary Design shall not modify the Owner's Criteria unless the Owner and Design-Builder execute a Modification.

§ 4.4 Design-Builder's Proposal

§ 4.4.1 Upon the Owner's issuance of a written consent to proceed under Section 4.3.2, the Design-Builder shall prepare and submit the Design-Builder's Proposal to the Owner. The Design-Builder's Proposal shall include the following:

- .1 A list of the Preliminary Design documents and other information, including the Design-Builder's clarifications, assumptions and deviations from the Owner's Criteria, upon which the Design-Builder's Proposal is based;
- .2 The proposed Contract Sum, including the compensation method and, if based upon the Cost of the Work plus a fee, a written statement of estimated cost organized by trade categories, allowances, contingencies, Design-Builder's Fee, and other items that comprise the Contract Sum;
- .3 The proposed date the Design-Builder shall achieve Substantial Completion;
- .4 An enumeration of any qualifications and exclusions, if applicable;
- .5 A list of the Design-Builder's key personnel, Contractors and suppliers; and
- .6 The date on which the Design-Builder's Proposal expires.

§ 4.4.2 Submission of the Design-Builder's Proposal shall constitute a representation by the Design-Builder that it has visited the site and become familiar with local conditions under which the Work is to be completed.

§ 4.4.3 If the Owner and Design-Builder agree on a proposal, the Owner and Design-Builder shall execute the Design-Build Amendment setting forth the terms of their agreement.

ARTICLE 5 WORK FOLLOWING EXECUTION OF THE DESIGN-BUILD AMENDMENT

§ 5.1 Construction Documents

§ 5.1.1 Upon the execution of the Design-Build Amendment, the Design-Builder shall prepare Construction Documents. The Construction Documents shall establish the quality levels of materials and systems required. The Construction Documents shall be consistent with the Design-Build Documents.

§ 5.1.2 The Design-Builder shall provide the Construction Documents to the Owner for the Owner's information. If the Owner discovers any deviations between the Construction Documents and the Design-Build Documents, the Owner shall promptly notify the Design-Builder of such deviations in writing. The Construction Documents shall not modify the Design-Build Documents unless the Owner and Design-Builder execute a Modification. The failure of the Owner to discover any such deviations shall not relieve the Design-Builder of the obligation to perform the Work in accordance with the Design-Build Documents.

§ 5.2 Construction

§ 5.2.1 **Commencement.** Except as permitted in Section 5.2.2, construction shall not commence prior to execution of the Design-Build Amendment.

§ 5.2.2 If the Owner and Design-Builder agree in writing, construction, may proceed prior to the execution of the Design-Build Amendment. However, such authorization shall not waive the Owner's right to reject the Design-Builder's Proposal.

§ 5.2.3 The Design-Builder shall supervise and direct the Work, using the Design-Builder's best skill and attention. The Design-Builder shall be solely responsible for, and have control over, construction means, methods, techniques, sequences and procedures, and for coordinating all portions of the Work under the Contract, unless the Design-Build Documents give other specific instructions concerning these matters.

§ 5.2.4 The Design-Builder shall be responsible for inspection of portions of Work already performed to determine that such portions are in proper condition to receive subsequent Work.

§ 5.3 Labor and Materials

§ 5.3.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall provide and pay for labor, materials, equipment, tools, construction equipment and machinery, water, heat, utilities, transportation, and other facilities and services, necessary for proper execution and completion of the Work, whether temporary or permanent, and whether or not incorporated or to be incorporated in the Work.

§ 5.3.2 When a material or system is specified in the Design-Build Documents, the Design-Builder may make substitutions only in accordance with Article 6.

§ 5.3.3 The Design-Builder shall enforce strict discipline and good order among the Design-Builder's employees and other persons carrying out the Work. The Design-Builder shall not permit employment of unfit persons or persons not properly skilled in tasks assigned to them.

§ 5.4 Taxes

The Design-Builder shall pay sales, consumer, use and similar taxes, for the Work provided by the Design-Builder, that are legally enacted when the Design-Build Amendment is executed, whether or not yet effective or merely scheduled to go into effect.

§ 5.5 Permits, Fees, Notices and Compliance with Laws

§ 5.5.1 Unless otherwise provided in the Design-Build Documents, the Design-Builder shall secure and pay for the building permit as well as any other permits, fees, licenses, and inspections by government agencies, necessary for proper execution of the Work and Substantial Completion of the Project.

§ 5.5.2 The Design-Builder shall comply with and give notices required by applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, applicable to performance of the Work.

§ 5.5.3 **Concealed or Unknown Conditions.** If the Design-Builder encounters conditions at the site that are (1) subsurface or otherwise concealed physical conditions that differ materially from those indicated in the Design-Build Documents or (2) unknown physical conditions of an unusual nature that differ materially from those ordinarily found to exist and generally recognized as inherent in construction activities of the character provided for in the Design-Build Documents, the Design-Builder shall promptly provide notice to the Owner before conditions are disturbed and in no event later than 21 days after first observance of the conditions. The Owner shall promptly investigate such conditions and, if the Owner determines that they differ materially and cause an increase or decrease in the Design-Builder's cost of, or time required for, performance of any part of the Work, shall recommend an equitable adjustment in the Contract Sum or Contract Time, or both. If the Owner determines that the conditions at the site are not materially different from those indicated in the Design-Build Documents and that no change in the terms of the Contract is justified, the Owner shall promptly notify the Design-Builder in writing, stating the reasons. If the Design-Builder disputes the Owner's determination or recommendation, the Design-Builder may proceed as provided in Article 14.

§ 5.5.4 If, in the course of the Work, the Design-Builder encounters human remains, or recognizes the existence of burial markers, archaeological sites, or wetlands, not indicated in the Design-Build Documents, the Design-Builder shall immediately suspend any operations that would affect them and shall notify the Owner. Upon receipt of such notice, the Owner shall promptly take any action necessary to obtain governmental authorization required to resume the operations. The Design-Builder shall continue to suspend such operations until otherwise instructed by the Owner but shall continue with all other operations that do not affect those remains or features. Requests for adjustments in the Contract Sum and Contract Time arising from the existence of such remains or features may be made as provided in Article 14.

§ 5.6 Allowances

§ 5.6.1 The Design-Builder shall include in the Contract Sum all allowances stated in the Design-Build Documents. Items covered by allowances shall be supplied for such amounts, and by such persons or entities as the Owner may direct, but the Design-Builder shall not be required to employ persons or entities to whom the Design-Builder has reasonable objection.

§ 5.6.2 Unless otherwise provided in the Design-Build Documents,

- .1 allowances shall cover the cost to the Design-Builder of materials and equipment delivered at the site and all required taxes, less applicable trade discounts;
- .2 the Design-Builder's costs for unloading and handling at the site, labor, installation costs, overhead, profit, and other expenses contemplated for stated allowance amounts, shall be included in the Contract Sum but not in the allowances; and
- .3 whenever costs are more than or less than allowances, the Contract Sum shall be adjusted accordingly by Change Order. The amount of the Change Order shall reflect (1) the difference between actual costs and the allowances under Section 5.6.2.1 and (2) changes in Design-Builder's costs under Section 5.6.2.2.

§ 5.6.3 The Owner shall make selections of materials and equipment with reasonable promptness for allowances requiring Owner selection.

§ 5.7 Key Personnel, Contractors and Suppliers

§ 5.7.1 The Design-Builder shall not employ personnel, or contract with Contractors or suppliers to whom the Owner has made reasonable and timely objection. The Design-Builder shall not be required to contract with anyone to whom the Design-Builder has made reasonable and timely objection.

§ 5.7.2 If the Design-Builder changes any of the personnel, Contractors or suppliers identified in the Design-Build Amendment, the Design-Builder shall notify the Owner and provide the name and qualifications of the new personnel, Contractor or supplier. The Owner may reply within 14 days to the Design-Builder in writing, stating (1) whether the Owner has reasonable objection to the proposed personnel, Contractor or supplier or (2) that the Owner requires additional time to review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.7.3 Except for those persons or entities already identified or required in the Design-Build Amendment, the Design-Builder, as soon as practicable after execution of the Design-Build Amendment, shall furnish in writing to the Owner the names of persons or entities (including those who are to furnish materials or equipment fabricated to a special design) proposed for each principal portion of the Work. The Owner may reply within 14 days to the Design-Builder in writing stating (1) whether the Owner has reasonable objection to any such proposed person or entity or (2) that the Owner requires additional time for review. Failure of the Owner to reply within the 14-day period shall constitute notice of no reasonable objection.

§ 5.7.3.1 If the Owner has reasonable objection to a person or entity proposed by the Design-Builder, the Design-Builder shall propose another to whom the Owner has no reasonable objection. If the rejected person or entity was reasonably capable of performing the Work, the Contract Sum and Contract Time shall be increased or decreased by the difference, if any, occasioned by such change, and an appropriate Change Order shall be issued before commencement of the substitute person or entity's Work. However, no increase in the Contract Sum or Contract Time shall be allowed for such change unless the Design-Builder has acted promptly and responsively in submitting names as required.

§ 5.8 Documents and Submittals at the Site

The Design-Builder shall maintain at the site for the Owner one copy of the Design-Build Documents and a current set of the Construction Documents, in good order and marked currently to indicate field changes and selections made during construction, and one copy of approved Submittals. The Design-Builder shall deliver these items to the Owner in accordance with Section 9.10.2 as a record of the Work as constructed.

§ 5.9 Use of Site

The Design-Builder shall confine operations at the site to areas permitted by applicable laws, statutes, ordinances, codes, rules and regulations, lawful orders of public authorities, and the Design-Build Documents, and shall not unreasonably encumber the site with materials or equipment.

§ 5.10 Cutting and Patching

The Design-Builder shall not cut, patch, or otherwise alter fully or partially completed construction by the Owner or a separate contractor except with written consent of the Owner and of such separate contractor; such consent shall not be unreasonably withheld. The Design-Builder shall not unreasonably withhold from the Owner or a separate contractor the Design-Builder's consent to cutting or otherwise altering the Work.

§ 5.11 Cleaning Up

§ 5.11.1 The Design-Builder shall keep the premises and surrounding area free from accumulation of waste materials or rubbish caused by operations under the Contract. At completion of the Work, the Design-Builder shall remove waste materials, rubbish, the Design-Builder's tools, construction equipment, machinery and surplus materials from and about the Project.

§ 5.11.2 If the Design-Builder fails to clean up as provided in the Design-Build Documents, the Owner may do so and Owner shall be entitled to reimbursement from the Design-Builder.

§ 5.12 Access to Work

The Design-Builder shall provide the Owner and its separate contractors and consultants access to the Work in preparation and progress wherever located. The Design-Builder shall notify the Owner regarding Project safety criteria and programs, which the Owner, and its contractors and consultants, shall comply with while at the site.

§ 5.13 Construction by Owner or by Separate Contractors

§ 5.13.1 Owner's Right to Perform Construction and to Award Separate Contracts

§ 5.13.1.1 The Owner reserves the right to perform construction or operations related to the Project with the Owner's own forces; and to award separate contracts in connection with other portions of the Project, or other construction or operations on the site, under terms and conditions identical or substantially similar to this Contract, including those terms and conditions related to insurance and waiver of subrogation. The Owner shall notify the Design-Builder promptly after execution of any separate contract. If the Design-Builder claims that delay or additional cost is involved because of such action by the Owner, the Design-Builder shall make a Claim as provided in Article 14.

§ 5.13.1.2 When separate contracts are awarded for different portions of the Project or other construction or operations on the site, the term "Design-Builder" in the Design-Build Documents in each case shall mean the individual or entity that executes each separate agreement with the Owner.

§ 5.13.1.3 The Owner shall provide for coordination of the activities of the Owner's own forces, and of each separate contractor, with the Work of the Design-Builder, who shall cooperate with them. The Design-Builder shall participate with other separate contractors and the Owner in reviewing their construction schedules. The Design-Builder shall make any revisions to the construction schedule deemed necessary after a joint review and mutual agreement. The construction schedules shall then constitute the schedules to be used by the Design-Builder, separate contractors and the Owner until subsequently revised.

§ 5.13.1.4 Unless otherwise provided in the Design-Build Documents, when the Owner performs construction or operations related to the Project with the Owner's own forces or separate contractors, the Owner shall be deemed to be subject to the same obligations, and to have the same rights, that apply to the Design-Builder under the Contract.

§ 5.14 Mutual Responsibility

§ 5.14.1 The Design-Builder shall afford the Owner and separate contractors reasonable opportunity for introduction and storage of their materials and equipment and performance of their activities, and shall connect and coordinate the Design-Builder's construction and operations with theirs as required by the Design-Build Documents.

§ 5.14.2 If part of the Design-Builder's Work depends upon construction or operations by the Owner or a separate contractor, the Design-Builder shall, prior to proceeding with that portion of the Work, prepare a written report to the Owner, identifying apparent discrepancies or defects in the construction or operations by the Owner or separate contractor that would render it unsuitable for proper execution and results of the Design-Builder's Work. Failure of the Design-Builder to report shall constitute an acknowledgment that the Owner's or separate contractor's completed or partially completed construction is fit and proper to receive the Design-Builder's Work, except as to defects not then reasonably discoverable.

§ 5.14.3 The Design-Builder shall reimburse the Owner for costs the Owner incurs that are payable to a separate contractor because of the Design-Builder's delays, improperly timed activities or defective construction. The Owner shall be responsible to the Design-Builder for costs the Design-Builder incurs because of a separate contractor's delays, improperly timed activities, damage to the Work or defective construction.

§ 5.14.4 The Design-Builder shall promptly remedy damage the Design-Builder wrongfully causes to completed or partially completed construction or to property of the Owner or separate contractors as provided in Section 10.2.5.

§ 5.14.5 The Owner and each separate contractor shall have the same responsibilities for cutting and patching the Work as the Design-Builder has with respect to the construction of the Owner or separate contractors in Section 5.10.

§ 5.15 Owner's Right to Clean Up

If a dispute arises among the Design-Builder, separate contractors and the Owner as to the responsibility under their respective contracts for maintaining the premises and surrounding area free from waste materials and rubbish, the Owner may clean up and will allocate the cost among those responsible.

ARTICLE 6 CHANGES IN THE WORK

§ 6.1 General

§ 6.1.1 Changes in the Work may be accomplished after execution of the Contract, and without invalidating the Contract, by Change Order or Change Directive, subject to the limitations stated in this Article 6 and elsewhere in the Design-Build Documents.

§ 6.1.2 A Change Order shall be based upon agreement between the Owner and Design-Builder. The Owner may issue a Change Directive without agreement by the Design-Builder.

§ 6.1.3 Changes in the Work shall be performed under applicable provisions of the Design-Build Documents, and the Design-Builder shall proceed promptly, unless otherwise provided in the Change Order or Change Directive.

§ 6.2 Change Orders

A Change Order is a written instrument signed by the Owner and Design-Builder stating their agreement upon all of the following:

- .1 The change in the Work;
- .2 The amount of the adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation; and
- .3 The extent of the adjustment, if any, in the Contract Time.

§ 6.3 Change Directives

§ 6.3.1 A Change Directive is a written order signed by the Owner directing a change in the Work prior to agreement on adjustment, if any, in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time. The Owner may by Change Directive, without invalidating the Contract, order changes in the Work within the general scope of the Contract consisting of additions, deletions or other revisions, the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, and Contract Time being adjusted accordingly.

§ 6.3.2 A Change Directive shall be used in the absence of total agreement on the terms of a Change Order.

§ 6.3.3 If the Change Directive provides for an adjustment to the Contract Sum or, if prior to execution of the Design-Build Amendment, an adjustment in the Design-Builder's compensation, the adjustment shall be based on one of the following methods:

- .1 Mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
- .2 Unit prices stated in the Design-Build Documents or subsequently agreed upon;
- .3 Cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
- .4 As provided in Section 6.3.7.

§ 6.3.4 If unit prices are stated in the Design-Build Documents or subsequently agreed upon, and if quantities originally contemplated are materially changed in a proposed Change Order or Change Directive so that application of such unit prices to quantities of Work proposed will cause substantial inequity to the Owner or Design-Builder, the applicable unit prices shall be equitably adjusted.

§ 6.3.5 Upon receipt of a Change Directive, the Design-Builder shall promptly proceed with the change in the Work involved and advise the Owner of the Design-Builder's agreement or disagreement with the method, if any, provided in the Change Directive for determining the proposed adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, or Contract Time.

§ 6.3.6 A Change Directive signed by the Design-Builder indicates the Design-Builder's agreement therewith, including adjustment in Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation, and Contract Time or the method for determining them. Such agreement shall be effective immediately and shall be recorded as a Change Order.

§ 6.3.7 If the Design-Builder does not respond promptly or disagrees with the method for adjustment in the Contract Sum or, if prior to execution of the Design-Build Amendment, the method for adjustment in the Design-Builder's compensation, the Owner shall determine the method and the adjustment on the basis of reasonable expenditures and savings of those performing the Work attributable to the change, including, in case of an increase, an amount for overhead and profit as set forth in the Agreement, or if no such amount is set forth in the Agreement, a reasonable amount. In such case, and also under Section 6.3.3.3, the Design-Builder shall keep and present, in such form as the Owner may prescribe, an itemized accounting together with appropriate supporting data. Unless otherwise provided in the Design-Build Documents, costs for the purposes of this Section 6.3.7 shall be limited to the following:

- .1 Additional costs of professional services;
- .2 Costs of labor, including social security, unemployment insurance, fringe benefits required by agreement or custom, and workers' compensation insurance;

- .3 Costs of materials, supplies and equipment, including cost of transportation, whether incorporated or consumed;
- .4 Rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Design-Builder or others;
- .5 Costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
- .6 Additional costs of supervision and field office personnel directly attributable to the change.

§ 6.3.8 The amount of credit to be allowed by the Design-Builder to the Owner for a deletion or change that results in a net decrease in the Contract Sum or, if prior to execution of the Design-Build Amendment, in the Design-Builder's compensation, shall be actual net cost. When both additions and credits covering related Work or substitutions are involved in a change, the allowance for overhead and profit shall be figured on the basis of net increase, if any, with respect to that change.

§ 6.3.9 Pending final determination of the total cost of a Change Directive to the Owner, the Design-Builder may request payment for Work completed under the Change Directive in Applications for Payment. The Owner will make an interim determination for purposes of certification for payment for those costs deemed to be reasonably justified. The Owner's interim determination of cost shall adjust the Contract Sum or, if prior to execution of the Design-Build Amendment, the Design-Builder's compensation, on the same basis as a Change Order, subject to the right of Design-Builder to disagree and assert a Claim in accordance with Article 14.

§ 6.3.10 When the Owner and Design-Builder agree with a determination concerning the adjustments in the Contract Sum or, if prior to execution of the Design-Build Amendment, the adjustment in the Design-Builder's compensation and Contract Time, or otherwise reach agreement upon the adjustments, such agreement shall be effective immediately and the Owner and Design-Builder shall execute a Change Order. Change Orders may be issued for all or any part of a Change Directive.

ARTICLE 7 OWNER'S RESPONSIBILITIES

§ 7.1 General

§ 7.1.1 The Owner shall designate in writing a representative who shall have express authority to bind the Owner with respect to all Project matters requiring the Owner's approval or authorization.

§ 7.1.2 The Owner shall render decisions in a timely manner and in accordance with the Design-Builder's schedule agreed to by the Owner. The Owner shall furnish to the Design-Builder, within 15 days after receipt of a written request, information necessary and relevant for the Design-Builder to evaluate, give notice of or enforce mechanic's lien rights. Such information shall include a correct statement of the record legal title to the property on which the Project is located, usually referred to as the site, and the Owner's interest therein.

§ 7.2 Information and Services Required of the Owner

§ 7.2.1 The Owner shall furnish information or services required of the Owner by the Design-Build Documents with reasonable promptness.

§ 7.2.2 The Owner shall provide, to the extent under the Owner's control and if not required by the Design-Build Documents to be provided by the Design-Builder, the results and reports of prior tests, inspections or investigations conducted for the Project involving structural or mechanical systems; chemical, air and water pollution; hazardous materials; or environmental and subsurface conditions, and information regarding the presence of pollutants at the Project site. Upon receipt of a written request from the Design-Builder, the Owner shall also provide surveys describing physical characteristics, legal limitations and utility locations for the site of the Project, and a legal description of the site under the Owner's control.

§ 7.2.3 The Owner shall promptly obtain easements, zoning variances, and legal authorizations or entitlements regarding site utilization where essential to the execution of the Project.

§ 7.2.4 The Owner shall cooperate with the Design-Builder in securing building and other permits, licenses and inspections.

§ 7.2.5 The services, information, surveys and reports required to be provided by the Owner under this Agreement, shall be furnished at the Owner's expense, and except as otherwise specifically provided in this Agreement or elsewhere in the Design-Build Documents or to the extent the Owner advises the Design-Builder to the contrary in writing, the

Design-Builder shall be entitled to rely upon the accuracy and completeness thereof. In no event shall the Design-Builder be relieved of its responsibility to exercise proper precautions relating to the safe performance of the Work.

§ 7.2.6 If the Owner observes or otherwise becomes aware of a fault or defect in the Work or non-conformity with the Design-Build Documents, the Owner shall give prompt written notice thereof to the Design-Builder.

§ 7.2.7 Prior to the execution of the Design-Build Amendment, the Design-Builder may request in writing that the Owner provide reasonable evidence that the Owner has made financial arrangements to fulfill the Owner's obligations under the Design-Build Documents and the Design-Builder's Proposal. Thereafter, the Design-Builder may only request such evidence if (1) the Owner fails to make payments to the Design-Builder as the Design-Build Documents require; (2) a change in the Work materially changes the Contract Sum; or (3) the Design-Builder identifies in writing a reasonable concern regarding the Owner's ability to make payment when due. The Owner shall furnish such evidence as a condition precedent to commencement or continuation of the Work or the portion of the Work affected by a material change. After the Owner furnishes the evidence, the Owner shall not materially vary such financial arrangements without prior notice to the Design-Builder.

§ 7.2.8 Except as otherwise provided in the Design-Build Documents or when direct communications have been specially authorized, the Owner shall communicate through the Design-Builder with persons or entities employed or retained by the Design-Builder.

§ 7.2.9 Unless required by the Design-Build Documents to be provided by the Design-Builder, the Owner shall, upon request from the Design-Builder, furnish the services of geotechnical engineers or other consultants for investigation of subsurface, air and water conditions when such services are reasonably necessary to properly carry out the design services furnished by the Design-Builder. In such event, the Design-Builder shall specify the services required. Such services may include, but are not limited to, test borings, test pits, determinations of soil bearing values, percolation tests, evaluations of hazardous materials, ground corrosion and resistivity tests, and necessary operations for anticipating subsoil conditions. The services of geotechnical engineer(s) or other consultants shall include preparation and submission of all appropriate reports and professional recommendations.

§ 7.2.10 The Owner shall purchase and maintain insurance as set forth in Exhibit B.

§ 7.3 Submittals

§ 7.3.1 The Owner shall review and approve or take other appropriate action on Submittals. Review of Submittals is not conducted for the purpose of determining the accuracy and completeness of other details, such as dimensions and quantities; or for substantiating instructions for installation or performance of equipment or systems; or for determining that the Submittals are in conformance with the Design-Build Documents, all of which remain the responsibility of the Design-Builder as required by the Design-Build Documents. The Owner's action will be taken in accordance with the submittal schedule approved by the Owner or, in the absence of an approved submittal schedule, with reasonable promptness while allowing sufficient time in the Owner's judgment to permit adequate review. The Owner's review of Submittals shall not relieve the Design-Builder of the obligations under Sections 3.1.11, 3.1.12, and 5.2.3. The Owner's review shall not constitute approval of safety precautions or, unless otherwise specifically stated by the Owner, of any construction means, methods, techniques, sequences or procedures. The Owner's approval of a specific item shall not indicate approval of an assembly of which the item is a component.

§ 7.3.2 Upon review of the Submittals required by the Design-Build Documents, the Owner shall notify the Design-Builder of any non-conformance with the Design-Build Documents the Owner discovers.

§ 7.4 Visits to the site by the Owner shall not be construed to create an obligation on the part of the Owner to make on-site inspections to check the quality or quantity of the Work. The Owner shall neither have control over or charge of, nor be responsible for, the construction means, methods, techniques, sequences or procedures, or for the safety precautions and programs in connection with the Work, because these are solely the Design-Builder's rights and responsibilities under the Design-Build Documents.

§ 7.5 The Owner shall not be responsible for the Design-Builder's failure to perform the Work in accordance with the requirements of the Design-Build Documents. The Owner shall not have control over or charge of, and will not be responsible for acts or omissions of the Design-Builder, Architect, Consultants, Contractors, or their agents or employees, or any other persons or entities performing portions of the Work for the Design-Builder.

§ 7.6 The Owner has the authority to reject Work that does not conform to the Design-Build Documents. The Owner shall have authority to require inspection or testing of the Work in accordance with Section 15.5.2, whether or not such Work is fabricated, installed or completed. However, neither this authority of the Owner nor a decision made in good faith either to exercise or not to exercise such authority shall give rise to a duty or responsibility of the Owner to the Design-Builder, the Architect, Consultants, Contractors, material and equipment suppliers, their agents or employees, or other persons or entities performing portions of the Work.

§ 7.7 The Owner shall determine the date or dates of Substantial Completion in accordance with Section 9.8 and the date of final completion in accordance with Section 9.10.

§ 7.8 Owner's Right to Stop Work

If the Design-Builder fails to correct Work which is not in accordance with the requirements of the Design-Build Documents as required by Section 11.2 or persistently fails to carry out Work in accordance with the Design-Build Documents, the Owner may issue a written order to the Design-Builder to stop the Work, or any portion thereof, until the cause for such order has been eliminated; however, the right of the Owner to stop the Work shall not give rise to a duty on the part of the Owner to exercise this right for the benefit of the Design-Builder or any other person or entity, except to the extent required by Section 5.13.1.3.

§ 7.9 Owner's Right to Carry Out the Work

If the Design-Builder defaults or neglects to carry out the Work in accordance with the Design-Build Documents and fails within a ten-day period after receipt of written notice from the Owner to commence and continue correction of such default or neglect with diligence and promptness, the Owner may, without prejudice to other remedies the Owner may have, correct such deficiencies. In such case, an appropriate Change Order shall be issued deducting from payments then or thereafter due the Design-Builder the reasonable cost of correcting such deficiencies. If payments then or thereafter due the Design-Builder are not sufficient to cover such amounts, the Design-Builder shall pay the difference to the Owner.

ARTICLE 8 TIME

§ 8.1 Progress and Completion

§ 8.1.1 Time limits stated in the Design-Build Documents are of the essence of the Contract. By executing the Design-Build Amendment the Design-Builder confirms that the Contract Time is a reasonable period for performing the Work.

§ 8.1.2 The Design-Builder shall not, except by agreement of the Owner in writing, commence the Work prior to the effective date of insurance, other than property insurance, required by this Contract. The Contract Time shall not be adjusted as a result of the Design-Builder's failure to obtain insurance required under this Contract.

§ 8.1.3 The Design-Builder shall proceed expeditiously with adequate forces and shall achieve Substantial Completion within the Contract Time.

§ 8.2 Delays and Extensions of Time

§ 8.2.1 If the Design-Builder is delayed at any time in the commencement or progress of the Work by an act or neglect of the Owner or of a consultant or separate contractor employed by the Owner; or by changes ordered in the Work by the Owner; or by labor disputes, fire, unusual delay in deliveries, unavoidable casualties or other causes beyond the Design-Builder's control; or by delay authorized by the Owner pending mediation and binding dispute resolution or by other causes that the Owner determines may justify delay, then the Contract Time shall be extended by Change Order for such reasonable time as the Owner may determine.

§ 8.2.2 Claims relating to time shall be made in accordance with applicable provisions of Article 14.

§ 8.2.3 This Section 8.2 does not preclude recovery of damages for delay by either party under other provisions of the Design-Build Documents.

ARTICLE 9 PAYMENT APPLICATIONS AND PROJECT COMPLETION

§ 9.1 Contract Sum

The Contract Sum is stated in the Design-Build Amendment.

§ 9.2 Schedule of Values

Where the Contract Sum is based on a stipulated sum or Guaranteed Maximum Price, the Design-Builder, prior to the first Application for Payment after execution of the Design-Build Amendment shall submit to the Owner a schedule of

values allocating the entire Contract Sum to the various portions of the Work and prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

§ 9.3 Applications for Payment

§ 9.3.1 At least ten days before the date established for each progress payment, the Design-Builder shall submit to the Owner an itemized Application for Payment for completed portions of the Work. The application shall be notarized, if required, and supported by data substantiating the Design-Builder's right to payment as the Owner may require, such as copies of requisitions from the Architect, Consultants, Contractors, and material suppliers, and shall reflect retainage if provided for in the Design-Build Documents.

§ 9.3.1.1 As provided in Section 6.3.9, Applications for Payment may include requests for payment on account of changes in the Work that have been properly authorized by Change Directives, or by interim determinations of the Owner, but not yet included in Change Orders.

§ 9.3.1.2 Applications for Payment shall not include requests for payment for portions of the Work for which the Design-Builder does not intend to pay the Architect, Consultant, Contractor, material supplier, or other persons or entities providing services or work for the Design-Builder, unless such Work has been performed by others whom the Design-Builder intends to pay.

§ 9.3.2 Unless otherwise provided in the Design-Build Documents, payments shall be made for services provided as well as materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work. If approved in advance by the Owner, payment may similarly be made for materials and equipment suitably stored off the site at a location agreed upon in writing. Payment for materials and equipment stored on or off the site shall be conditioned upon compliance by the Design-Builder with procedures satisfactory to the Owner to establish the Owner's title to such materials and equipment or otherwise protect the Owner's interest, and shall include the costs of applicable insurance, storage and transportation to the site for such materials and equipment stored off the site.

§ 9.3.3 The Design-Builder warrants that title to all Work, other than Instruments of Service, covered by an Application for Payment will pass to the Owner no later than the time of payment. The Design-Builder further warrants that, upon submittal of an Application for Payment, all Work for which Certificates for Payment have been previously issued and payments received from the Owner shall, to the best of the Design-Builder's knowledge, information and belief, be free and clear of liens, claims, security interests or encumbrances in favor of the Design-Builder, Architect, Consultants, Contractors, material suppliers, or other persons or entities entitled to make a claim by reason of having provided labor, materials and equipment relating to the Work.

§ 9.4 Certificates for Payment

The Owner shall, within seven days after receipt of the Design-Builder's Application for Payment, issue to the Design-Builder a Certificate for Payment indicating the amount the Owner determines is properly due, and notify the Design-Builder in writing of the Owner's reasons for withholding certification in whole or in part as provided in Section 9.5.1.

§ 9.5 Decisions to Withhold Certification

§ 9.5.1 The Owner may withhold a Certificate for Payment in whole or in part to the extent reasonably necessary to protect the Owner due to the Owner's determination that the Work has not progressed to the point indicated in the Design-Builder's Application for Payment, or the quality of the Work is not in accordance with the Design-Build Documents. If the Owner is unable to certify payment in the amount of the Application, the Owner will notify the Design-Builder as provided in Section 9.4. If the Design-Builder and Owner cannot agree on a revised amount, the Owner will promptly issue a Certificate for Payment for the amount that the Owner deems to be due and owing. The Owner may also withhold a Certificate for Payment or, because of subsequently discovered evidence, may nullify the whole or a part of a Certificate for Payment previously issued to such extent as may be necessary to protect the Owner from loss for which the Design-Builder is responsible because of

- .1 defective Work, including design and construction, not remedied;
- .2 third party claims filed or reasonable evidence indicating probable filing of such claims unless security acceptable to the Owner is provided by the Design-Builder;
- .3 failure of the Design-Builder to make payments properly to the Architect, Consultants, Contractors or others, for services, labor, materials or equipment;
- .4 reasonable evidence that the Work cannot be completed for the unpaid balance of the Contract Sum;
- .5 damage to the Owner or a separate contractor;

- .6 reasonable evidence that the Work will not be completed within the Contract Time, and that the unpaid balance would not be adequate to cover actual or liquidated damages for the anticipated delay; or
- .7 repeated failure to carry out the Work in accordance with the Design-Build Documents.

§ 9.5.2 When the above reasons for withholding certification are removed, certification will be made for amounts previously withheld.

§ 9.5.3 If the Owner withholds certification for payment under Section 9.5.1.3, the Owner may, at its sole option, issue joint checks to the Design-Builder and to the Architect or any Consultants, Contractor, material or equipment suppliers, or other persons or entities providing services or work for the Design-Builder to whom the Design-Builder failed to make payment for Work properly performed or material or equipment suitably delivered.

§ 9.6 Progress Payments

§ 9.6.1 After the Owner has issued a Certificate for Payment, the Owner shall make payment in the manner and within the time provided in the Design-Build Documents.

§ 9.6.2 The Design-Builder shall pay each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder no later than the time period required by applicable law, but in no event more than seven days after receipt of payment from the Owner the amount to which the Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder is entitled, reflecting percentages actually retained from payments to the Design-Builder on account of the portion of the Work performed by the Architect, Consultant, Contractor, or other person or entity. The Design-Builder shall, by appropriate agreement with each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder, require each Architect, Consultant, Contractor, and other person or entity providing services or work for the Design-Builder to make payments to subconsultants and subcontractors in a similar manner.

§ 9.6.3 The Owner will, on request and if practicable, furnish to the Architect, a Consultant, Contractor, or other person or entity providing services or work for the Design-Builder, information regarding percentages of completion or amounts applied for by the Design-Builder and action taken thereon by the Owner on account of portions of the Work done by such Architect, Consultant, Contractor or other person or entity providing services or work for the Design-Builder.

§ 9.6.4 The Owner has the right to request written evidence from the Design-Builder that the Design-Builder has properly paid the Architect, Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, amounts paid by the Owner to the Design-Builder for the Work. If the Design-Builder fails to furnish such evidence within seven days, the Owner shall have the right to contact the Architect, Consultants, and Contractors to ascertain whether they have been properly paid. The Owner shall have no obligation to pay or to see to the payment of money to a Consultant or Contractor, except as may otherwise be required by law.

§ 9.6.5 Design-Builder payments to material and equipment suppliers shall be treated in a manner similar to that provided in Sections 9.6.2, 9.6.3 and 9.6.4.

§ 9.6.6 A Certificate for Payment, a progress payment, or partial or entire use or occupancy of the Project by the Owner shall not constitute acceptance of Work not in accordance with the Design-Build Documents.

§ 9.6.7 Unless the Design-Builder provides the Owner with a payment bond in the full penal sum of the Contract Sum, payments received by the Design-Builder for Work properly performed by the Architect, Consultants, Contractors and other person or entity providing services or work for the Design-Builder, shall be held by the Design-Builder for the Architect and those Consultants, Contractors, or other person or entity providing services or work for the Design-Builder, for which payment was made by the Owner. Nothing contained herein shall require money to be placed in a separate account and not commingled with money of the Design-Builder, shall create any fiduciary liability or tort liability on the part of the Design-Builder for breach of trust or shall entitle any person or entity to an award of punitive damages against the Design-Builder for breach of the requirements of this provision.

§ 9.7 Failure of Payment

If the Owner does not issue a Certificate for Payment, through no fault of the Design-Builder, within the time required by the Design-Build Documents, then the Design-Builder may, upon seven additional days' written notice to the Owner, stop the Work until payment of the amount owing has been received. The Contract Time shall be extended appropriately and the Contract Sum shall be increased by the amount of the Design-Builder's reasonable costs of shut-down, delay and start-up, plus interest as provided for in the Design-Build Documents.

§ 9.8 Substantial Completion

§ 9.8.1 Substantial Completion is the stage in the progress of the Work when the Work or designated portion thereof is sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Work for its intended use. The date of Substantial Completion is the date certified by the Owner in accordance with this Section 9.8.

§ 9.8.2 When the Design-Builder considers that the Work, or a portion thereof which the Owner agrees to accept separately, is substantially complete, the Design-Builder shall prepare and submit to the Owner a comprehensive list of items to be completed or corrected prior to final payment. Failure to include an item on such list does not alter the responsibility of the Design-Builder to complete all Work in accordance with the Design-Build Documents.

§ 9.8.3 Upon receipt of the Design-Builder's list, the Owner shall make an inspection to determine whether the Work or designated portion thereof is substantially complete. If the Owner's inspection discloses any item, whether or not included on the Design-Builder's list, which is not sufficiently complete in accordance with the Design-Build Documents so that the Owner can occupy or utilize the Work or designated portion thereof for its intended use, the Design-Builder shall, before issuance of the Certificate of Substantial Completion, complete or correct such item upon notification by the Owner. In such case, the Design-Builder shall then submit a request for another inspection by the Owner to determine Substantial Completion.

§ 9.8.4 Prior to issuance of the Certificate of Substantial Completion under Section 9.8.5, the Owner and Design-Builder shall discuss and then determine the parties' obligations to obtain and maintain property insurance following issuance of the Certificate of Substantial Completion.

§ 9.8.5 When the Work or designated portion thereof is substantially complete, the Design-Builder will prepare for the Owner's signature a Certificate of Substantial Completion that shall, upon the Owner's signature, establish the date of Substantial Completion; establish responsibilities of the Owner and Design-Builder for security, maintenance, heat, utilities, damage to the Work and insurance; and fix the time within which the Design-Builder shall finish all items on the list accompanying the Certificate. Warranties required by the Design-Build Documents shall commence on the date of Substantial Completion of the Work or designated portion thereof unless otherwise provided in the Certificate of Substantial Completion.

§ 9.8.6 The Certificate of Substantial Completion shall be submitted by the Design-Builder to the Owner for written acceptance of responsibilities assigned to it in the Certificate. Upon the Owner's acceptance, and consent of surety, if any, the Owner shall make payment of retainage applying to the Work or designated portion thereof. Payment shall be adjusted for Work that is incomplete or not in accordance with the requirements of the Design-Build Documents.

§ 9.9 Partial Occupancy or Use

§ 9.9.1 The Owner may occupy or use any completed or partially completed portion of the Work at any stage when such portion is designated by separate agreement with the Design-Builder, provided such occupancy or use is consented to, by endorsement or otherwise, by the insurer providing property insurance and authorized by public authorities having jurisdiction over the Project. Such partial occupancy or use may commence whether or not the portion is substantially complete, provided the Owner and Design-Builder have accepted in writing the responsibilities assigned to each of them for payments, retainage, if any, security, maintenance, heat, utilities, damage to the Work and insurance, and have agreed in writing concerning the period for correction of the Work and commencement of warranties required by the Design-Build Documents. When the Design-Builder considers a portion substantially complete, the Design-Builder shall prepare and submit a list to the Owner as provided under Section 9.8.2. Consent of the Design-Builder to partial occupancy or use shall not be unreasonably withheld. The stage of the progress of the Work shall be determined by written agreement between the Owner and Design-Builder.

§ 9.9.2 Immediately prior to such partial occupancy or use, the Owner and Design-Builder shall jointly inspect the area to be occupied or portion of the Work to be used in order to determine and record the condition of the Work.

§ 9.9.3 Unless otherwise agreed upon, partial occupancy or use of a portion or portions of the Work shall not constitute acceptance of Work not complying with the requirements of the Design-Build Documents.

§ 9.10 Final Completion and Final Payment

§ 9.10.1 Upon receipt of the Design-Builder's written notice that the Work is ready for final inspection and acceptance and upon receipt of a final Application for Payment, the Owner will promptly make such inspection. When the Owner

finds the Work acceptable under the Design-Build Documents and the Contract fully performed, the Owner will, subject to Section 9.10.2, promptly issue a final Certificate for Payment.

§ 9.10.2 Neither final payment nor any remaining retained percentage shall become due until the Design-Builder submits to the Owner (1) an affidavit that payrolls, bills for materials and equipment, and other indebtedness connected with the Work, for which the Owner or the Owner's property might be responsible or encumbered, (less amounts withheld by Owner) have been paid or otherwise satisfied, (2) a certificate evidencing that insurance required by the Design-Build Documents to remain in force after final payment is currently in effect, (3) a written statement that the Design-Builder knows of no substantial reason that the insurance will not be renewable to cover the period required by the Design-Build Documents, (4) consent of surety, if any, to final payment, (5) as-constructed record copy of the Construction Documents marked to indicate field changes and selections made during construction, (6) manufacturer's warranties, product data, and maintenance and operations manuals, and (7) if required by the Owner, other data establishing payment or satisfaction of obligations, such as receipts, or releases and waivers of liens, claims, security interests, or encumbrances, arising out of the Contract, to the extent and in such form as may be designated by the Owner. If an Architect, a Consultant, or a Contractor, or other person or entity providing services or work for the Design-Builder, refuses to furnish a release or waiver required by the Owner, the Design-Builder may furnish a bond satisfactory to the Owner to indemnify the Owner against such liens, claims, security interests, or encumbrances. If such liens, claims, security interests, or encumbrances remains unsatisfied after payments are made, the Design-Builder shall refund to the Owner all money that the Owner may be compelled to pay in discharging such liens, claims, security interests, or encumbrances, including all costs and reasonable attorneys' fees.

§ 9.10.3 If, after Substantial Completion of the Work, final completion thereof is materially delayed through no fault of the Design-Builder or by issuance of Change Orders affecting final completion, the Owner shall, upon application by the Design-Builder, and without terminating the Contract, make payment of the balance due for that portion of the Work fully completed and accepted. If the remaining balance for Work not fully completed or corrected is less than retainage stipulated in the Design-Build Documents, and if bonds have been furnished, the written consent of surety to payment of the balance due for that portion of the Work fully completed and accepted shall be submitted by the Design-Builder to the Owner prior to issuance of payment. Such payment shall be made under terms and conditions governing final payment, except that it shall not constitute a waiver of claims.

§ 9.10.4 The making of final payment shall constitute a waiver of Claims by the Owner except those arising from

- .1 liens, Claims, security interests or encumbrances arising out of the Contract and unsettled;
- .2 failure of the Work to comply with the requirements of the Design-Build Documents; or
- .3 terms of special warranties required by the Design-Build Documents.

§ 9.10.5 Acceptance of final payment by the Design-Builder shall constitute a waiver of claims by the Design-Builder except those previously made in writing and identified by the Design-Builder as unsettled at the time of final Application for Payment.

ARTICLE 10 PROTECTION OF PERSONS AND PROPERTY

§ 10.1 Safety Precautions and Programs

The Design-Builder shall be responsible for initiating, maintaining and supervising all safety precautions and programs in connection with the performance of the Contract.

§ 10.2 Safety of Persons and Property

§ 10.2.1 The Design-Builder shall be responsible for precautions for the safety of, and reasonable protection to prevent damage, injury or loss to

- .1 employees on the Work and other persons who may be affected thereby;
- .2 the Work and materials and equipment to be incorporated therein, whether in storage on or off the site, under care, custody or control of the Design-Builder or the Architect, Consultants, or Contractors, or other person or entity providing services or work for the Design-Builder; and
- .3 other property at the site or adjacent thereto, such as trees, shrubs, lawns, walks, pavements, roadways, or structures and utilities not designated for removal, relocation or replacement in the course of construction.

§ 10.2.2 The Design-Builder shall comply with, and give notices required by, applicable laws, statutes, ordinances, codes, rules and regulations, and lawful orders of public authorities, bearing on safety of persons or property, or their protection from damage, injury or loss.

§ 10.2.3 The Design-Builder shall implement, erect, and maintain, as required by existing conditions and performance of the Contract, reasonable safeguards for safety and protection, including posting danger signs and other warnings

against hazards, promulgating safety regulations, and notify owners and users of adjacent sites and utilities of the safeguards and protections.

§ 10.2.4 When use or storage of explosives or other hazardous materials or equipment, or unusual methods, are necessary for execution of the Work, the Design-Builder shall exercise utmost care, and carry on such activities under supervision of properly qualified personnel.

§ 10.2.5 The Design-Builder shall promptly remedy damage and loss (other than damage or loss insured under property insurance required by the Design-Build Documents) to property referred to in Sections 10.2.1.2 and 10.2.1.3, caused in whole or in part by the Design-Builder, the Architect, a Consultant, a Contractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts they may be liable and for which the Design-Builder is responsible under Sections 10.2.1.2 and 10.2.1.3; except damage or loss attributable to acts or omissions of the Owner, or anyone directly or indirectly employed by the Owner, or by anyone for whose acts the Owner may be liable, and not attributable to the fault or negligence of the Design-Builder. The foregoing obligations of the Design-Builder are in addition to the Design-Builder's obligations under Section 3.1.14.

§ 10.2.6 The Design-Builder shall designate a responsible member of the Design-Builder's organization, at the site, whose duty shall be the prevention of accidents. This person shall be the Design-Builder's superintendent unless otherwise designated by the Design-Builder in writing to the Owner.

§ 10.2.7 The Design-Builder shall not permit any part of the construction or site to be loaded so as to cause damage or create an unsafe condition.

§ 10.2.8 **Injury or Damage to Person or Property.** If the Owner or Design-Builder suffers injury or damage to person or property because of an act or omission of the other, or of others for whose acts such party is legally responsible, written notice of the injury or damage, whether or not insured, shall be given to the other party within a reasonable time not exceeding 21 days after discovery. The notice shall provide sufficient detail to enable the other party to investigate the matter.

§ 10.3 Hazardous Materials

§ 10.3.1 The Design-Builder is responsible for compliance with any requirements included in the Design-Build Documents regarding hazardous materials. If the Design-Builder encounters a hazardous material or substance not addressed in the Design-Build Documents and if reasonable precautions will be inadequate to prevent foreseeable bodily injury or death to persons resulting from a material or substance, including but not limited to asbestos or polychlorinated biphenyl (PCB), encountered on the site by the Design-Builder, the Design-Builder shall, upon recognizing the condition, immediately stop Work in the affected area and report the condition to the Owner in writing.

§ 10.3.2 Upon receipt of the Design-Builder's written notice, the Owner shall obtain the services of a licensed laboratory to verify the presence or absence of the material or substance reported by the Design-Builder and, in the event such material or substance is found to be present, to cause it to be rendered harmless. Unless otherwise required by the Design-Build Documents, the Owner shall furnish in writing to the Design-Builder the names and qualifications of persons or entities who are to perform tests verifying the presence or absence of such material or substance or who are to perform the task of removal or safe containment of such material or substance. The Design-Builder will promptly reply to the Owner in writing stating whether or not the Design-Builder has reasonable objection to the persons or entities proposed by the Owner. If the Design-Builder has an objection to a person or entity proposed by the Owner, the Owner shall propose another to whom the Design-Builder has no reasonable objection. When the material or substance has been rendered harmless, Work in the affected area shall resume upon written agreement of the Owner and Design-Builder. By Change Order, the Contract Time shall be extended appropriately and the Contract Sum shall be increased in the amount of the Design-Builder's reasonable additional costs of shut-down, delay and start-up.

§ 10.3.3 To the fullest extent permitted by law, the Owner shall indemnify and hold harmless the Design-Builder, the Architect, Consultants, and Contractors, and employees of any of them, from and against claims, damages, losses and expenses, including but not limited to attorneys' fees, arising out of or resulting from performance of the Work in the affected area, if in fact the material or substance presents the risk of bodily injury or death as described in Section 10.3.1 and has not been rendered harmless, provided that such claim, damage, loss or expense is attributable to bodily injury, sickness, disease or death, or to injury to, or destruction of, tangible property (other than the Work itself), except to the extent that such damage, loss or expense is due to the fault or negligence of the party seeking indemnity.

§ 10.3.4 The Owner shall not be responsible under this Section 10.3 for materials or substances the Design-Builder brings to the site unless such materials or substances are required by the Owner's Criteria. The Owner shall be

responsible for materials or substances required by the Owner's Criteria, except to the extent of the Design-Builder's fault or negligence in the use and handling of such materials or substances.

§ 10.3.5 The Design-Builder shall indemnify the Owner for the cost and expense the Owner incurs (1) for remediation of a material or substance the Design-Builder brings to the site and negligently handles, or (2) where the Design-Builder fails to perform its obligations under Section 10.3.1, except to the extent that the cost and expense are due to the Owner's fault or negligence.

§ 10.3.6 If, without negligence on the part of the Design-Builder, the Design-Builder is held liable by a government agency for the cost of remediation of a hazardous material or substance solely by reason of performing Work as required by the Design-Build Documents, the Owner shall indemnify the Design-Builder for all cost and expense thereby incurred.

§ 10.4 Emergencies

In an emergency affecting safety of persons or property, the Design-Builder shall act, at the Design-Builder's discretion, to prevent threatened damage, injury or loss.

ARTICLE 11 UNCOVERING AND CORRECTION OF WORK

§ 11.1 Uncovering of Work

The Owner may request to examine a portion of the Work that the Design-Builder has covered to determine if the Work has been performed in accordance with the Design-Build Documents. If such Work is in accordance with the Design-Build Documents, the Owner and Design-Builder shall execute a Change Order to adjust the Contract Time and Contract Sum, as appropriate. If such Work is not in accordance with the Design-Build Documents, the costs of uncovering and correcting the Work shall be at the Design-Builder's expense and the Design-Builder shall not be entitled to a change in the Contract Time unless the condition was caused by the Owner or a separate contractor in which event the Owner shall be responsible for payment of such costs and the Contract Time will be adjusted as appropriate.

§ 11.2 Correction of Work

§ 11.2.1 **Before or After Substantial Completion.** The Design-Builder shall promptly correct Work rejected by the Owner or failing to conform to the requirements of the Design-Build Documents, whether discovered before or after Substantial Completion and whether or not fabricated, installed or completed. Costs of correcting such rejected Work, including additional testing and inspections, the cost of uncovering and replacement, and compensation for any design consultant employed by the Owner whose expenses and compensation were made necessary thereby, shall be at the Design-Builder's expense.

§ 11.2.2 After Substantial Completion

§ 11.2.2.1 In addition to the Design-Builder's obligations under Section 3.1.12, if, within one year after the date of Substantial Completion of the Work or designated portion thereof or after the date for commencement of warranties established under Section 9.9.1, or by terms of an applicable special warranty required by the Design-Build Documents, any of the Work is found not to be in accordance with the requirements of the Design-Build Documents, the Design-Builder shall correct it promptly after receipt of written notice from the Owner to do so unless the Owner has previously given the Design-Builder a written acceptance of such condition. The Owner shall give such notice promptly after discovery of the condition. During the one-year period for correction of the Work, if the Owner fails to notify the Design-Builder and give the Design-Builder an opportunity to make the correction, the Owner waives the rights to require correction by the Design-Builder and to make a claim for breach of warranty. If the Design-Builder fails to correct nonconforming Work within a reasonable time during that period after receipt of notice from the Owner, the Owner may correct it in accordance with Section 7.9.

§ 11.2.2.2 The one-year period for correction of Work shall be extended with respect to portions of Work first performed after Substantial Completion by the period of time between Substantial Completion and the actual completion of that portion of the Work.

§ 11.2.2.3 The one-year period for correction of Work shall not be extended by corrective Work performed by the Design-Builder pursuant to this Section 11.2.

§ 11.2.3 The Design-Builder shall remove from the site portions of the Work that are not in accordance with the requirements of the Design-Build Documents and are neither corrected by the Design-Builder nor accepted by the Owner.

§ 11.2.4 The Design-Builder shall bear the cost of correcting destroyed or damaged construction of the Owner or separate contractors, whether completed or partially completed, caused by the Design-Builder's correction or removal of Work that is not in accordance with the requirements of the Design-Build Documents.

§ 11.2.5 Nothing contained in this Section 11.2 shall be construed to establish a period of limitation with respect to other obligations the Design-Builder has under the Design-Build Documents. Establishment of the one-year period for correction of Work as described in Section 11.2.2 relates only to the specific obligation of the Design-Builder to correct the Work, and has no relationship to the time within which the obligation to comply with the Design-Build Documents may be sought to be enforced, nor to the time within which proceedings may be commenced to establish the Design-Builder's liability with respect to the Design-Builder's obligations other than specifically to correct the Work.

§ 11.3 Acceptance of Nonconforming Work

If the Owner prefers to accept Work that is not in accordance with the requirements of the Design-Build Documents, the Owner may do so instead of requiring its removal and correction, in which case the Contract Sum will be reduced as appropriate and equitable. Such adjustment shall be effected whether or not final payment has been made.

ARTICLE 12 COPYRIGHTS AND LICENSES

§ 12.1 Drawings, specifications, and other documents furnished by the Design-Builder, including those in electronic form, are Instruments of Service. The Design-Builder, and the Architect, Consultants, Contractors, and any other person or entity providing services or work for any of them, shall be deemed the authors and owners of their respective Instruments of Service, including the Drawings and Specifications, and shall retain all common law, statutory and other reserved rights, including copyrights. Submission or distribution of Instruments of Service to meet official regulatory requirements, or for similar purposes in connection with the Project, is not to be construed as publication in derogation of the reserved rights of the Design-Builder and the Architect, Consultants, and Contractors, and any other person or entity providing services or work for any of them.

§ 12.2 The Design-Builder and the Owner warrant that in transmitting Instruments of Service, or any other information, the transmitting party is the copyright owner of such information or has permission from the copyright owner to transmit such information for its use on the Project.

§ 12.3 Upon execution of the Agreement, the Design-Builder grants to the Owner a limited, irrevocable and non-exclusive license to use the Instruments of Service solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner substantially performs its obligations, including prompt payment of all sums when due, under the Design-Build Documents. The license granted under this section permits the Owner to authorize its consultants and separate contractors to reproduce applicable portions of the Instruments of Service solely and exclusively for use in performing services or construction for the Project. If the Design-Builder rightfully terminates this Agreement for cause as provided in Section 13.1.4 or 13.2.1 the license granted in this Section 12.3 shall terminate.

§ 12.3.1 The Design-Builder shall obtain non-exclusive licenses from the Architect, Consultants, and Contractors, that will allow the Design-Builder to satisfy its obligations to the Owner under this Article 12. The Design-Builder's licenses from the Architect and its Consultants and Contractors shall also allow the Owner, in the event this Agreement is terminated for any reason other than the default of the Owner or in the event the Design-Builder's Architect, Consultants, or Contractors terminate their agreements with the Design-Builder for cause, to obtain a limited, irrevocable and non-exclusive license solely and exclusively for purposes of constructing, using, maintaining, altering and adding to the Project, provided that the Owner (1) agrees to pay to the Architect, Consultant or Contractor all amounts due, and (2) provide the Architect, Consultant or Contractor with the Owner's written agreement to indemnify and hold harmless the Architect, Consultant or Contractor from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise from the Owner's alteration or use of the Instruments of Service.

§ 12.3.2 In the event the Owner alters the Instruments of Service without the author's written authorization or uses the Instruments of Service without retaining the authors of the Instruments of Service, the Owner releases the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all claims and causes of action arising from or related to such uses. The Owner, to the extent permitted by law, further agrees to indemnify and hold harmless the Design-Builder, Architect, Consultants, Contractors and any other person or entity providing services or work for any of them, from all costs and expenses, including the cost of defense, related to claims and causes of action asserted by any third person or entity to the extent such costs and expenses arise

from the Owner's alteration or use of the Instruments of Service under this Section 12.3.2. The terms of this Section 12.3.2 shall not apply if the Owner rightfully terminates this Agreement for cause under Sections 13.1.4 or 13.2.2.

Article 12.3.3 See Exhibit "G" attached and incorporated by reference.

ARTICLE 13 TERMINATION OR SUSPENSION

§ 13.1 Termination or Suspension Prior to Execution of the Design-Build Amendment

§ 13.1.1 If the Owner fails to make payments to the Design-Builder for Work prior to execution of the Design-Build Amendment in accordance with this Agreement, such failure shall be considered substantial nonperformance and cause for termination or, at the Design-Builder's option, cause for suspension of performance of services under this Agreement. If the Design-Builder elects to suspend the Work, the Design-Builder shall give seven days' written notice to the Owner before suspending the Work. In the event of a suspension of the Work, the Design-Builder shall have no liability to the Owner for delay or damage caused by the suspension of the Work. Before resuming the Work, the Design-Builder shall be paid all sums due prior to suspension and any expenses incurred in the interruption and resumption of the Design-Builder's Work. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

§ 13.1.2 If the Owner suspends the Project, the Design-Builder shall be compensated for the Work performed prior to notice of such suspension. When the Project is resumed, the Design-Builder shall be compensated for expenses incurred in the interruption and resumption of the Design-Builder's Work. The Design-Builder's compensation for, and time to complete, the remaining Work shall be equitably adjusted.

§ 13.1.3 If the Owner suspends the Project for more than 90 cumulative days for reasons other than the fault of the Design-Builder, the Design-Builder may terminate this Agreement by giving not less than seven days' written notice.

§ 13.1.4 Either party may terminate this Agreement upon not less than seven days' written notice should the other party fail substantially to perform in accordance with the terms of this Agreement through no fault of the party initiating the termination.

§ 13.1.5 The Owner may terminate this Agreement upon not less than seven days' written notice to the Design-Builder for the Owner's convenience and without cause.

§ 13.1.6 In the event of termination not the fault of the Design-Builder, the Design-Builder shall be compensated for Work performed prior to termination, together with Reimbursable Expenses then due and any other expenses directly attributable to termination for which the Design-Builder is not otherwise compensated. In no event shall the Design-Builder's compensation under this Section 13.1.6 be greater than the compensation set forth in Section 2.1.

§ 13.2 Termination or Suspension Following Execution of the Design-Build Amendment

§ 13.2.1 Termination by the Design-Builder

§ 13.2.1.1 The Design-Builder may terminate the Contract if the Work is stopped for a period of 30 consecutive days through no act or fault of the Design-Builder, the Architect, a Consultant, or a Contractor, or their agents or employees, or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, for any of the following reasons:

- .1 Issuance of an order of a court or other public authority having jurisdiction that requires all Work to be stopped;
- .2 An act of government, such as a declaration of national emergency that requires all Work to be stopped;
- .3 Because the Owner has not issued a Certificate for Payment and has not notified the Design-Builder of the reason for withholding certification as provided in Section 9.5.1, or because the Owner has not made payment on a Certificate for Payment within the time stated in the Design-Build Documents; or
- .4 The Owner has failed to furnish to the Design-Builder promptly, upon the Design-Builder's request, reasonable evidence as required by Section 7.2.7.

§ 13.2.1.2 The Design-Builder may terminate the Contract if, through no act or fault of the Design-Builder, the Architect, a Consultant, a Contractor, or their agents or employees or any other persons or entities performing portions of the Work under direct or indirect contract with the Design-Builder, repeated suspensions, delays or interruptions of the entire Work by the Owner as described in Section 13.2.3 constitute in the aggregate more than 100 percent of the total number of days scheduled for completion, or 120 days in any 365-day period, whichever is less.

§ 13.2.1.3 If one of the reasons described in Section 13.2.1.1 or 13.2.1.2 exists, the Design-Builder may, upon seven days' written notice to the Owner, terminate the Contract and recover from the Owner payment for Work executed, including reasonable overhead and profit, costs incurred by reason of such termination, and damages.

§ 13.2.1.4 If the Work is stopped for a period of 60 consecutive days through no act or fault of the Design-Builder or any other persons or entities performing portions of the Work under contract with the Design-Builder because the Owner has repeatedly failed to fulfill the Owner's obligations under the Design-Build Documents with respect to matters important to the progress of the Work, the Design-Builder may, upon seven additional days' written notice to the Owner, terminate the Contract and recover from the Owner as provided in Section 13.2.1.3.

§ 13.2.2 Termination by the Owner For Cause

§ 13.2.2.1 The Owner may terminate the Contract if the Design-Builder

- .1 fails to submit the Proposal by the date required by this Agreement, or if no date is indicated, within a reasonable time consistent with the date of Substantial Completion;
- .2 repeatedly refuses or fails to supply an Architect, or enough properly skilled Consultants, Contractors, or workers or proper materials;
- .3 fails to make payment to the Architect, Consultants, or Contractors for services, materials or labor in accordance with their respective agreements with the Design-Builder;
- .4 repeatedly disregards applicable laws, statutes, ordinances, codes, rules and regulations, or lawful orders of a public authority; or
- .5 is otherwise guilty of substantial breach of a provision of the Design-Build Documents.

§ 13.2.2.2 When any of the above reasons exist, the Owner may without prejudice to any other rights or remedies of the Owner and after giving the Design-Builder and the Design-Builder's surety, if any, seven days' written notice, terminate employment of the Design-Builder and may, subject to any prior rights of the surety:

- .1 Exclude the Design-Builder from the site and take possession of all materials, equipment, tools, and construction equipment and machinery thereon owned by the Design-Builder;
- .2 Accept assignment of the Architect, Consultant and Contractor agreements pursuant to Section 3.1.15; and
- .3 Finish the Work by whatever reasonable method the Owner may deem expedient. Upon written request of the Design-Builder, the Owner shall furnish to the Design-Builder a detailed accounting of the costs incurred by the Owner in finishing the Work.

§ 13.2.2.3 When the Owner terminates the Contract for one of the reasons stated in Section 13.2.2.1, the Design-Builder shall not be entitled to receive further payment until the Work is finished.

§ 13.2.2.4 If the unpaid balance of the Contract Sum exceeds costs of finishing the Work and other damages incurred by the Owner and not expressly waived, such excess shall be paid to the Design-Builder. If such costs and damages exceed the unpaid balance, the Design-Builder shall pay the difference to the Owner. The obligation for such payments shall survive termination of the Contract.

§ 13.2.3 Suspension by the Owner for Convenience

§ 13.2.3.1 The Owner may, without cause, order the Design-Builder in writing to suspend, delay or interrupt the Work in whole or in part for such period of time as the Owner may determine.

§ 13.2.3.2 The Contract Sum and Contract Time shall be adjusted for increases in the cost and time caused by suspension, delay or interruption as described in Section 13.2.3.1. Adjustment of the Contract Sum shall include profit. No adjustment shall be made to the extent

- .1 that performance is, was or would have been so suspended, delayed or interrupted by another cause for which the Design-Builder is responsible; or
- .2 that an equitable adjustment is made or denied under another provision of the Contract.

§ 13.2.4 Termination by the Owner for Convenience

§ 13.2.4.1 The Owner may, at any time, terminate the Contract for the Owner's convenience and without cause.

§ 13.2.4.2 Upon receipt of written notice from the Owner of such termination for the Owner's convenience, the Design-Builder shall

- .1 cease operations as directed by the Owner in the notice;
- .2 take actions necessary, or that the Owner may direct, for the protection and preservation of the Work; and,
- .3 except for Work directed to be performed prior to the effective date of termination stated in the notice, terminate all existing Project agreements, including agreements with the Architect, Consultants, Contractors, and purchase orders, and enter into no further Project agreements and purchase orders.

§ 13.2.4.3 In case of such termination for the Owner's convenience, the Design-Builder shall be entitled to receive payment for Work executed, and costs incurred by reason of such termination, along with reasonable overhead and profit on the Work not executed.

ARTICLE 14 CLAIMS AND DISPUTE RESOLUTION

§ 14.1 Claims

§ 14.1.1 **Definition.** A Claim is a demand or assertion by one of the parties seeking, as a matter of right, payment of money, or other relief with respect to the terms of the Contract. The term "Claim" also includes other disputes and matters in question between the Owner and Design-Builder arising out of or relating to the Contract. The responsibility to substantiate Claims shall rest with the party making the Claim.

§ 14.1.2 **Time Limits on Claims.** The Owner and Design-Builder shall commence all claims and causes of action, whether in contract, tort, breach of warranty or otherwise, against the other, arising out of or related to the Contract in accordance with the requirements of the binding dispute resolution method selected in Section 1.3, within the time period specified by applicable law, but in any case not more than 10 years after the date of Substantial Completion of the Work. The Owner and Design-Builder waive all claims and causes of action not commenced in accordance with this Section 14.1.2.

§ 14.1.3 Notice of Claims

§ 14.1.3.1 **Prior To Final Payment.** Prior to Final Payment, Claims by either the Owner or Design-Builder must be initiated by written notice to the other party within 21 days after occurrence of the event giving rise to such Claim or within 21 days after the claimant first recognizes the condition giving rise to the Claim, whichever is later.

§ 14.1.3.2 **Claims Arising After Final Payment.** After Final Payment, Claims by either the Owner or Design-Builder that have not otherwise been waived pursuant to Sections 9.10.4 or 9.10.5, must be initiated by prompt written notice to the other party. The notice requirement in Section 14.1.3.1 and the Initial Decision requirement as a condition precedent to mediation in Section 14.2.1 shall not apply.

§ 14.1.4 **Continuing Contract Performance.** Pending final resolution of a Claim, except as otherwise agreed in writing or as provided in Section 9.7 and Article 13, the Design-Builder shall proceed diligently with performance of the Contract and the Owner shall continue to make payments in accordance with the Design-Build Documents.

§ 14.1.5 **Claims for Additional Cost.** If the Design-Builder intends to make a Claim for an increase in the Contract Sum, written notice as provided herein shall be given before proceeding to execute the portion of the Work that relates to the Claim. Prior notice is not required for Claims relating to an emergency endangering life or property arising under Section 10.4.

§ 14.1.6 Claims for Additional Time

§ 14.1.6.1 If the Design-Builder intends to make a Claim for an increase in the Contract Time, written notice as provided herein shall be given. The Design-Builder's Claim shall include an estimate of cost and of probable effect of delay on progress of the Work. In the case of a continuing delay, only one Claim is necessary.

§ 14.1.6.2 If adverse weather conditions are the basis for a Claim for additional time, such Claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated, and had an adverse effect on the scheduled construction.

§ 14.1.7 Claims for Consequential Damages

The Design-Builder and Owner waive Claims against each other for consequential damages arising out of or relating to this Contract. This mutual waiver includes

- .1 damages incurred by the Owner for rental expenses, for losses of use, income, profit, financing, business and reputation, and for loss of management or employee productivity or of the services of such persons; and
- .2 damages incurred by the Design-Builder for principal office expenses including the compensation of personnel stationed there, for losses of financing, business and reputation, and for loss of profit except anticipated profit arising directly from the Work.

This mutual waiver is applicable, without limitation, to all consequential damages due to either party's termination in accordance with Article 13. Nothing contained in this Section 14.1.7 shall be deemed to preclude an award of liquidated damages, when applicable, in accordance with the requirements of the Design-Build Documents.

§ 14.2 Initial Decision

§ 14.2.1 An initial decision shall be required as a condition precedent to mediation of all Claims between the Owner and Design-Builder initiated prior to the date final payment is due, excluding those arising under Sections 10.3 and 10.4 of the Agreement and Sections B.3.2.9 and B.3.2.10 of Exhibit B to this Agreement, unless 30 days have passed after the Claim has been initiated with no decision having been rendered. Unless otherwise mutually agreed in writing, the Owner shall render the initial decision on Claims.

§ 14.2.2 Procedure

§ 14.2.2.1 **Claims Initiated by the Owner.** If the Owner initiates a Claim, the Design-Builder shall provide a written response to Owner within ten days after receipt of the notice required under Section 14.1.3.1. Thereafter, the Owner shall render an initial decision within ten days of receiving the Design-Builder's response: (1) withdrawing the Claim in whole or in part, (2) approving the Claim in whole or in part, or (3) suggesting a compromise.

§ 14.2.2.2 **Claims Initiated by the Design-Builder.** If the Design-Builder initiates a Claim, the Owner will take one or more of the following actions within ten days after receipt of the notice required under Section 14.1.3.1: (1) request additional supporting data, (2) render an initial decision rejecting the Claim in whole or in part, (3) render an initial decision approving the Claim, (4) suggest a compromise or (5) indicate that it is unable to render an initial decision because the Owner lacks sufficient information to evaluate the merits of the Claim.

§ 14.2.3 In evaluating Claims, the Owner may, but shall not be obligated to, consult with or seek information from persons with special knowledge or expertise who may assist the Owner in rendering a decision. The retention of such persons shall be at the Owner's expense.

§ 14.2.4 If the Owner requests the Design-Builder to provide a response to a Claim or to furnish additional supporting data, the Design-Builder shall respond, within ten days after receipt of such request, and shall either (1) provide a response on the requested supporting data, (2) advise the Owner when the response or supporting data will be furnished or (3) advise the Owner that no supporting data will be furnished. Upon receipt of the response or supporting data, if any, the Owner will either reject or approve the Claim in whole or in part.

§ 14.2.5 The Owner's initial decision shall (1) be in writing; (2) state the reasons therefor; and (3) identify any change in the Contract Sum or Contract Time or both. The initial decision shall be final and binding on the parties but subject to mediation and, if the parties fail to resolve their dispute through mediation, to binding dispute resolution.

§ 14.2.6 Either party may file for mediation of an initial decision at any time, subject to the terms of Section 14.2.6.1.

§ 14.2.6.1 Either party may, within 30 days from the date of an initial decision, demand in writing that the other party file for mediation within 60 days of the initial decision. If such a demand is made and the party receiving the demand fails to file for mediation within the time required, then both parties waive their rights to mediate or pursue binding dispute resolution proceedings with respect to the initial decision.

§ 14.2.7 In the event of a Claim against the Design-Builder, the Owner may, but is not obligated to, notify the surety, if any, of the nature and amount of the Claim. If the Claim relates to a possibility of a Design-Builder's default, the Owner may, but is not obligated to, notify the surety and request the surety's assistance in resolving the controversy.

§ 14.2.8 If a Claim relates to or is the subject of a mechanic's lien, the party asserting such Claim may proceed in accordance with applicable law to comply with the lien notice or filing deadlines.

§ 14.3 Mediation

§ 14.3.1 Claims, disputes, or other matters in controversy arising out of or related to the Contract, except those waived as provided for in Sections 9.10.4, 9.10.5, and 14.1.7, shall be subject to mediation as a condition precedent to binding dispute resolution.

§ 14.3.2 The parties shall endeavor to resolve their Claims by mediation which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Mediation Procedures in effect on the date of the Agreement. A request for mediation shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the mediation. The request may be made concurrently with the filing of binding dispute resolution proceedings but, in such event, mediation shall proceed in advance of binding dispute resolution proceedings, which shall be stayed pending mediation for a period of 60 days from the date of filing, unless stayed for a longer period by agreement of the parties or court order. If an

arbitration proceeding is stayed pursuant to this Section 14.3.2, the parties may nonetheless proceed to the selection of the arbitrator(s) and agree upon a schedule for later proceedings.

§ 14.3.3 The parties shall share the mediator's fee and any filing fees equally. The mediation shall be held in the place where the Project is located, unless another location is mutually agreed upon. Agreements reached in mediation shall be enforceable as settlement agreements in any court having jurisdiction.

§ 14.4 Arbitration

§ 14.4.1 If the parties have selected arbitration as the method for binding dispute resolution in Section 1.3, any Claim subject to, but not resolved by, mediation shall be subject to arbitration which, unless the parties mutually agree otherwise, shall be administered by the American Arbitration Association in accordance with its Construction Industry Arbitration Rules in effect on the date of the Agreement. A demand for arbitration shall be made in writing, delivered to the other party to the Contract, and filed with the person or entity administering the arbitration. The party filing a notice of demand for arbitration must assert in the demand all Claims then known to that party on which arbitration is permitted to be demanded.

§ 14.4.1.1 A demand for arbitration shall be made no earlier than concurrently with the filing of a request for mediation, but in no event shall it be made after the date when the institution of legal or equitable proceedings based on the Claim would be barred by the applicable statute of limitations or statute of repose. For statute of limitations or statute of repose purposes, receipt of a written demand for arbitration by the person or entity administering the arbitration shall constitute the institution of legal or equitable proceedings based on the Claim.

§ 14.4.2 The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in any court having jurisdiction.

§ 14.4.3 The foregoing agreement to arbitrate, and other agreements to arbitrate with an additional person or entity duly consented to by parties to the Agreement, shall be specifically enforceable under applicable law in any court having jurisdiction thereof.

§ 14.4.4 Consolidation or Joinder

§ 14.4.4.1 Either party, at its sole discretion, may consolidate an arbitration conducted under this Agreement with any other arbitration to which it is a party provided that (1) the arbitration agreement governing the other arbitration permits consolidation, (2) the arbitrations to be consolidated substantially involve common questions of law or fact, and (3) the arbitrations employ materially similar procedural rules and methods for selecting arbitrator(s).

§ 14.4.4.2 Either party, at its sole discretion, may include by joinder persons or entities substantially involved in a common question of law or fact whose presence is required if complete relief is to be accorded in arbitration, provided that the party sought to be joined consents in writing to such joinder. Consent to arbitration involving an additional person or entity shall not constitute consent to arbitration of any claim, dispute or other matter in question not described in the written consent.

§ 14.4.4.3 The Owner and Design-Builder grant to any person or entity made a party to an arbitration conducted under this Section 14.4, whether by joinder or consolidation, the same rights of joinder and consolidation as the Owner and Design-Builder under this Agreement.

ARTICLE 15 MISCELLANEOUS PROVISIONS

§ 15.1 Governing Law

The Contract shall be governed by the law of the place where the Project is located except that, if the parties have selected arbitration as the method of binding dispute resolution, the Federal Arbitration Act shall govern Section 14.4.

§ 15.2 Successors and Assigns

§ 15.2.1 The Owner and Design-Builder, respectively, bind themselves, their partners, successors, assigns and legal representatives to the covenants, agreements and obligations contained in the Design-Build Documents. Except as provided in Section 15.2.2, neither party to the Contract shall assign the Contract as a whole without written consent of the other. If either party attempts to make such an assignment without such consent, that party shall nevertheless remain legally responsible for all obligations under the Contract.

§ 15.2.2 The Owner may, without consent of the Design-Builder, assign the Contract to a lender providing construction financing for the Project, if the lender assumes the Owner's rights and obligations under the Design-Build Documents. The Design-Builder shall execute all consents reasonably required to facilitate such assignment.

§ 15.2.3 If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute certificates, other than those required by Section 3.1.10, the Owner shall submit the proposed language of such certificates for review at least 14 days prior to the requested dates of execution. If the Owner requests the Design-Builder, Architect, Consultants, or Contractors to execute consents reasonably required to facilitate assignment to a lender, the Design-Builder, Architect, Consultants, or Contractors shall execute all such consents that are consistent with this Agreement, provided the proposed consent is submitted to them for review at least 14 days prior to execution. The Design-Builder, Architect, Consultants, and Contractors shall not be required to execute certificates or consents that would require knowledge, services or responsibilities beyond the scope of their services.

§ 15.3 Written Notice

Written notice shall be deemed to have been duly served if delivered in person to the individual, to a member of the firm or entity, or to an officer of the corporation for which it was intended; or if delivered at, or sent by registered or certified mail or by courier service providing proof of delivery to, the last business address known to the party giving notice.

§ 15.4 Rights and Remedies

§ 15.4.1 Duties and obligations imposed by the Design-Build Documents, and rights and remedies available thereunder, shall be in addition to and not a limitation of duties, obligations, rights and remedies otherwise imposed or available by law.

§ 15.4.2 No action or failure to act by the Owner or Design-Builder shall constitute a waiver of a right or duty afforded them under the Contract, nor shall such action or failure to act constitute approval of or acquiescence in a breach thereunder, except as may be specifically agreed in writing.

§ 15.5 Tests and Inspections

§ 15.5.1 Tests, inspections and approvals of portions of the Work shall be made as required by the Design-Build Documents and by applicable laws, statutes, ordinances, codes, rules and regulations or lawful orders of public authorities. Unless otherwise provided, the Design-Builder shall make arrangements for such tests, inspections and approvals with an independent testing laboratory or entity acceptable to the Owner, or with the appropriate public authority, and shall bear all related costs of tests, inspections and approvals. The Design-Builder shall give the Owner timely notice of when and where tests and inspections are to be made so that the Owner may be present for such procedures. The Owner shall bear costs of (1) tests, inspections or approvals that do not become requirements until after bids are received or negotiations concluded, and (2) tests, inspections or approvals where building codes or applicable laws or regulations prohibit the Owner from delegating their cost to the Design-Builder.

§ 15.5.2 If the Owner determines that portions of the Work require additional testing, inspection or approval not included under Section 15.5.1, the Owner will instruct the Design-Builder to make arrangements for such additional testing, inspection or approval by an entity acceptable to the Owner, and the Design-Builder shall give timely notice to the Owner of when and where tests and inspections are to be made so that the Owner may be present for such procedures. Such costs, except as provided in Section 15.5.3, shall be at the Owner's expense.

§ 15.5.3 If such procedures for testing, inspection or approval under Sections 15.5.1 and 15.5.2 reveal failure of the portions of the Work to comply with requirements established by the Design-Build Documents, all costs made necessary by such failure shall be at the Design-Builder's expense.

§ 15.5.4 Required certificates of testing, inspection or approval shall, unless otherwise required by the Design-Build Documents, be secured by the Design-Builder and promptly delivered to the Owner.

§ 15.5.5 If the Owner is to observe tests, inspections or approvals required by the Design-Build Documents, the Owner will do so promptly and, where practicable, at the normal place of testing.

§ 15.5.6 Tests or inspections conducted pursuant to the Design-Build Documents shall be made promptly to avoid unreasonable delay in the Work.

§ 15.6 Confidential Information

If the Owner or Design-Builder transmits Confidential Information, the transmission of such Confidential Information constitutes a warranty to the party receiving such Confidential Information that the transmitting party is authorized to transmit

the Confidential Information. If a party receives Confidential Information, the receiving party shall keep the Confidential Information strictly confidential and shall not disclose it to any other person or entity except as set forth in Section 15.6.1.

§ 15.6.1 A party receiving Confidential Information may disclose the Confidential Information as required by law or court order, including a subpoena or other form of compulsory legal process issued by a court or governmental entity. A party receiving Confidential Information may also disclose the Confidential Information to its employees, consultants or contractors in order to perform services or work solely and exclusively for the Project, provided those employees, consultants and contractors are subject to the restrictions on the disclosure and use of Confidential Information as set forth in this Contract.

§ 15.7 Capitalization

Terms capitalized in the Contract include those that are (1) specifically defined, (2) the titles of numbered articles or (3) the titles of other documents published by the American Institute of Architects.

§ 15.8 Interpretation

§ 15.8.1 In the interest of brevity the Design-Build Documents frequently omit modifying words such as "all" and "any" and articles such as "the" and "an," but the fact that a modifier or an article is absent from one statement and appears in another is not intended to affect the interpretation of either statement.

§ 15.8.2 Unless otherwise stated in the Design-Build Documents, words which have well-known technical or construction industry meanings are used in the Design-Build Documents in accordance with such recognized meanings.

ARTICLE 16 SCOPE OF THE AGREEMENT

§ 16.1 This Agreement is comprised of the following documents listed below:

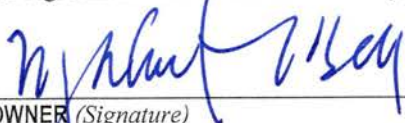
- .1 AIA Document A141™-2014, Standard Form of Agreement Between Owner and Design-Builder
- .2 AIA Document A141™-2014, Exhibit A, Design-Build Amendment, if executed
- .3 AIA Document A141™-2014, Exhibit B, Insurance and Bonds
- ~~.4 AIA Document A141™-2014, Exhibit C, Sustainable Projects, if completed~~
- ~~.5 AIA Document E203™-2013, Building Information Modeling and Digital Data Exhibit, if completed, or the following:~~

- .6 Other:
 - Exhibit "D"
 - Exhibit "E"
 - Exhibit "F"
 - Exhibit "G"

meb


[Signature]

This Agreement entered into as of the day and year first written above.



OWNER (Signature)
Michael L. Bell, Chairman

(Printed name and title)



DESIGN-BUILDER (Signature)
R. Gregory Jenkins, President

(Printed name and title)

Init.
/

AIA[®] Document A141[™] – 2014 Exhibit A

Design-Build Amendment

This Amendment is incorporated into the accompanying AIA Document A141[™]-2014, Standard Form of Agreement Between Owner and Design-Builder dated the 2nd day of January in the year 2020 (the "Agreement")
(In words, indicate day, month and year.)

for the following PROJECT:

(Name and location or address)

HCWD No. 2 Office, Warehouse and Shop
Lot 1A, Hughes Commerce Center, Section 2

THE OWNER:

(Name, legal status and address)

Hardin County Water District No. 2
360 Ring Rd.

Elizabethtown, KY 42701

THE DESIGN-BUILDER:

(Name, legal status and address)

Jenkins-Essex Construction, Inc.

PO Box 1088

Elizabethtown, KY 42702-1088

The Owner and Design-Builder hereby amend the Agreement as follows.

This document has important legal consequences.

Consultation with an attorney is encouraged with respect to its completion or modification.

Consultation with an attorney is also encouraged with respect to professional licensing requirements in the jurisdiction where the Project is located.

TABLE OF ARTICLES

- A.1 CONTRACT SUM
- A.2 CONTRACT TIME
- A.3 INFORMATION UPON WHICH AMENDMENT IS BASED
- A.4 DESIGN-BUILDER'S PERSONNEL, CONTRACTORS AND SUPPLIERS
- A.5 COST OF THE WORK

ARTICLE A.1 CONTRACT SUM

§ A.1.1 The Owner shall pay the Design-Builder the Contract Sum in current funds for the Design-Builder's performance of the Contract after the execution of this Amendment. The Contract Sum shall be one of the following and shall not include compensation the Owner paid the Design-Builder for Work performed prior to execution of this Amendment:

(Check the appropriate box.)

- Stipulated Sum, in accordance with Section A.1.2 below
- Cost of the Work plus the Design-Builder's Fee, in accordance with Section A.1.3 below
- Cost of the Work plus the Design-Builder's Fee with a Guaranteed Maximum Price, in accordance with Section A.1.4 below

(Based on the selection above, complete Section A.1.2, A.1.3 or A.1.4 below.)

§ A.1.2 Stipulated Sum

§ A.1.2.1 The Stipulated Sum shall be

(\$ _____), subject to authorized adjustments as provided in the Design-Build Documents.

§ A.1.2.2 The Stipulated Sum is based upon the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If the Owner is permitted to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the change in Stipulated Sum for each and the deadline by which the alternate must be accepted.)

§ A.1.2.3 Unit prices, if any:

(Identify item, state the unit price, and state any applicable quantity limitations.)

Item	Units and Limitations	Price per Unit (\$0.00)
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§ A.1.3 Cost of the Work Plus Design-Builder's Fee

§ A.1.3.1 The Cost of the Work is as defined in Article A.5, Cost of the Work.

§ A.1.3.2 The Design-Builder's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Design-Builder's Fee, and the method for adjustment to the Fee for changes in the Work.)

§ A.1.4 Cost of the Work Plus Design-Builder's Fee With a Guaranteed Maximum Price

§ A.1.4.1 The Cost of the Work is as defined in Article A.5, Cost of the Work.

§ A.1.4.2 The Design-Builder's Fee:

(State a lump sum, percentage of Cost of the Work or other provision for determining the Design-Builder's Fee and the method for adjustment to the Fee for changes in the Work.)

\$625,000.00

Change Order work shall be charged at Cost plus 8.5% Design-Builder's Fee.

§ A.1.4.3 Guaranteed Maximum Price

§ A.1.4.3.1 The sum of the Cost of the Work and the Design-Builder's Fee is guaranteed by the Design-Builder not to exceed Eight Million Dollars and No Cents

(\$ 8,000,000.00), subject to additions and deductions for changes in the Work as provided in the Design-Build Documents. Costs that would cause the Guaranteed Maximum Price to be exceeded shall be paid by the Design-Builder without reimbursement by the Owner.

(Insert specific provisions if the Design-Builder is to participate in any savings.)

§ A.1.4.3.2 Itemized Statement of the Guaranteed Maximum Price

Provided below is an itemized statement of the Guaranteed Maximum Price organized by trade categories, allowances, contingencies, alternates, the Design-Builder’s Fee, and other items that comprise the Guaranteed Maximum Price. *(Provide information below or reference an attachment.)*

Itemized statement to be presented with the formal Design-Build Proposal which shall be submitted by Design-Builder at such time as Design Documents reach 60% completion. Owner understands and agrees that the Scope of Work beyond what is stated in this Agreement is undetermined and that should the projected total cost plus the Design-Builder’s Fee exceed the \$8,000,000 Guaranteed Maximum Price as set out in Para. A.1.4, value engineering measures will be employed to bring the project estimate within the Guaranteed Maximum Price.

§ A.1.4.3.3 The Guaranteed Maximum Price is based on the following alternates, if any, which are described in the Design-Build Documents and are hereby accepted by the Owner:

(State the numbers or other identification of accepted alternates. If the Owner is permitted to accept other alternates subsequent to the execution of this Amendment, attach a schedule of such other alternates showing the change in the Cost of the Work and Guaranteed Maximum Price for each and the deadline by which the alternate must be accepted.)

§ A.1.4.3.4 Unit Prices, if any:

(Identify item, state the unit price, and state any applicable quantity limitations.)

Item	Units and Limitations	Price per Unit (\$0.00)
Equipment Usage Prices	Attachment F	
Unit Prices	To be included in Design-Build Proposal as outlined in Para. A.3.1.8	

§ A.1.4.3.5 Assumptions, if any, on which the Guaranteed Maximum Price is based:

§ A.1.5 Payments

§ A.1.5.1 Progress Payments

§ A.1.5.1.1 Based upon Applications for Payment submitted to the Owner by the Design-Builder, the Owner shall make progress payments on account of the Contract Sum to the Design-Builder as provided below and elsewhere in the Design-Build Documents.

§ A.1.5.1.2 The period covered by each Application for Payment shall be one calendar month ending on the last day of the month, or as follows:

§ A.1.5.1.3 Provided that an Application for Payment is received not later than the thirtieth day of the month, the Owner shall make payment of the certified amount to the Design-Builder not later than the thirtieth day of the next month. If an Application for Payment is received by the Owner after the application date fixed above, payment shall be made by the Owner not later than thirty (30) days after the Owner receives the Application for Payment.

(Federal, state or local laws may require payment within a certain period of time.)

§ A.1.5.1.4 With each Application for Payment where the Contract Sum is based upon the Cost of the Work, or the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit payrolls, petty cash accounts, receipted invoices or invoices with check vouchers attached, and any other evidence required by the Owner to demonstrate that cash disbursements already made by the Design-Builder on account of the Cost of the Work equal or exceed (1) progress payments already received by the Design-Builder, less (2) that portion of those payments attributable to the Design-Builder's Fee; plus (3) payrolls for the period covered by the present Application for Payment.

§ A.1.5.1.5 With each Application for Payment where the Contract Sum is based upon a Stipulated Sum or Cost of the Work with a Guaranteed Maximum Price, the Design-Builder shall submit the most recent schedule of values in accordance with the Design-Build Documents. The schedule of values shall allocate the entire Contract Sum among the various portions of the Work. Compensation for design services, if any, shall be shown separately. Where the Contract Sum is based on the Cost of the Work with a Guaranteed Maximum Price, the Design-Builder's Fee shall be shown separately. The schedule of values shall be prepared in such form and supported by such data to substantiate its accuracy as the Owner may require. This schedule of values, unless objected to by the Owner, shall be used as a basis for reviewing the Design-Builder's Applications for Payment.

§ A.1.5.1.6 In taking action on the Design-Builder's Applications for Payment, the Owner shall be entitled to rely on the accuracy and completeness of the information furnished by the Design-Builder and shall not be deemed to have made a detailed examination, audit or arithmetic verification of the documentation submitted in accordance with Sections A.1.5.1.4 or A.1.5.1.5, or other supporting data; to have made exhaustive or continuous on-site inspections; or to have made examinations to ascertain how or for what purposes the Design-Builder has used amounts previously paid. Such examinations, audits and verifications, if required by the Owner, will be performed by the Owner's auditors acting in the sole interest of the Owner.

§ A.1.5.1.7 Except with the Owner's prior approval, the Design-Builder shall not make advance payments to suppliers for materials or equipment which have not been delivered and stored at the site.

§ A.1.5.2 Progress Payments—Stipulated Sum

§ A.1.5.2.1 Applications for Payment where the Contract Sum is based upon a Stipulated Sum shall indicate the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment.

§ A.1.5.2.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Contract Sum properly allocable to completed Work as determined by multiplying the percentage completion of each portion of the Work by the share of the Contract Sum allocated to that portion of the Work in the schedule of values, less retainage of percent (%) on the Work. Pending final determination of cost to the Owner of Changes in the Work, amounts not in dispute shall be included as provided in Section 6.3.9 of the Agreement;
- .2 Add that portion of the Contract Sum properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the completed construction (or, if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing), less retainage of percent (%);
- .3 Subtract the aggregate of previous payments made by the Owner; and
- .4 Subtract amounts, if any, the Owner has withheld or nullified, as provided in Section 9.5 of the Agreement.

§ A.1.5.2.3 The progress payment amount determined in accordance with Section A.1.5.2.2 shall be further modified under the following circumstances:

- .1 Add, upon Substantial Completion of the Work, a sum sufficient to increase the total payments to the full amount of the Contract Sum, less such amounts as the Owner shall determine for incomplete Work, retainage applicable to such work and unsettled claims; and
(Section 9.8.6 of the Agreement discusses release of applicable retainage upon Substantial Completion of Work.)
- .2 Add, if final completion of the Work is thereafter materially delayed through no fault of the Design-Builder, any additional amounts payable in accordance with Section 9.10.3 of the Agreement.

§ A.1.5.2.4 Reduction or limitation of retainage, if any, shall be as follows:

(If it is intended, prior to Substantial Completion of the entire Work, to reduce or limit the retainage resulting from the percentages inserted in Sections A.1.5.2.2.1 and A.1.5.2.2.2 above, and this is not explained elsewhere in the Design-Build Documents, insert provisions here for such reduction or limitation.)

§ A.1.5.3 Progress Payments—Cost of the Work Plus a Fee

§ A.1.5.3.1 Where the Contract Sum is based upon the Cost of the Work plus a fee without a Guaranteed Maximum Price, Applications for Payment shall show the Cost of the Work actually incurred by the Design-Builder through the end of the period covered by the Application for Payment and for which Design-Builder has made or intends to make actual payment prior to the next Application for Payment.

§ A.1.5.3.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- .1 Take the Cost of the Work as described in Article A.5 of this Amendment;
- .2 Add the Design-Builder's Fee, less retainage of _____ percent (_____ %).
The Design-Builder's Fee shall be computed upon the Cost of the Work described in the preceding Section A.1.5.3.2.1 at the rate stated in Section A.1.3.2; or if the Design-Builder's Fee is stated as a fixed sum in that Section, an amount which bears the same ratio to that fixed-sum Fee as the Cost of the Work in that Section bears to a reasonable estimate of the probable Cost of the Work upon its completion;
- .3 Subtract retainage of _____ percent (_____ %) from that portion of the Work that the Design-Builder self-performs;
- .4 Subtract the aggregate of previous payments made by the Owner;
- .5 Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by Section A.1.5.1.4 or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .6 Subtract amounts, if any, for which the Owner has withheld or withdrawn a Certificate of Payment as provided in the Section 9.5 of the Agreement.

§ A.1.5.3.3 The Owner and Design-Builder shall agree upon (1) a mutually acceptable procedure for review and approval of payments to the Architect, Consultants, and Contractors and (2) the percentage of retainage held on agreements with the Architect, Consultants, and Contractors, and the Design-Builder shall execute agreements in accordance with those terms.

§ A.1.5.4 Progress Payments—Cost of the Work Plus a Fee with a Guaranteed Maximum Price

§ A.1.5.4.1 Applications for Payment where the Contract Sum is based upon the Cost of the Work Plus a Fee with a Guaranteed Maximum Price shall show the percentage of completion of each portion of the Work as of the end of the period covered by the Application for Payment. The percentage of completion shall be the lesser of (1) the percentage of that portion of the Work which has actually been completed; or (2) the percentage obtained by dividing (a) the expense that has actually been incurred by the Design-Builder on account of that portion of the Work for which the Design-Builder has made or intends to make actual payment prior to the next Application for Payment by (b) the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values.

§ A.1.5.4.2 Subject to other provisions of the Design-Build Documents, the amount of each progress payment shall be computed as follows:

- .1 Take that portion of the Guaranteed Maximum Price properly allocable to completed Work as determined by multiplying the percentage of completion of each portion of the Work by the share of the Guaranteed Maximum Price allocated to that portion of the Work in the schedule of values. Pending final determination of cost to the Owner of changes in the Work, amounts not in dispute shall be included as provided in Section 6.3.9 of the Agreement.
- .2 Add that portion of the Guaranteed Maximum Price properly allocable to materials and equipment delivered and suitably stored at the site for subsequent incorporation in the Work, or if approved in advance by the Owner, suitably stored off the site at a location agreed upon in writing;
- .3 Add the Design-Builder's Fee, less retainage of Ten percent (10.0%).
The Design-Builder's Fee shall be computed upon the Cost of the Work at the rate stated in Section A.1.4.2 or, if the Design-Builder's Fee is stated as a fixed sum in that Section, shall be an amount that bears the same

ratio to that fixed-sum fee as the Cost of the Work bears to a reasonable estimate of the probable Cost of the Work upon its completion;

- .4 Subtract retainage of Ten percent (10.0%) from that portion of the Work that the Design-Builder self-performs;
- .5 Subtract the aggregate of previous payments made by the Owner;
- .6 Subtract the shortfall, if any, indicated by the Design-Builder in the documentation required by Section A.1.5.1.4 to substantiate prior Applications for Payment, or resulting from errors subsequently discovered by the Owner's auditors in such documentation; and
- .7 Subtract amounts, if any, for which the Owner has withheld or nullified a payment as provided in Section 9.5 of the Agreement.

8 Pursuant to KRS 371.410(1), once the project is 50% complete the amount of retainage will be reduced to five percent (5%)

§ A.1.5.4.3 The Owner and Design-Builder shall agree upon (1) a mutually acceptable procedure for review and approval of payments to the Architect, Consultants, and Contractors and (2) the percentage of retainage held on agreements with the Architect, Consultants, and Contractors; and the Design-Builder shall execute agreements in accordance with those terms.

§ A.1.5.5 Final Payment

§ A.1.5.5.1 Final payment, constituting the entire unpaid balance of the Contract Sum, shall be made by the Owner to the Design-Builder not later than 30 days after the Design-Builder has fully performed the Contract and the requirements of Section 9.10 of the Agreement have been satisfied, except for the Design-Builder's responsibility to correct non-conforming Work discovered after final payment or to satisfy other requirements, if any, which extend beyond final payment.

§ A.1.5.5.2 If the Contract Sum is based on the Cost of the Work, the Owner's auditors will review and report in writing on the Design-Builder's final accounting within 30 days after the Design-Builder delivers the final accounting to the Owner. Based upon the Cost of the Work the Owner's auditors report to be substantiated by the Design-Builder's final accounting, and provided the other conditions of Section 9.10 of the Agreement have been met, the Owner will, within seven days after receipt of the written report of the Owner's auditors, either issue a final Certificate for Payment, or notify the Design-Builder in writing of the reasons for withholding a certificate as provided in Section 9.5.1 of the Agreement.

ARTICLE A.2 CONTRACT TIME

§ A.2.1 Contract Time, as defined in the Agreement at Section 1.4.13, is the period of time, including authorized adjustments, for Substantial Completion of the Work.

§ A.2.2 The Design-Builder shall achieve Substantial Completion of the Work not later than () days from the date of this Amendment, or as follows:
(Insert number of calendar days. Alternatively, a calendar date may be used when coordinated with the date of commencement. If appropriate, insert requirements for earlier Substantial Completion of certain portions of the Work.)

Fifteen (15) months after receipt by Owner from the PSC of a Certificate of Public Convenience and Necessity

Portion of Work

Substantial Completion Date

, subject to adjustments of the Contract Time as provided in the Design-Build Documents.
(Insert provisions, if any, for liquidated damages relating to failure to achieve Substantial Completion on time or for bonus payments for early completion of the Work.)

The Design-Builder shall pay the Owner the sum of Five Hundred Dollars (\$500.00) per day for each and every day of unexcused delay in achieving Substantial Completion beyond the date set forth herein for Substantial Completion. Any sums due and payable hereunder by the Design-Builder shall be payable, not as a penalty, but as liquidated damages representing an estimate of delay damages likely to be sustained by the Owner that are difficult to determine and ascertain, estimated at the time of executing this Contract. Such liquidated damages shall apply regardless of whether the Design-Builder has been terminated by the Owner prior to Substantial Completion so long as the Design-Builder's actions or inactions contributed to the delay. Such liquidated damages shall be in addition to and not in preclusion of the recovery of actual damages resulting from other defects in the Design-Builder's performance hereunder for matters other than delays in Substantial Completion.

ARTICLE A.3 INFORMATION UPON WHICH AMENDMENT IS BASED

§ A.3.1 The Contract Sum and Contract Time set forth in this Amendment are based on the following:

Document	Title	Date	Pages
	Design Build Qualifications	9/17/19	45
	Letter of Intent	10/31/19	2

§ A.3.1.1 The Supplementary and other Conditions of the Contract:

Document	Title	Date	Pages
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§ A.3.1.2 The Specifications:

(Either list the specifications here or refer to an exhibit attached to this Amendment.)

To be Developed

Section	Title	Date	Pages
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§ A.3.1.3 The Drawings:

(Either list the drawings here or refer to an exhibit attached to this Amendment.)

To be developed

Number	Title	Date
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§ A.3.1.4 The Sustainability Plan, if any:

(If the Owner identified a Sustainable Objective in the Owner's Criteria, identify the document or documents that comprise the Sustainability Plan by title, date and number of pages, and include other identifying information. The Sustainability Plan identifies and describes the Sustainable Objective; the targeted Sustainable Measures; implementation strategies selected to achieve the Sustainable Measures; the Owner's and Design-Builder's roles and responsibilities associated with achieving the Sustainable Measures; the specific details about design reviews, testing or metrics to verify achievement of each Sustainable Measure; and the Sustainability Documentation required for the Project, as those terms are defined in Exhibit C to the Agreement.)

Title	Date	Pages
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Other identifying information:

§ A.3.1.5 Allowances and Contingencies:

(Identify any agreed upon allowances and contingencies, including a statement of their basis.)

.1 Allowances

.2 Contingencies

§ A.3.1.6 Design-Builder's assumptions and clarifications:

Required Special Inspections to be engaged and paid for by Owner.
No further Geotechnical Exploration to be performed.

§ A.3.1.7 Deviations from the Owner's Criteria as adjusted by a Modification:

§ A.3.1.8 To the extent the Design-Builder shall be required to submit any additional Submittals to the Owner for review, indicate any such submissions below:

ARTICLE A.4 DESIGN-BUILDER'S PERSONNEL, CONTRACTORS AND SUPPLIERS

§ A.4.1 The Design-Builder's key personnel are identified below:
(Identify name, title and contact information.)

- .1 Superintendent
Rick Highbaugh

- .2 Project Manager
Corey Shive

- .3 Others
Project Executive
Jarrod Benningfield

§ A.4.2 The Design-Builder shall retain the following Consultants, Contractors and suppliers, identified below:
(List name, discipline, address and other information.)

J. Lake Architecture & Design 129 Quartermaster Court Jeffersonville, IN 47130	Mike Billings PE, PLS Engineering Design Group 315 S. Mulberry St. Elizabethtown, KY 42701
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ARTICLE A.5 COST OF THE WORK

§ A.5.1 Cost To Be Reimbursed as Part of the Contract

§ A.5.1.1 Labor Costs

§ A.5.1.1.1 Wages of construction workers directly employed by the Design-Builder to perform the construction of the Work at the site or, with the Owner's prior approval, at off-site workshops.

§ A.5.1.1.2 With the Owner's prior approval, wages or salaries of the Design-Builder's supervisory and administrative personnel when stationed at the site.

(If it is intended that the wages or salaries of certain personnel stationed at the Design-Builder's principal or other offices shall be included in the Cost of the Work, identify below the personnel to be included, whether for all or only part of their time, and the rates at which their time will be charged to the Work.)

Person Included	Status (full-time/part-time)	Rate (\$0.00)	Rate (unit of time)
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§ A.5.1.1.3 Wages and salaries of the Design-Builder's supervisory or administrative personnel engaged at factories, workshops or on the road, in expediting the production or transportation of materials or equipment required for the Work, but only for that portion of their time required for the Work.

§ A.5.1.1.4 Costs paid or incurred by the Design-Builder for taxes, insurance, contributions, assessments and benefits required by law or collective bargaining agreements and, for personnel not covered by such agreements, customary benefits such as sick leave, medical and health benefits, holidays, vacations and pensions, provided such costs are based on wages and salaries included in the Cost of the Work under Section A.5.1.1.

§ A.5.1.1.5 Bonuses, profit sharing, incentive compensation and any other discretionary payments paid to anyone hired by the Design-Builder or paid to the Architect or any Consultant, Contractor or supplier, with the Owner's prior approval.

§ A.5.1.2 **Contract Costs.** Payments made by the Design-Builder to the Architect, Consultants, Contractors and suppliers in accordance with the requirements of their subcontracts.

§ A.5.1.3 **Costs of Materials and Equipment Incorporated in the Completed Construction**

§ A.5.1.3.1 Costs, including transportation and storage, of materials and equipment incorporated or to be incorporated in the completed construction.

§ A.5.1.3.2 Costs of materials described in the preceding Section A.5.1.3.1 in excess of those actually installed to allow for reasonable waste and spoilage. Unused excess materials, if any, shall become the Owner's property at the completion of the Work or, at the Owner's option, shall be sold by the Design-Builder. Any amounts realized from such sales shall be credited to the Owner as a deduction from the Cost of the Work.

§ A.5.1.4 **Costs of Other Materials and Equipment, Temporary Facilities and Related Items**

§ A.5.1.4.1 Costs of transportation, storage, installation, maintenance, dismantling and removal of materials, supplies, temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Design-Builder at the site and fully consumed in the performance of the Work. Costs of materials, supplies, temporary facilities, machinery, equipment and tools that are not fully consumed shall be based on the cost or value of the item at the time it is first used on the Project site less the value of the item when it is no longer used at the Project site. Costs for items not fully consumed by the Design-Builder shall mean fair market value.

§ A.5.1.4.2 Rental charges for temporary facilities, machinery, equipment and hand tools not customarily owned by construction workers that are provided by the Design-Builder at the site and costs of transportation, installation, minor repairs, dismantling and removal. The total rental cost of any Design-Builder-owned item may not exceed the purchase price of any comparable item. Rates of Design-Builder-owned equipment and quantities of equipment shall be subject to the Owner's prior approval.

§ A.5.1.4.3 Costs of removal of debris from the site of the Work and its proper and legal disposal.

§ A.5.1.4.4 Costs of document reproductions, electronic communications, postage and parcel delivery charges, dedicated data and communications services, teleconferences, Project websites, extranets and reasonable petty cash expenses of the site office.

§ A.5.1.4.5 Costs of materials and equipment suitably stored off the site at a mutually acceptable location, with the Owner's prior approval.

§ A.5.1.5 **Miscellaneous Costs**

§ A.5.1.5.1 Premiums for that portion of insurance and bonds required by the Design-Build Documents that can be directly attributed to the Contract. With the Owner's prior approval self-insurance for either full or partial amounts of the coverages required by the Design-Build Documents.

§ A.5.1.5.2 Sales, use or similar taxes imposed by a governmental authority that are related to the Work and for which the Design-Builder is liable.

§ A.5.1.5.3 Fees and assessments for the building permit and for other permits, licenses and inspections for which the Design-Builder is required by the Design-Build Documents to pay.

§ A.5.1.5.4 Fees of laboratories for tests required by the Design-Build Documents, except those related to defective or nonconforming Work for which reimbursement is excluded by Section 15.5.3 of the Agreement or by other provisions of the Design-Build Documents, and which do not fall within the scope of Section A.5.1.6.3.

§ A.5.1.5.5 Royalties and license fees paid for the use of a particular design, process or product required by the Design-Build Documents; the cost of defending suits or claims for infringement of patent rights arising from such requirement of the Design-Build Documents; and payments made in accordance with legal judgments against the Design-Builder resulting from such suits or claims and payments of settlements made with the Owner's consent. However, such costs of legal defenses, judgments and settlements shall not be included in the calculation of the Design-Builder's Fee or subject to the Guaranteed Maximum Price. If such royalties, fees and costs are excluded by the second to last sentence of Section 3.1.13.2 of the Agreement or other provisions of the Design-Build Documents, then they shall not be included in the Cost of the Work.

§ A.5.1.5.6 With the Owner's prior approval, costs for electronic equipment and software directly related to the Work.

§ A.5.1.5.7 Deposits lost for causes other than the Design-Builder's negligence or failure to fulfill a specific responsibility in the Design-Build Documents.

§ A.5.1.5.8 With the Owner's prior approval, which shall not be unreasonably withheld, legal, mediation and arbitration costs, including attorneys' fees, other than those arising from disputes between the Owner and Design-Builder, reasonably incurred by the Design-Builder after the execution of the Agreement and in the performance of the Work.

§ A.5.1.5.9 With the Owner's prior approval, expenses incurred in accordance with the Design-Builder's standard written personnel policy for relocation, and temporary living allowances of, the Design-Builder's personnel required for the Work.

§ A.5.1.5.10 That portion of the reasonable expenses of the Design-Builder's supervisory or administrative personnel incurred while traveling in discharge of duties connected with the Work.

§ A.5.1.6 Other Costs and Emergencies

§ A.5.1.6.1 Other costs incurred in the performance of the Work if, and to the extent, approved in advance in writing by the Owner.

§ A.5.1.6.2 Costs incurred in taking action to prevent threatened damage, injury or loss in case of an emergency affecting the safety of persons and property.

§ A.5.1.6.3 Costs of repairing or correcting damaged or nonconforming Work executed by the Design-Builder, Contractors or suppliers, provided that such damaged or nonconforming Work was not caused by negligence or failure to fulfill a specific responsibility of the Design-Builder and only to the extent that the cost of repair or correction is not recovered by the Design-Builder from insurance, sureties, Contractors, suppliers, or others.

§ A.5.1.7 Related Party Transactions

§ A.5.1.7.1 For purposes of Section A.5.1.7, the term "related party" shall mean a parent, subsidiary, affiliate or other entity having common ownership or management with the Design-Builder; any entity in which any stockholder in, or management employee of, the Design-Builder owns any interest in excess of ten percent in the aggregate; or any person or entity which has the right to control the business or affairs of the Design-Builder. The term "related party" includes any member of the immediate family of any person identified above.

§ A.5.1.7.2 If any of the costs to be reimbursed arise from a transaction between the Design-Builder and a related party, the Design-Builder shall notify the Owner of the specific nature of the contemplated transaction, including the identity of the related party and the anticipated cost to be incurred, before any such transaction is consummated or cost incurred. If the Owner, after such notification, authorizes the proposed transaction, then the cost incurred shall be included as a cost to be reimbursed, and the Design-Builder shall procure the Work, equipment, goods or service from the related party, as a Contractor, according to the terms of Section A.5.4. If the Owner fails to authorize the transaction, the Design-Builder shall procure the Work, equipment, goods or service from some person or entity other than a related party according to the terms of Section A.5.4.

§ A.5.2 Costs Not to Be Reimbursed as Part of this Contract

The Cost of the Work shall not include the items listed below:

- .1 Salaries and other compensation of the Design-Builder's personnel stationed at the Design-Builder's principal office or offices other than the site office, except as specifically provided in Section A.5.1.1;
- .2 Expenses of the Design-Builder's principal office and offices other than the site office;
- .3 Overhead and general expenses, except as may be expressly included in Section A.5.1;

- .4 The Design-Builder's capital expenses, including interest on the Design-Builder's capital employed for the Work;
- .5 Except as provided in Section A.5.1.6.3 of this Agreement, costs due to the negligence or failure of the Design-Builder, Contractors and suppliers or anyone directly or indirectly employed by any of them or for whose acts any of them may be liable to fulfill a specific responsibility of the Contract;
- .6 Any cost not specifically and expressly described in Section A.5.1; and
- .7 Costs, other than costs included in Change Orders approved by the Owner, that would cause the Guaranteed Maximum Price to be exceeded.

§ A.5.3 Discounts, Rebates, and Refunds

§ A.5.3.1 Cash discounts obtained on payments made by the Design-Builder shall accrue to the Owner if (1) before making the payment, the Design-Builder included them in an Application for Payment and received payment from the Owner, or (2) the Owner has deposited funds with the Design-Builder with which to make payments; otherwise, cash discounts shall accrue to the Design-Builder. Trade discounts, rebates, refunds and amounts received from sales of surplus materials and equipment shall accrue to the Owner, and the Design-Builder shall make provisions so that they can be obtained.

§ A.5.3.2 Amounts that accrue to the Owner in accordance with Section A.5.3.1 shall be credited to the Owner as a deduction from the Cost of the Work.

§ A.5.4 Other Agreements

§ A.5.4.1 When the Design-Builder has provided a Guaranteed Maximum Price, and a specific bidder (1) is recommended to the Owner by the Design-Builder; (2) is qualified to perform that portion of the Work; and (3) has submitted a bid that conforms to the requirements of the Design-Build Documents without reservations or exceptions, but the Owner requires that another bid be accepted, then the Design-Builder may require that a Change Order be issued to adjust the Guaranteed Maximum Price by the difference between the bid of the person or entity recommended to the Owner by the Design-Builder and the amount of the subcontract or other agreement actually signed with the person or entity designated by the Owner.

§ A.5.4.2 Agreements between the Design-Builder and Contractors shall conform to the applicable payment provisions of the Design-Build Documents, and shall not be awarded on the basis of cost plus a fee without the prior consent of the Owner. If an agreement between the Design Builder and a Contractor is awarded on a cost plus a fee basis, the Design-Builder shall provide in the agreement for the Owner to receive the same audit rights with regard to the Cost of the Work performed by the Contractor as the Owner receives with regard to the Design-Builder in Section A.5.5, below.

§ A.5.4.3 The agreements between the Design-Builder and Architect and other Consultants identified in the Agreement shall be in writing. These agreements shall be promptly provided to the Owner upon the Owner's written request.

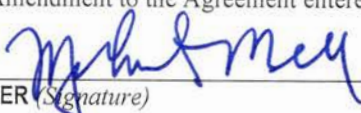
§ A.5.5 Accounting Records

The Design-Builder shall keep full and detailed records and accounts related to the cost of the Work and exercise such controls as may be necessary for proper financial management under the Contract and to substantiate all costs incurred. The accounting and control systems shall be satisfactory to the Owner. The Owner and the Owner's auditors shall, during regular business hours and upon reasonable notice, be afforded access to, and shall be permitted to audit and copy, the Design-Builder's records and accounts, including complete documentation supporting accounting entries, books, correspondence, instructions, drawings, receipts, subcontracts, Contractor's proposals, purchase orders, vouchers, memoranda and other data relating to the Contract. The Design-Builder shall preserve these records for a period of three years after final payment, or for such longer period as may be required by law.

§ A.5.6 Relationship of the Parties

The Design-Builder accepts the relationship of trust and confidence established by this Agreement and covenants with the Owner to exercise the Design-Builder's skill and judgment in furthering the interests of the Owner; to furnish efficient construction administration, management services and supervision; to furnish at all times an adequate supply of workers and materials; and to perform the Work in an expeditious and economical manner consistent with the Owner's interests.

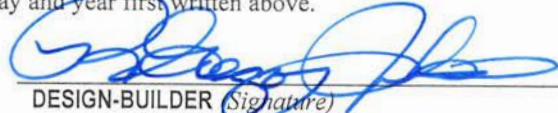
This Amendment to the Agreement entered into as of the day and year first written above.



OWNER (Signature)

Michael L. Bell, Chairman

(Printed name and title)



DESIGN-BUILDER (Signature)

R. Gregory Jenkins, President

(Printed name and title)



AIA Document A141™ – 2014 Exhibit B

Insurance and Bonds

for the following PROJECT:

(Name and location or address)

HCWD No. 2 Office, Warehouse and Shop
Lot 1A, Hughes Commerce Center, Section 2

This document has important legal consequences. Consultation with an attorney is encouraged with respect to its completion or modification.

THE OWNER:

(Name, legal status and address)

Hardin County Water District No. 2
360 Ring Rd.

Elizabethtown, KY 42701

THE DESIGN-BUILDER:

(Name, legal status and address)

Jenkins-Essex Construction, Inc.

PO Box 1088

Elizabethtown, KY 42702-1088

THE AGREEMENT

This Insurance Exhibit is part of the accompanying agreement for the Project, between the Owner and the Design-Builder (hereinafter, the Agreement), dated the 2nd day of January in the year 2020

(In words, indicate day, month and year.)

TABLE OF ARTICLES

- B.1 GENERAL
- B.2 DESIGN BUILDER'S INSURANCE AND BONDS
- B.3 OWNER'S INSURANCE
- B.4 SPECIAL TERMS AND CONDITIONS

ARTICLE B.1 GENERAL

The Owner and Design-Builder shall purchase and maintain insurance and provide bonds as set forth in this Exhibit B. Where a provision in this Exhibit conflicts with a provision in the Agreement into which this Exhibit is incorporated, the provision in this Exhibit will prevail.

ARTICLE B.2 DESIGN BUILDER'S INSURANCE AND BONDS

§ B.2.1 The Design-Builder shall purchase and maintain the following types and limits of insurance from a company or companies lawfully authorized to do business in the jurisdiction where the Project is located. The Design-Builder shall maintain the required insurance until the expiration of the period for correction of Work as set forth in Section 11.2.2.1 of the Agreement, unless a different duration is stated below:

(If the Design-Builder is required to maintain insurance for a duration of other than the expiration of the period for correction of Work, state the duration.)

§ B.2.1.1 Commercial General Liability with policy limits of not less than One Million (\$1,000,000.00) for each occurrence and Two Million (\$2,000,000.00) in the aggregate providing coverage for claims including

- .1 damages because of bodily injury, sickness or disease, including occupational sickness or disease, and death of any person;
- .2 personal injury;
- .3 damages because of injury to or destruction of tangible property;
- .4 bodily injury or property damage arising out of completed operations; and
- .5 contractual liability applicable to the Design-Builder's obligations under Section 3.1.14 of the Agreement.

§ B.2.1.2 Automobile Liability covering vehicles owned by the Design-Builder and non-owned vehicles used by the Design-Builder with policy limits of not less than One Million (\$1,000,000.00) per claim and One Million (\$1,000,000.00) in the aggregate for bodily injury, death of any person, and property damage arising out of the ownership, maintenance and use of those motor vehicles specified in this Section B.2.1.2, along with any other statutorily required automobile coverage.

§ B.2.1.3 The Design-Builder may achieve the required limits and coverage for Commercial General Liability and Automobile Liability through a combination of primary and excess liability insurance, provided such primary and excess insurance policies result in the same or greater coverage as those required under Sections B.2.1.1 and B.2.1.2.

§ B.2.1.4 Workers' Compensation at statutory limits.

§ B.2.1.5 Employers' Liability with policy limits as provided below:

\$4,000,000.00 each accident/\$4,000,000.00 ea. employee/\$4,000,000.00 policy limit

§ B.2.1.6 Professional Liability covering negligent acts, errors and omissions in the performance of professional services, with policy limits of not less than (\$) per claim and (\$) in the aggregate.

§ B.2.1.7 Pollution Liability covering performance of the Work, with policy limits of not less than (\$) per claim and (\$) in the aggregate.

§ B.2.1.7.1 The Design-Builder may obtain a combined Professional Liability and Pollution Liability policy to satisfy the requirements set forth in Sections B.2.1.6 and B.2.1.7, with combined policy limits that are not less than Two Million (\$2,000,000.00) per claim and Two Million (\$2,000,000.00) in the aggregate.

§ B.2.1.8 The Design-Builder shall provide written notification to the Owner of the cancellation or expiration of any insurance required by this Article B.2. The Design-Builder shall provide such written notice within five (5) business days of the date the Design-Builder is first aware of the cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.

§ B.2.1.9 **Additional Insured Obligations.** The Owner and its consultants and contractors shall be additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, Automobile Liability and Pollution Liability. The additional insured coverage shall be primary and non-contributory to any of the Owner's insurance policies. The additional insured coverage shall apply to both ongoing operations and completed operations. The policy limits applicable to the additional insureds shall be the same amount applicable to the named insured or, if the policy provides otherwise, policy limits not less than the amounts required under this Agreement.

§ B.2.1.10 **Certificates of Insurance.** The Design-Builder shall provide certificates of insurance acceptable to the Owner evidencing compliance with the requirements in this Article B.2: (1) prior to commencement of the Work; (2) upon renewal or replacement of each required policy of insurance; and (3) upon Owner's written request. An additional

certificate evidencing continuation of liability coverage, including coverage for completed operations, shall be submitted with the final Application for Payment as required by Section 9.10.2 of the Agreement and thereafter upon renewal or replacement of such coverage until the expiration of the time required by Section B.2.1. The certificates will show the Owner and its consultants and contractors as additional insureds on the Design-Builder's primary and excess insurance policies for Commercial General Liability, Automobile Liability, and Pollution Liability. Information concerning reduction of coverage on account of revised limits, claims paid under the General Aggregate or both, shall be furnished by the Design-Builder with reasonable promptness.

§ B.2.2 Performance Bond and Payment Bond

The Design-Builder shall provide surety bonds as follows:
(Specify type and penal sum of bonds.)

Type	Penal Sum (\$0.00)
Performance Bond	\$8,000,000.00
Payment Bond	\$8,000,000.00

§ B.2.2.1 Upon the request of any person or entity appearing to be a potential beneficiary of bonds covering payment of obligations arising under the Agreement, the Design-Builder shall promptly furnish a copy of the bonds or shall permit a copy to be made.

ARTICLE B.3 OWNER'S INSURANCE

§ B.3.1 Owner's Liability Insurance

The Owner shall be responsible for purchasing and maintaining the Owner's usual liability insurance.

~~§ B.3.2 Property Insurance~~

~~§ B.3.2.1 Unless otherwise provided, at the time of execution of the Design-Build Amendment, the Owner shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction where the Project is located, property insurance written on a builder's risk "all-risk" or equivalent policy form in the amount of the initial Contract Sum, plus the value of subsequent Modifications and cost of materials supplied or installed by others, comprising the total value for the entire Project at the site on a replacement cost basis without optional deductibles. If any construction that is part of the Work shall commence prior to execution of the Design-Build Amendment, the Owner shall, prior to commencement of construction, purchase and maintain property insurance as described above in an amount sufficient to cover the total value of the Work at the site on a replacement cost basis without optional deductibles. The insurance required under this section shall include interests of the Owner, Design-Builder, Architect, Consultants, Contractors, and Subcontractors in the Project. The property insurance shall be maintained, unless otherwise provided in the Design-Build Documents or otherwise agreed in writing by all persons and entities who are beneficiaries of the insurance, until the Owner has issued a Certificate of Substantial Completion in accordance with Section 9.8 of the Agreement. Unless the parties agree otherwise, upon issuance of a Certificate of Substantial Completion, the Owner shall replace the insurance policy required under this Section B.3.2 with another property insurance policy written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work set forth in Section 11.2.2 of the Agreement.~~

~~§ B.3.2.1.1 The insurance required under Section B.3.2.1 shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for the Design-Builder's services and expenses required as a result of such insured loss.~~

~~§ B.3.2.1.2 If the insurance required under Section B.3.2.1 requires deductibles, the Owner shall pay costs not covered because of such deductibles.~~

§ B.3.2.1.3 The insurance required under Section B.3.2.1 shall cover portions of the Work stored off the site, and also portions of the Work in transit.

§ B.3.2.1.4 Partial occupancy or use in accordance with Section 9.9 of the Agreement shall not commence until the insurance company or companies providing the insurance required under Section B.3.2.1 have consented to such partial occupancy or use by endorsement or otherwise. The Owner and the Design-Builder shall take reasonable steps to obtain consent of the insurance company or companies and shall, without mutual written consent, take no action with respect to partial occupancy or use that would cause cancellation, lapse or reduction of insurance.

§ B.3.2.2 **Boiler and Machinery Insurance.** The Owner shall purchase and maintain boiler and machinery insurance, which shall specifically cover commissioning, testing, or breakdown of equipment required by the Work, if not covered by the insurance required in Section B.3.2.1. This insurance shall include the interests of the Owner, Design-Builder, Architect, Consultants, Contractor and Subcontractors in the Work, and the Owner and Design-Builder shall be named insureds.

§ B.3.2.3 If the Owner does not intend to purchase the insurance required under Sections B.3.2.1 and B.3.2.2 with all of the coverages in the amounts described above, the Owner shall inform the Design-Builder in writing prior to any construction that is part of the Work. The Design-Builder may then obtain insurance that will protect the interests of the Owner, Design-Builder, Architect, Consultants, Contractors, and Subcontractors in the Work. The cost of the insurance shall be charged to the Owner by an appropriate Change Order. If the Owner does not provide written notice, and the Design-Builder is damaged by the failure or neglect of the Owner to purchase or maintain insurance as described above, the Owner shall bear all reasonable costs and damages attributable thereto.

§ B.3.2.4 **Loss of Use Insurance.** At the Owner's option, the Owner may purchase and maintain insurance to insure the Owner against loss of use of the Owner's property due to fire or other hazards, however caused. The Owner waives all rights of action against the Design-Builder for loss of use of the Owner's property, including consequential losses due to fire or other hazards covered under the property insurance required under this Exhibit B to the Agreement.

§ B.3.2.5 If during the Project construction period the Owner insures properties, real or personal or both, at or adjacent to the site by property insurance under policies separate from those insuring the Project, or if after final payment property insurance is to be provided on the completed Project through a policy or policies other than those insuring the Project during the construction period, the Owner shall waive all rights in accordance with the terms of Section B.3.2.7 for damages caused by fire or other causes of loss covered by this separate property insurance. All separate policies shall provide this waiver of subrogation by endorsement or otherwise.

§ B.3.2.6 Before an exposure to loss may occur, the Owner shall file with the Design-Builder a copy of each policy that includes insurance coverages required by this Section B.3.2. Each policy shall contain all generally applicable conditions, definitions, exclusions and endorsements related to this Project. The Owner shall provide written notification to the Design-Builder of the cancellation or expiration of any insurance required by this Article B.3. The Owner shall provide such written notice within five (5) business days of the date the Owner is first aware of the cancellation or expiration, or is first aware that the cancellation or expiration is threatened or otherwise may occur, whichever comes first.

§ B.3.2.7 **Waivers of Subrogation.** The Owner and Design-Builder waive all rights against (1) each other and any of their consultants, subconsultants, contractors and subcontractors, agents and employees, each of the other, and (2) any separate contractors described in Section 5.13 of the Agreement, if any, and any of their subcontractors, sub-subcontractors, agents and employees, for damages caused by fire or other causes of loss to the extent covered by property insurance obtained pursuant to Section B.3.2 or other property insurance applicable to the Work and completed construction, except such rights as they have to proceeds of such insurance held by the Owner as fiduciary. The Owner or Design-Builder, as appropriate, shall require of the separate contractors described in Section 5.13 of the Agreement, if any, and the subcontractors, sub-subcontractors, agents and employees of any of them, by appropriate agreements, written where legally required for validity, similar waivers each in favor of the other parties enumerated herein. The policies shall provide such waivers of subrogation by endorsement or otherwise. A waiver of subrogation shall be effective as to a person or entity even though that person or entity would otherwise have a duty of indemnification, contractual or otherwise, did not pay the insurance premium directly or indirectly, and whether or not the person or entity had an insurable interest in the property damaged.

§ B.3.2.8 A loss insured under the Owner's property insurance shall be adjusted by the Owner as fiduciary and made payable to the Owner as fiduciary for the insureds, as their interests may appear, subject to requirements of any

applicable mortgagee clause and of Section B.3.2.10. The Design-Builder shall pay the Architect, Consultants and Contractors their just shares of insurance proceeds received by the Design-Builder, and by appropriate agreements, written where legally required for validity, the Design-Builder shall require the Architect, Consultants and Contractors to make payments to their consultants and subcontractors in similar manner.

§ B.3.2.9 If required in writing by a party in interest, the Owner as fiduciary shall, upon occurrence of an insured loss, give bond for proper performance of the Owner's duties. The cost of required bonds shall be charged against proceeds received as fiduciary. The Owner shall deposit in a separate account proceeds so received, which the Owner shall distribute in accordance with such agreement as the parties in interest may reach, or as determined in accordance with the method of binding dispute resolution selected in the Agreement between the Owner and Design-Builder. If after such loss no other special agreement is made and unless the Owner terminates the Contract for convenience, replacement of damaged property shall be performed by the Design-Builder after notification of a Change in the Work in accordance with Article 6 of the Agreement.

§ B.3.2.10 The Owner as fiduciary shall have power to adjust and settle a loss with insurers unless one of the parties in interest shall object in writing within five days after occurrence of a loss to the Owner's exercise of this power. If an objection is made, the dispute shall be resolved in the manner selected by the Owner and Design-Builder as the method of binding dispute resolution in the Agreement. If the Owner and Design-Builder have selected arbitration as the method of binding dispute resolution, the Owner as fiduciary shall make settlement with insurers or, in the case of a dispute over distribution of insurance proceeds, in accordance with the directions of the arbitrators.

ARTICLE B.4 SPECIAL TERMS AND CONDITIONS

Special terms and conditions that modify this Insurance and Bonds Exhibit, if any, are as follows:

Builder's Risk Insurance: At the time of the Design-Build Amendment, the Design-Builder shall purchase and maintain, in a company or companies lawfully authorized to do business in the jurisdiction where the Project is located, property insurance written on a builder's risk all-risk or equivalent policy form in the amount of the initial Contract Sum, plus the value of subsequent modifications comprising the total value for the entire Project at the site on a replacement cost basis without optional deductibles. If any construction that is a part of the Work shall commence prior to the execution of the Design-Build Amendment, the Design-Builder shall, prior to the commencement of construction, purchase and maintain property insurance as described above in an amount sufficient to cover the total value of the Work at the site on a replacement cost basis without optional deductibles. The insurance required under this section shall cover and include the interests of the Owner, Design-Builder, Architect, Consultants, Contractors and Subcontractors in the Project. The property insurance shall be maintained, unless otherwise agreed in writing by all parties that are beneficiaries of the insurance, until a Certificate of Substantial Completion has been issued. Unless the parties agree otherwise, upon issuance of a Certificate of Substantial Completion, Design-Builder shall purchase and maintain with a property insurance policy written for the total value of the Project that shall remain in effect until expiration of the period for correction of the Work.

The property insurance required above shall include, without limitation, insurance against the perils of fire (with extended coverage) and physical loss or damage including, without duplication of coverage, theft, vandalism, malicious mischief, collapse, earthquake, flood, windstorm, falsework, testing and startup, temporary buildings and debris removal, including demolition occasioned by enforcement of any applicable legal requirements, and shall cover reasonable compensation for the costs and expenses required as a result of such insured loss. It shall also cover portions of the Work stored offsite and portions of the work in transit.

If the property insurance required above requires deductibles, the Design-Builder shall pay costs not covered because of such deductibles.

Exhibit D

Article 14.4

Should any dispute arise between the Design-Builder and the Owner regarding the performance of the work under this agreement or payments to be made by the Owner to the Design-Builder, the parties hereby agree that, upon the written demand of either party to the other, such dispute will be referred for arbitration to such person as the parties mutually agree to designate for that purpose. If the parties are unable to agree on an arbitrator, either of them may petition the Hardin Circuit Court to appoint a person to serve as arbitrator to resolve the dispute between them. At a time mutually satisfactory to the parties and the arbitrator, a hearing will be held in Elizabethtown, Kentucky at which time both parties will have the opportunity to present their witnesses and evidence to the arbitrator regarding the dispute or disputes then in issue. Except as otherwise provided herein, the arbitration will be conducted in conformance with the Construction Industry Arbitration Rules of the American Arbitration Association. The arbitrator will render a decision on the dispute or disputes which shall be final and binding upon both parties to this Agreement. The fees to be paid to the arbitrator and any other expenses associated with the arbitration shall be borne equally by the parties to this agreement. Unless otherwise provided in this Agreement, performance of this Agreement shall not be stopped by reason of any dispute which has arisen between the parties.

Except as provided herein, the provisions of Paragraph A14.4 of the AIA A141-2014-Exhibit A shall govern arbitration.



Building Quality Since 1904

October 31, 2019

Mr. Mike Bell
Chairman
Hardin County Water District No. 2
360 Ring Rd.
Elizabethtown, KY 42701

**HCWD No. 2 Office, Warehouse and Shop
Elizabethtown, Kentucky**

Dear Mr. Bell:

This is a letter of intent to facilitate immediate commencement of this design/build project while design work continues and a design/build contract is prepared. **Hardin County Water District No. 2** (the "Owner") has selected **Jenkins-Essex Construction, Inc** ("Jenkins-Essex") to act as design/builder for the design and construction of the Owner's planned Office, Warehouse and Shop (the "Project") to be located in Elizabethtown, KY.

It is agreed that this Letter of Intent constitutes a binding letter of intent with respect to the terms and conditions contained herein. Between the date of this Letter of Intent and January 1, 2020, the Owner and Jenkins-Essex shall enter into a more definitive contract (the "Contract"), setting forth more completely the understandings of each party with respect to the other party's performance. The Owner and Jenkins-Essex agree to immediately undertake good faith negotiations in order to determine the terms and conditions of the Contract, based on those terms used on previous projects.

The Owner hereby authorizes Jenkins-Essex to continue with design of the Project, with the intent to enter into a design/build contract to allow construction to begin. If the Owner elects not to proceed with the Project for any reason prior to execution of the Contract, or if the Owner and Jenkins-Essex cannot agree on the terms and conditions of the Contract, or related Contract documents, Jenkins-Essex may cease design immediately upon notification to the Owner and shall be compensated within thirty (30) days thereafter for all its services rendered and costs incurred plus overhead and profit equal to 10% of the cost incurred and the Owner shall have no further obligation to Jenkins-Essex. While this Letter of Intent is in effect, payment for Jenkins-Essex Work shall be made within thirty (30) days of invoicing by Jenkins-Essex. Late payments shall bear interest at the rate of prime plus 2%. Jenkins-Essex shall also have the right to suspend work upon written notification if payment is not made timely. Jenkins-Essex may terminate this Letter of Intent upon written notification if work is suspended for thirty (30) days.

Subject to the Contract, the design documents, plans and specifications prepared or furnished by Jenkins-Essex shall be the property of Jenkins-Essex and shall not be used or circulated by the Owner or others without Jenkins-Essex written consent, which consent shall be in Jenkins-Essex sole discretion.

If unforeseen or differing site conditions are encountered prior to execution of the Contract, Jenkins-Essex may suspend work upon written notification until such time as the Owner and Jenkins-Essex agree in writing on the terms and conditions for continuation of the work.

The current contract amount for our Design-Build services for the construction of the Hardin County Water District #2 project shall be: **\$8,000,000.00**

The laws of the Commonwealth of Kentucky shall govern this Letter of Intent. This letter of Intent may not be assigned without the consent of the Design Builder.

Thank you for your confidence in us. We are looking forward to working with you on this project.

Very truly yours,

JENKINS-ESSEX CONSTRUCTION, INC.



R. Gregory Jenkins
President

If this Letter of Intent is agreeable with you, please indicate by your authorized signature in the space provided below and return a signed original to Jenkins-Essex.

Hardin Water District #2

Mark A. Bell


Name

Chair

Title

Hardin County Water District No. 2

ATTACHMENT "F"

	Equipment Schedule Usage Rates		
Cat 420F 4wd Backhoe		\$1,500.00	Month
SKR00724		(\$65)	Day
Case 680L 2wd Backhoe		\$800.00	Month
JJG00304313		(\$35.00)	Day
John Deere 4wd Backhoe		\$1,200.00	Month
T0310EX881924		(\$53)	Day
Pettibone Telescoping Forklift		\$800.00	Month
7-054		(\$35.00)	Day
Cat 239 Skidsteer		\$1,200.00	Month
CAT0239DABL901121		(\$53)	Day
Cat 239 Skidsteer		\$1,200.00	Month
BL903654		(\$17)	Day
Dump Trucks		\$400.00	Month
		(\$17)	Day

1. Hauling cost shall be responsibility of project being delivered to.
2. Hauling cost for being returned to the shop shall be covered by the company.

Exhibit G

Article 12.3.3

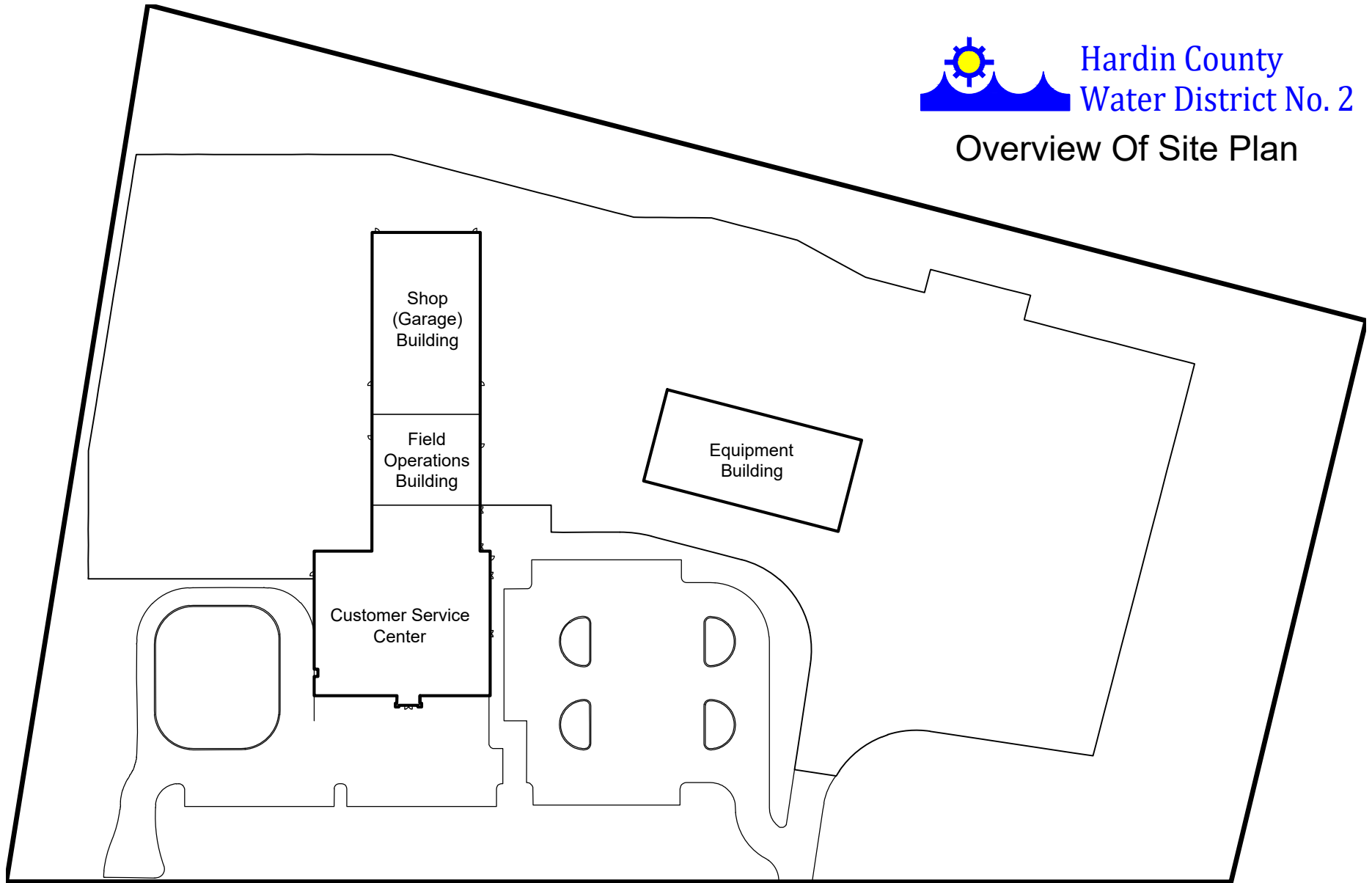
Owner shall receive a copy of all Instruments of Service as soon as they are completed by the authors of those Instruments of Service as long as Owner has made all requested payments under the Agreement to pay for the work of the authors. Owner shall have an exclusive right to use those Instruments of Service for the completion of the Project, even if Owner moves forward with the Project without Design-Builder. Owner agrees to indemnify and hold harmless Design-Builder and all authors and owners of the Instruments of Services from any costs or expense related to claims asserted by a third party to the extent such costs or expenses arise from Owner's alteration of the Instruments of Service, or use of the Instruments of Services for any project other than the Project.

EXHIBIT 15



Hardin County
Water District No. 2

Overview Of Site Plan

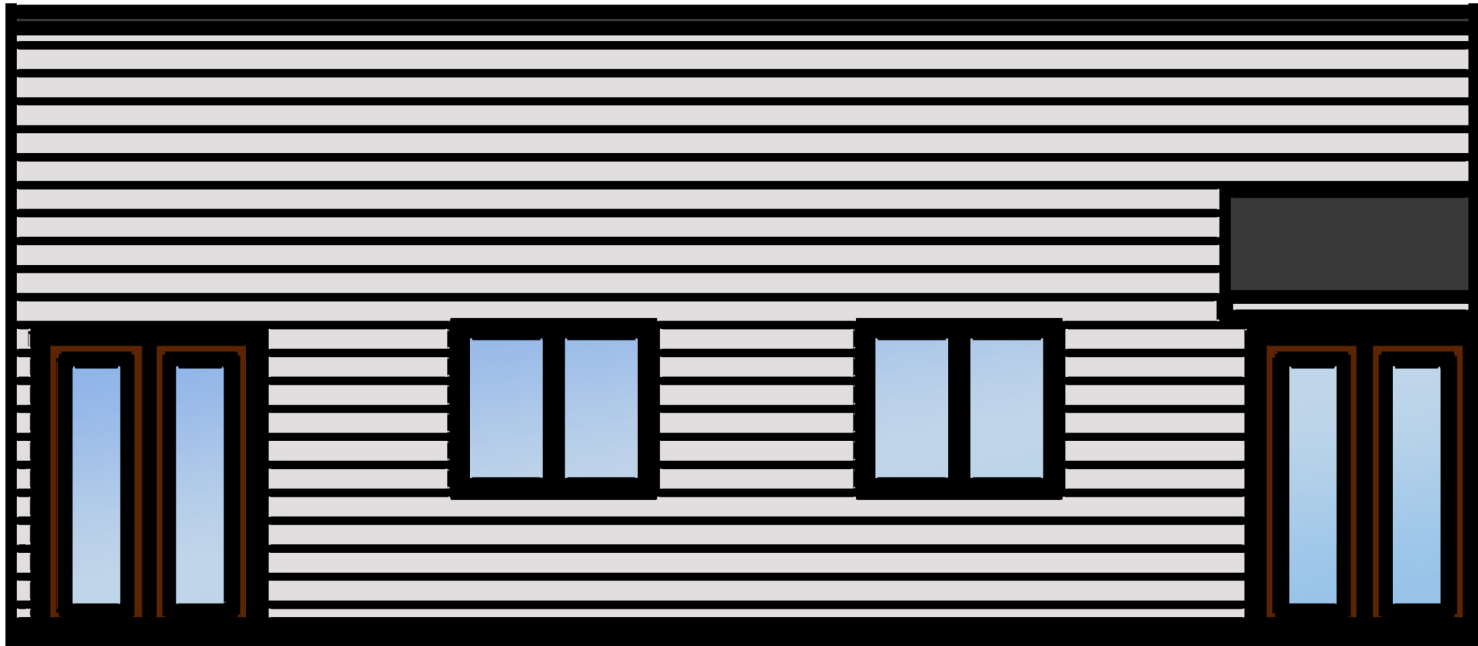


WEST PARK RD.

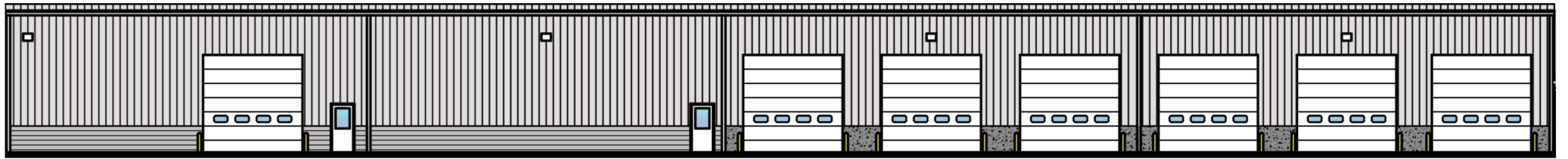
EXHIBIT 16



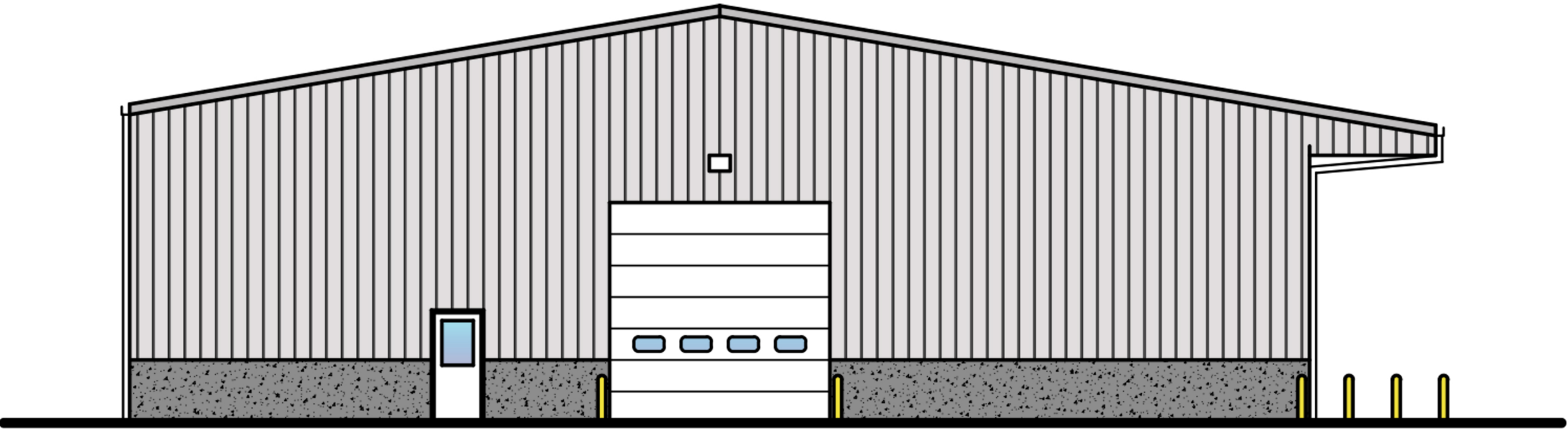
CUSTOMER SERVICE CENTER



FIELD OPERATIONS BUILDING



SHOP (GARAGE) BUILDING



EQUIPMENT BUILDING

EXHIBIT 17

PROVIDED AS SEPARATE DOCUMENT

EXHIBIT 18

PROVIDED AS SEPARATE DOCUMENT

EXHIBIT 19

Location of Proposed Facilities

The proposed facilities will be located at 1951 West Park Road, Elizabethtown, Kentucky.
This location is shown on Exhibit 2 and Exhibit 12 (as Lot 1C)

EXHIBIT 20

CONTRACT FOR PURCHASE AND SALE OF REAL ESTATE

This Contract for Purchase and Sale of Real Estate (this "Contract") is made effective as of 20th day of March, 2020 the "Effective Date"), by and between **Hardin County Water District No. 2**, a Public Body Corporate having an address of P.O. Box 66, Elizabethtown, Kentucky 42702 ("Seller"), and **Kentucky Utilities Company**, a Kentucky corporation, having a notice address of Attn: Real Estate Department, 820 West Broadway, Louisville, Kentucky 40202 ("Purchaser"). Seller and Purchaser agree as follows:

1. **Recitals.** Seller owns the real property comprising approximately 7.153 acres of land located at 360 Ring Road, Elizabethtown, Kentucky 42701 and more particularly described on attached Exhibit A, including all improvements thereon and easements and appurtenances thereto (the "Property"). Purchaser desires to purchase the Property from Seller and Seller desires to sell the Property to Purchaser on the terms contained in this Contract.
2. **Purchase Price.** The purchase price for the Property is Three Million One Hundred Thousand Dollars (\$3,100,000.00) (the "Purchase Price"). The Purchase Price will be paid to Seller at the Closing payable in cash, or its equivalent, at the time of closing, as herein defined.

Deposit. As evidence of good faith binding this Contract, a deposit of Ten Thousand Dollars, (\$10,000.00), (the "First Down Payment") is made herein and to be held by the Bell, Hess and Van Zant, PLC Escrow account of 2819 Ring Road, Suite 101, Elizabethtown, Kentucky and to be applied to the purchase price at closing. Upon obtaining the approval set forth in Section 3, a deposit of Ninety Thousand Dollars, (\$90,000.00), (the "Second Down Payment") will be made to be held by the Bell, Hess and Van Zant, PLC Escrow account of 2819 Ring Road, Suite 101, Elizabethtown, Kentucky and to be applied to the purchase price at closing. Should the title to the property appear defective, Seller shall have thirty (30) days after receipt of notice from Purchaser of such defect in which to remedy same at the cost of the Seller. In the event Seller breaches the contract, including the failure to obtain approval set forth in Section 3, or Seller is not able to correct the deficiencies in the title on a timely basis, the First and Second Down Payment will be returned to the Purchaser in full. In the event the Purchaser fails to perform Purchaser's obligations hereunder, Seller shall retain the First and Second Down Payment, if paid, as liquidated damages. In the event this transaction closes within the terms of this Contract, or any agreements, extensions or addendums thereto, the \$100,000.00 shall be applied and credited toward the purchase price herein.

3. **Closing Contingency.** Except as otherwise provided herein or in a written amendment signed by both Parties, this Contract and the obligations of both Parties are contingent upon the Seller obtaining, on or before September 30, 2020, a Certificate of Convenience and Necessity from the Kentucky Public Service Commission to construct major improvements to the real property located at 315 Ring Road, Elizabethtown, Kentucky, which will enable the Seller to relocate its Customer Service Center, maintenance facilities, warehouse

buildings, cold storage facilities, and all other operations currently housed at 360 Ring Road to 315 Ring Road.

4.

Possession: Possession of the premises shall transfer on or before March 31, 2022; provided, however, that if Seller is not able to surrender possession of the property conveyed herein on or before March 31, 2022, the sale of the Property (the "Closing") shall continue as provided in Section 6 and Seller shall enter into a lease in form materially similar to Exhibit B and pay to Purchaser rent in the amount of \$10,000.00 per month for any and all months beyond March 31, 2022 for which Seller fails to surrender possession to the Purchaser.

5.

Inspection. Purchaser will have up to one hundred twenty (120) days after the Effective Date (the "Review Period") to review Seller's title to the Real Property and to perform physical and legal inspections (including, without limitation, a survey, electrical, mechanical and structural inspections) of the Real Property, as well as to consider whether the site is suitable for Purchaser's intended use. Seller shall allow Purchaser and its consultants access to the Property at reasonable times for the purpose of conducting inspections. After completion of its inspections, Purchaser will promptly and diligently restore the Property to the same condition as existed immediately prior to such inspections. For the period between the completion of Purchaser's inspections and the Closing Date, Seller shall not commit or suffer any waste of the Property or make any change in the use of the Property which will in any materially impair the value of the Property. Purchaser agrees to indemnify and hold Seller harmless from all claims, liabilities, costs and expenses (including reasonable attorneys' fees) arising out of the acts or omissions of Purchaser, its consultants or designees on the Property in the performance of such inspections, or the entry by same onto the Property, including, but not limited to, mechanics' lien claims, damage to persons or property, and third-party claims. The foregoing obligations shall survive the termination of this Contract and the Closing.

6.

Closing. The Closing shall be held at the office of the Seller's counsel at 2819 Ring Road, Suite 101, Elizabethtown, Kentucky 42701, or at such other location that is mutually agreeable to the parties, no later than March 31, 2022 (the "Closing Date") and no later than 5:00 p.m. Eastern Time on such date. Except as otherwise expressly set forth in this Contract or mutually agreed to by the parties, the Closing Date shall not be extended for any reason whatsoever.

a.

Deed; Removal of Liens. Seller will convey good and marketable fee simple title to the Real Property to Purchaser at the Closing by limited warranty deed in a form reasonably satisfactory to Purchaser, in recordable form (the "Deed"), free and clear of encumbrances, subject only to easements, restrictions, and covenants of record, legal highways, real estate taxes and assessments not yet due and payable, zoning and other governmental regulations, and matters which a current survey of the Property would disclose. Mortgages and other monetary liens on the Property, if any, will be paid off or caused to be released by Seller at or prior to the Closing.

- b. Termination of Leases. Except as otherwise provided in Section 4, possession of the Property will be delivered to Purchaser at the Closing free and clear of any leasehold interests, and Seller agrees to indemnify Purchaser from any claims, losses, liabilities and expenses, including reasonable attorneys' fees, arising out of any claim by any tenant under a valid lease that has not been terminated as of the Closing Date.
 - c. Other Closing Documents. Seller and Purchaser shall execute such other documents as may be reasonably necessary or appropriate to close the purchase and sale of the Property, which documents shall be in form and content reasonably acceptable to both Purchaser and Seller.
 - d. Closing Costs. Seller will be responsible for the preparation of the Deed, and for the payment of all transfer taxes in connection with the conveyance of the Property. Purchaser will be responsible for the cost of recording the Deed. All non-delinquent real estate taxes and assessments will be prorated among Purchaser and Seller at Closing based on the most recent available tax duplicate or invoice, and such proration will be final. Purchaser will be responsible for any closing or escrow fees and all costs associated with its due diligence investigations. Each party will be responsible for its own legal fees.
7. Condition of the Property. THE PROPERTY IS BEING SOLD "AS IS", "WHERE IS" AND "WITH ALL FAULTS" AS OF CLOSING, WITHOUT ANY REPRESENTATION OR WARRANTY WHATSOEVER AS TO ITS CONDITION, FITNESS FOR ANY PARTICULAR PURPOSE, MERCHANTABILITY OR ANY OTHER WARRANTY, EXPRESS OR IMPLIED, EXCEPT AS SPECIFICALLY SET FORTH IN THIS CONTRACT. SELLER SPECIFICALLY DISCLAIMS ANY WARRANTY, GUARANTY OR REPRESENTATION, ORAL OR WRITTEN, PAST OR PRESENT, EXPRESS OR IMPLIED, CONCERNING THE PROPERTY, EXCEPT AS SPECIFICALLY SET FORTH IN THIS CONTRACT. PURCHASER ACKNOWLEDGES THAT PURCHASER IS PURCHASING THE PROPERTY BASED SOLELY UPON PURCHASER'S OWN INDEPENDENT INVESTIGATIONS AND FINDINGS AND NOT IN RELIANCE UPON ANY INFORMATION PROVIDED BY SELLER OR SELLER'S AGENTS OR CONTRACTORS, EXCEPT AS SPECIFICALLY SET FORTH IN THIS CONTRACT.
8. Risk of Loss. Risk of loss for the property shall remain with the Seller until the Closing date. If at any time prior to the Closing Date, all or any substantial part of the Property is damaged by fire or other casualty, taken or appropriated by virtue of eminent domain or similar proceedings, or is condemned for any public or quasi-public use, then Purchaser may terminate this Contract and thereafter neither party will have any further obligations hereunder except for the indemnifications set forth herein.
9. No Claims or Disputes. Seller represents and warrants to Purchaser that there are no suits, claims, foreclosure proceedings, landlord-tenant disputes, property tax protests, or zoning proceedings that are pending or, to Seller's actual knowledge, threatened with respect to or

in any manner affecting the Property. The foregoing representation and warranty of Seller shall survive for a period of one hundred and eighty (180) days after the Closing Date.

10. **Assignability.** Purchaser may not directly or indirectly assign or transfer any of Purchaser's rights, obligations and interests under this Contract, to any person or entity without the prior written consent or approval of Seller, provided, however, that Seller hereby consents to Purchaser's assignment of Purchaser's rights, obligations and interests under this Contract to an entity in which Purchaser maintains a controlling economic interest, so long as notice of said assignment is provided within five (5) business days prior to the Closing Date.
11. **Brokers.** Each party represents to the other party that no real estate broker, consultant, finder or like agent has been engaged by such party or has any interest in this transaction. Seller will not be responsible for paying the commission of any real estate broker, consultant, finder or like agent. Seller and Purchaser agree to indemnify, defend and hold the other harmless from and against all claims, losses, liabilities and expenses, including reasonable attorneys' fees, arising out of any claim by any broker, consultant, finder or like agent with whom such party has dealt or negotiated.
12. **Notices.** All notices permitted or required under this Contract will be in writing and will be given by (a) United States Certified Mail, return receipt requested, postage prepaid, (b) by personal delivery or (c) national overnight courier delivery service for next business day delivery, charges prepaid, and addressed to the applicable party at the address set forth in the introductory paragraph of this Contract or to such other address as a party may specify from time to time by giving notice in accordance with this Section. All notices will be effective upon the date of receipt or, if applicable, refusal.
13. **General.**
 - a. **Entire Agreement.** This Contract constitutes the entire agreement between Seller and Purchaser with respect to the Property and supersedes any other prior communications, representations or statements with respect to the transaction contemplated herein.
 - b. **Amendments.** This Contract may not be modified, altered or amended in any manner except by an agreement in writing executed by the parties.
 - c. **Severability.** If any provision of this Contract is determined to be invalid, the remainder of this Contract will be valid, enforceable and effective.
 - d. **Governing Law.** This Contract will be interpreted and governed by the laws of the Commonwealth of Kentucky.
 - e. **Benefit.** This Contract will inure to the benefit of and bind the parties and their respective successors and assigns.

- f.** Counterparts; Facsimile Signatures. This Contract may be signed in counterparts, each of which will constitute an original and all of which counterparts together will constitute a single instrument. Facsimile signatures or signatures transmitted by email or other electronic means shall be sufficient to bind the parties.
- g.** Headings. The section headings in this Contract are included for convenience only and shall not be construed to limit or modify the provisions of this Contract.
- h.** Time. Time is of the essence to this Contract. If a date specified for performance by either or both parties falls on a weekend or legal holiday, the time for performance shall be extended to the next business day.

[SIGNATURE PAGES FOLLOW]

This Contract is executed by the parties as of the dates set forth below but shall be effective as of the Effective Date set forth above.

SELLER:

Hardin County Water District No. 2

By: Michael L. Bell
Michael L. Bell, Chairman

PURCHASER:

Kentucky Utilities

By: Paul W. Weis
Paul W. Weis, MANAGER REAL ESTATE & ROW

State of Kentucky

County of Hardin

The foregoing document was subscribed, sworn to and acknowledged before me this 17th day of March 2021 by **Michael L. Bell**, in his capacity as Chairman for and on behalf of Hardin County Water District No. 2, A public body corporate, First Party herein.

Amber D. Pike # 561210
Notary Public
My Commission expires: 02-09-2021

State of Kentucky

County of Hardin

The foregoing document was subscribed, sworn to and acknowledged before me this 20th day of MARCH, by **Paul W. Weis** in his capacity as Manager, Real Estate and Right of Way and on behalf of Kentucky Utilities Company, A Kentucky corporation, Second Party herein.

Randall J. Magallon
Notary Public
My Commission expires: AUGUST 16, 2021

EXHIBIT A

Legal Description of Property

Being Lot 3D of the amended record plat of Hughes Commerce Ctr., Section 3, Lot 3C in Plat Cabinet 1, Sheet 1768, of record in the Hardin County Clerk's Office.

Being the same property conveyed to Seller by deed dated June 28, 1996 and recorded in Deed Book 845, Page 88 in the Office of the Hardin County Court Clerk.

PREPARED BY:

MATTHEW C. HESS
BELL, HESS & VAN ZANT, PLC
2819 Ring Road, Suite 101
Elizabethtown, Kentucky 42701

EXHIBIT 21

**ESTIMATE OF ANNUAL OPERATING COSTS
OF PROPOSED FACILITIES**

	2019 Expenses for the Current Customer Service Center	Estimated Expenses for the Proposed Customer Service Center
Electricity	\$ 23,230.16	\$ 33,120.00
Gas	\$ 3,807.20	\$ 10,120.00
Water	\$ 1,374.48	\$ 1,375.00
Sewer	\$ 365.52	\$ 366.00
Phone/Internet	\$ 17,040.00	\$ 17,040.00
Custodial	\$ 14,400.00	\$ 21,046.00
Security	\$ 422.52	\$ 423.00
Mowing	\$ 3,840.00	\$ 4,800.00
Exterminating	\$ 490.00	\$ 716.00
Trash Removal	\$ 1,125.53	\$ 1,126.00
Total	\$ 59,464.45	\$ 90,132.00