



Board of Alderman Request for Action

MEETING DATE: 6/7/2022

DEPARTMENT: Public Works

AGENDA ITEM: Approve Bill No. 2942-22, Approving a Replacement Easement with United States of America Corps of Engineers on water pipeline and pumping station – 2nd Reading

REQUESTED BOARD ACTION:

A motion to approve Bill No. 2942-22. Second reading by title only.

SUMMARY:

The Raw Water Pump Station is located at the base of the Smithville Lake and Dam. The City is currently in the process of rebuilding the Raw Water pump station to ensure sufficient water supply to the City, adding additional pumping capacity, adding additional control valves, installing copper ion generator for eradication of zebra mussels and getting the pump station out of the flood plain. In order to connect to the new location of the pump station and minimize bypass pumping a new easement on the Corps property is needed.

PREVIOUS ACTION:

POLICY ISSUE:

Facility / Infrastructure Maintenance

FINANCIAL CONSIDERATIONS:

There is no cost for this easement

ATTACHMENTS:

- ☒ Ordinance
- ☐ Resolution
- ☐ Staff Report
- ☐ Other:

- ☒ Contract
- ☐ Plans
- ☐ Minutes

AN ORDINANCE APPROVING AN EASEMENT FOR WATER PIPELINE AND PUMPING FACILITY IN SUPPORT OF WATER SUPPLY STORAGE BETWEEN THE CITY OF SMITHVILLE, MISSOURI, AND THE UNITED STATES OF AMERICA REGARDING THE EASEMENT NO. DACW41-2-22-0001 AS A REPLACEMENT TO EASEMENT NO. DACW41-2-12-0016 FOR THE USE OF CORPS OF ENGINEERS PROPERTY TO EXPAND, IMPROVE, REPAIR AND REVISE THE EXISTING WATER SUPPLY AND PUMPING FACILITIES.

WHEREAS, Section 70.220 R.S.Mo states in part "*Political subdivisions may cooperate with . . . the United States . . . may contract and cooperate with . . . with a duly authorized agency of the United States, . . . for the planning, development, construction, acquisition or operation of any public improvement or facility, or for a common service; provided, that the subject and purposes of any such contract or cooperative action made and entered into by such municipality or political subdivision shall be within the scope of the powers of such municipality or political subdivision.*

WHEREAS the City of Smithville and the United State of America (Army Corps of Engineers) have previously entered an easement, for Water Pipeline And Pumping Facility In Support Of Water Supply Storage purposes for a term of twenty-five years (25), beginning April 8, 2008, and ending April 4, 2033, Easement No. DACW41-2-12-0016.

WHEREAS the City of Smithville and The United States of America want to extend the term not to exceed twenty-five (25) more years beginning March 15, 2022 and to expand the easement for long term use and temporary construction purposes to expand, improve, repair and revise the water pipeline and pumping facility in support of water supply storage and in support of the Water Supply Contract, Contract No. DACW41-73-C-0007 between the parties dated August 30, 1972, allowing Smithville to obtain water supply from Smithville Lake, by way of .

WHEREAS The form of said proposed agreement, attached hereto as **Ordinance Exhibit 1** is incorporated herein by reference and is known as Easement No. DACW41-2-22-0001.

WHEREAS the Secretary of the Army acting for and on behalf of the United States of America has agreed to said requested easement modification.

NOW, THEREFORE, BE IT ORDAINED BY THE BOARD OF ALDERMEN OF THE CITY OF SMITHVILLE, MISSOURI AS FOLLOWS:

Pursuant to the authority of Section 70.220 R.S.Mo., the Mayor is authorized and directed to sign and execute on behalf of the City of Smithville the Easement for Water Pipeline and Pumping Facility in Support of Water Supply Storage in the form of **Ordinance Exhibit A** attached hereto.

PASSED THIS 7th DAY OF JUNE, 2022

Damien Boley, Mayor

ATTEST:

Linda Drummond, City Clerk

First Reading: 05/17/2022

Second Reading: 06/07/2022

DEPARTMENT OF THE ARMY
EASEMENT FOR WATER PIPELINE AND PUMPING FACILITY
IN SUPPORT OF
AN AGREEMENT FOR WATER SUPPLY STORAGE
DACW41-73-C-0007
LOCATED AT
SMITHVILLE LAKE
CLAY COUNTY, MISSOURI

THIS EASEMENT is made on behalf of the **UNITED STATES OF AMERICA** (the "United States"), between the **SECRETARY OF THE ARMY**, acting by and through the Real Estate Contracting Officer, Real Estate Division, U.S. Army Engineer District, Kansas City District, hereinafter referred to as the "Grantor", under and by virtue of the authority vested in the said Secretary by Title 10, United States Code, Section 2668, having found that the granting of this easement will not be against the public interest, and pursuant to **DACW41-73-C-0007** between the parties hereto, hereinafter referred to as the "Water Supply Storage Agreement", with an effective date of September 1, 1972, entered into under the authority of the Water Supply Act of 1958, as amended (43 U.S.C. § 390b), Flood Control Act of 1965 (Public Law 298, 89th Congress), Section 6 of the Flood Control Act of 1970 (42 U.S.C. 1962d-5b), and **City of Smithville**, the municipal corporation, duly organized and existing under and by virtue of the laws of the State of Missouri, with its principal office at 107 W. Main Street, Smithville, Missouri 64089, hereinafter referred to as the "Grantee."

NOW, THEREFORE:

The Grantor, for good and valuable consideration set forth below, the receipt and sufficiency of which are hereby acknowledged, upon and subject to the terms and conditions set forth in this easement, does hereby grant and convey to the Grantee:

a perpetual and assignable easement and right-of-way in, on, over, and across the land described in **Exhibit A**, attached hereto and made a part hereof, hereinafter referred to as the "Premises," for the location, construction, operation, maintenance, repair, and replacement of an underground 24 inch water pipeline and raw water intake structure, and pumping facility to hereinafter referred to as the "Facilities," having been determined not to include more land than is necessary for the easement.

EASEMENT NO. DACW41-2-22-0010
Replaces No. DACW41-2-12-0016

a temporary easement and right-of-way in, on, over, and across, the land described in **Exhibit B**, attached hereto and made a part hereof, for a period not to exceed 36 months beginning March 15, 2022 , for use by the Grantee and its representatives, agents, and contractors as a work area, including the right to move, store, and remove equipment and supplies, erect and remove temporary structures, and perform any other work necessary and incident to the construction of the Facilities, having been determined not to include more land than is necessary for the easement; hereinafter collectively referred to as the "Premises."

All right, title, and interest in and to the Facilities constructed on the Premises by the Grantee shall remain in the Grantee and shall not merge. The Grantor shall make no claim of title during the term of this easement to the Facilities or any portion thereof.

THIS EASEMENT is granted subject to the following terms and conditions:

1. CONSIDERATION

The consideration for the grant of this easement is the construction, operation, maintenance, repair, and replacement of the Facilities for the benefit of the general public in accordance with the terms and conditions hereinafter set forth.

2. NOTICES

a. All correspondence and notices to be given pursuant to Condition 17, RELOCATION OF FACILITIES, and Condition 18, TERMINATION, of this easement shall be in writing and addressed, if to the Grantee, to City of Smithville, 107 West Main Street, Smithville, Missouri 64089 and, if to the Grantor, to the U.S. Army Engineer District, Kansas City District, Attn: Chief, Real Estate Division, 601 East 12th Street, Kansas City, Missouri 64106-2824, or as may from time to time otherwise be directed by the parties.

b. Notices shall be mailed by certified mail, postage prepaid, return receipt requested, addressed to the addresses above. The effective date of the notice shall be the earlier of the actual date of receipt or the date the addressee is notified of the attempted delivery of the certified mail, whether or not the addressee actually accepts delivery. Use of an express delivery service will not substitute for this requirement.

c. General correspondence and other communications, other than the said notices, do not have to be sent certified mail, return receipt requested.

3. AUTHORIZED REPRESENTATIVES

Except as otherwise specifically provided, any reference herein to "Secretary of the Army," "Real Estate Contracting Officer," "Grantor," or "Chief, Real Estate Division"

shall include their duly authorized representatives. Any reference to "Grantee" shall include its assignees, transferees, and their duly authorized representatives.

4. SUPERVISION BY THE GRANTOR

The construction, operation, maintenance, repair, or replacement of the Facilities shall be performed at no cost or expense to the United States and subject to the approval of the Grantor. Upon the completion of any of the aforementioned activities, the Grantee shall immediately restore the Premises to the satisfaction of the Grantor. The use and occupation of the Premises for the purposes herein granted shall be subject to such rules and regulations as the Grantor prescribes in writing from time to time and the terms and conditions of the Water Supply Storage Agreement.

5. APPLICABLE LAWS AND REGULATIONS

The Grantee shall comply with all applicable Federal, state, county, and municipal laws, ordinances, and regulations wherein the Premises are located.

6. WATER SUPPLY STORAGE AGREEMENT

a. The Grantee shall comply with the terms and conditions of the Water Supply Storage Agreement as a condition of this easement.

b. The granting of this easement does not expressly or by implication authorize the utilization of reservoir storage space for water supply purposes, or the withdrawal or increase in withdrawal of surplus water, from Smithville Lake Project.

7. OPERATION OF FACILITIES

a. The Grantee shall operate the Facilities and all electrical equipment shall be installed, operated, and maintained in compliance with all applicable Federal, state, county, and municipal laws, ordinances, and regulations including, but not limited to, the provisions of the latest edition of the National Electrical Safety Code (NESC) and the U.S. Environmental Protection Agency regulations on Polychlorinated Biphenyls (PCB's).

b. Any electrical service to submerged motors or those located above water shall be by means of a sealed, waterproof, multiple conductor cable with controls and switches located on land. The location of such motors and the electrical feeders shall be clearly marked to be visible to boaters and swimmers. Additionally, signs warning "DANGER-HIGH VOLTAGE-Unauthorized Access Prohibited" shall be erected to be visible from the land and water approaches to the equipment.

8. CONDITION OF PREMISES

The Grantee acknowledges that it has inspected the Premises, knows the condition, and understands that the easement is granted without any representation or warranties whatsoever and without any obligation on the part of the Grantor.

9. INSPECTION AND REPAIRS

The Grantee shall inspect the Facilities at reasonable intervals and immediately repair any defects found by such inspection or when required by the Grantor to repair any such defects.

10. PROTECTION OF UNITED STATES PROPERTY

The Grantee shall be responsible for any damage that may be caused to the property of the United States by the activities of the Grantee under this easement and shall exercise due diligence in the protection of all property located on the Premises against fire or damage from any and all other causes. Any property of the United States damaged or destroyed by the Grantee incident to the exercise of the privileges herein granted shall be promptly repaired or replaced by the Grantee to a condition satisfactory to the Grantor or, at the election of the Grantor, reimbursement made therefor by the Grantee in an amount necessary to restore or replace the property to a condition satisfactory to the Grantor.

11. RIGHT TO ENTER

The right is reserved to the Grantor to enter upon the Premises at any time and for any purpose necessary or convenient in connection with government purposes, to make inspections, to remove timber or other material, except property of the Grantee, to flood the Premises, to manipulate the level of the lake or pool in any manner whatsoever and/or to make any other use of the Premises as may be necessary in connection with government purposes, and the Grantee shall have no claim for damages on account thereof against the Grantor, the United States, or any officer, agent, or employee thereof.

12. TRANSFERS AND ASSIGNMENTS

Without prior written approval by the Grantor, the Grantee shall neither transfer nor assign this easement or any part thereof nor grant any interest, privilege or license whatsoever in connection with this easement. The provisions, terms, and conditions of this easement shall extend to and be binding upon and shall inure to the benefit of the successors and assigns of the Grantee.

13. INDEMNITY

The United States shall not be responsible for damages to property or injuries to persons which may arise from or be incident to the exercise of the privileges herein granted, or for damages to the property or injuries to the person of the Grantee's officers, agents, or employees or others who may be on the Premises at their invitation or the invitation of any one of them, and the Grantee shall hold the United States harmless from any and all such claims not including damages due to the fault or negligence of the United States or its contractors.

14. SUBJECT TO EASEMENTS

This easement is subject to all other existing easements as well as established access routes for roadways and utilities located on the Premises. The Grantor will coordinate the proposed grant of any new easement or route in, on, over, or across the Premises with the Grantee and easements will not be granted which, in the opinion of the Grantor, will interfere with the Grantee's use of the Premises.

15. REQUIRED SERVICES

The Grantee shall furnish through the Facilities such services as may be required from time to time for governmental purposes, provided that payment for such service will be made by the United States at rates which shall be mutually agreeable but which shall never exceed the most favorable rates offered by the Grantee for similar service.

16. RELOCATION OF FACILITIES

In the event all or any portion of the Premises occupied by the Facilities shall be needed by the United States, or in the event the existence of the Facilities is determined to be detrimental to governmental activities, the Grantee shall from time to time, upon notice to do so, and as often as so notified, remove the Facilities to such other location on the Premises as may be designated by Grantor. In the event the Facilities shall not be removed or relocated within ninety (90) calendar days after such notice, the Grantor may cause such relocation at the sole expense of the Grantee.

17. TERMINATION

a. This easement may be terminated by the Grantor upon thirty (30) calendar days written notice to the Grantee if the Grantor shall determine that the right-of-way hereby granted interferes with the use or disposal of the Premises by the United States, or it may be revoked by the Grantor for failure of the Grantee to comply with any or all of the conditions of this easement; for non-use for a period of two (2) years; or for abandonment.

b. This easement may be terminated if the Grantee fails to comply with the terms and conditions of, or is in default under, the Water Supply Storage Agreement. In addition, if the Water Supply Storage Agreement is terminated, expires, or becomes void, then this easement may be terminated by the Grantor.

18. SOIL AND WATER CONSERVATION

The Grantee shall maintain, in a manner satisfactory to the Grantor, all soil and water conservation structures that may be in existence upon the Premises at the beginning of or that may be constructed by the Grantee during the term of this easement. The Grantee shall take appropriate measures to prevent or control soil erosion within the Premises and any soil erosion occurring within or outside the Premises resulting from the activities of the Grantee shall be corrected by the Grantee as directed by the Grantor.

19. ENVIRONMENTAL PROTECTION

a. Within the limits of its legal power, the Grantee shall protect the Premises against pollution of its air, ground, and water. The Grantee shall promptly comply with any laws, regulations, orders, notices, or instructions affecting the activity hereby authorized if and when issued by the U.S. Environmental Protection Agency, or any Federal, state, interstate, or local governmental agency having jurisdiction to abate or prevent pollution. The disposal of any toxic or hazardous substance within the Premises is strictly prohibited. Such regulations, orders, notices, or instructions in effect or prescribed by the U.S. Environmental Protection Agency or any Federal, state, interstate, or local governmental agency are hereby made a condition of this easement. The Grantee shall not discharge waste or effluent from the Premises in such a manner that the discharge will contaminate streams or other bodies of water or otherwise become a public nuisance.

b. The use of any pesticides or herbicides within the Premises shall be in conformance with all applicable Federal, state, and local laws and regulations. The Grantee must obtain approval in writing from the Grantor before any pesticides or herbicides are applied to the Premises.

c. The Grantee will use all reasonable means available to protect the environment and natural resources, and where damage nonetheless occurs arising from the Grantee's activities, the Grantee shall be liable to restore the damaged resources.

20. HISTORIC PRESERVATION

The Grantee shall not remove or disturb, or cause or permit to be removed or disturbed, any historical, archeological, architectural or other cultural artifacts, relics, remains, or objects of antiquity. In the event such items are discovered on the

Premises, the Grantee shall immediately notify the Grantor and protect the site and material from further disturbance until the Grantor gives clearance to proceed.

21. NON-DISCRIMINATION

a. The Grantee shall not discriminate against any person or persons upon the basis of race, creed, color, age, sex, handicap, disability, national origin or religion in the use and occupancy of the Premises.

b. The Grantee shall comply with the provisions of Title VI of the Civil Rights Act of 1964 as amended (42 U.S.C. Section 2000d); the Age Discrimination Act of 1975 (42 U.S.C. Section 6102); the Rehabilitation Act of 1973, as amended (29 U.S.C. Section 794); and all requirements imposed by or pursuant to the regulations of the Department of Defense in 32 CFR Part 195; Department of Defense Directive 5500.11; Department of Defense Directive 1020.1; and Army Regulation 600-7.

22. RESTORATION

On or before the expiration or termination of this easement, the Grantee shall, without expense to the United States, and within such time as the Grantor may indicate, remove said facilities and restore the Premises to the satisfaction of the Grantor. In the event the Grantee shall fail to remove said facilities and restore the Premises, the Grantor shall have the option to take over said facilities without compensation, or to remove said facilities and perform the restoration at the expense of the Grantee, and the Grantee shall have no claim for damages against the United States or its officers or agents for such action.

23. DISCLAIMER

This instrument is effective only insofar as the rights of the United States in the property are concerned, and the Grantee shall obtain such permission as may be required on account of any other existing rights. It is understood that the granting of this easement does not eliminate the necessity of obtaining any Department of the Army permit which may be required pursuant to the provisions of Section 10 of the Rivers and Harbors Act of 3 March 1899 (33 U.S.C. Section 403), Section 404 of the Clean Water Act (33 U.S.C. Section 1344) or any other permit or license which may be required by Federal, state or local statute in connection with use of the Premises.

24. DESCRIPTION

Upon the completion of construction and satisfactory restoration of the temporary easement area, the Grantee, will provide as-built drawings and description. This easement will be amended to correct the description based on the as-built drawings and description. The right-of-way herein granted shall be limited to the area

actually occupied by the pipeline/facilities with rights of ingress and egress for installation, operation and maintenance.

25. DETERMINATION REGARDING EXECUTIVE ORDER 13658

Any reference in this section to “prime contractor” or “contractor” shall mean the Lessee and any reference to “contract” shall refer to the Lease.

a. The parties expressly stipulate this contract is subject to Executive Order 13658, the regulations issued by the Secretary of Labor in 29 CFR part 10 pursuant to the Executive Order, and the following provisions.

b. Minimum Wages. (1) Each worker (as defined in 29 CFR 10.2) engaged in the performance of this contract by the prime contractor or any subcontractor, regardless of any contractual relationship which may be alleged to exist between the contractor and worker, shall be paid not less than the applicable minimum wage under Executive Order 13658.

(2) The minimum wage required to be paid to each worker performing work on or in connection with this contract between January 1, 2015 and December 31, 2015 shall be \$10.10 per hour. The minimum wage shall be adjusted each time the Secretary of Labor's annual determination of the applicable minimum wage under section 2(a)(ii) of Executive Order 13658 results in a higher minimum wage. Adjustments to the Executive Order minimum wage under section 2(a)(ii) of Executive Order 13658 will be effective for all workers subject to the Executive Order beginning January 1 of the following year. If appropriate, the contracting officer, or other agency official overseeing this contract shall ensure the contractor is compensated only for the increase in labor costs resulting from the annual inflation increases in the Executive Order 13658 minimum wage beginning on January 1, 2016. The Secretary of Labor will publish annual determinations in the Federal Register no later than 90 days before such new wage is to take effect. The Secretary will also publish the applicable minimum wage on www.wdol.gov (or any successor Web site). The applicable published minimum wage is incorporated by reference into this contract.

(3) The contractor shall pay unconditionally to each worker all wages due free and clear and without subsequent deduction (except as otherwise provided by 29 CFR 10.23), rebate, or kickback on any account. Such payments shall be made no later than one pay period following the end of the regular pay period in which such wages were earned or accrued. A pay period under this Executive Order may not be of any duration longer than semi-monthly.

(4) The prime contractor and any upper-tier subcontractor shall be responsible for the compliance by any subcontractor or lower-tier subcontractor with the Executive Order minimum wage requirements. In the event of any violation of the minimum wage

obligation of this clause, the contractor and any subcontractor(s) responsible therefore shall be liable for the unpaid wages.

(5) If the commensurate wage rate paid to a worker on a covered contract whose wages are calculated pursuant to a special certificate issued under 29 U.S.C. 214(c), whether hourly or piece rate, is less than the Executive Order minimum wage, the contractor must pay the Executive Order minimum wage rate to achieve compliance with the Order. If the commensurate wage due under the certificate is greater than the Executive Order minimum wage, the contractor must pay the 14(c) worker the greater commensurate wage.

c. Withholding. The agency head shall upon its own action or upon written request of an authorized representative of the Department of Labor withhold or cause to be withheld from the prime contractor under this or any other Federal contract with the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay workers the full amount of wages required by Executive Order 13658.

d. Contract Suspension/Contract Termination/Contractor Debarment. In the event of a failure to pay any worker all or part of the wages due under Executive Order 13658 or 29 CFR part 10, or a failure to comply with any other term or condition of Executive Order 13658 or 29 CFR part 10, the contracting agency may on its own action or after authorization or by direction of the Department of Labor and written notification to the contractor, take action to cause suspension of any further payment, advance or guarantee of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the contractor in default with any additional cost. A breach of the contract clause may be grounds for debarment as a contractor and subcontractor as provided in 29 CFR 10.52.

e. The contractor may not discharge any part of its minimum wage obligation under Executive Order 13658 by furnishing fringe benefits or, with respect to workers whose wages are governed by the Service Contract Act, the cash equivalent thereof.

f. Nothing herein shall relieve the contractor of any other obligation under Federal, State or local law, or under contract, for the payment of a higher wage to any worker, nor shall a lower prevailing wage under any such Federal, State, or local law, or under contract, entitle a contractor to pay less than \$10.10 (or the minimum wage as established each January thereafter) to any worker.

g. Payroll Records. (1) The contractor shall make and maintain for three years records containing the information specified in paragraphs (g)(1) (i) through (vi) of this section for each worker and shall make the records available for inspection and

transcription by authorized representatives of the Wage and Hour Division of the U.S. Department of Labor:

- (i) Name, address, and social security number.
- (ii) The worker's occupation(s) or classification(s)
- (iii) The rate or rates of wages paid.
- (iv) The number of daily and weekly hours worked by each worker.
- (v) Any deductions made; and
- (vi) Total wages paid.

(2) The contractor shall also make available a copy of the contract, as applicable, for inspection or transcription by authorized representatives of the Wage and Hour Division.

(3) Failure to make and maintain or to make available such records for inspection and transcription shall be a violation of 29 CFR part 10 and this contract, and in the case of failure to produce such records, the contracting officer, upon direction of an authorized representative of the Department of Labor, or under its own action, shall take such action as may be necessary to cause suspension of any further payment or advance of funds until such time as the violations are discontinued.

(4) The contractor shall permit authorized representatives of the Wage and Hour Division to conduct investigations, including interviewing workers at the worksite during normal working hours.

(5) Nothing in this clause limits or otherwise modifies the contractor's payroll and recordkeeping obligations, if any, under the Davis-Bacon Act, as amended, and its implementing regulations; the Service Contract Act, as amended, and its implementing regulations; the Fair Labor Standards Act, as amended, and its implementing regulations; or any other applicable law.

h. The contractor (as defined in 29 CFR 10.2) shall insert this clause in all of its covered subcontracts and shall require its subcontractors to include this clause in any covered lower-tier subcontracts. The prime contractor and any upper-tier subcontractor shall be responsible for the compliance by any subcontractor or lower-tier subcontractor with this contract clause.

i. Certification of Eligibility. (1) By entering into this contract, the contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has

an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed pursuant to section 5 of the Service Contract Act, section 3(a) of the Davis-Bacon Act, or 29 CFR 5.12(a)(1).

(2) No part of this contract shall be subcontracted to any person or firm whose name appears on the list of persons or firms ineligible to receive Federal contracts.

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

j. Tipped employees. In paying wages to a tipped employee as defined in section 3(t) of the Fair Labor Standards Act, 29 U.S.C. 203(t), the contractor may take a partial credit against the wage payment obligation (tip credit) to the extent permitted under section 3(a) of Executive Order 13658. In order to take such a tip credit, the employee must receive an amount of tips at least equal to the amount of the credit taken; where the tipped employee does not receive sufficient tips to equal the amount of the tip credit the contractor must increase the cash wage paid for the workweek so that the amount of cash wage paid and the tips received by the employee equal the applicable minimum wage under Executive Order 13658. To utilize this proviso:

(1) The employer must inform the tipped employee in advance of the use of the tip credit;

(2) The employer must inform the tipped employee of the amount of cash wage that will be paid and the additional amount by which the employee's wages will be considered increased on account of the tip credit;

(3) The employees must be allowed to retain all tips (individually or through a pooling arrangement and regardless of whether the employer elects to take a credit for tips received); and

(4) The employer must be able to show by records that the tipped employee receives at least the applicable Executive Order minimum wage through the combination of direct wages and tip credit.

k. Anti-retaliation. It shall be unlawful for any person to discharge or in any other manner discriminate against any worker because such worker has filed any complaint or instituted or caused to be instituted any proceeding under or related to Executive Order 13658 or 29 CFR part 10, or has testified or is about to testify in any such proceeding.

l. Disputes concerning labor standards. Disputes related to the application of Executive Order 13658 to this contract shall not be subject to the general disputes clause of the contract. Such disputes shall be resolved in accordance with the

procedures of the Department of Labor set forth in 29 CFR part 10. Disputes within the meaning of this contract clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the workers or their representatives.

m. Notice. The contractor must notify all workers performing work on or in connection with a covered contract of the applicable minimum wage rate under the Executive Order. With respect to service employees on contracts covered by the Service Contract Act and laborers and mechanics on contracts covered by the Davis-Bacon Act, the contractor may meet this requirement by posting, in a prominent and accessible place at the worksite, the applicable wage determination under those statutes. With respect to workers performing work on or in connection with a covered contract whose wages are governed by the FLSA, the contractor must post a notice provided by the Department of Labor in a prominent and accessible place at the worksite so it may be readily seen by workers. Contractors that customarily post notices to workers electronically may post the notice electronically provided such electronic posting is displayed prominently on any Web site that is maintained by the contractor, whether external or internal, and customarily used for notices to workers about terms and conditions of employment.

n. If a duly authorized representative of the United States discovers or determines, whether before or subsequent to executing this contract, that an erroneous determination regarding the applicability of Executive Order 13658 was made, contractor, to the extent permitted by law, agrees to indemnify and hold harmless the United States, its officers, agents, and employees, for and from any and all liabilities, losses, claims, expenses, suits, fines, penalties, judgments, demands or actions, costs, fees, and damages directly or indirectly arising out of, caused by, related to, resulting from or in any way predicated upon, in whole or in part, the erroneous Executive Order 13658 determination. This includes contractor releasing any claim or entitlement it would otherwise have to an equitable adjustment to the contract and indemnifying and holding harmless the United States from the claims of subcontractors and contractor employees.

26. DETERMINATION REGARDING EXECUTIVE ORDER 13706

Any reference in this section to “prime contractor” or “contractor” shall mean the Lessee and any reference to “contract” shall refer to the Lease.

a. *Executive Order 13706.* This contract is subject to Executive Order 13706, the regulations issued by the Secretary of Labor in 29 CFR part 13 pursuant to the Executive Order, and the following provisions.

b. *Paid Sick Leave.* (1) The contractor shall permit each employee (as defined in 29 CFR 13.2) engaged in the performance of this contract by the prime contractor or

any subcontractor, regardless of any contractual relationship that may be alleged to exist between the contractor and employee, to earn not less than 1 hour of paid sick leave for every 30 hours worked. The contractor shall additionally allow accrual and use of paid sick leave as required by Executive Order 13706 and 29 CFR part 13. The contractor shall in particular comply with the accrual, use, and other requirements set forth in 29 CFR 13.5 and 13.6, which are incorporated by reference in this contract.

(2) The contractor shall provide paid sick leave to all employees when due free and clear and without subsequent deduction (except as otherwise provided by 29 CFR 13.24), rebate, or kickback on any account. The contractor shall provide pay and benefits for paid sick leave used no later than one pay period following the end of the regular pay period in which the paid sick leave was taken.

(3) The prime contractor and any upper-tier subcontractor shall be responsible for the compliance by any subcontractor or lower-tier subcontractor with the requirements of Executive Order 13706, 29 CFR part 13, and this clause.

c. *Withholding.* The contracting officer shall, upon its own action or upon written request of an authorized representative of the Department of Labor, withhold or cause to be withheld from the prime contractor under this or any other Federal contract with the same prime contractor, so much of the accrued payments or advances as may be considered necessary to pay employees the full amount owed to compensate for any violation of the requirements of Executive Order 13706, 29 CFR part 13, or this clause, including any pay and/or benefits denied or lost by reason of the violation; other actual monetary losses sustained as a direct result of the violation, and liquidated damages.

d. *Contract Suspension/Contract Termination/Contractor Debarment.* In the event of a failure to comply with Executive Order 13706, 29 CFR part 13, or this clause, the contracting agency may on its own action or after authorization or by direction of the Department of Labor and written notification to the contractor, take action to cause suspension of any further payment, advance, or guarantee of funds until such violations have ceased. Additionally, any failure to comply with the requirements of this clause may be grounds for termination of the right to proceed with the contract work. In such event, the Government may enter into other contracts or arrangements for completion of the work, charging the contractor in default with any additional cost. A breach of the contract clause may be grounds for debarment as a contractor and subcontractor as provided in 29 CFR 13.52.

e. The paid sick leave required by Executive Order 13706, 29 CFR part 13, and this clause is in addition to a contractor's obligations under the Service Contract Act and Davis-Bacon Act, and a contractor may not receive credit toward its prevailing wage or fringe benefit obligations under those Acts for any paid sick leave provided in satisfaction of the requirements of Executive Order 13706 and 29 CFR part 13.

f. Nothing in Executive Order 13706 or 29 CFR part 13 shall excuse noncompliance with or supersede any applicable Federal or State law, any applicable law or municipal ordinance, or a collective bargaining agreement requiring greater paid sick leave or leave rights than those established under Executive Order 13706 and 29 CFR part 13.

g. *Recordkeeping.* (1) Any contractor performing work subject to Executive Order 13706 and 29 CFR part 13 must make and maintain, for no less than three (3) years from the completion of the work on the contract, records containing the information specified in paragraphs (i) through (xv) of this section for each employee and shall make them available for inspection, copying, and transcription by authorized representatives of the Wage and Hour Division of the U.S. Department of Labor:

- (i) Name, address, and Social Security number of each employee;
- (ii) The employee's occupation(s) or classification(s);
- (iii) The rate or rates of wages paid (including all pay and benefits provided);
- (iv) The number of daily and weekly hours worked;
- (v) Any deductions made;
- (vi) The total wages paid (including all pay and benefits provided) each pay period;
- (vii) A copy of notifications to employees of the amount of paid sick leave the employee has accrued, as required under 29 CFR 13.5(a)(2);
- (viii) A copy of employees' requests to use paid sick leave, if in writing, or, if not in writing, any other records reflecting such employee requests;
- (ix) Dates and amounts of paid sick leave taken by employees (unless a contractor's paid time off policy satisfies the requirements of Executive Order 13706 and 29 CFR part 13 as described in §13.5(f)(5), leave must be designated in records as paid sick leave pursuant to Executive Order 13706);
- (x) A copy of any written responses to employees' requests to use paid sick leave, including explanations for any denials of such requests, as required under 29 CFR 13.5(d)(3);
- (xi) Any records reflecting the certification and documentation a contractor may require an employee to provide under 29 CFR 13.5(e), including copies of any certification or documentation provided by an employee;

(xii) Any other records showing any tracking of or calculations related to an employee's accrual or use of paid sick leave;

(xiii) The relevant covered contract;

(xiv) The regular pay and benefits provided to an employee for each use of paid sick leave; and

(xv) Any financial payment made for unused paid sick leave upon a separation from employment intended, pursuant to 29 CFR 13.5(b)(5), to relieve a contractor from the obligation to reinstate such paid sick leave as otherwise required by 29 CFR 13.5(b)(4).

(2)(i) If a contractor wishes to distinguish between an employee's covered and non-covered work, the contractor must keep records or other proof reflecting such distinctions. Only if the contractor adequately segregates the employee's time will time spent on non-covered work be excluded from hours worked counted toward the accrual of paid sick leave. Similarly, only if that contractor adequately segregates the employee's time may a contractor properly refuse an employee's request to use paid sick leave on the ground that the employee was scheduled to perform non-covered work during the time she asked to use paid sick leave.

(ii) If a contractor estimates covered hours worked by an employee who performs work in connection with covered contracts pursuant to 29 CFR 13.5(a)(i) or (iii), the contractor must keep records or other proof of the verifiable information on which such estimates are reasonably based. Only if the contractor relies on an estimate that is reasonable and based on verifiable information will an employee's time spent in connection with non-covered work be excluded from hours worked counted toward the accrual of paid sick leave. If a contractor estimates the amount of time an employee spends performing in connection with covered contracts, the contractor must permit the employee to use her paid sick leave during any work time for the contractor.

(3) In the event a contractor is not obligated by the Service Contract Act, the Davis-Bacon Act, or the Fair Labor Standards Act to keep records of an employee's hours worked, such as because the employee is exempt from the FLSA's minimum wage and overtime requirements, and the contractor chooses to use the assumption permitted by 29 CFR 13.5(a)(1)(iii), the contractor is excused from the requirement in paragraph (1)(d) of this section to keep records of the employee's number of daily and weekly hours worked.

(4)(i) Records relating to medical histories or domestic violence, sexual assault, or stalking, created for purposes of Executive Order 13706, whether of an employee or an employee's child, parent, spouse, domestic partner, or other individual related by blood or affinity whose close association with the employee is the equivalent of a family

relationship, shall be maintained as confidential records in separate files/records from the usual personnel files.

(ii) If the confidentiality requirements of the Genetic Information Nondiscrimination Act of 2008 (GINA), section 503 of the Rehabilitation Act of 1973, and/or the Americans with Disabilities Act (ADA) apply to records or documents created to comply with the recordkeeping requirements in this contract clause, the records and documents must also be maintained in compliance with the confidentiality requirements of the GINA, section 503 of the Rehabilitation Act of 1973, and/or ADA as described in 29 CFR 1635.9, 41 CFR 60-741.23(d), and 29 CFR 1630.14(c)(1), respectively.

(iii) The contractor shall not disclose any documentation used to verify the need to use 3 or more consecutive days of paid sick leave for the purposes listed in 29 CFR 13.5(c)(1)(iv) (as described in 29 CFR 13.5(e)(1)(ii)) and shall maintain confidentiality about any domestic abuse, sexual assault, or stalking, unless the employee consents or when disclosure is required by law.

(5) The contractor shall permit authorized representatives of the Wage and Hour Division to conduct interviews with employees at the worksite during normal working hours.

(6) Nothing in this contract clause limits or otherwise modifies the contractor's recordkeeping obligations, if any, under the Davis-Bacon Act, the Service Contract Act, the Fair Labor Standards Act, the Family and Medical Leave Act, Executive Order 13658, their respective implementing regulations, or any other applicable law.

h. The contractor (as defined in 29 CFR 13.2) shall insert this clause in all of its covered subcontracts and shall require its subcontractors to include this clause in any covered lower-tier subcontracts.

i. *Certification of Eligibility.* (1) By entering into this contract, the contractor (and officials thereof) certifies that neither it (nor he or she) nor any person or firm who has an interest in the contractor's firm is a person or firm ineligible to be awarded Government contracts by virtue of the sanctions imposed pursuant to section 5 of the Service Contract Act, section 3(a) of the Davis-Bacon Act, or 29 CFR 5.12(a)(1).

(2) No part of this contract shall be subcontracted to any person or firm whose name appears on the list of persons or firms ineligible to receive Federal contracts currently maintained on the System for Award Management Web site, <http://www.SAM.gov>.

(3) The penalty for making false statements is prescribed in the U.S. Criminal Code, 18 U.S.C. 1001.

j. *Interference/Discrimination.* (1) A contractor may not in any manner interfere with an employee's accrual or use of paid sick leave as required by Executive Order 13706 or 29 CFR part 13. Interference includes, but is not limited to, miscalculating the amount of paid sick leave an employee has accrued, denying or unreasonably delaying a response to a proper request to use paid sick leave, discouraging an employee from using paid sick leave, reducing an employee's accrued paid sick leave by more than the amount of such leave used, transferring an employee to work on non-covered contracts to prevent the accrual or use of paid sick leave, disclosing confidential information contained in certification or other documentation provided to verify the need to use paid sick leave, or making the use of paid sick leave contingent on the employee's finding a replacement worker or the fulfillment of the contractor's operational needs.

(2) A contractor may not discharge or in any other manner discriminate against any employee for:

(i) Using, or attempting to use, paid sick leave as provided for under Executive Order 13706 and 29 CFR part 13;

(ii) Filing any complaint, initiating any proceeding, or otherwise asserting any right or claim under Executive Order 13706 and 29 CFR part 13;

(iii) Cooperating in any investigation or testifying in any proceeding under Executive Order 13706 and 29 CFR part 13; or

(iv) Informing any other person about his or her rights under Executive Order 13706 and 29 CFR part 13.

k. *Waiver.* Employees cannot waive, nor may contractors induce employees to waive, their rights under Executive Order 13706, 29 CFR part 13, or this clause.

l. *Notice.* The contractor must notify all employees performing work on or in connection with a covered contract of the paid sick leave requirements of Executive Order 13706, 29 CFR part 13, and this clause by posting a notice provided by the Department of Labor in a prominent and accessible place at the worksite so it may be readily seen by employees. Contractors that customarily post notices to employees electronically may post the notice electronically, provided such electronic posting is displayed prominently on any Web site that is maintained by the contractor, whether external or internal, and customarily used for notices to employees about terms and conditions of employment.

m. *Disputes concerning labor standards.* Disputes related to the application of Executive Order 13706 to this contract shall not be subject to the general disputes clause of the contract. Such disputes shall be resolved in accordance with the procedures of the Department of Labor set forth in 29 CFR part 13. Disputes within the

EASEMENT NO. DACW41-2-22-0010
Replaces No. DACW41-2-12-0016

meaning of this contract clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the U.S. Department of Labor, or the employees or their representatives.

27. SPECIAL CONDITIONS

a. That the right-of-way hereby granted shall not occupy more land than is reasonably necessary for such purpose, as determined by the said officer, and in no event shall exceed a width of Fifteen Feet **(15')** on each side of the center line thereof.

b. In the event this Easement is renewed by a similar instrument, then **RESTORATION** Condition hereof, will not be applicable.

c. No transformers shall be located on the Premises which contain Polychlorinated Biphenyls (PCB's).

d. Water Supply Contract DACW41-73-C-0007 attached as Exhibit C.

e. This easement supercedes **DACW41-2-12-0016** which was granted to the City of Smithville for a Twenty-Five (25) year term beginning April 5,2008 and ending April 4, 2033.

EASEMENT NO. DACW41-2-22-0010
Replaces No. DACW41-2-12-0016

THIS EASEMENT is not subject to Title 10, United States Code, Section 2662, as amended.

IN WITNESS WHEREOF, the Grantor has caused this easement to be executed in its name by the Real Estate Contracting Officer, U.S. Army Engineer District, Kansas City District, this _____ day of _____, 2022.

UNITED STATES OF AMERICA

Matt W. Bosky
Chief, Management & Disposal Branch
Real Estate Contracting Officer

THIS EASEMENT is also executed by the Grantee this ____ day of _____, 2022.

BY: CITY OF SMITHVILLE

Signature

Printed Name

Title

CERTIFICATE OF AUTHORITY

I, _____ (Name), certify that I am the
_____ (Title) of **City of Smithville**, that
_____ (signator of outgrant) who signed the foregoing
instrument on behalf of the grantee was then _____ (title of signator
of outgrant) of **City of Smithville**. I further certify that the said officer was acting within
the scope of powers delegated to this governing body of the grantee in executing said
instrument.

City of Smithville

Date

Clerk or Appropriate Official

AFFIX SEAL

ACKNOWLEDGMENT

STATE OF MISSOURI)
)ss
COUNTY OF JACKSON)

BEFORE ME, a Notary Public in and for Jackson County, personally appeared **Mr. Matt W. Bosky**, to me known to be the identical person and officer whose name is subscribed to the foregoing instrument, and acknowledged to me that they executed the said instrument by authority of the Secretary of the Army, for the purposes therein expressed as the act and deed of the United States.

GIVEN under my hand and seal, this ____ day of _____, _____.

NOTARY PUBLIC

(Seal)

My commission expires on the _____ day of _____, _____.

EASEMENT NO. DACW41-2-22-0010
Replaces No. DACW41-2-12-0016

Exhibit A

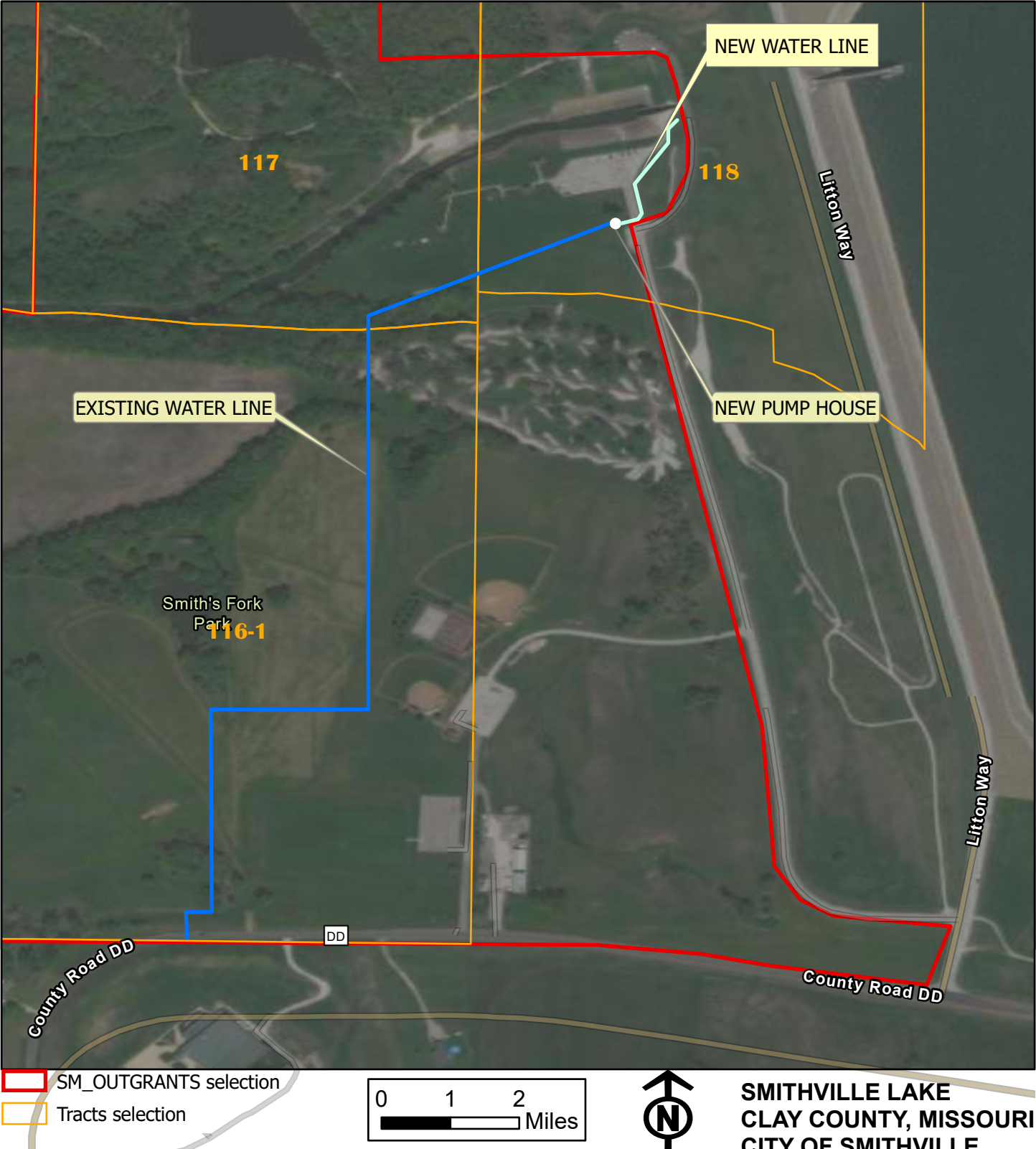
<<legal description of facilities easement>>

Exhibit B

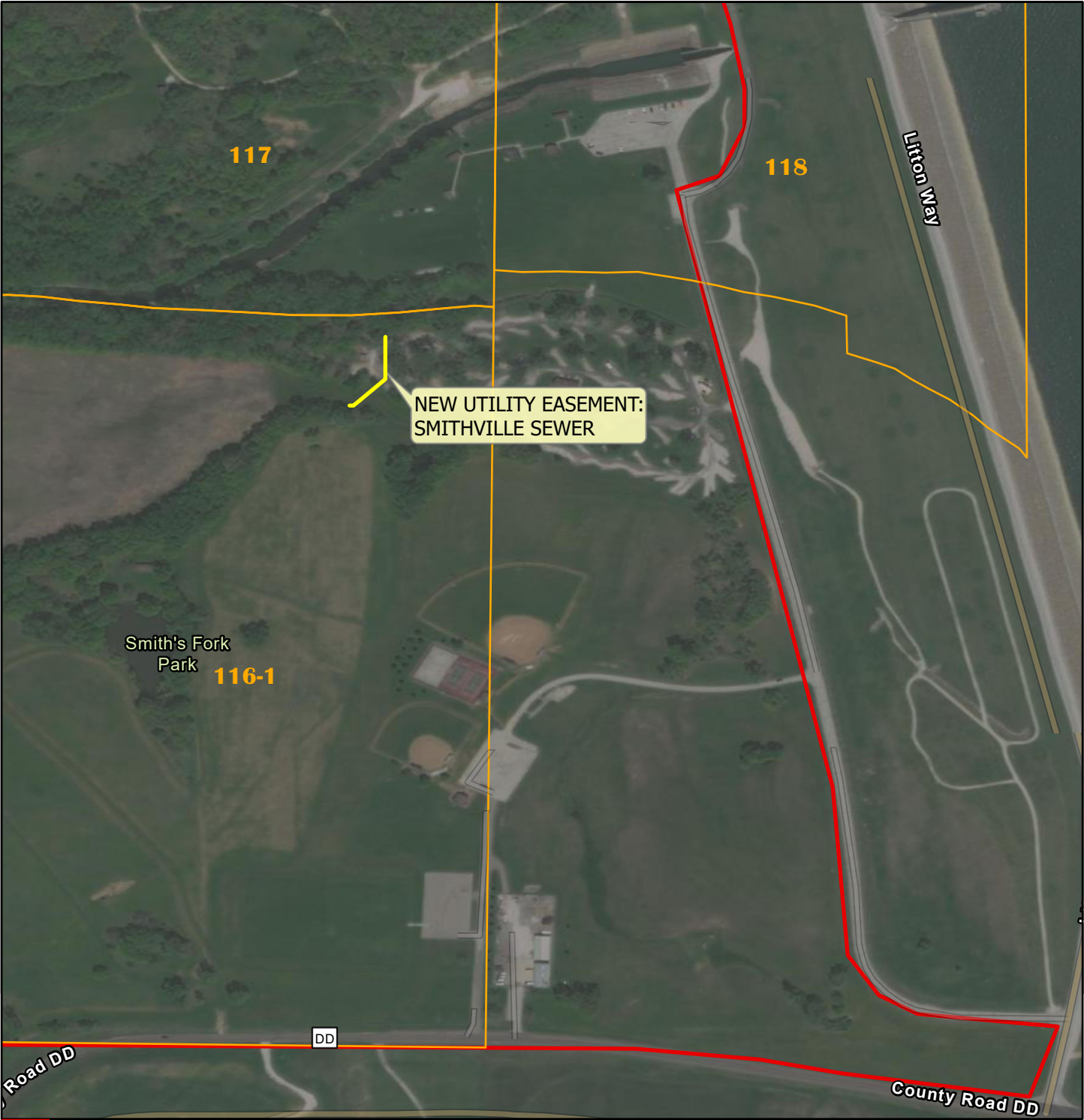
<<legal description of temporary work area>>

Exhibit C

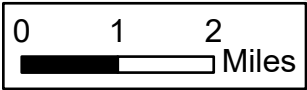
<<water supply agreement DACW41-73-C-0007>>



SMITHVILLE LAKE
CLAY COUNTY, MISSOURI
CITY OF SMITHVILLE
TRACT NO: 116-1, 117, 118
S: 13, T: 53N, R: 32W
0.2 ACRES



 SM_OUTGRANTS selection
 Tracts selection



SMITHVILLE LAKE
CLAY COUNTY, MISSOURI
CITY OF SMITHVILLE
TRACT NO: 116-1
S: 13, T: 53N, R: 32W
0.06 ACRES

City of Smithville
Authorization 89
Raw Water Pump Station

ATTACHMENT "A"

WATER LINE EASEMENT(1)

A tract of land being within the U.S. Government Reservation, Smithville Lake, Missouri in the Southwest Quarter of Section 13, Township 53 North, Range 33 West, Clay County, Missouri, more particularly described as follows:

Commencing at the southwest corner of Southwest Quarter of said Section 13; thence N00°01'38"W, along the west line thereof, 113.68 feet; thence departing said west line, N89°58'22"E, 1676.24 feet to the Point of Beginning; thence N09°35'54"W, 98.64 feet; thence N80°23'50"E, 86.00 feet; thence S09°35'54"E, 114.86 feet; thence S67°30'00"W, 77.51 feet; thence N26°54'31"W, 35.10 feet to the Point of Beginning.

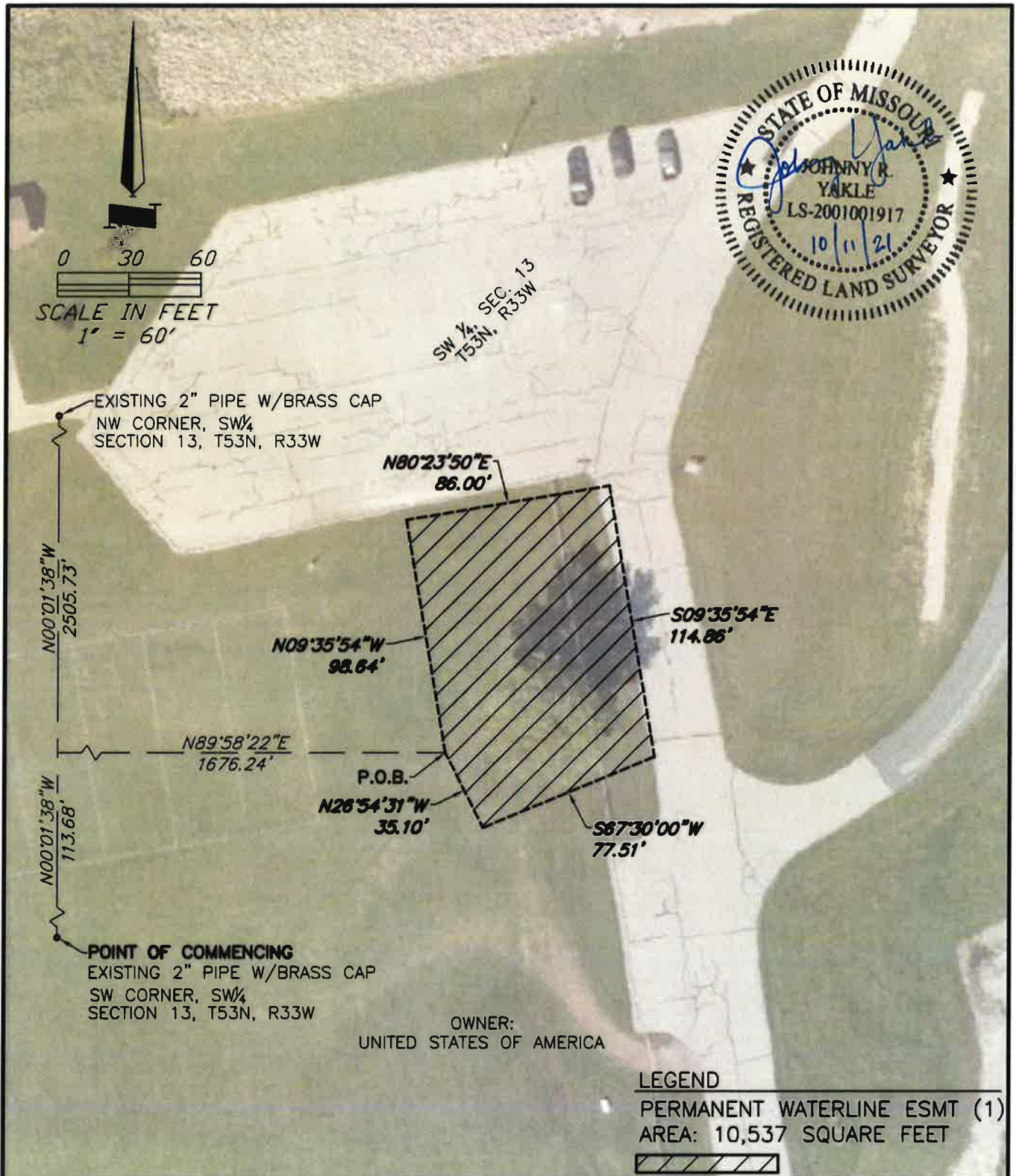
Containing in all 10,537 square feet, more or less.

(Note: The bearings in this description are based on Grid North, Missouri State Plane Coordinate System, NAD83)

*I hereby certify this description was prepared
by me or under my direct supervision.*

Johnny Yakle, MO LS No.2001001917
HDR Engineering
10450 Holmes Road
Kansas City, Mo. 64131
(816)360-2700





HDR ENGINEERING, INC.
10450 HOLMES RD. STE 600, KANSAS CITY, MO
64131-3471 - PH:816-360-2700
MO. CERTIFICATE OF AUTHORITY NO. #000856

EXHIBIT
PERMANENT WATERLINE ESMT (1)

OWNER: UNITED STATES OF AMERICA



107 WEST MAIN ST
SMITHVILLE, MO 64089

TBS
JRY

City of Smithville
Authorization 89
Raw Water Pump Station

ATTACHMENT "A"

WATER LINE EASEMENT(2)

A strip of land 20 feet in width being within the U.S. Government Reservation, Smithville Lake, Missouri in the Southwest Quarter of Section 13, Township 53 North, Range 33 West, Clay County, Missouri, said strip lying 10 feet on both sides of, parallel with and adjacent to the following described centerline:

Commencing at the southwest corner of Southwest Quarter of said Section 13; thence N00°01'38"W, along the west line thereof, 164.78 feet; thence departing said west line, N89°58'22"E, 1754.84 feet to the Point of Beginning; thence N80°24'06"E, 33.87 feet; thence N32°07'39"E, 19.67 feet; thence N12°52'21"W, 69.18 feet; thence N32°07'39"E, 186.37 feet; thence N09°37'39"E, 30.05 feet; thence N32°07'24"E, 50.00 feet to the Point of Termination.

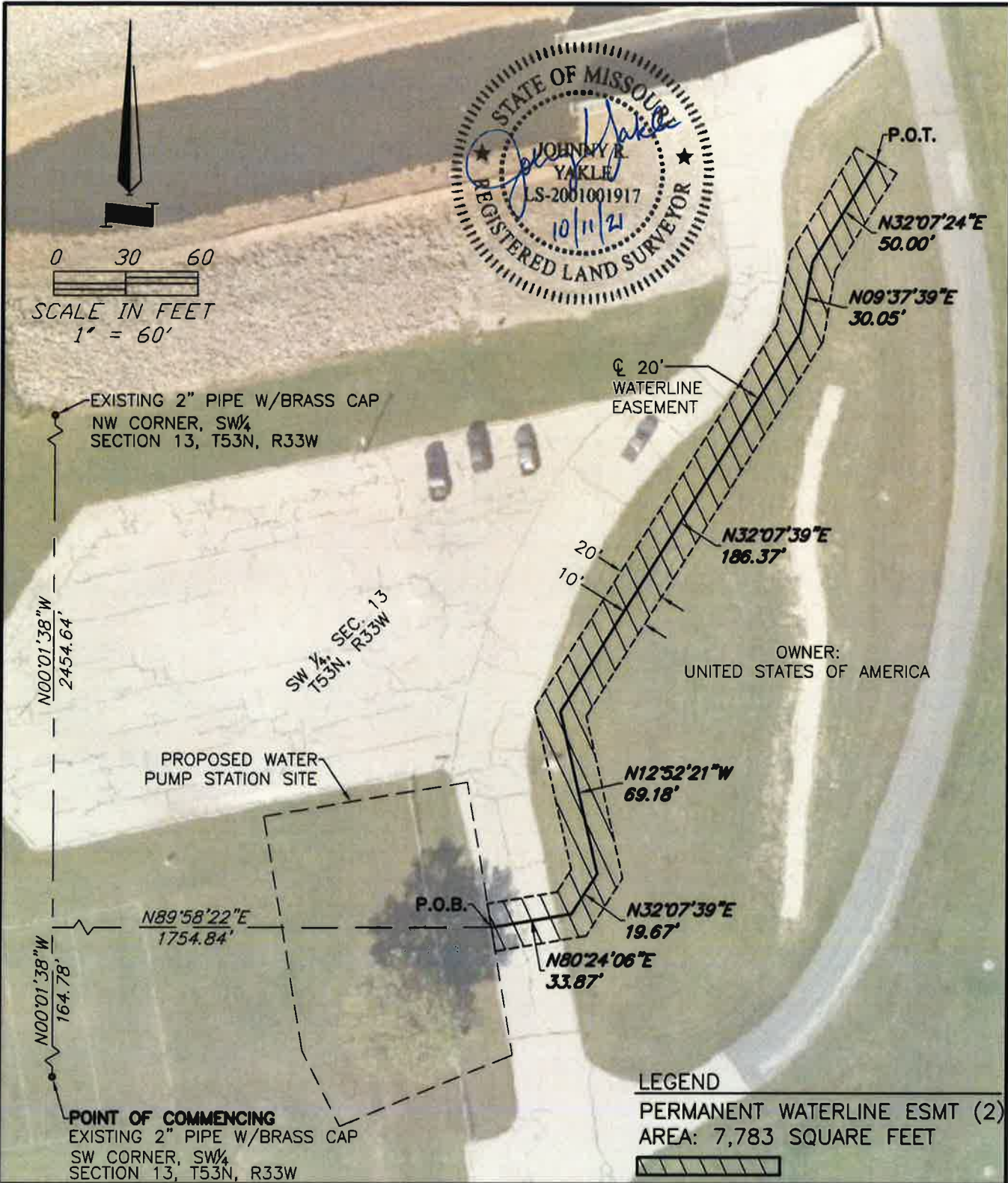
Said strip containing in all 7,783 square feet, more or less.

(Note: The bearings in this description are based on Grid North, Missouri State Plane Coordinate System, NAD83)

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Kansas City, Mo. 64131
(816)360-2700





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10450 HOLMES RD. STE 600, KANSAS CITY, MO
64131-3471 - PH:816-360-2700
MO. CERTIFICATE OF AUTHORITY NO. #000856

EXHIBIT
PERMANENT WATERLINE ESMT (2)

OWNER: UNITED STATES OF AMERICA



107 WEST MAIN ST
SMITHVILLE, MO 64089

TBS
JRY

City of Smithville
Authorization 89
Raw Water Pump Station

ATTACHMENT "A"

WATER LINE EASEMENT(3)

A strip of land 35 feet in width being within the U.S. Government Reservation, Smithville Lake, Missouri in the Southwest Quarter of Section 13, the Northwest Quarter of Section 24 and the Southwest Quarter of Section 24 in Township 53 North, Range 33 West, Clay County, Missouri, said strip lying 17.5 feet on both sides of, parallel with and adjacent to the following described centerline:

Commencing at the southwest corner of Southwest Quarter of said Section 13; thence N00°01'38"W, along the west line thereof, 98.03 feet; thence departing said west line, N89°58'22"E, 1684.17 feet to the Point of Beginning; thence S67°30'00"W, 758.28 feet; thence S00°00'00"E, 1755.83 feet; thence N90°00'00"W, 843.45 feet; thence S00°00'00"E, 647.00 feet; thence N90°00'00"W 156.14 feet; thence S00°26'02"W, 51.04 feet to the south line of the Southwest Quarter of Section 24; thence continue S00°26'02"W, 160.00 feet to the northerly right of way line of Missouri State Highway DD, and the Point of Termination.

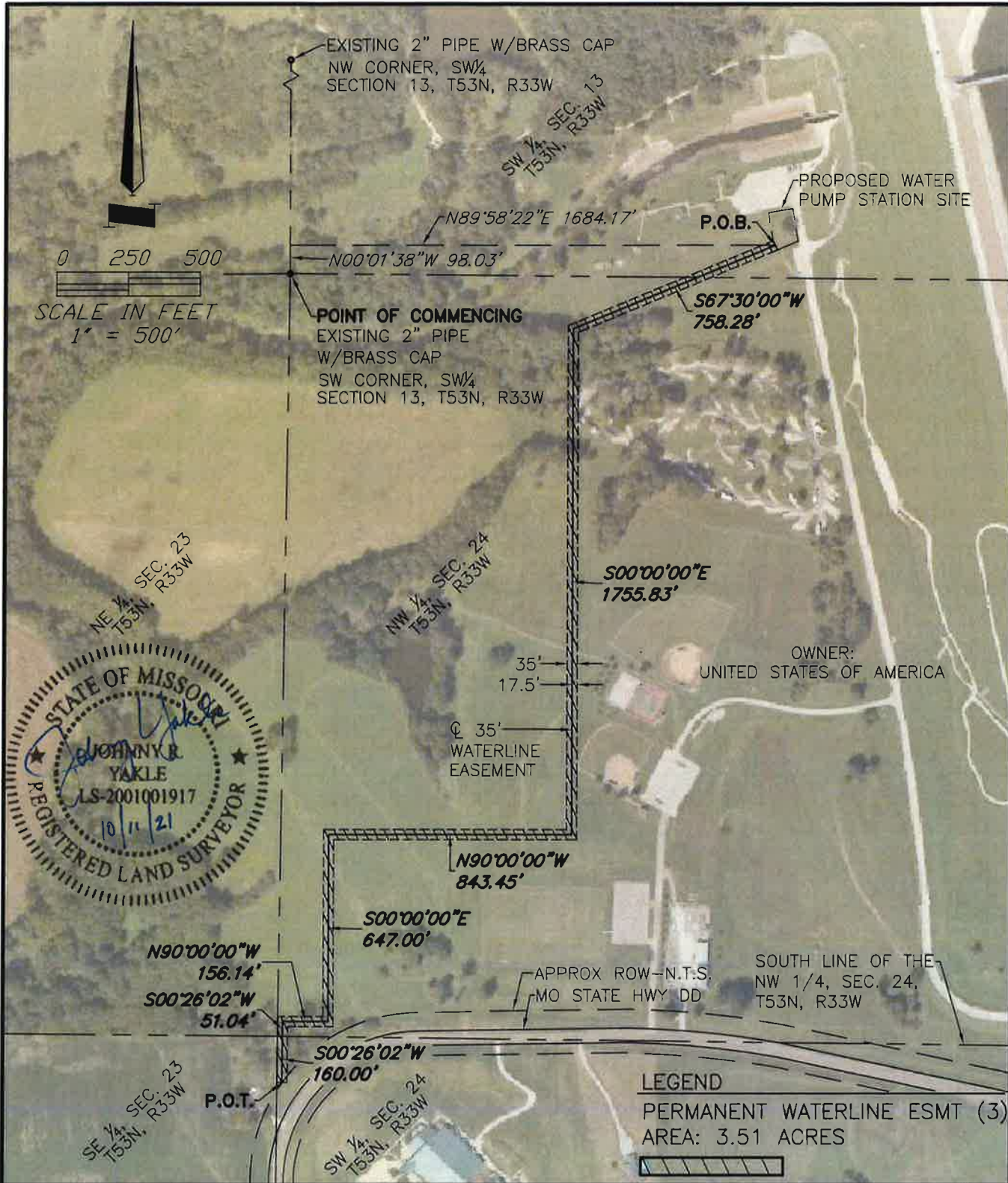
Said strip containing in all 3.51 acres, more or less.

(Note: The bearings in this description are based on Grid North, Missouri State Plane Coordinate System, NAD83)

*I hereby certify this description was prepared
by me or under my direct supervision.*

Johnny Yakle, MO LS No.2001001917
HDR Engineering
10450 Holmes Road
Kansas City, Mo. 64131
(816)360-2700





HDR ENGINEERING, INC.
10450 HOLMES RD. STE 600, KANSAS CITY, MO
64131-3471 - PH:816-360-2700
MO. CERTIFICATE OF AUTHORITY NO. #000856

EXHIBIT
PERMANENT WATERLINE ESMT (3)

OWNER: UNITED STATES OF AMERICA



107 WEST MAIN ST
SMITHVILLE, MO 64089

TBS
JRY

City of Smithville
Authorization 89
Raw Water Pump Station

ATTACHMENT "A"

SEWER EASEMENT

A strip of land 15 feet in width being within the U.S. Government Reservation, Smithville Lake, Missouri in the Northwest Quarter of Section 24, Township 53 North, Range 33 West, Clay County, Missouri, said strip lying 7.5 feet on both sides of, parallel with and adjacent to the following described centerline:

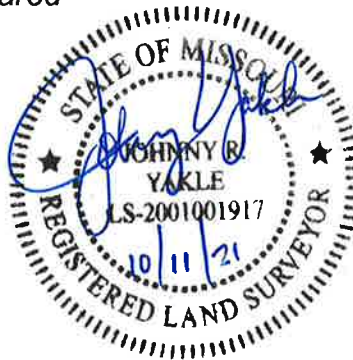
Commencing at the northwest corner of Northwest Quarter of said Section 24; thence S00°44'04"W, along the west line thereof, 570.30 feet; thence departing said west line, S89°15'56"E, 1008.46 feet to the Point of Beginning; thence N90°00'00"E, 5.62 feet; thence N30°39'42"E, 71.00 feet; thence N00°00'00"E, 110.00 feet to the Point of Termination.

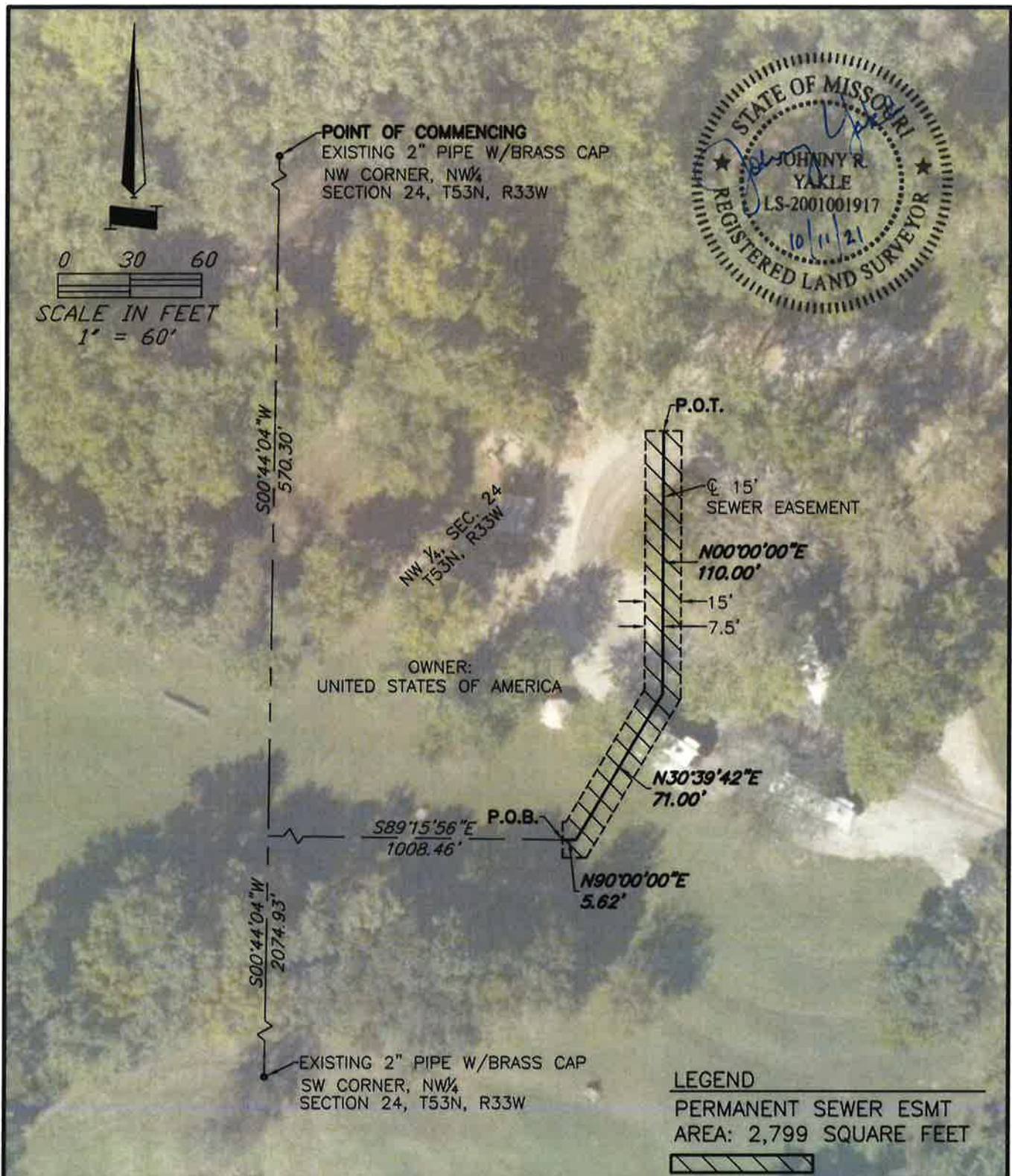
Said strip containing in all 2,799 square feet, more or less.

(Note: The bearings in this description are based on Grid North, Missouri State Plane Coordinate System, NAD83)

*I hereby certify this description was prepared
by me or under my direct supervision.*

Johnny Yakle, MO LS No.2001001917
HDR Engineering
10450 Holmes Road
Kansas City, Mo. 64131
(816)360-2700





HDR ENGINEERING, INC.
10450 HOLMES RD. STE 600, KANSAS CITY, MO
64131-3471 - PH:816-360-2700
MO. CERTIFICATE OF AUTHORITY NO. #000856

**EXHIBIT
PERMANENT SEWER ESMT**

OWNER: UNITED STATES OF AMERICA



107 WEST MAIN ST
SMITHVILLE, MO 64089

TBS
JRY

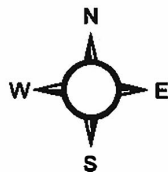
SMITHVILLE LAKE



0 195 390 780 1,170 1,560 Feet

Legend

- Pipeline
- Tracts
- Corps Boundary
- PLSS



SMITHVILLE LAKE, MISSOURI CITY
OF SMITHVILLE, MISSOURI
Raw water pipeline
TRACT NOs. 116-1, 117 & 118
S-13 & 33, T-53N, R-33W; 3.90 acres
Clay County, Missouri

Legal Description

DESCRIPTION:

A strip of land 35 feet in width, lying within the U.S. Government Reservation, Smithville Lake, Missouri, situated in the SE¼SW¼ of Section 13, and the W¼NW¼, the NW¼NE¼NW¼, and the NW¼NW¼SW¼ of Section 24, all in Township 53 North, Range 33 West of the Fifth Principal Meridian, Clay County, Missouri, and lying varying widths on each side of the following described line:

Commencing at a point on the north line of the SW¼ of said Section 24, said point being 15 feet east of the northwest corner of said SW¼; thence S 0°26'10" W, approximately 160 feet to the northerly right-of-way line of Missouri State Highway Route DD, said point being the point of beginning of the strip of land herein described; thence returning on the last described course with a width of 20 feet on the right and 15 feet on the left, approximately 208.52 feet; thence with a width of 15 feet on the right and 20 feet on the left N 90° E, 156.16 feet; thence with a width of 20 feet on the right and 15 feet on the left, N 0° E, 652 feet; thence continuing with the same width N 90° E, 843.45 feet; thence continuing with the same width N 0° E, 1755 feet; thence continuing with the same width N 67°30' E, 865 feet; thence continuing with the same width N 22°30' E, 295 feet; thence continuing with the same width N 13°30' E, 75 feet; containing 3.90 acres, more or less.

Contract . DACW41-73-C-0007

CONTRACT BETWEEN THE UNITED STATES OF AMERICA
AND
THE CITY OF SMITHVILLE, MISSOURI
FOR
WATER STORAGE SPACE IN SMITHVILLE LAKE, MISSOURI

THIS CONTRACT, entered into 72 AUG 30, by and between THE UNITED STATES OF AMERICA (hereinafter called the "Government") represented by the Contracting Officer executing this contract, and the city of Smithville, Missouri (hereinafter called the "User"):

WITNESSETH THAT:

WHEREAS, the Flood Control Act of 1965 (Public Law 298, 89th Congress), authorized the construction, operation, and maintenance of the Smithville Lake on Little Platte River, Missouri (hereinafter called the "Project"); and

WHEREAS, the User desires to contract with the Government for the use of storage included in the Project for municipal and industrial water supply, and for payment of the cost thereof in accordance with the provisions of the Water Supply Act of 1958, as amended (43 U.S.C. 390b); and

WHEREAS, the User is empowered so to contract with the Government and is vested with all necessary powers for accomplishment of the purposes of this contract, including those required by Section 221 of the Flood Control Act of 1970 (42 U.S.C. 1962d-5b);

NOW, THEREFORE, the Government and the User agree as follows:

ARTICLE 1 - Water Storage Space.

(a) Project Construction. The Government, subject to the directions of Federal law and any limitations imposed thereby, shall design and construct the Project so as to include therein space for the storage of water by the User.

(b) Rights of User.

(1) The User shall have the right to utilize an undivided 7.83 percent (estimated to contain 8,000 acre-feet after adjustment for sediment deposits) of the total storage space in the Project between elevations 864.2 feet above mean sea level and 836.3 feet above mean sea level, which total storage space is estimated to contain 102,200 acre-feet after adjustment for sediment deposits. This storage space is to be used to impound water for present and anticipated future demand or need for municipal and industrial water supply. Twenty-five percent (an estimated 2,000 acre-feet) of the space which User has a right to utilize is for present use water storage and 75.00 percent (an estimated 6,000 acre-feet) is for future use water storage.

(2) The User shall have the right to withdraw water from the lake, or to order releases to be made by the United States through the outlet works in the Dam, subject to the provisions of Article 1(c) and to the extent the aforesaid storage space will provide; and shall have the right to construct all such works, plants, pipelines, and appliances as may be necessary and convenient for the purpose of diversion or withdrawals, subject to the approval of the Contracting Officer as to design and location. The grant of an easement for right-of-way, across, in and upon land of the Government at the Project shall be by a separate instrument in a form satisfactory to the Secretary of the Army, without additional cost to the User, under the authority of and in accordance with the provisions of 10 U.S.C. 2669 and such other authority as may be required. Subject to the conditions of such easement, the User shall have the right to use so much of the Project land as may reasonably be required in the exercise of the rights and privileges herein granted.

(c) Rights Reserved. The Government reserves the right to maintain at all times a minimum downstream release of 8 cubic feet per second through the gates or spillway of the dam. The Government further reserves the right to take such measures as may be necessary in the operation of the Project to preserve life or property.

(d) Quality or Availability of Water. The User recognizes that this contract provides storage space for raw water only. The Government makes no representations with respect to the quality or availability of water and assumes no responsibility therefor, or for the treatment of the water.

ARTICLE 2 - Regulation of and Right to Use of Water. The regulation of the use of water withdrawn or released from the aforesaid storage space shall be the sole responsibility of the User. The User has the full responsibility to acquire in accordance with State laws and regulations, and, if necessary, to establish or defend, any and all water rights needed for utilization of the storage provided under this contract. The Government shall not be responsible for diversions by others, nor will it become a party to any controversies involving the use of the storage space by the User except as such controversies may affect the operations of the Government.

ARTICLE 3 - Operation and Maintenance. The Government shall operate and maintain the Project and the User shall pay to the Government a share of the costs of such operation and maintenance as provided in Article 5. The User shall be responsible for operation and maintenance of all installations and facilities which it may construct for the diversion or withdrawal of water, and shall bear all costs of construction, operation, and maintenance of such installations and facilities.

ARTICLE 4 - Measurement of Withdrawals and Releases. The User agrees to furnish and install, without cost to the Government, suitable meters

or measuring devices satisfactory to the Contracting Officer for the measurement of water which is withdrawn from the Project by any means other than through the Project outlet works. The User shall furnish to the Government monthly statements of all such withdrawals. Releases from the water supply storage space through the Project outlet works shall be made in accordance with written schedules furnished by the User and approved by the Contracting Officer and shall be subject to Article 1(c). The measure of all such releases shall be by means of a rating curve of the outlet works, or by such other suitable means as may be agreed upon prior to use of the water supply storage space.

ARTICLE 5 - Payments. In consideration of the right to utilize the aforesaid storage space in the Project for municipal and industrial water supply purposes, the User shall pay the following sums to the Government:

(a) Project Investment Costs.

(1) The User shall repay to the Government, at the times and with interest on the unpaid balance as hereinafter specified, the amounts stated below which, as shown in Exhibit A attached to and made a part of this contract, constitute the entire estimated amount of the construction costs, including interest during construction, allocated to the water storage right acquired by the User under this contract. The interest rate to be used for purposes of computing interest during construction and interest on the unpaid balance will be determined by the Secretary of the Treasury as of the beginning of the fiscal year in which construction of the Project is initiated, on the basis set forth in the Water Supply Act of 1958, as amended. Such interest rate at the time of negotiation of this contract is 3.649 percent. The User shall repay:

2.235 percent of the construction cost of specific water supply facilities, estimated at	\$27,267
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2.86 percent of the total Project joint-use construction costs, estimated at	\$1,023,637
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Interest during construction, estimated at	<u>\$56,912</u>
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Total estimated amount of Project investment costs allocated to the water supply storage space provided under this contract.	\$1,107,816
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(2) The Project investment costs allocated to the storage space indicated in Article 1(b)(1) as being provided for present demand is currently estimated at \$298,890, on the basis of the costs presented in Exhibit A. The amount of the Project Investment costs allocated to the storage for present demand shall be paid in 50 consecutive annual installments, the first of which shall be due and payable within 30 days after the User is notified by the Contracting Officer that the Project

is completed and operational for water supply purposes. Payments thereafter will be due and payable on the anniversary date of the first payment. Except for the first payment which will be applied solely to the retirement of principal, all installments shall include accrued interest on the unpaid balance at the rate provided above. The last annual installment shall be adjusted upward or downward when due to assure repayment of all of the investment costs allocated to the storage for present demand within 50 years.

(3) The amount of the Project investment costs allocated to the remaining portion of the storage space, that provided for future use, is currently estimated at \$808,926 on the basis of the costs presented in Exhibit A. No principal or interest payment with respect to this storage for future water supply is required to be made during the first 10 years following the date the Project is operational for water supply purposes, unless all or a portion of such storage is used during this period. The amount to be paid for any portion of such storage which is used shall be determined by multiplying the percentage of the total storage for future water supply which is placed in use by the total amount of the Project investment costs allocated to future water supply. Interest at the rate provided above will be charged on the amount of the Project investment costs allocated to the storage for future water supply which is not being used from the tenth (10th) year following the date the Project is operational for water supply purposes until the time when such storage is first used. The User may at its option pay the interest as it becomes due or allow the interest to accumulate until the storage is used. If this latter option is exercised, the interest will be compounded annually and added to the principal amount. When any portion of the storage for future water supply is used, payment in both principal and interest for the portion used must be started, and the amount of the Project investment costs allocated thereto, with interest on the unpaid balance as provided above, shall be paid within the life of the Project in not to exceed 50 consecutive annual installments beginning within 30 days after the date of first use of such portion.

(4) An estimated schedule of annual payments for the storage provided for present demand is attached as Exhibit B of this contract. The annual payments as provided therein shall be made until the actual construction costs of the Project are determined. When the actual construction costs of the Project are determined, the annual payments due thereafter will be adjusted to reflect any increase or decrease in the actual costs, including interest during construction, from the estimated amounts shown in Exhibit A. Payment schedules for the storage provided for future water supply demands will be furnished by the Contracting Officer when use of such storage is started, and if based on estimated costs will be subject to revision when actual costs are known.

(5) If the User shall fail to make any of the aforesaid payments when due, then the overdue payments shall bear interest compounded annually at the rate provided above until paid. The amount charged on

payments overdue for a period of less than one year shall be figured on a monthly basis. For example, if the payment is made within the first month after being overdue (31 to 60 days after the anniversary date), one month's interest shall be charged. This provision shall not be construed as giving the User a choice of either making payments when due or paying interest, nor shall it be construed as waiving any other rights of the Government, at law or in equity, which might result from any default by the User.

(6) The User shall have the right at any time it so elects to prepay the indebtedness under this Article 5(a), in whole or in part, with accrued interest thereon to the date of such prepayment.

(b) Annual Operation, Maintenance, and Major Capital Replacement Costs. The User will be required to pay 2.235 percent of the annual experienced operation, maintenance, and major capital replacement costs of specific water supply facilities. In addition, the User shall pay 0.536 percent of the annual experienced joint-use operation, maintenance, and major replacement costs of the Project until such time as the storage for future water supply is used. As the storage provided for future water supply demands is used, the share of the annual experienced joint-use operation, maintenance, and major capital replacement costs, which the User will be required to pay in addition to the operation, maintenance, and major capital replacement costs of the specific water supply facilities, will be increased commensurate with the percentage of the water supply storage being used, up to a total of 2.144 percent of such costs.

ARTICLE 6 - Construction Cost Adjustments. All construction cost dollar amounts in this contract, including those in the appendices, are tentative only, based on the Government's best estimates. They will be adjusted upward or downward by the Contracting Officer when final construction costs become known, and the contract will be modified to reflect the adjustments.

ARTICLE 7 - Duration of Contract. This contract shall be effective when approved by the Secretary of the Army and shall continue in full force and effect for the life of the Project.

ARTICLE 8 - Permanent Rights to Storage. Upon completion of payments by the User, as provided in Article 5(a) herein, the User shall have a permanent right, under the provisions of the Act of 16 October 1963 (Public Law 88-140, 43 U.S.C. 390e), to the use of the water supply storage space in the Project as provided in Article 1, subject to the following:

(a) The User shall continue payment of annual operation and maintenance costs allocated to water supply.

(b) The User shall bear the costs allocated to water supply of any necessary reconstruction, rehabilitation, or replacement of Project features which may be required to continue satisfactory operation of

the Project. Such costs will be established by the Contracting Officer. Repayment arrangements including schedules will be in writing and will be made a part of this contract.

(c) Upon completion of payments by the User as provided in Article 5(a) hereof, the Contracting Officer shall redetermine the storage space for municipal and industrial water supply, taking into account such equitable reallocation of reservoir storage capacities among the purposes served by the Project as may be necessary due to sedimentation. Such findings, and the storage space allocated to municipal and industrial water supply, shall be defined and described in an exhibit which will be made a part of this contract. Following the same principle, such reallocation of reservoir storage capacity may be further adjusted from time to time as the result of sedimentation resurveys to reflect actual rates of sedimentation and the exhibit revised to show the revised storage space allocated to municipal and industrial water supply.

(d) The permanent rights of the User under this contract shall be continued so long as the Government continues to operate the Project. In the event the Government no longer operates the Project, such rights may be continued subject to the execution of a separate contract, or additional supplemental agreement providing for:

(1) continued operation by the User of such part of the facility as is necessary for utilization of the water supply storage space allocated to it;

(2) terms which will protect the public interest; and

(3) effective absolvment of the Government by the User from all liability in connection with such continued operation.

ARTICLE 9 - Release of Claims. The User shall hold and save the Government, including its officers, agents, and employees harmless from liability of any nature or kind for or on account of any claim for damages which may be filed or asserted as a result of the storage in the Project, or withdrawal or release of water from the Project, made or ordered by the User or as a result of the construction, operation, or maintenance of the features of appurtenances owned and operated by the User, provided, that this shall not be construed as obligating the User to hold and save the Government harmless from damages or liability resulting from the sole negligence of the Government or its officers, agents, or employees and not involving negligence on the part of User or its officers, agents, or employees.

ARTICLE 10 - Assignment. The User shall not transfer or assign this contract or any rights acquired thereunder, nor suballot said water supply storage space or any part thereof, nor grant any interest, privilege or license whatsoever in connection with this contract, without the approval of the Secretary of the Army, provided that, unless contrary to the public

interest, this restriction shall not be construed to apply to any water that may be obtained from the water supply storage space by the User and furnished to any third party or parties, nor any method of allocation thereof.

ARTICLE 11 - Officials Not to Benefit. No member of or delegate to Congress, or resident Commissioner, shall be admitted to any share or part of this contract, or to any benefit that may arise therefrom; but this provision shall not be construed to extend to this contract if made with a corporation for its general benefit.

ARTICLE 12 - Covenant Against Contingent Fees. The User warrants that no person or selling agency has been employed or retained to solicit or secure this contract upon an agreement or understanding for a commission, percentage, brokerage, or contingent fee excepting bona fide employees or bona fide established commercial or selling agencies maintained by the User for the purpose of securing business. For breach or violation of this warranty the Government shall have the right to annul this contract without liability or in its discretion to add to the contract price or consideration, or otherwise recover the full amount of such commission, percentage, brokerage, or contingent fee.

ARTICLE 13 - Environmental Quality. During any construction, operation, and maintenance by User of any facilities, specific actions will be taken to control environmental pollution which could result from such activity and to comply with applicable Federal, State, and local laws and regulations concerning environmental pollution. Particular attention should be given to (1) reduction of air pollution by control of burning, minimization of dust, containment of chemical vapors, and control of engine exhaust gases, and of smoke from temporary heaters; (2) reduction of water pollution by control of sanitary facilities, storage of fuels and other contaminants, and control of turbidity and siltation from erosion; (3) minimization of noise levels; (4) onsite and offsite disposal of waste and spoil; and (5) prevention of landscape defacement and damage.

ARTICLE 14 - Federal and State Laws.

(a) In acting under its rights and obligations hereunder, the User agrees to comply with all applicable Federal and State laws and regulations, including but not limited to the provisions of the Davis-Bacon Act (40 U.S.C. 276a et seq.); the Contract Work Hours and Safety Standards Act (40 U.S.C. 327-333); and Title 29, Code of Federal Regulations, Part 3.

(b) The User furnishes, as part of this contract, an assurance (Exhibit C) that it will comply with Title VI of the Civil Rights Act of 1964 (78 Stat. 241, 42 U.S.C. 2000d, et seq) and Department of Defense Directive 5500.11 issued pursuant thereto and published in Part 300 of Title 32, Code of Federal Regulations.

ARTICLE 15 - Definitions.

- (a) Joint-use costs - The costs of features used for any two or more project purposes.
- (b) Project investment costs - The initial cost of the Project, including: land acquisition; construction; interest during construction on the value of land, labor, and materials used for planning and construction of the Project.
- (c) Specific costs - The costs of project features normally serving only one particular project purpose.
- (d) Interest during construction - An amount of interest which accrues on expenditures for the establishment of Project services during the period between the actual outlay and the time the Project is first made available to User for water storage.

ARTICLE 16 - Approval. This contract is subject to the written approval of the Secretary of the Army and shall not be binding until so approved.

IN WITNESS WHEREOF, the parties have executed this contract as of the day and year first above written.

THE UNITED STATES OF AMERICA

THE CITY OF SMITHVILLE, MISSOURI

By

W. A. Needham
Colonel, Corps of Engineers
District Engineer
Contracting Officer

By

Harold Chance
President of the City Council

Phyllis Edwards
City Clerk

DATE

1 Sept 1972

DATE

August 28, 1972

APPROVED:

Robert F. Froehlike

By

Robert F. Froehlike
Secretary of the Army

DATE

27 NOV 1972

Approved this 28 day of August, 1972

Frank Evans
Mayor

EXHIBIT A

I - LAKE STORAGE

<u>Feature</u>	<u>Elevation</u> (ft., m.s.l.)	<u>Usable</u> <u>Storage*</u> (ac.-ft.)	<u>Percent of</u> <u>Conservation</u> <u>Storage</u>
Flood control	876.2 - 864.2	102,200	
Multipurpose storage	864.2 - 836.3	102,200	
Water supply		95,200	93.15
Smithville, Missouri (8.40% of water supply storage)		(8,000)	(7.83)
Initial (2.10% of water supply storage)		(2,000)	(1.96)
Future (6.30% of water supply storage)		(6,000)	(5.87)
Others		(87,200)	(85.32)
Water quality control		<u>7,000</u>	<u>6.85</u>
Total		204,400	100.00

*Storage above elevation 836.3 remaining after 100 years sedimentation.

EXHIBIT A--con.

II - ALLOCATION OF ESTIMATED FIRST COST

	<u>First Cost</u>	<u>Percent of Joint-use</u>
Flood control (joint use)	\$18,588,217	51.9
Recreation	11,845,626	
Specific	\$7,004,750	
Joint-use	4,840,876	13.5
Water supply storage	13,406,156	
Specific	1,220,000	
Joint-use	12,186,156	34.1
Water quality control (joint use)	174,751	0.5
Road betterments (specific cost)	740,000	
Nonsponsored separable recreation lands	<u>305,250</u>	
Total	45,060,000	100.0

EXHIBIT A--con.

III - COSTS TO BE REPAYED BY THE USER
FOR W. S. STORAGE

Initial use:

Cost of 2,000 acre-feet of water supply storage
(2.10% x \$12,186,156)

\$255,909

Interest during construction at 3.649%
(2.10% x \$653,932)

13,732

Cost of water supply pipe
(2.235% x \$1,220,000)

27,267

Interest during construction at 3.649%
(2.235% x \$88,699)1,982

Total Initial Use Cost

\$298,890

Future use:

Cost of 6,000 acre-feet of water supply storage
(6.30% x \$12,186,156)

767,728

Interest during construction at 3.649%
(6.30% x \$653,932)41,198

Total Future Use Cost

\$808,926Total Initial and Future Use Cost to
Smithville, Missouri

\$1,107,816

EXHIBIT A—con.

 IV - ALLOCATION OF ESTIMATED ANNUAL OPERATION,
 MAINTENANCE AND MAJOR REPLACEMENT COSTS

	Water Supply						
	Smithville, Missouri					FC, WQC, REC, F&WL	Total
<u>Item</u>	<u>Initial</u>	<u>Future</u>	<u>Total</u>	<u>Others</u>	<u>Subtotal</u>		
	\$	\$	\$	\$	\$	\$	
Specific cost	45*	0	45	1,955	2,000	326,000	328,000
Joint-use cost	761**	2,284***	3,045	33,200	36,245	105,755	142,000
Total	806	2,284	3,090	35,155	38,245	431,755	470,000

*Based on 2.235 percent of specific cost allocated to water supply.

**Based on 2.10 percent of joint-use cost allocated to water supply.

***Based on 6.30 percent of joint-use cost allocated to water supply.

 V - ESTIMATED ANNUAL CHARGES TO USER FOR INITIAL
 USE OF WATER SUPPLY STORAGE SPACE

Interest and amortization of cost of water supply feature
 (0.042244 x \$298,890) = \$12,626

0.536% of the actual joint-use cost of operation, maintenance
 major replacement cost for the preceding fiscal year;
 computed as follows:

761
 142000 x 100 = 0.536% Estimated annual amount 761

2.235% of the actual specific cost of operation, maintenance,
 and major replacement for the preceding fiscal year 45

Total \$13,432

EXHIBIT B -

ESTIMATED SCHEDULE OF REPAYMENT

Easement No. DACW41-2-22-0010

INTEREST RATE = 0.036490
 INITIAL PRINCIPAL = \$ 298890.

YEAR	PAYMENT \$	INTEREST \$	BALANCE \$
			286264.00
1	12626	10445.77	284083.77
2	12626	10366.22	281823.99
3	12626	10283.76	279481.75
4	12626	10198.29	277054.04
5	12626	10109.70	274537.74
6	12626	10017.88	271929.62
7	12626	9922.71	269226.33
8	12626	9824.07	266424.40
9	12626	9721.83	263520.23
10	12626	9615.85	260510.08
11	12626	9506.01	257390.09
12	12626	9392.16	254156.25
13	12626	9274.16	250804.41
14	12626	9151.85	247330.26
15	12626	9025.08	243729.34
16	12626	8893.68	239997.02
17	12626	8757.49	236128.51
18	12626	8616.33	232118.84
19	12626	8470.02	227962.86
20	12626	8318.36	223655.22
21	12626	8161.18	219190.40
22	12626	7998.26	214562.66
23	12626	7829.39	209766.05
24	12626	7654.36	204794.41
25	12626	7472.95	199641.36
26	12626	7284.91	194300.27
27	12626	7090.02	188764.29
28	12626	6888.01	183026.30
29	12626	6678.63	177078.93
30	12626	6461.61	170914.54
31	12626	6236.67	164525.21
32	12626	6003.52	157902.73
33	12626	5761.87	151038.60
34	12626	5511.40	143924.00
35	12626	5251.79	136549.79
36	12626	4982.70	128906.49
37	12626	4703.80	120984.29
38	12626	4414.72	112773.01
39	12626	4115.09	104262.10
40	12626	3804.52	95440.62
41	12626	3482.63	86297.25
42	12626	3148.99	76820.24
43	12626	2803.17	66997.41
44	12626	2444.74	56816.15
45	12626	2073.22	46263.37
46	12626	1688.15	35325.52
47	12626	1289.03	23988.55
48	12626	875.34	12237.89
49	12626	446.56	0.
50	12684.45		

Exhibit "C"

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EXHIBIT C - ASSURANCE OF COMPLIANCE WITH THE DEPARTMENT OF DEFENSE
DIRECTIVE UNDER TITLE VI OF THE CIVIL RIGHTS ACT OF 1964

THE CITY OF SMITHVILLE, MISSOURI

(hereinafter called "Applicant-Recipient")

HEREBY AGREES THAT it will comply with title VI of the Civil Rights Act of 1964 (Public Law 88-352) and all requirements imposed by or pursuant to the Directive of the Department of Defense (32 Code of Federal Regulations Part 300, issued as Department of Defense Directive 5500.11, 28 December 1964) issued pursuant to that title, to the end that, in accordance with title VI of that Act and the Directive, no person in the United States shall, on the ground of race, color, or national origin be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program or activity for which the Applicant-Recipient receives Federal financial assistance from Department of the Army and HEREBY GIVES ASSURANCE THAT it will immediately take any measures necessary to effectuate this agreement.

If any real property or structure thereon is provided or improved with the aid of Federal financial assistance extended to the Applicant-Recipient by this Department of the Army, assurance shall obligate the Applicant-Recipient, or in the case of any transfer of such property, any transferee, for the period during which the real property or structure is used for a purpose for which the Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits. If any personal property is so provided, this assurance shall obligate the Applicant-Recipient for the period during which it retains ownership or possession of the property. In all other cases, this assurance shall obligate the Applicant-Recipient for the period during which the Federal financial assistance is extended to it by Department of the Army.

THIS ASSURANCE is given in consideration of and for the purpose of obtaining any and all Federal grants, loans, contracts, property, discounts, or other Federal financial assistance extended after the date hereof to the Applicant-Recipient by the Department, including installment payments after such date on account of arrangements for Federal financial assistance which were approved before such date. The Applicant-Recipient recognizes and agrees that such Federal financial assistance will be extended in reliance on the representations and agreements made in this assurance, and that the United States shall have the right to seek judicial enforcement of this assurance. This assurance is binding on the