

Rural Water District No. 1  
Ellsworth County, Kansas a/k/a Post Rock Rural Water District  
Regular Board Meeting Minutes  
April 21, 2020

At 6:35 pm, Chairman Brad Miller noting a quorum called the regular board meeting to order.

Directors present were Brad Miller, Ralph Larson, Martin Bland, and Howard Wehrman, (at the District Office) Dave Gorrell, Joel Christy and Butch Tepe (virtually).

Director not present: Secretary/Treasurer Kayla Errebo

Others Present: Leslee Rivarola, and Ryan Cook (virtually) and Sharon Condit (in the District Office)

Guest: Todd Luckman, Louis Funk, Joe Kramer (virtually)

At 6:36 pm, Chairman Miller called for a motion to approve the consent agenda items. Director Wehrman made a motion to approve the consent agenda items. Seconded by Director Larson. Motion carried by roll call vote.

At 6:37 pm, Chairman Miller called for Item #4 on the agenda. Mr. Luckman was in the process of logging into Microsoft Teams; therefore, Ms. Rivarola took the lead on updating the Board of Directors on the Water Purchase Agreement. Mr. Luckman then explained the three items that are in question and needed to be discussed by the Board of Directors. The three issues are as follows:

1. The first is the language dealing with other users attaching to the line as constructed. If you will recall, J-Six wished to have the line preserved for its own use and to be vested with a kind of “right-of-first-refusal” for the line capacity. While this was rejected, we thought it fair that if a larger user tied onto the line, they should share in a proportion of the cost of the line as a reimbursement to J-Six. This is not uncommon for some Districts. We left it to J-Six to create the language, and I think it generally corresponds with what is needed. Just for the sake of example, so the Board can determine what this means, the calculation, based upon the minimum “Major User” would be calculated as follows, based upon estimated costs of construction:

New User gallons (120,000) divided by total J-Six amount (20,000,000) multiplied by construction cost (\$750,000) = \$4,500.00 connection fee.

Or a larger user example:

New User gallons (500,000) divided by total J-Six amount (20,000,000) multiplied by construction cost (\$750,000) = \$18,750.00 connection fee.

Under this formulation, this amount would be in addition to any mains to the new user and the benefit unit and meter fee, but it is fair based upon the size of the user and excludes a lot of smaller users. The issues for the Board on this would be whether they accept this minimum for the New User as being high enough to exclude normal users. In addition, I do think that the language does not provide for any controls on how much J-Six could claim in a New User scenario. I first thought they were saying that they would only have a right to obtain the same amount as the New User as far as an increase, but it does not explicitly say that, so in theory, the first person to tie on above the minimum would allow J-Six to take all the remaining capacity of the line. I am assuming that is not what you want and will discuss this with J-Six before the meeting to see if that can be changed.

2. Note the rate for the water at the wholesale rate, as discussed.
3. The last part says that the District cannot actually shut off water for a breach for 120 days without a court order. In reality, J-Six could likely seek an administrative order from KDHE or other authority forcing the District to continue supplying water to avoid a health problem due to livestock death, so this does not seem to be much of a concession in this.

After a brief discussion on the above three issues and with the language changes to be made, Chairman Miller called for a motion to approve the Water Purchase Agreement between Rural Water District No. 1 Ellsworth County, Kansas and J-Six Enterprises. Director Tepe made a motion to approve the Water Purchase Agreement contingent upon the final language changes. Seconded by Director Bland. Chairman called for a roll call vote. Directors Wehrman, Larson, Bland Tepe, Christy and Vice Chairman Gorrell voted yes. Motion carried. (See Exhibit A)

Chairman Miller called for the next item on the agenda, which was the Construction Agreement between Rural Water District No. 1 Ellsworth County Kansas and J-Six Enterprises. Mr. Luckman explained the changes to the Construction Services Agreement between Rural Water District No. 1 Ellsworth County Kansas and J-Six Enterprises were minor and those changes have been made and the Construction Agreement is ready for approval by the Board of Directors. Chairman Miller called for a motion to approve the Construction Agreement. Director Larson made a motion to approve and to construct a 10-mile water main extension to serve J-Six Enterprises hog facility in McPherson County, Kansas. Seconded by Director Bland. The vote was by roll call. Directors Wehrman, Larson, Bland, Christy, Tepe and Vice Chairman Gorrell voted yes. Motion carried. (See Exhibit B)

Mr. Kramer asked about the procedure to set up the escrow account. Chairman Miller requested that the process be done with the assistance of Ms. Rivarola.

At 7:15 pm, Chairman Miller called for Item number 6 on the agenda. Mr. Funk from Bartlett & West introduced himself and gave a brief review of his credentials and experience in working with rural water systems and his years of service with Bartlett & West. Upon approval of the Professional Service Agreement with Bartlett & West, Inc., Mr. Funk explained his approach to provide the proposal for service. He stated the ability to mobilize quickly and have a plan set and ready for review in approximately four (4) weeks. Mr. Funk gave a brief description of the scope of work. Mr. Luckman reviewed the Agreement for Professional Services with the Board of Directors. Mr. Luckman explained the process of obtaining private easements from landowners and using the road right of way. Mr. Luckman explained, an issue with the water line being laid in the right of way. If in future years, the road would need to be widened the District would be liable for paying to have the water line moved. He explained, that is better to obtain private easements to lay the water line. Mr. Luckman explained, that when obtaining private easements there may be some cost for crop damages. Mr. Funk added that it is best to obtain private easements. Mr. Luckman cautioned the Board of Directors on trading meter fees or benefit units for easements.

Chairman Miller called for a motion to accept the Agreement for Professional Services with Bartlett and West. Director Teppe made a motion to accept the Agreement for Professional Services as presented by Bartlett & West, Inc. with KDHE Review and Construction Bidding of Water Main Extension in McPherson County, Kansas, in the lump sum amount and not to exceed \$58,000. Seconded by Vice Chairman Gorrell. Chairman Miller called for a roll call vote. Directors Wehrman, Larson, Christy, Bland, Teppe and Vice Chairman Gorrell voted yes. Motion carried. (See Exhibit C)

Mr. Luckman departed the meeting at 7:30 pm for previously scheduled meeting and he would return upon the completion of that meeting.

At 7:30 pm, Chairman Miller called for Item number 7 on the agenda. Mr. Ryan Cook the District accountant shared the Capital Improvement Plan (CIP) with the Board of Directors. Mr. Cook explained the plan is designed to include \$450,000 and to be a five (5) year plan that is flexible and that repairs could be made by order of priority. After a brief discussion, of whether to approve the CIP budget at this meeting or to meet with the Ranson Financial Group prior to approval, Chairman Miller called for a motion to approve the CIP budget. Vice Chairman Gorrell made a motion to approve the CIP budget as presented by Mr. Cook. Seconded by Director Bland. Chairman Miller called for a roll call vote. Director Wehrman voted no. Directors Bland, Larson, Christy, and Teppe voted yes. Motion passed. (See Exhibit D)

Mr. Cook departed the meeting at 7:50.

At 8:00 pm, Chairman Miller called for Item number 8 on the agenda. Chairman Miller briefed the board of directors on the two quotes that were obtained for the replacement of one and one eight miles of line on Avenue D. After a brief discussion about the two bids and the size and the class of pipe that would need to be used for this project, Chairman Miller called for a motion to move forward with the Avenue D Project. Vice Chairman Gorrell made a motion to replace one and one eight mile of pipe on Avenue D pending a study on the size and class of pipe by Bartlett and West and the project is not to exceed the amount of \$100,000. Also, the CIP Committee would have the option to approve the contractor for the project. Seconded by Director Larson. Chairman Miller called for a roll call vote. Directors Wehrman, Larson, Bland, Christy, Teppe and Vice Chairman Gorrell voted yes. Motion carried.

At 8:15 pm, Chairman Miller called for Item number 9 on the agenda. Director Christy discussed the three bids for the purchase of a pump to be installed at Booster Station #2. After a brief discussion about the brand of pump to purchase and the cost of labor to install the pump, Chairman Miller called for a motion to purchase the pump. Director Bland made a motion to purchase a Franklin pump from Rosencrantz-Bemis Drilling Co. in the amount of \$9,903.56 and the total cost including labor not to exceed \$12,000. Seconded by Director Larson. Chairman Miller called for a roll call vote. Directors Wehrman, Larson, Bland, Christy, Teppe and Vice Chairman Gorrell voted yes. Motion carried.

At 8:30 pm, Chairman Miller called for a 10-minute break.

Mr. Louis Funk departed the meeting at 8:30 pm

At 8:40 pm, the meeting reconvened.

At 8:40 pm, Chairman Miller called for Item number 2 on the agenda. After a brief discussion about the invoice from Schwab-Eaton, it was decided to table the decision to pay the Schwab-Eaton invoice until some items and data was retrieved from Schwab-Eaton.

At 8:45 pm, Chairman Miller called for Item number 3 on the agenda. After a brief discussion and a few questions on various invoices, Chairman Miller called for a motion to approve the bills. Director Larson made a motion to approve the bills not to exceed the amount of \$135,479.08. Seconded by Director Wehrman. Chairman Miller called for a roll call vote.

Directors Wehrman, Larson, Bland, Christy, Teppe and Vice Chairman Gorrell voted yes.  
Motion carried.

At 9:55 pm, Chairman Miller called for Item number 10 on the agenda. Item # 10 is the Resolution Suspending District Purchasing Policy and Authorizing Chairman to make emergency expenditures during the COVID-19 pandemic with approval of the CIP Committee.

Ms. Rivarola briefed the board of directors on the Purchasing Policy and the Financial Procedures for the District. She presented the following details about the Purchasing Policy and the Financial Procedures.

The District's "Purchasing Policy & Financial Procedures" dated April 12, 2016 detail purchasing and expenditure authority within the District. Generally, expenditures are ratified by the Board of Directors during the regular monthly Board meeting. On occasion, a Special Board meeting is called to authorize an expenditure in advance that is in excess of staff's spending authority, and once the invoice is submitted or services are rendered, the actual expense incurred is ratified by the Board of Directors during their monthly Board meeting. This process should allow for a two-step authorization of expenditures in excess of staff's spending authority.

Section 4.1 "Emergency Purchases" authorizes the Superintendent of Finance and Administration to waive the quote process for expenditures in excess of \$500 under a defined emergency condition. The policy further authorizes the Superintendent of Finance and Administration to make emergency purchases in an amount not to exceed \$10,000 using the same emergency condition definition.

The District no longer has a position titled Superintendent of Finance and Administration. In addition, the District does not have a General Manager on staff. In order to ensure continuity of operations, particularly in response to the current health pandemic of COVID-19, it is suggested to authorize the Chairman of the Board to make emergency purchases on behalf of the District in an amount not to exceed \$10,000. The following stipulations are suggested to ensure full transparency and accountability to the Board of Directors for any emergency purchases.

- 1) Temporarily expand section 4.1 Emergency Purchases to authorize the Chairman of the Board to make emergency expenditures on behalf of the District in an amount not to exceed \$10,000 per occurrence.
- 2) The Chairman must receive the approval of a majority of the Capital Improvement Committee in advance of making Emergency Purchases.

- 3) Any Emergency Expenditures approved by the Capital Improvement Committee shall be communicated via email to the full Board of Directors and a copy to the Office Manager for record keeping purposes.
- 4) The Board of Directors will be asked to ratify emergency purchases at their next regularly scheduled Board meeting.
- 5) Emergency purchases in excess of \$10,000 should still be approved in advance by the Board of Directors, as they are currently.
- 6) The expansion of emergency expenditure authority will remain in effect until December 31, 2020, which is consistent with the expanded federal benefits of the Families First Coronavirus Response Act.

After the explanation, by Ms. Rivarola and a brief discussion, Chairman Miller called for a motion to approve the temporary authorization for emergency expenditures. Director Christy made a motion to temporarily expand Section 4.1 Emergency Purchases of the District's Purchasing Policy and Financial Procedures adopted April 12, 2016 authorizing the Chairman to make emergency expenditures in an amount not to exceed \$10,000 subject to the six stipulations presented above. Seconded by Vice Chairman Gorrell. Chairman Miller called for a roll call vote. Directors Wrehman voted no. Directors Larson, Christy, Miller and Vice Chairman Gorrell voted yes. Directors Bland and Teppe abstained. Motion passed. (See Exhibit E)

At 10:05 pm, Chairman Miller called for Item number 11 on the agenda. Item number 11 is the Consideration of the 2020 Insurance Renewal for Health and Dental Care. Ms. Rivarola gave a brief description of the cost of the health and dental insurance and the increase in premiums for the insurance period beginning April 1, 2020. The District is currently under a grandfathered health and dental insurance plan with Blue cross Blue Shield. After some discussion, it was decided to have Ms. Rivarola contact a couple of insurance companies for quotes. Chairman Miller called for a motion to authorize Ms. Rivarola to contact other insurance companies to obtain quotes for health and dental coverage. Director Bland made a motion for Ms. Rivarola to contact several insurance companies for health and dental insurance quotes. Seconded by Vice Chairman Gorrell. Chairman Miller called for a roll call vote. Directors Wehrman, Larson, Bland, Christy, Teppe and Vice Chairman Gorrell voted yes. Motion carried.

At 10:15 pm, Chairman Miller called for Item number 12 on the agenda. Item # 12 is to Authorize the Personnel Committee to Recruit a Water Operator at the Water Treatment Plant. Ms. Rivarola explained, currently, there are two full-time employees assigned to work at the Water Treatment Plant. Of those two employees, Mr. Terry Ranker is the KDHE designated Operator of Record. The two employees are splitting on-call time every other week.

The Personnel Committee has been working on staffing, operations plans, and diversifying the distribution of duties among employees to ensure the District is able to provide service. As an essential service, the ability to continue operations with limited interruption is important for the customers who depend on the District for water.

Distribution staff members have been rotating down to the treatment plant to learn the system. The system is complex and short-term or day-long rotations is unlikely to result in distribution staff being able to operate the water treatment plant on their own. In addition, the distribution staff are new employees and learning the system in distribution.

After Ms. Rivarola's update on the request to recruit a Water Operator for the Water Treatment Plant, Chairman Miller called for a motion. Director Larson made a motion to authorize the Personnel Committee to hire an additional full-time employee to serve as an Operator at the Water Treatment Plant. Seconded by Director Bland. Chairman Miller called for a roll call vote. Directors Wehrman, Larson, Bland, Christy, Teppe and Vice Chairman Gorrell voted yes. Motion carried.

Chairman Miller called for the attorney's report. Mr. Luckman gave a brief update on the contract situation with the City of Ellsworth and the Federal Labor Law- Families First Coronavirus Response Act (FFCRA).

At 10:15 pm, Chairman Miller called for a motion to recess into Executive Session. Vice Chairman Gorrell made a motion to recess into Executive Session to discuss pursuant to K.S. A. 75-4319(b) to discuss non-elected personnel for 15 minutes to include all Directors, consultant Leslee Rivarola and the District's Attorney Mr. Todd Luckman. Seconded by Director Bland. Chairman Miller called for a roll call vote. Directors Wehrman, Larson, Bland, Teppe, Christy and Vice Chairman Gorrell voted yes. Motion carried. No action taken.

Mr. Luckman departed the meeting at 10:30 pm.

At 10:30 pm, Chairman Miller gave a brief update on the situation with Osborne Rural Water District #2. No action taken.

At 10:40 pm, Chairman Miller called for the Distribution, Water Treatment Plant and the Office Managers reports. Ms. Condit reported there were no additional updates to the three reports, but she provided an update from Schwab-Eaton on the Clarifier Project.

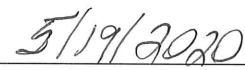
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At 10:50 pm, with no other business to be brought before the Board of Directors, Chairman Miller called for a motion to adjourn the meeting. Director Bland made a motion to adjourn the meeting. Seconded by Director Christy. All board members voted yes by roll call vote.

Meeting Adjourned at 10:50 pm.

Respectively Submitted:

  
\_\_\_\_\_  
Vice Chairman Gorrell

  
\_\_\_\_\_  
Date



WATER PURCHASE AGREEMENT

This AGREEMENT for the sale of water ("Agreement"), is made and entered into this 29<sup>th</sup> day of April, 2020, by and between J-Six Farms, LLC, hereinafter called "J-Six", and Rural Water District No. 1, Ellsworth County, Kansas, hereinafter called the "District."

**WITNESSETH:**

**WHEREAS**, J-Six desires to purchase water for its agricultural business venture;

**WHEREAS**, the District is organized and established under the provisions of K.S.A. 82a-612 *et seq.*, as a rural water district and wishes to supply water to J-Six under the terms of this Agreement; and

**WHEREAS**, contemporaneously herewith, J-Six and the District have entered into that certain Construction Agreement for Water Main Extension (the "Construction Agreement") for the planning and construction of District facilities with this Agreement in mind; and

**WHEREAS**, by motion of the Board of Directors of the District approved, on the 21<sup>st</sup> day of April, 2020, the purchase of water in accordance with the provisions of this Agreement, and the execution of the same by the Chairman and the Secretary was duly authorized;

**NOW, THEREFORE**, in consideration of the foregoing and the mutual agreements hereinafter set forth, the parties agree as follows:

1. **(Quality and Quantity)**. District agrees to furnish J-Six at the point of delivery hereinafter specified, during the term of this Agreement or any renewal or extension thereof, potable treated water meeting all applicable purity standards of the Kansas Department of Health and Environment and all regulatory bodies which monitor and enforce potable water compliance requirements in such quantity as is desired by J-Six and is available for purchase from District at any given time, not to exceed 56,160 gallons per day or 20 million gallons per year (the "Annual Guaranteed Amount"). The rate of delivery shall be at least 39 gallons per minute. The District shall maintain a minimum pressure of at least 20 psi. Emergency failures of pressure or supply due to main supply line breaks, power failure, flood, fire, and use of water to fight fire, earthquake or other catastrophes shall excuse the District from this provision for such reasonable periods of time as may be necessary to restore service. This Agreement is subject to such rules, regulations, or laws as may be applicable to similar agreements in this State, and the District and J-Six will collaborate in obtaining such permits, certificates, or the like, as may be required to comply therewith. Should any regulatory agency prevent or hinder District's performance of this contract, District shall take reasonable administrative actions to prevent such interference, but shall not be

liable to J-Six for failure to supply water under the terms hereof due to said regulatory action and J-Six shall be released from any liability to pay for the minimum volume of water required under the provisions of this contract if District is unable to deliver said minimum volume of water as a result of such regulatory action. The amount of 20 million gallons per year is the amount guaranteed as to be provided under this Agreement and the District need not supply water over that amount, nor shall supply over that amount be deemed to be an increase in this amount that is binding on the parties. All amounts over the 20 million gallon per year minimum shall be deemed to be from excess supply and availability is not guaranteed unless modified by subsequent written agreement by the parties, and the District reserves the right to restrict service to prevent use above these monthly or annual amounts if such excess usage would cause the District to either breach its obligations under other agreements or would impair its ability to properly supply water to other patrons in line with its duty as a public water supply. Further, the amount of 20 million gallons per year is based upon a constant level of use on a monthly basis of 1.6 million gallons per month. The District reserves the right to restrict usage or volumes on a monthly basis as is reasonable to prevent excessive use that harms the system or could result in the inability to service other customers. Notwithstanding the foregoing, the District agrees that in consideration of J-Six paying for the Water Main Extension, the parties intend that J-Six shall have the right to increase its Annual Guaranteed Amount prior to the Water Main Extension being used by any Major Users. Accordingly, during the term of this Agreement, prior to the District permitting (i) any new customer requesting at least 120,000 gallons of water per year (a "Major User") to connect to the "Water Main Extension" (as defined in the Construction Agreement) or any existing user connected to the Water Main Extension requesting an increase in its annual water usage to a cumulative total of at least 120,000 gallons of water per year (in which event such existing user shall then be deemed a "Major User"), J-Six shall have the right to increase the Annual Guaranteed Amount under this Agreement by such amount desired by J-Six (provided the same does not exceed the capacity anticipated by the District) and shall only connect such Major User or approve the requested increase in water usage of such existing user in the event (i) the capacity of the Water Main Extension can sufficiently accommodate both J-Six's increased usage and such Major User's additional usage and (ii) the District shall collect a "Reimbursement Charge" from such Major User's and shall pay such Reimbursement Charge to J-Six. The term "Reimbursement Charge" shall mean an amount equal to (y) the amount of annual water requested by such Major User (or the additional water requested by a Major User if such Major User has previously paid a Reimbursement Charge and has requested additional water) divided by 20,000,000 times (z) the "Total Costs" (as defined in the Construction Agreement) paid by J-Six under the Construction Agreement. It is understood by the parties to this Agreement that connection of a Major User shall only entitle J-Six to request an increase in an amount equivalent to the estimated use of the new Major User, or such amounts in excess of this estimated use as the District may agree is reasonable under the circumstances. Further, that any increase for J-Six under this part of the Agreement shall result in a corresponding increase to its Annual Guaranteed Amount so that all amounts now obtained become a new minimum annual water use controlled by Paragraph 5. C. herein.

2. **(Point of Delivery and Pressure).** Water will be furnished at the point of delivery, which is at the location of the water meter to be installed at Section 9, Township 18, Range 5 West of the 6 P.M. in McPherson County, Kansas (the "Point of Delivery"). Provided, that if it shall become necessary to change the point of delivery, such point of delivery shall be relocated to such place as the parties may agree. If such relocation is for the convenience of the District, then District shall be responsible for the costs associated with that relocation. If relocation is due to the request of J-Six, then the costs of relocation to that point of delivery shall be paid by J-Six. If the relocation is due to any other cause, including a cause that is beyond the control of either or both of the parties, then the costs of relocation of that point of delivery shall be split equally between the parties.

J-Six shall make any extensions and/or improvements needed for J-Six to accept water from the District at the Point of Delivery at J-Six's expense. The District shall provide the meter, to be of a type and size selected by the District, and J-Six shall reimburse the District for the same. In addition, J-Six shall pay the cost of installation of the meter, meter pit, and related equipment required at the Point of Delivery. J-Six shall grant any easement or other interest in land necessary provide for the housing of the meter and all other related equipment of the District.

3. **(Metering Equipment).** The District shall operate and maintain, at its own expense, at the point of delivery, the metering equipment for properly measuring the quantity of water delivered to J-Six and to calibrate such metering equipment as necessary. The District shall calibrate such metering equipment whenever requested by J-Six but not more frequently than once every twelve (12) months. A meter registering not more than 2% above or below the test results shall be deemed to be accurate. The previous readings of any meter disclosed by test to be inaccurate shall be corrected for the six (6) months before such test in accordance with the percentage of inaccuracy found by such tests. If any meter fails to register for any period, the amount of water furnished during such period shall be deemed to be the amount of water delivered in the corresponding period immediately prior to the failure, unless the District and J-Six shall agree upon a different amount.

4. **(Billing Procedure).** The District shall read the meter by the first day of each month and furnish J-Six, on or about the Fifth (5<sup>th</sup>) day of each month, with an itemized statement of the amount of water furnished J-Six during the preceding month. The District will charge a Fifteen dollar (\$15) monthly fee to read the meter. If J-Six's use is such that it is below the monthly minimum volume of water as established in this Agreement, said minimum shall be billed at the same time and in the same manner. On the Sixteenth (16<sup>th</sup>) day of the month the amount due will be paid by J-Six. If J-Six fails to pay the charges by the Sixteenth (16<sup>th</sup>) day of the month, a late charge of 1% of the amount due will be assessed and added to the amount owed to the District on the Seventeenth (17<sup>th</sup>) day of the month.

5. **(Rates).** Rates for water, and changes to those rates, shall be governed as follows:

A. Beginning Rates. District agrees to furnish J-Six water delivered in accordance with the following schedule of rates: \$7.18 per 1,000 gallons, subject to modification as provided below.

B. Modification of Water Rate. The rate stated above shall be modified at least annually by the District. Any failure to modify on an annual basis shall not constitute a waiver of the right to modify the rate. Beginning with the year following the execution of this Agreement and each year thereafter, the rate shall be adjusted in the same amount as the rate charged per thousand gallons for wholesale customers of the District. In no instance shall the rate exceed that charged to wholesale customers of the District. In the case where the District and J-Six increase the minimum annual or monthly amounts under this Agreement, the rate may be further modified to defray capital costs needed to supply amounts needed to supply the increased minimum amounts.

C. Minimum Annual Water Use and Minimum Annual Water Use Reconciliation. Each month of service, J-Six will pay to the District a monthly minimum amount that is the equivalent to the rate under 5.A, or as the same is increased, modified or amended by the parties subsequent hereto, for 1.6 million gallons of water, regardless of whether the full amount is used or not in that month. On or about November 1<sup>st</sup> of every full year after the anniversary date of the date of first delivery, the District will examine the usage of J-Six to determine compliance with the minimum annual water use provided in this Agreement, and any request by J-Six to increase that minimum amount so that additional water will be guaranteed to be delivered by the District. Any increase in this minimum annual water use shall be memorialized in writing by the parties and outline any change in rates as a result. This Agreement contemplates that J-Six will pay a monthly amount that is equivalent to the annual amount divided over the twelve-month calendar year regardless of whether J-Six uses the minimum amount or not during any one month. All usage over and above the monthly minimum will be charged in accordance with the rate structure in this Agreement, payable on a monthly basis. In certain instances of monthly variations of use, the District will grant a credit, as follows: If, at the end of the year anniversary, as determined on Nov. 1, J-Six has not exceeded the minimum annual water use over the course of the year, no reconciliation will occur nor will any credit be granted. If J-Six has exceeded the minimum annual water use over the course of the year, the District shall determine if J-Six paid the minimum monthly amount in any individual month yet obtained less than the monthly minimum water allocation. For those months, the difference shall be determined, and J-Six shall be credited with an amount equivalent to the number of unused gallons for those months only, at the rate outlined in 5.A, above, as amended, modified or increased subsequent hereto. However, in no case shall this recalculation be used to establish credit for more than three monthly incidences of underuse in a calendar year. In the case of more than three months of underuse, the District shall credit those months with the greatest amounts of underuse.

6. **(Term of Agreement).** This Agreement shall extend for a term of Twenty (20) years from the date of the initial delivery of any water as shown by the first bill submitted by the District to J-Six. The term may be extended for a period of Ten (10) years at the unilateral request of J-Six. Thereafter, the term of this contract may be renewed or extended for such term, or terms, as may be mutually agreed upon by the parties, with said renewal or extension being in writing, signed by the parties or their successors.

7. **(Delivery of Water).** That at least Ten (10) days prior to initial purchase of water under this contract, the District will notify J-Six of the date for the initial delivery of water.

8. **(Conservation of Supply and Supply Failure).** That the District will, at all times, operate and maintain its system in an effective manner and will take such action as may be necessary to furnish J-Six with quantities of water required by J-Six. Temporary or partial failure to deliver water shall be remedied with all possible dispatch. In the event of an extended shortage of water, or the supply of water available to the District is otherwise diminished over an extended period of time, the supply of water to J-Six shall be reduced or diminished at the same rate or proportion as the supply to the District's consumers is reduced or diminished.

Emergency failures of pressure or supply due to main supply line breaks, power failure, flood, drought, fire and use of water to fight fire, earthquake, or other catastrophe shall excuse the District from delivery of water under this Agreement for such reasonable period of time as may be necessary to restore service. J-Six shall be subject to any and all aspects of the District's emergency water conservation plan or any other regulatory requirements regarding water conservation. In the event the supply of water is interrupted for any of the above-mentioned reasons, J-Six agrees to waive any right, claim or damages against the District arising out of such termination or interruption. The District also reserves the right to suspend service temporarily to make necessary repairs or improvements to its water supply distribution system. Provided, however, that the District shall notify J-Six of any interruptions of service in advance and shall prosecute any work necessary to restore service with due diligence and shall take all reasonable measures to ensure the least possible delay in service.

9. **(Regulatory Agencies).** This Agreement is subject to such rules, regulations, or laws as may be applicable to similar agreements in this State and the District and J-Six will collaborate in obtaining such permits, certificates, or the like, as may be required to comply therewith.

10. **(Assignment and Use by J-Six).** J-Six may not assign or otherwise transfer rights under this Agreement or assign the Agreement, in whole or in part, to any other party absent advanced, written consent from the District. Notwithstanding the foregoing, J-Six shall have the right to assign this Agreement to any affiliate of J-Six or other person or entity who purchases the real property described in this Agreement. Further, J-Six warrants and agrees that its planned use is solely for the use on the property in an agricultural business, and for housing on the property in

service of the agricultural business, with no more than six separate residential buildings. J-Six agrees that it shall not:

- Allow others, either individuals or businesses, to connect to its lines or to cross-connect with any other water system, public or private;
- To sell water to third parties in any manner, including filling mobile tanks or connection to other businesses for the use of that business;
- To connect to other properties to provide water at retail or to any other person, business or governmental entity; and
- To subdivide residential lots on the properties and sell them to third parties with water service provided from the District connection.

**11. (Successor to District).** In the event of any occurrence rendering the District incapable of performing under this Agreement, any successor of the District, whether the result of legal process, assignment, or otherwise, shall succeed to the rights and obligations of the District hereunder.

**12. (Water Rights).** The parties agree that J-Six shall not obtain any right or interest in any of District's water rights as a result thereof, and J-Six agrees to execute and deliver any documents District may reasonably require in order to disclaim any such claim or interest at any time during or after termination of this Agreement. Further, if, at any time during the term of this Agreement, J-Six requests that this Agreement be modified to increase the minimum amounts of water to be provided and it becomes necessary for the District to acquire additional water rights, or requires the District to incur any other costs due to membership in a Water Assurance District or the purchase of rights to water storage under the Kansas Water Office Water Marketing Program incurred, in part or in whole, to supply such additional water to J-Six, then J-Six agrees to reimburse the District for the costs of any such acquisition by the District in proportion that the same is necessary to maintain the appropriate additional supply to J-Six, with the same to be incorporated into the water rate paid by J-Six. This would include, but not be limited to, costs incurred for any release of water from surface water sources under the Water Marketing Program. However, any increase in needed rights based upon demand upon the system as a whole will not be individually assessed under this Agreement, and J-Six will only share in any increase assessed against all District customers.

**13. (Assignment of Interest).** The interest of the District under this Agreement may be assigned to any lender, including but not limited to the United States of America, Department of Agriculture, as collateral security for any loan made to finance construction, extensions, repairs or maintenance of the District's water supply distribution systems.

**14. (Default).** Failure of J-Six to make to the District any of the payments or charges for which provision is made in this Agreement, and such failure continues 30 days after written notice of such failure given to J-Six, then such failure shall constitute a default on the part of J-

Six. In the event of any default, J-Six shall not be relieved of its liability for payment of the amounts in default and the District shall have the right to recover from J-Six any amount in default. In the event of any two such payment defaults in any one calendar year period, J-Six shall take such action as may be necessary to annually provide funds in an amount sufficient to make all payments due under the provisions of this Agreement for the subsequent year. In enforcement of any such right or recovery the District may bring any suit, action, or proceeding in law or in equity, including an action for specific performance, as may be necessary or appropriate to enforce any covenant, agreement, or obligation to make any payment for which provision is made in this Agreement against J-Six. The District may cease and discontinue providing water to J-Six if J-Six is in default hereunder for failure to pay any amount due hereunder for water it has received and thereafter fails to cure such default within one hundred twenty (120) days after a second written notice to J-Six notifying J-Six of the District's intent to discontinue providing water to J-Six. This termination of service is for the purposes of conservation only and shall not relieve J-Six for its duty to pay for monthly minimum charges. The District may not cease and discontinue the supply of water to J-Six as specified herein unless J-Six has failed to pay charges for water delivered to J-Six within the first thirty (30) day notice period and such failure continues after the required 120-day notice has been given or unless such discontinuance is authorized by court order. In the event of any default by the District under any covenant, agreement, or obligation of this Agreement, J-Six may bring suit, action, or proceeding in law or in equity, including mandamus, injunction, and action for specific performance as may be necessary or appropriate to enforce any covenants, agreement, or obligation of this Agreement against the District.

**15. (Severability/Modification).** In the event any provision of this Agreement shall be held illegal, invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate, render unenforceable or otherwise affect any other provision hereof. No provision of this Agreement may be modified, altered or amended by individual action of either party to this Agreement; all such modifications, alterations or amendments must be agreed to in writing by both parties.

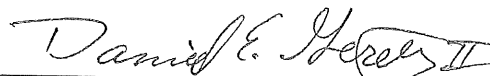
**16. (Indemnification).** J-Six agrees, to the fullest extent allowed by law, to indemnify and hold the District and its officers, employees and representatives (hereafter "Indemnitees") harmless from and against any liability, loss, damage, cause of action, penalty, fine, cost (including, but not limited to, attorneys' fees), claim or strict liability claim to the extent arising out of or in any way related to the gross negligence or intentional misconduct of J-Six with respect to the Water Main Extension, on account of personal injuries, death, damage to property or damage to the environment, regardless of whether such harm is to J-Six, the District, Indemnitees, the employees or officers of either, or any other person or entity. J-Six's obligations under this paragraph with respect to actions occurring during the term of this Agreement shall survive the termination, revocation or expiration of this Agreement.

**17. (Fire Pressure).** Unless otherwise specifically provided herein or by a subsequent written agreement, the District has not provided service at a pressure to guarantee appropriate

flows for the use in combating fires of any type. This Agreement shall not be interpreted to require the District to provide fire flows at any location for the benefit of J-Six, or any other party or entity.

18. (Governing Law). This Agreement will be governed by the law of the State of Kansas and interpreted in accordance with those laws.

IN WITNESS WHEREOF, the parties hereto, have caused this Agreement to be duly executed and approved.



J-SIX FARMS, LLC

Daniel E. Gerety, II, Manager & President


By:

Printed Name

Title

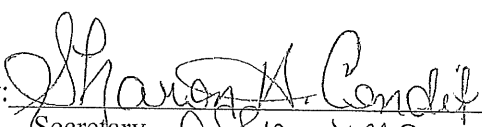
RURAL WATER DISTRICT NO. 1, ELLSWORTH COUNTY, KANSAS

BY:

  
Chairman

Attest:

By:

  
Secretary Office Manager



CONSTRUCTION AGREEMENT FOR  
WATER MAIN EXTENSION

This Agreement for Construction of a Water Main Extension (“Agreement”), is made and entered into this 29<sup>th</sup> day of April, 2020, by and between J-Six Farms, LLC, hereinafter called “J-Six”, and Rural Water District No. 1, Ellsworth County, Kansas, hereinafter called the “District.”

WITNESSETH:

WHEREAS, J-Six desires water service from the District, and is requesting the construction of necessary lines and facilities for that purpose and the acquisition of real property interests by the District for placement of lines; and

WHEREAS, the Parties understand that the extension of service will require capital improvements by the District and the placement of water mains across property outside of the District boundaries; and

WHEREAS, the District has contracted with a qualified engineering firm to provide the District with construction plans and related services, for assistance in the construction process by supervision of elements of the work; and

WHEREAS, the District desires to have the costs of the same advanced, along with an appropriate agreement regarding the sale of water to J-Six;

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

1. **PROJECT AND PROPERTY SERVED.** The parties hereby agree to the terms contained in this Agreement relating to the construction of a water main extension (“Water Main Extension”), to serve the J-Six Farms property at Section 9, Township 18, Range 5 West of the 6 P.M. in McPherson County, Kansas (“Property”).
2. **PROJECT CONTINGENT UPON EXECUTION OF WATER PURCHASE AGREEMENT AND WATER CAPACITY.** The Parties have agreed to the terms of the attached Water Purchase Agreement governing the supply of water upon completion of construction, attached as Exhibit “A”. This Construction Agreement is contingent upon the full execution of the Water Purchase Agreement by J-Six and the District. It is agreed and understood that the dedication of water supply capacity, professional work and efforts towards construction by the District are advanced in anticipation of the long-term rights and duties in Exhibit “A” and failure to execute and agree to the same shall void this Agreement and any rights obtained as a result. In addition, this Agreement is contingent upon the determination by District engineers that the District water treatment plant has the capacity to serve J-Six in the amounts allowed under the Water Purchase

Agreement. If it is determined that the current water treatment facilities cannot economically serve J-Six, this Agreement will be terminated.

3. **ADVANCE DEPOSIT OF DESIGN, MANAGEMENT AND CONSTRUCTION COSTS.** The District has provided its estimate of the costs of the design, management of construction and costs of construction of the Water Main Extension, attached as Exhibit "B". The Water Main Extension cannot proceed absent guaranteed reimbursement of the total costs of design, management and construction of the Water Main Extension as herein described (the "Total Costs"). As such, J-Six, within thirty (30) days of the mutual execution of this Agreement, shall deposit in an escrow account of the District's choosing, an amount equivalent to the estimated costs in Exhibit "B" along with all fees and charges for said escrow account to be maintained for the construction term. This shall be in accordance with an Escrow Agreement approved by both parties. Until completion of the construction contract and any period of correction under the construction contract, the District may withdraw funds from the escrow for the payment of engineering expenses, management expenses, construction expense, the cost of purchase of any real property interests necessary for the completion of the Water Main Extension and any and all costs related to the Water Main Extension. Any such use shall be in the sole discretion of the District and it shall not require the approval or assent of J-Six to any such use. However, should the District, in its discretion, require the acquisition of private easement in order to construct the Water Main Extension, and cannot condemn said property, the District will negotiate in good faith with the landowner to determine an amount due, and will consult with J-Six regarding that cost for approval. If J-Six does not approve the property acquisition, this Agreement shall immediately terminate in accordance with the terms of this Agreement regarding Regulatory Issues/Impossibility, and escrow funds will be used in the manner outlined upon the end of the project. If the acquisition is approved by J-Six, the District will be authorized to use Escrowed funds to pay for the real estate interest required and J-Six will agree to pay additional funds into the Escrow to cover this cost.

J-Six understands that the Water Main Extension will be presented for bidding by qualified contractors after design services are complete, the plans and permits are approved as outlined herein and the required real property interests are obtained. Upon receipt, opening and consideration of the bids, the District will notify J-Six of its accepted bid and will reconcile amounts remaining in the escrow account against the bid. If the approved bid exceeds the amount remaining, J-Six will tender, within seven (7) days, funds to the District to pay any difference, along with a contingency payment which is an additional 10% of the total bid, to be retained in the escrow account to guarantee further construction. If the bid is less than funds on hand, then an amount of 110% of the bid will be retained in the escrow account until used in the process of construction, and excess funds will be provided to J-Six. After acceptance of the bid, the District will draw on funds on a monthly basis, or on a reasonable basis as the construction agreement may require. The District agrees to advance funds based upon a properly signed and submitted payment

request by the contractor. Upon completion of the Water Main Extension and satisfaction of all payment demands any remaining funds will either be returned to J-Six or used as a credit against water later purchased by J-Six from the District under the Water Purchase Agreement, as determined by J-Six in its sole discretion. However, should J-Six not indicate in writing within 60 days of the end of construction the disposition of these funds, the same shall be returned to J-Six.

It is specifically agreed that should the contract for construction be cancelled either by the contractor, or by forced removal of the contractor due to reasons provided in the construction contract based upon lack of proper performance by the contractor, the escrow account will be maintained by the District until such time as a mutual release of all claims is obtained. Thereafter the District and J-Six will confer regarding cancellation of the contract or continuation of construction by a replacement contractor before any remaining amounts will be repaid to J-Six. Should the construction of the Water Main Extension require replacement of the contractor, J-Six agrees that the cost of any delay shall not be borne by the District, and J-Six shall provide escrow funds to cover any additional funds needed to secure construction assistance, and will maintain a right to refund or compensation of the same against the original contractor by way of action by the District or directly as a Third-party beneficiary. J-Six shall be reasonably consulted about the replacement of the contractor and any bid of that replacement contractor, and may refuse any replacement that increases construction costs in an unreasonable amount.

4. **APPROVALS PRIOR TO BIDDING OF CONSTRUCTION CONTRACT.** The Parties agree that the District shall obtain all relevant permits, approvals, allowances and determinations required for the construction process that shall be anticipated as needed from individuals or governmental entities as outlined by the plans and that can be reasonably obtained prior to bidding. The District shall tender these approvals, along with all proposed plans, form construction contracts and construction requirements to J-Six prior to bidding for review and approval, which shall not be unreasonably withheld. The parties agree that J-Six will be listed as a Third-Party beneficiary to any construction contract between the District and the contractor. The District shall not be required to bid the Water Main Extension or proceed further until approval is obtained.
  
5. **PROJECT CHANGES OR MODIFICATIONS.** The District may agree to certain modifications in the contract between itself and the contractor as may be necessary after recommendation by the engineer. These change orders will not require the approval of J-Six unless the same increases any cost of construction in excess of five percent (5%) of the total contract cost. Any change orders due to contract modification that exceed five percent (5%) of the total cost, or, when change orders in the aggregate under this provision exceed five percent (5%) of the total cost, the District and Contractor will seek prior approval of these changes from J-Six.

The plans and construction process may be altered, delayed, extended or made more costly by unknown subsurface conditions or unknown underground facilities in the area of construction. If the construction process needs to be extended, modified or changed in any way as a result of these unknown conditions, J-Six will bear the expense of these conditions, provided, however, the same shall still be subject to the five percent (5%) limitation for change orders. The District agrees to make every reasonable effort to alter plans and specifications to avoid undue and unnecessary expense in addressing unknown conditions.

6. **DISTRICT'S PROPERTY RIGHTS.** Upon execution of this Agreement any and all engineering studies, documents, communications, maps, plans and other work product, along with any construction documents related thereto, shall be the property of the District, free of any interest of J-Six and free of any liens and encumbrances whatsoever, and thereafter the District shall have sole ownership of the same. All improvements, facilities, pipelines, equipment or other property resulting from the project shall be the sole and separate property of the District, and J-Six shall maintain no interest therein. All easements and rights to real property obtained shall be titled solely in the name of the District and J-Six shall have no ownership rights to said property.
  
7. **LIMITATIONS ON J-SIX RIGHTS UNDER THIS AGREEMENT AND AT LAW.** J-Six enters this Agreement solely as a purchaser of water under contract. J-Six shall not be considered a benefit unit holder, water subscriber or otherwise obtain rights as a voting member of the District based upon this Agreement or the relationship of the parties. J-Six understands it retains no property interests or other rights in the equipment, facilities or other property of the District as a result of this Agreement. J-Six agrees that it maintains no rights under the By-Laws of the District, its Rules and Regulations or any other policy from the District to its patrons. The relationship of the parties is solely contractual, and this Agreement shall not be interpreted to create a partnership, joint venture or other cooperative arrangement at law or in equity. J-Six is aware of the ability of the District to attach lands to its territory and serve patrons within those territories. As such, J-Six agrees that the District may attach lands within the area of the new construction and beyond, and serve customers therein, without compensation or reimbursement to J-Six, except as set forth in this Agreement or the Water Purchase Agreement. The District maintains the right to extend service beyond the J-Six property, in its discretion, if the same does not materially interfere with service to J-Six. Further, should the District expand its territory with respect to the Water Main Extension, J-Six agrees to consent to any attachment to District territory that requires J-Six approval; provided the same does not negatively affect J-Six. However, upon being attached to the territory of the District, J-Six will be required to purchase a benefit unit to become a participating member of the District. The parties agree that the inclusion of the J-Six property in the territory of the District will not void or modify this Agreement, or the agreed Water Purchase Agreement, absent mutual consent to amendment or cancellation.

J-Six agrees that it is bound by the terms of the Water Purchase Agreement regarding water conservation rules and acknowledges the terms regarding possible interruption of service.

8. **DUTY OF COOPERATION AND GRANT OF EASEMENTS.** J-Six agrees to aid the District and the engineer in any public or private meetings with McPherson County or other interested parties to obtain necessary rights-of-way or easements, and to provide reasonably necessary information about the Water Main Extension to these public or private entities. J-Six will, to the extent it owns land through which the Water Main Extension will run, grant or obtain all water line easements needed for installation of the Water Main Extension or any future maintenance of the Water Main Extension without additional compensation of any kind. The District agrees that this will not be interpreted to allow blanket easement over all parts of the J-Six property, and instead will be limited to lines installed in the construction process. J-Six will also not unreasonably deny easements to the District within any property J-Six owns, and as the District deems necessary, for the District to provide adequate corridors for the operation and maintenance of the District's water system or for other needs of the District.
9. **DESIGN AND INSTALLATION.** All decisions to be made in connection with the manner of design and installation of the Water Main Extension, the type of materials to be used, and the maintenance thereof shall be and shall so remain at the exclusive discretion and under the sole control of the District. The District does not warrant or guarantee the delivery of water to J-Six through this Agreement apart from those rights obtained under the Water Purchase Agreement between the parties. The District does not assume any liability for the design of the extension, and any errors or defects in design or construction are solely a matter between the District, its engineer and its contractor.
10. **J-SIX REPRESENTATIONS AND INFORMATION.** The District has prepared the plans and specifications, and has dedicated certain capacities in its system, based upon the representations of J-Six as to its needs and capacity. J-Six represents that this information was truthful and can and should be relied upon by the District. These requirements are the basis for the amounts listed in the Water Purchase Agreement entered between the parties. The District shall not be required, based upon this Agreement or any further agreement (other than the Water Purchase Agreement), to increase capacity or provide additional services to J-Six beyond these agreed amounts.
11. **PRIVATE WATER DISTRIBUTION AND SERVICE LINES.** J-Six is responsible for all installation and costs of installing all private water distribution lines and service lines required to serve land within the Property beyond the Water Line Extension.
12. **FIRE PRESSURE.** Unless otherwise specifically provided herein or by a subsequent written agreement, the District has not provided service at a pressure to

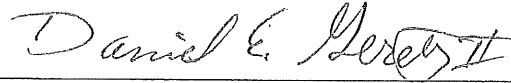
guarantee appropriate flows for the use in combating fires of any type. This Agreement shall not be interpreted to require the District to provide fire flows at any location for the benefit of J-Six, or any other party or entity.

13. **REGULATORY ISSUES/IMPOSSIBILITY OF PERFORMANCE.** J-Six is aware that the District may require approval from Federal, State or local authorities on various aspects of this project. The District, through its engineers, shall endeavor to meet all reasonable requirements of these authorities, and will attempt in good faith, to acquire all required approvals prior to the commencement of construction. However, if said governmental authorities make any determination that the extension is not allowed by law or refuse to grant a necessary permit or allowance necessary to proceed, the District may discontinue the project with no liability to J-Six, and a release from J-Six shall be provided upon payment of any remaining funds from the escrow fund. Further, should any approval, permit, assurance or bond be required by any public utility, railroad or similar entity in the process of construction of the line, and these are withheld by these entities, or excessive costs are demanded, the District may discontinue the project without liability to J-Six, and funds shall be released as outlined above.
14. **ENTIRE AGREEMENT.** This Agreement and the Water Purchase Agreement constitutes the entire agreements between the parties hereto with respect to the matters contained in this Agreement and the Water Purchase Agreement. Any and all previous agreements written or oral, express or implied between the parties hereto or on their behalf relating to such matters are hereby terminated and cancelled and each of the parties hereto hereby releases and forever discharges the other of and from all manner of actions, causes of action, claims and demands whatsoever under or in respect of any such agreement.
15. **AMENDMENT.** This Agreement may be altered, modified or amended only by a written instrument, duly executed by both parties and stating that the alteration, modification or amendment is an addition to and subject to this Agreement. J-Six understands that no vested rights are obtained by its signature to this Agreement.
16. **WAIVER.** No waiver of any provision of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the party making the waiver.
17. **ASSIGNMENT.** This Agreement shall not be assigned by either party without the express, written consent of the other party, and in any case the Agreement may not be assigned by J-Six except to a party receiving full ownership of the entirety of the property described in this Agreement. Provided, however, if J-Six wishes to sell portions of its land without water service being provided to that land, it may do so as long as no use of water will be allowed to that part of the transferred property without the agreement of the District. Further, the District may assign its interest in this Agreement to any governmental agency which provides financing to the

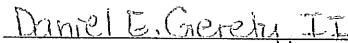
District.

18. **GOVERNING LAW.** This Agreement will be governed by the law of the State of Kansas and interpreted in accordance with those laws.

IN WITNESS WHEREOF, the J-Six and the District subscribe their signatures hereto the day and year first above written.



J-SIX FARMS, LLC

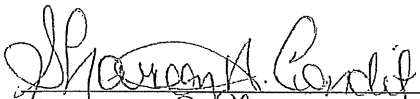


BY:

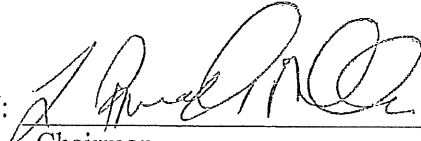
Manager & President  
Printed Name and Title

RURAL WATER DISTRICT NO. 1, ELLSWORTH COUNTY, KANSAS

Attest:

  
Secretary Office Manager

BY:

  
Chairman

BARTLETT & WEST, INC.

AGREEMENT FOR PROFESSIONAL SERVICES

This is an agreement effective as of \_\_\_\_\_, 2020 between Rural Water District No. 1, Ellsworth County, KS ("CLIENT") located at 103 N. Douglas, Ellsworth, KS 67439, and Bartlett & West, Inc. ("CONSULTANT") located at 1200 SW Executive Dr., Topeka, KS 66615.

WHEREAS, the CLIENT intends to construct a 10-mile, 6-inch waterline extension project for the purpose of supplying water to J-Six Enterprises.

WHEREAS, CLIENT intends to engage CONSULTANT to perform certain professional services with regard to such work, which is hereinafter called the Project.

CLIENT and CONSULTANT therefore agree as follows:

ARTICLE I – DEFINITIONS AND RULES OF INTERPRETATION

A. The agreement between Client and Consultant consists of this Agreement for Professional Services, the Standard Provisions of Agreement for Professional Services attached as Exhibit A, and the following exhibits and addenda:

1. Exhibit B: Schedule of Hourly Rates

All such items together shall be referenced herein as the "Agreement."

B. In the event of any conflict in the language of this Agreement for Professional Services with the Standard Provisions of Agreement attached hereto, the language of the Standard Provisions of Agreement shall control.

C. This Agreement represents the entire and integrated agreement between Client and Consultant and supersedes all prior negotiations, representations or agreements, either written or oral. This Agreement may be amended only by written instrument signed by both Client and Consultant.

D. This Agreement shall be governed by the laws of the state of Kansas.

ARTICLE II – SCOPE OF WORK

A. The CONSULTANT shall perform services as described below. Any additional services must be separately requested by the CLIENT and agreed to by the CONSULTANT pursuant to Article II.A.4 below.

1. Design Phase Services. CONSULTANT shall:

- a. Prepare plans and specifications indicating the scope, extent, and character of the PROJECT. Front-end contract documents will also be provided, utilizing the EJCDC and funding agency contract documents. Plans shall address improvements associated with waterline construction within the CLIENT'S rural water system.



- b. Assist the CLIENT and CLIENT'S attorney in identifying private easements that are required for the waterline installation.
  - c. Provide technical criteria, written descriptions, and design data for permits associated with the PROJECT. The CONSULTANT will assist the CLIENT in applying for the following permits:
    - i. Kansas Department of Health & Environment
    - ii. Road crossing permits
  - d. Advise the CLIENT of any adjustments to the opinion of probable construction costs or other costs related to completion of the PROJECT.
  - e. Prepare and furnish bidding documents for review and approval by CLIENT. In addition, furnish additional copies of the documents to regulatory agencies. Address comments from regulatory agencies and communicate the nature of the comments to the CLIENT.
  - f. Following the CLIENT'S review of the bidding documents, revise the documents based on the CLIENT'S comments, and furnish two copies to the CLIENT. CLIENT shall provide comments on the bidding documents to the CONSULTANT within 31 days of receipt.
2. Bidding Phase Services. CONSULTANT shall:
- a. Assist CLIENT in advertising for and obtaining bids or negotiating proposals for the work, attend pre-bid conferences, if applicable, and receive and process Contractor deposits or charges for the bidding documents.
  - b. Issue Addenda as appropriate to clarify, correct, or change the bidding documents.
  - c. Attend the bid opening, prepare bid tabulation sheets, and assist the CLIENT in evaluating bids or proposals and in assembling the contract documents associated with the work.
  - d. Issue Notice of Award to selected Contractor and coordinate the execution of the construction contract, bonds, insurance, and other pertinent forms.
3. Construction Phase Services. CONSULTANT shall:
- a. Act as the CLIENT's representative as provided in the General Conditions of the Construction Contract. The extent and limitations of the duties, responsibility and authority of the CONSULTANT as assigned in the General Conditions shall not be modified, except as CONSULTANT may otherwise agree in writing.
  - b. Participate in a pre-construction conference prior to the commencement of the work at the site.
  - c. In the event that the CONSULTANT believes that work will not produce a completed project that generally conforms to the Contract Documents, the CONSULTANT will recommend to the CLIENT that the Contractor's work be disapproved and rejected.
  - d. Recommend changes in the work and prepare change orders, field orders, and work change directives as appropriate.
  - e. Review and take appropriate action in respect to shop drawings, samples, inspection reports, and manufacturer's data furnished by the Contractor. Such review is only for general conformance with the design concept of the PROJECT and the information given in the Construction Documents. Neither the review nor any correction(s) or comment(s) made on submittal(s) relieves the Contractor from full compliance with the Contract Documents, including, but not limited to, the plans and specifications. Review of a specific item does not, nor shall it be construed to, include review of an assembly of which the item is a component. The Contractor is solely responsible for all measurements, dimensions, quantities, materials, and proper fit up and interfacing of all components, all aspects of any fabrication process; the means, methods, techniques, sequences and procedures of construction; coordination of the work with that of all other trades; and performing all work

in a safe and satisfactory manner. When the professional certification of performance characteristics of materials, systems or equipment is required by the Contract Documents, the CONSULTANT shall be entitled to rely upon such certification to establish that the materials, systems or equipment meet the performance criteria required by the Contract Documents.

- f. Review and make recommendations regarding Contractor's payment requests. Recommendations are made based on the CONSULTANT'S knowledge, information, and belief that the construction progress and the work is in general conformance with the Contract Documents. By approving a Contractor payment request, the CONSULTANT does not relieve the Contractor from the responsibility to construct the project in accordance with the contract requirements.
4. Additional services. Additional services will be provided by the CONSULTANT upon the request of the CLIENT and paid for as defined in Article V, Payment Provisions. These services may include, but are not limited to:
- a. Assistance with project funding, including application for Federal or State grants and loans.
  - b. Assistance with easement drafting and acquisition.
  - c. Services resulting from significant changes in the scope, extent, or character of the portions of the PROJECT designed or specified by the CONSULTANT including, but not limited to, changes in size, complexity, CLIENT'S schedule, character of construction, or method of financing. These services may also be as a result of changes in laws or regulations after the signing of this Agreement or other causes beyond the CONSULTANT'S control.
  - d. Provide the services of a resident project representative at the site with the responsibilities referenced in paragraph 22 of the Standard Provisions of Agreement attached as Exhibit A to this Agreement.
  - e. Establish baselines and benchmarks for locating the work, or provide construction surveys and staking as requested by CLIENT.
  - f. Serving as a consultant or witness for the CLIENT in any litigation, arbitration, or other dispute resolution process related to the PROJECT.
  - g. Other services performed by the CONSULTANT not otherwise provided for in this Agreement.
  - h. Assist with the acquisition of easements, as directed by CLIENT.

### ARTICLE III – CLIENT'S RESPONSIBILITIES

In addition to other responsibilities set forth in this Agreement, Client shall:

- A. Furnish available information pertinent to the Project including reports and data relative to previous designs, or investigation at or adjacent to the site.
- B. Examine alternative solutions, reports, drawings, specifications, and other documents presented by Consultant and render timely decisions pertaining to the documents.
- C. Provide timely reviews, approvals, and permits from all governmental authorities having jurisdiction over elements or phases of the Project.
- D. Participate in conferences, meetings, bid openings, and other similar aspects of the Project as requested by Consultant.

#### ARTICLE IV – TIME OF PERFORMANCE FOR SERVICES

- A. The services under this Agreement have been agreed to in anticipation of the orderly progress of the PROJECT through completion. Unless a specific time of performance for services is specified in this Agreement, CONSULTANT'S obligation to render services hereunder will be for a period which may be reasonably required for the completion of said services. If a specific time of performance is provided herein and if the CLIENT has requested changes in the scope or character of the PROJECT, the time of performance shall be extended to accommodate such changes.

#### ARTICLE V – PAYMENT PROVISIONS

- A. CLIENT shall pay the CONSULTANT for services described in the Scope of Work, Sections II.A.1-3 a Lump Sum fee of \$58,000, sub-divided as follows:
1. Design Phase = \$36,000
  2. Bidding and Contracting Phase = \$10,000
  3. Construction Administration Phase = \$12,000
- B. The Lump Sum includes compensation for CONSULTANT'S services and services of CONSULTANT'S sub-consultants, if any. The Lump Sum includes labor and direct expenses associated with providing the services as defined.
- C. The portion of the Lump Sum amount billed for CONSULTANT'S services will be based upon the CONSULTANT'S estimate of the percentage of completion accomplished during the billing period.
- D. Additional services, as referenced in Article II.A-4, will be billed on an hourly rate basis.

#### ARTICLE VI – INSURANCE

- A. Consultant shall purchase and maintain insurance as set forth below:
1. Commercial General Liability insurance with a limit of \$1,000,000 for each occurrence and \$2,000,000 general aggregate.
  2. Automobile Liability insurance with a limit of \$1,000,000 for each accident, combined single limit for bodily injury and property damage.
  3. Workers Compensation and Employer's Liability insurance in accordance with statutory requirements, with a limit of \$1,000,000 for each accident.
  4. Professional Liability insurance on a claims-made basis in the amount of \$3,000,000 per claim and \$3,000,000 annual aggregate.
  5. Commercial Umbrella, with a limit of \$2,000,000 each occurrence and aggregate.
  6. Technology E&O with a limit of \$1,000,000 each claim and aggregate.

Certificates of insurance evidencing the coverages indicated above will be provided to Client upon request.

#### ARTICLE VII – DISPUTE RESOLUTION

- A. Prior to arbitration or litigation, the parties shall endeavor to resolve disputes in accordance with paragraph 10 of the Standard Provisions of Agreement attached as Exhibit A to this Agreement.

Any claim, dispute or other matter in question arising out of or related to this Agreement shall be subject to arbitration if it involves a total claim amount and anticipated costs including attorney's fees and expenses of less than \$200,000. Claims in excess of \$200,000 shall be brought only in the district court of Shawnee County, Kansas and the parties agree to this venue and to jurisdiction by this court.

- B. Unless the parties mutually agree otherwise, arbitration shall be in accordance with the construction industry arbitration rules of the American Arbitration Association then in effect. The demand for arbitration shall be filed in writing with the other party to the agreement and with the American Arbitration Association.
- C. A demand for arbitration shall be made within a reasonable time after the claim, dispute or other matter in question has arisen. In no event shall the demand for arbitration be made after the date when institution of legal or equitable proceedings based on such claim, dispute or other matter in question would be barred by the applicable statute of limitations.
- D. The award rendered by the arbitrator or arbitrators shall be final, and judgment may be entered upon it in accordance with applicable law in the state having jurisdiction thereof.

#### ARTICLE VIII – INDEMNITY

- A. Indemnity by Consultant. Consultant agrees to indemnify and hold harmless Client from and against damages, losses, costs or expenses (including reasonable attorney's fees) actually incurred by Client but only to the extent caused by the negligent performance of Consultant. In no event shall the indemnification obligation extend beyond the date when the institution of legal or equitable proceedings for professional negligence would be barred by any applicable statute of repose or statute of limitations. If Client and Consultant are both at fault for certain damages, then each party shall bear liability for its own respective percentage of fault.
- B. Consultant will not be required to indemnify Client for claims caused or alleged to be caused in whole or in part by the acts or omissions of Client or other third parties for whom Consultant is not responsible.
- C. Consultant's obligation to indemnify Client is limited by Article IX – Design Contingency and Limitation of Liability provisions.
- D. Under no circumstances shall Consultant be required to pay the defense costs of Client, unless Consultant is adjudged to be negligent by a court of law and such defense costs are included as damages in the award. Consultant's obligation to pay defense costs, if awarded by a court, is limited by Article IX – Design Contingency and Limitation of Liability provisions, if any such provisions are part of this Agreement.

#### ARTICLE IX – DESIGN CONTINGENCY AND LIMITATION OF LIABILITY

- A. DESIGN CONTINGENCY. Consultant makes no warranty, express or implied, that its design is free of errors. Client and Consultant agree that certain increased costs and changes may be required and are anticipated due to omissions, errors or inconsistencies in drawings and specifications prepared by Consultant. Therefore, Client agrees to set aside a reserve in the amount of 10% of the estimated total project cost as a contingency to be used, as needed, to pay for any such increased

costs and changes. The percentage is intended to be for the whole project cost and not applied as a percentage to individual segments or quantities of a construction project. Client agrees to make no claim against Consultant with respect to any increased cost within this contingency amount. If costs due to changes resulting from design errors, omissions or inconsistencies exceed the contingency, then Consultant shall be responsible for damages incurred by Client above that sum but only to the extent caused by Consultant's negligent performance. Cost increases as a result of Client requests made after construction documents are issued for permit, changes in governmental agency requirements after previous approval, or unforeseen conditions are not costs due to errors, omissions or inconsistencies. In no event shall Consultant be responsible for direct costs that Client would have incurred in the construction contract, including actual installed quantities during construction, but for Consultant's error or omission.

- B. **LIMITATION OF LIABILITY.** To the extent that claims against Consultant exceed the contingency set forth above, then to the fullest extent permitted by law, Client agrees to limit the total liability, in the aggregate, of Consultant's officers, directors, employees, agents and independent professional associates and consultants, and any of them, to Client, anyone claiming by, through or under Client, for any and all injuries, claims, losses, expenses or damages whatsoever arising out of or in any way related to Consultant's services, the Project or this Agreement from any cause or causes whatsoever, including but not limited to the negligence, errors, omissions, strict liability or breach of contract of Consultant's officers, directors, employees, agents or independent professional associates or consultants, or any of them. Such liability shall not exceed the total compensation actually received by Consultant under this Agreement, or the total amount of \$50,000.00, whichever is greater.
- C. Client and Consultant agree that specific and adequate consideration has been given for this limitation of liability.

ARTICLE X – TERM OF AGREEMENT

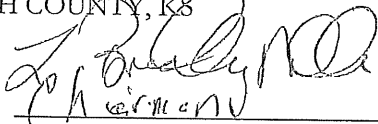
- A. This Agreement shall become effective upon signatures by both Parties.

IN WITNESS WHEREOF, the duly authorized representatives of the Parties hereto have executed this Agreement.

**Client:**

RURAL WATER DISTRICT NO. 1  
ELLSWORTH COUNTY, KS

By:

  
\_\_\_\_\_

Print Name:

Chris Miller  
\_\_\_\_\_

Title:

Chairman  
\_\_\_\_\_

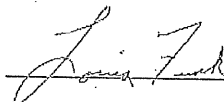
Date Signed:

5-5-20  
\_\_\_\_\_

**Consultant:**

BARTLETT & WEST, INC.

By:

  
\_\_\_\_\_

Print Name:

Louis Funk, P.E.  
\_\_\_\_\_

Title:

Vice President  
\_\_\_\_\_

Date Signed:

4/27/2020  
\_\_\_\_\_

EXHIBIT A  
STANDARD PROVISIONS OF AGREEMENT FOR PROFESSIONAL SERVICES

Client and Bartlett & West, Inc. (referred to as Consultant), agree that the following provisions shall be part of this Agreement.

1. Payment. Unless stated otherwise in this Agreement, fees and all other charges will be billed monthly as the work progresses, and the net amount shall be due at the time of billing. If Client does not pay invoices within thirty (30) days of the billing date, Consultant may, upon written notice to Client, suspend further work until payment is current. Client agrees to indemnify and hold Consultant harmless from any claim or liability resulting from such suspension. Interest not exceeding the maximum rate allowable by law will be payable on any amounts not paid within thirty (30) days of the billing date, payment thereafter applied first to accrued interest and then to the principal unpaid amount. If Client fails to pay Consultant pursuant to this section, Client shall be liable for and shall reimburse Consultant for expenses incurred by Consultant in connection with or in any way relating to Client's failure to pay. Such expenses shall include, without limitation, reasonable attorneys' fees, legal expenses, and court costs. In the event Client fails to pay Consultant within ninety (90) days after the billing date, then Client agrees that Consultant shall have the right to consider such failure as a substantial breach of this Agreement and the duties of Consultant under this Agreement may be terminated at the election of Consultant upon five (5) days written notice.

2. Taxes. Compensation payable to Consultant pursuant to this Agreement shall be in addition to taxes that may be assessed against Consultant by any state or political subdivision directly on services performed or payments for services performed by Consultant. Such taxes that Consultant may be required to collect or pay shall be added by Consultant to invoices submitted to Client pursuant to this Agreement.

3. Suspension. In the event all or any portion of the work prepared or partially prepared by Consultant is suspended, abandoned, or terminated, Client shall pay Consultant for the work performed on an hourly basis, not to exceed any maximum contract amount specified herein.

4. Termination. This Agreement may be terminated by Client or Consultant upon thirty (30) days written notice in the event of substantial failure of the other party to perform in accordance with the terms of this Agreement. Client expressly agrees to hold Consultant harmless from any liability arising out of Consultant's termination of its services hereunder due to Client's failure to perform and/or pay in accordance with the provisions of this Agreement. In the event of termination of this Agreement, Client shall promptly pay Consultant for all fees, charges, and services performed by Consultant in accordance with the compensation arrangements under this Agreement or on an agreed hourly basis. If Consultant files suit for breach of contract, all attorney fees, court costs, and other related costs will be paid by Client if a Court finds Client has breached its contract with Consultant.

5. Delay. All agreements on Consultant's part are contingent upon, and Consultant shall not be responsible for damages or be in default, or be deemed to be in default, by reason of delays in performance of others by reason of strikes, lock-outs, accidents, acts of God, widespread infectious disease outbreaks (including, but not limited to, epidemics and pandemics) and other delays unavoidable or beyond Consultant's reasonable control, or due to shortages or unavailability of labor at established area wage rate or delays caused by failure of Client or Client's agents to furnish information or to approve or disapprove Consultant's work promptly, or due to late or slow, or faulty performance by Client, other contractors or governmental agencies, the performance of whose work is precedent to or concurrent with the performance of Consultant's work. In the case of the happening of any such cause of delay, the time of completion shall be extended accordingly.

6. Client Changes. In the event any changes are made in the work to be performed hereunder, by Client or persons other than Consultant, and which affect Consultant's work, any and all liability arising out of such changes is waived as against Consultant and Client assumes full responsibility for such changes unless Client has given Consultant prior notice and has received from Consultant written consent for such changes.

7. Third Party Information. Consultant is not responsible, and liability is waived by Client as against the Consultant, for use by Client or any other person of any data, reports, plans or drawings not prepared by Consultant.

8. Waiver of Consequential Damages. Neither Client nor Consultant shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of, or connected in any way to the Project or this Agreement. This mutual waiver includes, but is not limited to, damages related to loss of use, loss of profits, loss of income, loss of reputation, unrealized savings or diminution of property value and shall apply to any cause of action including negligence, strict liability, breach of contract and breach of warranty.

9. Completion. In no event shall any statute of limitations commence to run any later than the date when Consultant's services are substantially completed, and any cause of action against Consultant arising from or pertaining to this Agreement must be initiated no later than two (2) years after the date when Consultant's services are substantially completed.

10. Disputes. If a claim, dispute or other matter in question arises out of or related to this Agreement, the parties shall first try to resolve the issue through prompt negotiations conducted by an officer authorized to make decisions on behalf of each party. If the dispute is not resolved within sixty (60) calendar days of the commencement of negotiations, the parties shall appoint a qualified, neutral, third-party mediator, as a condition precedent to the institution of litigation. If the parties are unable to agree upon a

mediator, Consultant shall present a list of three prospective mediators to Client, who shall choose the mediator. In the event of failure on the part of Client to do so within ten (10) days of receipt of the list, Consultant shall choose the mediator. The mediator's fees shall be shared equally and shall be held at the offices of Client or Consultant as selected by the mediator.

11. Waiver of Subrogation. To the extent any damage or claim is covered by property insurance, Client and Consultant waive all rights against each other and against the contractors, consultants, and employees of the other for damages, except such rights as they may have to the proceeds of such property insurance. Client or Consultant, as applicable, shall require of the contractors, consultants, agents, and employees of any of them similar waivers in favor of the other parties enumerated herein.

12. Standard of Care. Consultant's services shall be performed in a manner consistent with that degree of skill and care exercised by practicing professionals performing similar services at the same time, at the same locality, and under the same or similar circumstances and conditions. Consultant makes no other representations or any warranties, whether expressed or implied, with respect to the services rendered hereunder.

13. Consultant Data. All reports, plans, specifications, computer files, data resulting from laser scanning, survey notes, and other original documents are instruments of service and shall remain the property of Consultant. Consultant may sell said instruments of service to third-party sources.

14. Ownership. Consultant has and will retain all ownership rights in any software developed under this Agreement, including all patent rights, copyrights, trade secrets, trademarks, service marks, related goodwill and confidential and proprietary information, except as explicitly stated in this Agreement.

15. Ownership. Products of work (POW) shall be defined as any deliverable provided to Client as a result of services provided under this Agreement, including but not limited to software applications, databases, specifications, and documentation related to said POW. Delivered POW are proprietary to Consultant and contain trade secrets, inclusive of unpublished specifications. POW are owned by Consultant and are protected by United States copyright laws, trademark laws, and applicable international treaties and/or conventions. In consideration of the rights granted herein, Client agrees to retain all software, related materials, and information delivered or provided to it in strict confidence. All rights, title, and ownership in patents, trademarks, copyrights, trade secrets, know-how, or any other proprietary rights in the POW remain exclusively with Consultant. Client shall not sell, transfer, lease, lend, assign, time-share, sublicense, publish, disclose, display, or otherwise make available the POW in any form, including, but not limited to, flowcharts, logic diagrams, executable code, object code, source code, or technical documentation, to any other person or entity without the express written permission of Consultant. Client shall secure and protect the POW in the same manner and to the same degree it protects its own proprietary information, using no less than a reasonable standard of care. Client shall not decompile or

reverse engineer any of Consultant's software. Client shall not make any modifications or derivative works to the POW.

16. Ownership. All error corrections, enhancements, new releases, and any other products of work created by Consultant as a result of services provided under this Agreement are and shall remain the exclusive property of Consultant, regardless of whether Client, its employees, or agents may have contributed to the conception, joined in its development, or paid Consultant for the development or use of said POW.

17. Confidentiality. All information relating to Client that is known to be confidential or proprietary, or which is clearly marked as such, shall be held in confidence by Consultant and shall not be disclosed or used by Consultant except to the extent that such disclosure or use is reasonably necessary to the performance of Consultant's services. All information relating to Consultant that is known to be confidential or proprietary, or which is clearly marked as such, shall be held in confidence by Client. These obligations of confidentiality shall extend after the termination of this Agreement, but shall not apply with respect to information that is independently developed by the parties, lawfully becomes a part of the public domain, or of which the parties gained knowledge or possession free of any confidentiality obligation.

18. Fees. When applicable to the project, Client shall pay the costs of inspection fees, zoning and annexation application fees, assessment fees, soils engineering fees, soils testing fees, aerial photography fees, and all other fees, permits, bond premiums, title company charges, and reproductions, and all other charges not specifically covered by the terms of this Agreement.

19. Construction Costs. If any opinion is prepared by Consultant as to anticipated construction costs, such opinion represents a judgment as a professional and is supplied for the general guidance of Client. Since Consultant has no control over the cost of labor and material, or over competitive bidding or market conditions, Consultant does not guarantee the accuracy of such opinion as compared to contractor bids or actual cost to Client.

20. Job Site. If the work involves construction services, Client agrees that in accordance with generally accepted construction practices, the construction contractor will be required by Client to assume sole and complete responsibility for job site conditions during the course of construction of the project, including safety of all persons and property and that this requirement shall be made to apply continuously and not be limited to normal working hours. Consultant does not assume responsibility for the safety of persons or property on or about the project site.

20.1 Job Site-Confined Space and/or Permit Required Entry. If confined space and/or permit required entry is required for the services to be provided, Owner/general contractor shall provide subcontractor and Consultant with a completed Confined Space Pre-Entry checklist that complies with 29 CFR 1910.146 and 29 CFR 1926.1200 AA standards for construction as amended and applicable state laws and regulations. Owner/general contractor, at

its expense, shall obtain any and all required permits and equipment for such entry. Owner/general contractor shall determine if the job requires anyone to enter manholes, vaults, lift station, piping, tanks or other confined spaces. Before work at a worksite, Owner/general contractor must ensure that a competent person identifies all confined spaces in which one or more of the persons it directs may work, and identifies each space that is a permit space, through consideration and evaluation of the elements of that space, including testing as necessary. If the workplace contains one or more permit spaces, Owner/ general contractor who identifies, or who receives notice of, a permit space must:

- (1) Inform exposed persons by posting danger signs or by any other equally effective means, of the existence and location of, and the danger posed by, each permit space; and a sign reading "DANGER – PERMIT REQUIRED CONFINED SPACE, DO NOT ENTER" or using other similar language would satisfy the requirement for a sign.
- (2) Inform, in a timely manner and in a manner other than posting, its employees' authorized representatives and the controlling contractor of the existence and location of, and the danger posed by, each permit space.

If Owner/general contractor determines any person will enter a permit space, that host employer must have a written permit space program that complies with §1926.1204 implemented at the construction site. Contractor shall provide appropriate air monitoring equipment, employee training, permit forms, rescue procedures, personnel, and other means necessary to safely and independently enter confined spaces. The written program and permit must be made available prior to and during entry operations for inspection by person(s) who need to enter the space for work or inspection.

**20.2. Job Site-Fall Protection and Rescue Plans.** In the event personal fall arrest systems are used, the following rescue considerations shall apply. Owner/general contractor must assure that persons can be promptly rescued or can rescue themselves should a fall occur. The availability of rescue personnel, ladders, or other rescue equipment should be evaluated. In some situations, equipment that allows employees to rescue themselves after the fall has been arrested may be desirable, such as devices that have descent capability. All new persons on site shall be given instructions on the proper use of fall protection devices before they begin work, as well as rescue procedures. The written fall protection plan will be reviewed before work begins on the job site. Fall protection equipment use will be reviewed regularly at the weekly safety meetings.

**21. Construction Site Visits.** If applicable, Consultant shall make periodic visits to the project site to observe the progress and quality of the executed work and to generally review whether the work is proceeding in accordance with plans and specifications. Consultant shall not be required to make exhaustive or continuous on-site inspections to check the quality or quantity of work and does not assume responsibility for construction techniques, procedures, sequences and schedules or for the conduct, action, errors or omissions of any construction contractor, subcontractor, or material supplier, their agents or employees.

**22. Resident Project Representation.** When applicable, Consultant may provide resident project representation under Consultant's

supervision that will be paid for by Client and that will be intended to give Client further assurance with regard to the finished work, but will not involve Consultant in the construction means, methods, techniques, sequences or procedures or safety precautions or programs nor provide to Client any guarantee by Consultant of the accuracy, quality or timeliness of performance by any contractor, subcontractor, or material supplier.

**23. Hazardous Materials.** In the event that Consultant or any other party encounters asbestos or hazardous or toxic materials at the job site, or should become known in any way that certain materials may be present at the job site or any adjacent areas that may affect the performance of Consultant's services, Consultant may, at its option and without liability for consequential or any other damages, suspend performance of services on the project until Client retains appropriate specialist consultants or contractors to identify, abate and/or remove the asbestos or hazardous or toxic material, and warrant that the job site is in full compliance with applicable laws and regulations.

**24. Assignment/Third Party Reliance/Certification.** Neither Client nor Consultant shall assign its interest in this Agreement without the written consent of the other. The services to be provided pursuant to this Agreement are being performed solely for the benefit of Client, and no benefit is meant to be conferred upon any person or entity not a party to this Agreement, and no such person or entity should rely upon Consultant's performance of those services to Client; and no claim against Consultant shall accrue to any contractor, subcontractor, consultant, engineer, supplier, fabricator, manufacturer, lender, tenant, surety, homeowner's association or any other third-party as a result of this Agreement or the performance or non-performance of services on the project. Consultant shall not be required to sign any documents, no matter by whom requested, that would result in Consultant's having to certify, guaranty, or warrant the existence of conditions that Consultant cannot ascertain.

**25. Client Representative.** Client shall designate an individual with authority to act on behalf of Client as to all aspects of the project, shall examine and respond promptly to submissions from Consultant, shall give prompt written notice to Consultant if Client becomes aware of any defect in the project, and shall otherwise fully cooperate as may be required or appropriate in connection with the project.

**26. Equal Opportunity.** Consultant shall abide by the requirements of 41 CFR §§ 60-1.4(a), 60-300.5(a), and 60-741.5(a). These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities and prohibit discrimination against all individuals based on their race, color, religion, sex, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals without regard to race, color, religion, sex, national origin, protected veteran status or disability.

**27. Severability.** Should any provision herein be found or deemed to be invalid, this Agreement shall be construed as not containing such provision and all other provisions which are otherwise lawful



shall remain in full force and effect, and to this end, the provisions of this Agreement are declared to be severable.

**BARTLETT & WEST, INC.**  
**2020 SCHEDULE OF HOURLY CHARGES**  
**Effective January 1, 2020**

Engineer Landscape Architect Architect Planner	XI	\$225.00	Right-of-Way Technician VI	\$123.00
	X	210.00	Right-of-Way Technician V	112.00
	IX	195.00	Right-of-Way Technician IV	102.00
	VIII	183.00	Right-of-Way Technician III	93.00
	VII	170.00	Right-of-Way Technician II	82.00
	VI	155.00	Right-of-Way Technician I	70.00
	V	145.00		
	IV	135.00	GIS Coordinator IX	\$225.00
	III	125.00	GIS Coordinator VIII	210.00
	II	115.00	GIS Coordinator VII	200.00
	I	102.00	GIS Coordinator VI	185.00
		GIS Coordinator V	175.00	
		GIS Coordinator IV	165.00	
		GIS Coordinator III	150.00	
		GIS Coordinator II	135.00	
		GIS Coordinator I	125.00	
Engineering Technician XI	\$180.00			
Engineering Technician X	155.00			
Engineering Technician IX	140.00			
Engineering Technician VIII	127.00			
Engineering Technician VII	115.00			
Engineering Technician VI	107.00	GIS Developer/DBA V	\$165.00	
Engineering Technician V	100.00	GIS Developer/DBA IV	155.00	
Engineering Technician IV	93.00	GIS Developer/DBA III	145.00	
Engineering Technician III	83.00	GIS Developer/DBA II	135.00	
Engineering Technician II	73.00	GIS Developer/DBA I	125.00	
Engineering Technician I	63.00			
		GIS Analyst V	\$135.00	
Surveyor X	\$185.00	GIS Analyst IV	125.00	
Surveyor IX	170.00	GIS Analyst III	115.00	
Surveyor VIII	155.00	GIS Analyst II	105.00	
Surveyor VII	137.00	GIS Analyst I	95.00	
Surveyor VI	125.00			
Surveyor V	112.00	GIS Technician IV	\$97.00	
Surveyor IV	100.00	GIS Technician III	87.00	
Surveyor III	90.00	GIS Technician II	78.00	
Surveyor II	80.00	GIS Technician I	68.00	
Surveyor I	70.00			
		Project Coordinator III	125.00	
Survey Technician VIII	\$130.00	Project Coordinator II	115.00	
Survey Technician VII	115.00	Project Coordinator I	103.00	
Survey Technician VI	102.00			
Survey Technician V	90.00	Systems Analyst	\$170.00	
Survey Technician IV	80.00	Systems Administrator	125.00	
Survey Technician III	72.00	Systems Technician	85.00	
Survey Technician II	65.00			
Survey Technician I	60.00	Administrator VI	\$130.00	
		Administrator V	115.00	
Construction Eng. Tech IX	\$160.00	Administrator IV	102.00	
Construction Eng. Tech VIII	145.00	Administrator III	87.00	
Construction Eng. Tech VII	135.00	Administrator II	76.00	
Construction Eng. Tech VI	125.00	Administrator I	68.00	
Construction Eng. Tech V	115.00			
Construction Eng. Tech IV	102.00	Administrative Technician V	\$75.00	
Construction Eng. Tech III	90.00	Administrative Technician IV	68.00	
Construction Eng. Tech II	80.00	Administrative Technician III	60.00	
Construction Eng. Tech I	70.00	Administrative Technician II	55.00	
		Administrative Technician I	50.00	
Right-of-Way Specialist IV	\$208.00			
Right-of-Way Specialist III	165.00			
Right-of-Way Specialist II	143.00			
Right-of-Way Specialist I	127.00			

The listed rates are subject to annual adjustment January 1 of each year

BWE-2020

Rural Water District No. 1, Ellsworth County, KS						
5-Year Capital Improvement Plan						
January 1, 2020						
SYSTEM IMPROVEMENT RESERVE	2020	2021	2022	2023	2024	2025
Beginning Unencumbered Cash 1-1	1,591,847	1,325,661	1,069,581	810,811	549,325	285,093
Receipts:						
Transfer from Operations Account	180,000	180,000	180,000	180,000	180,000	180,000
Interest Income	16,714	13,919	11,231	8,514	5,768	2,993
Total Receipts	196,714	193,919	191,231	188,514	185,768	182,993
Total Resources Available	1,788,561	1,519,581	1,260,811	999,325	735,093	468,086
Capital Projects:						
DISTRIBUTION SYSTEM						
Line Replacement	101,525	250,000	250,000	250,000	250,000	250,000
Replace 10" Main Line on Avenue D						
Booster Pump Stations						
Building for Booster Station No. 6						
Replacement Pump/Motor for Booster Station No. 2						
Rebuild Rechlorination Station Booster No. 6						
Rebuild Rechlorination Station Booster No. 7						
Rebuild Rechlorination Station Booster No. 9						
Water Tower Improvements						
Meter Pits/Vaults						
Rebuild Meter Vault at Luray						
Rebuild Meter Vault at Gorham						
Rebuild Meter Vault at Ellsworth						
WATER TREATMENT PLANT						
Clarifier Rehabilitation	298,475	150,000	150,000	150,000	150,000	150,000
Build Catwalk in Basement at Plant						
Install VFD Pump No. 2 at Raw Water Station						
VEHICLES AND EQUIPMENT						
Vehicle Acquisition		50,000	50,000	50,000	50,000	50,000
Equipment Acquisition						
Facility Improvements						
Technology						
Office Furniture						
CIP PROFESSIONAL FEES						
Engineering	62,900					
Legal						
Total Expenditures	462,900	450,000	450,000	450,000	450,000	450,000
Ending Unencumbered Cash 12-31	1,325,661	1,069,581	810,811	549,325	285,093	18,086

Anyone making purchases on behalf of Post Rock Rural Water District is responsible for ensuring their purchase activities are in accordance with the rules and regulation of the policy and with the District's best interest at mind.

**Purchases of \$100.00 or less**

Purchases of \$100.00 or less can be made by all employees without a purchase order. The paid invoice/receipt detailing the transaction must be signed by the employee and have a description of what the item will be used for. **Purchases shall not be artificially divided so as to constitute a purchase under this section.**

**Purchases of \$100.01 to \$499.99**

Purchases of at least \$100.01 but less than \$500.00 require a purchase order with necessary authorization. **Purchases shall not be artificially divided so as to constitute a purchase under this section.**

**Purchases of \$500.00 to \$4,999.99**

Purchases of at least \$500.00 but less than \$5,000.00 require a purchase order with necessary authorization. The requesting department will obtain at least three (3) competitive email or written quotes, and an additional quote is required if the three quotes are not competitive. **Purchases shall not be artificially divided so as to constitute a purchase under this section.**

**Purchases of \$5,000.00 and Over**

Purchases of \$5,000.00 and over require a purchase order with necessary authorization. The requesting department will obtain at least three (3) competitive email or written quotes, and an additional quote is required if the three quotes are not competitive. **Purchases shall not be artificially divided so as to constitute a purchase under this section.**

The District's bidding threshold is \$500.00, at which competition via bids and quotes from multiple vendors are required before purchase of a good or service. The \$500 level is determined by the total value of the requisition or based upon the quote received from the supplier.

**4.1 Emergency Purchases**

An emergency condition exists when there is a threat to public health, welfare, or safety such as may arise by reason of floods, epidemics, riots, equipment failure, etc. The condition must create an immediate and serious need for supplies, equipment, materials, and/or services that cannot be met through normal procurement methods and the lack of which would threaten the function of Post Rock Rural Water District.

If an emergency purchase is in excess of \$500.00, the Superintendent of Finance and Administration may waive the quote process.

In no case, under emergency conditions, shall any contract or purchase obligating Post Rock Rural Water District in total to an amount in excess of \$10,000.00, be entered into without prior approval of Superintendent of Production and Distribution and Superintendent of Finance and Administration, then notification will be sent to the SUPCOMM and BOD. Purchases shall be limited to only the quantity necessary to meet the emergency, and in no event shall the contract price exceed commercially reasonable prices.

If the emergency arises after normal working hours, the appropriate department shall notify the superintendent immediately. All such emergency purchases shall be reported in writing to the Superintendent of Finance and Administration as soon as possible.

### **5.0 Capitalization Policy**

#### **5.1 Capital Asset**

A capital asset is a unit of tangible property that has an economic useful life of more than 12 months; and is acquired or produced for a cost of more than \$2,500, including acquisition and installation costs.

#### **5.2 Purpose**

Capital assets must be capitalized and depreciated for financial statement purposes.

### **6.0 Vehicle and Rolling Equipment Procedures**

#### **6.1 Purchasing Process for New Vehicles/Equipment**

The Board appointed Superintendent creates the specifications and list of vendors to be contacted. A minimum of 3 competitive bids must be received.

The Board appointed Superintendent will contact the Superintendent of Finance and Administration to schedule a time to review the bids

The Board appointed Superintendent then makes the recommendation to the SUPCOMM and Board of Directors.

The SUPCOMM and Board of Directors have final approval or rejection of purchase, request additional time to review, or request a re-bid of the vehicle/equipment.