WHEREAS, The County of Fayette, as Trustee for the Taxing Districts therein, has undertaken a program to collect delinquent taxes and to perfect titles to real property in cases in which the taxes on such real property have not been paid, pursuant to 35ILCS 200/21-90, and

WHEREAS, Pursuant to this program, the County of Fayette, as Trustee for the Taxing Districts therein, has acquired an interest in the following described real estate:

18-VANDALIA TOWNSHIP

PERMANENT PARCEL NUMBER: 18-14-16-330-005

As described in certificates(s) : NONE sold November 2016

and it appearing to the County board that it is in the best interest of the County to dispose of its interest in said property.

WHEREAS, Dennis Grubaugh, Deborah Grubaugh, has bid $3,265.00 for the County's interest, such bid having been presented to the County board at the same time it having been determined by the County board and the Agent for the County, that the County shall receive from such bid $2,400.00 as a return for its certificate(s) of purchase. The County Clerk shall receive $0.00 for cancellation of Certificate(s) and to reimburse the revolving account the charges advanced from this account, the auctioneer shall receive $0.00 for his services and the Recorder of Deeds shall receive $65.00 for recording. The remainder is the amount due the Agent under his contract for services. The total paid by purchaser is $3,265.00.

WHEREAS, your County board recommends the adoption of the following resolution:

BE IT RESOLVED BY THE COUNTY BOARD OF FAYETTE COUNTY, ILLINOIS, that the Chairman of the Board of Fayette County, Illinois, be hereby authorized to execute a deed of conveyance of the County's interest or authorize the cancellation of the appropriate Certificate(s) of Purchase, as the case may be, on the above described real estate for the sum of $2,400.00 to be paid to the Treasurer of Fayette County Illinois, to be disbursed according to law. This resolution to be effective for sixty (60) days from this date and any transaction between the above parties not occurring within this period shall be null and void.

ADOPTED by roll call vote this 10th day of December, 2019

ATTEST:

CLERK

COUNTY BOARD CHAIRMAN

SALE TO NEW OWNER
WHEREAS, The County of Fayette, as Trustee for the Taxing Districts therein, has undertaken a program to collect delinquent taxes and to perfect titles to real property in cases in which the taxes on such real property have not been paid, pursuant to 35ILCS 200/21-90, and

WHEREAS, Pursuant to this program, the County of Fayette, as Trustee for the Taxing Districts therein, has acquired an interest in the following described real estate:

18-VANDALIA TOWNSHIP

PERMANENT PARCEL NUMBER: 18-14-17-156-008

As described in certificates(s) : NONE sold November 2016

and it appearing to the County board that it is in the best interest of the County to dispose of its interest in said property.

WHEREAS, E & L Realty, LLC, has bid $4,000.00 for the County's interest, such bid having been presented to the County board at the same time it having been determined by the County board and the Agent for the County, that the County shall receive from such bid $2,951.25 as a return for its certificate(s) of purchase. The County Clerk shall receive $0.00 for cancellation of Certificate(s) and to reimburse the revolving account the charges advanced from this account, the auctioneer shall receive $0.00 for his services and the Recorder of Deeds shall receive $65.00 for recording. The remainder is the amount due the Agent under his contract for services. The total paid by purchaser is $4,000.00.

WHEREAS, your County board recommends the adoption of the following resolution:

BE IT RESOLVED BY THE COUNTY BOARD OF FAYETTE COUNTY, ILLINOIS, that the Chairman of the Board of Fayette County, Illinois, be hereby authorized to execute a deed of conveyance of the County's interest or authorize the cancellation of the appropriate Certificate(s) of Purchase, as the case may be, on the above described real estate for the sum of $2,951.25 to be paid to the Treasurer of Fayette County Illinois, to be disbursed according to law. This resolution to be effective for sixty (60) days from this date and any transaction between the above parties not occurring within this period shall be null and void.

ADOPTED by roll call vote this 10th day of December, 2019

ATTEST:

CLERK

COUNTY BOARD CHAIRMAN

SALE TO NEW OWNER
#2019-12-10-C

LEVY RESOLUTION
FOR
TAX YEAR 2019 (Payable 2020)

BE IT RESOLVED by the County Board Members of the County of Fayette, State of Illinois, that there be and there is hereby levied upon all of the taxable property in the County of Fayette, State of Illinois, as the same is assessed and equalized for Tax Year 2019 for the following sums or so much thereof as may be legally extended for the following funds:

<table>
<thead>
<tr>
<th>NAME OF FUND</th>
<th>APPROPRIATED:</th>
<th>LEVIED:</th>
</tr>
</thead>
<tbody>
<tr>
<td>General Fund:</td>
<td>$5,272,247</td>
<td>$666,711</td>
</tr>
<tr>
<td>Health-TB Services Fund:</td>
<td>$2,538,694</td>
<td>$50,000</td>
</tr>
<tr>
<td>Social Security Fund:</td>
<td>$377,053</td>
<td>$256,881</td>
</tr>
<tr>
<td>IMRF Fund:</td>
<td>$555,354</td>
<td>$350,887</td>
</tr>
<tr>
<td>Liability Insurance and Work Comp Fund:</td>
<td>$525,734</td>
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<tr>
<td>Unemployment Insurance Fund:</td>
<td>$15,000</td>
<td>$14,840</td>
</tr>
<tr>
<td>County Highway Fund:</td>
<td>$596,055</td>
<td>$256,128</td>
</tr>
<tr>
<td>Federal Aid Matching Highway Fund:</td>
<td>$129,920</td>
<td>$128,058</td>
</tr>
<tr>
<td>County Bridge Fund:</td>
<td>$180,340</td>
<td>$128,058</td>
</tr>
<tr>
<td>Fayette County Coop Exten</td>
<td>$49,985</td>
<td>$49,386</td>
</tr>
<tr>
<td>377 Board:</td>
<td>$90,700</td>
<td>$89,636</td>
</tr>
<tr>
<td>Public Building Commission</td>
<td>$169,100</td>
<td>$167,073</td>
</tr>
</tbody>
</table>

PASSED AND APPROVED by the Fayette County Board Members on this 10th day of December, A.D., 2019.

ATTEST:

COUNTY CLERK

CHAIRMAN
ORDINANCE #2019-12-10-D
ORDINANCE PROVIDING FOR ANIMAL CONTROL
IN FAYETTE COUNTY ILLINOIS

This Ordinance shall be known as and referred to as the FAYETTE COUNTY ANIMAL CONTROL ORDINANCE.

WHEREAS, The County Board of Fayette County has determined that it is in the best interest of Fayette County that an Ordinance be established providing for animal control in concurrence with the State of Illinois Animal Control Act; and

WHEREAS, Illinois Compiled statutes, chapter 55, para., 5/5-1071 gives the County the power to regulate and prohibit the running at large of dogs in certain areas of the County; and

WHEREAS, Illinois Compiled statutes, Chapter 510, Para. 5-1 seq. required the County to effectuate a program for stray animal control and rabies prevention; and

WHEREAS, The County Board of Fayette County desires to establish an Animal Control Program and adopt by Ordinance the provisions of Animal Control Act for the State of Illinois set forth in Chapter 510, Section 5/1 et seq. of the 1992 Illinois Compiled Statutes.

NOW, THEREFORE, BE IT ORDAINED by the County Board of Fayette County as follows:

1. The provisions of the Animal Control Act set forth in Chapter 510, Section 5-1 et seq. of the 1992 Illinois Compiled Statutes as now exists or as may be amended from time to time hereafter are hereby adopted by the County Board of Fayette County and incorporated herein by reference thereto.

2. REPEAL OF PRIOR ORDINANCE AND RESOLUTIONS. All prior animal control and rabies inoculation ordinances and resolutions adopted by the County Board of Fayette County are hereby repealed as of the effective date of this Ordinance.

3. DEFINITIONS. As used in this Ordinance, the follow items shall have the following meanings:

a. Animal Control Officer means any person hired/contracted by the Administrator with the advice and consent of the County Board to carry out, assist with, or aid the Animal Control Program in any way.
b. Board means the County Board of Fayette County.
c. Dog means all members of the family Canidae.
d. Leash means a cord, robe, strap, chain or frame which shall be securely fastened to the collar or harness of a dog or other animal and shall be of enough strength to keep such dog or other animal under control.
e. Owner means any person having a right to property in a dog or other animal, or who has a dog or other animal in their care, or acts as its custodian or who knowingly permits a dog or other animal to remain on or about any premises occupied by him/her.
f. Stray Dog means any dog not on the premises of the owner or under control by leash, or identifiable by collar or tags.

4. PERSONNEL. The Chairman of the County Board of Fayette County shall appoint with the advice the consent of the Board, an Animal Control Administrator. The Administrator’s salary and expenses, if any, shall be set annually by the Board and incorporated in the annual budget. The Administrator may be removed for cause. The Administrator shall have control of all equipment and personnel and shall carry out the Animal Control Program in Fayette County. The Administrator will be responsible and accountable to the County Board for all equipment and personnel.

5. The Administrator shall control and prevent the spread of rabies, and shall also have the following duties:

   a. Administer the Animal Control Program in Fayette County.
   b. Make such reports as are required by the Director of the Department of Agriculture of the State of Illinois and the County Board of Fayette County.
   c. Direct the activities of and assign duties to the independent contractor / personnel working in the Fayette County Animal Control Program.

6. POWERS OF THE COUNTY BOARD. The County Board of Fayette County, by virtue of their Ordinance, has the following powers:

   a. Direct the Administrator to draft written rules and regulations for the operation of the Fayette County Animal Control Program as needed.
   b. Direct the Administrator to prepare an annual budget for the operation of the Fayette County Animal Control Program.

7. INOCULATION CERTIFICATES. The Administrator shall provide licensed veterinarians with rabies inoculation certificates in a form approved by the County Board of Fayette County, which shall be signed by the veterinarian administering the rabies inoculation vaccine. The original of said certificate shall be issued to the owner of the dog or other animal which has been inoculated and a copy of the certificate shall be returned to the Administrator or his designated representative.

8. DOG BITES. When the Administrator receives information that any person has been bitten by a dog or other animal, the Administrator or his authorized representative, shall have such dog or other animal confined under the management of a licensed veterinarian for a period of 10 days. The Administrator may, by regulation, permit such confinement to be reduced to a period of less than 10 days. Such veterinarian shall report the clinical condition of the dog or other animal immediately, with confirmation in writing to the Administrator within 24 hours after the dog or other animal is presented for examination, giving the owner’s name, address, the date of confinement, the breed, description, age, and sex of such dog or other animal, on appropriate form approved by the Administrator. The Administrator shall notify the attending physician or responsible health agency. At the end of the confinement period, the veterinarian shall submit a written report to the Administrator advising him of the final disposition of such dog or other animal on the appropriate forms approved by the
Administrator. When evidence is present that such dog or other animal was inoculated against rabies within the time prescribed by law, it may be confined in a manner, on the owner’s premises, which will prohibit it from biting any person for a period of 10 days, if the Administrator or other licensed veterinarian, adjudges such confinement satisfactory. The Administrator may, by regulation, permit such confinement to be reduced to a period of less than 10 days. At the end of confinement period, such dog or other animal shall be examined by the Administrator or licensed veterinarian.

Any person having knowledge that any person has been bitten by a dog or other animal is required to notify the Administrator promptly. Failure to notify the Administrator within 48 hours is a violation of this ordinance, unless good cause is shown. It is unlawful for the owner of such dog or other animal to euthanize, sell, give away or otherwise dispose of such dog or other animal known to have bitten a person, until it is released by the Administrator or his authorized representative. It is unlawful for the owner of such dog or other animal to refuse or fail to comply with the written or printed instructions made by the Administrator or his authorized representative. If such instructions cannot be delivered in person, they shall be mailed to the owner of such dog or other animal by regulation mail, postage prepaid to the address provided on the Inoculation Certificate or the last known address of the owner. The affidavit or testimony of the Administrator or his authorized representative delivering or mailing such instructions is prima facia evidence that the owner of such dog or other animal was notified of his responsibilities. Any expense incurred in the handling of a dog or other animal under this section shall be borne by the owner. For purpose of this section, the word “immediately” means by telephone, in person, or by other than use of the mail.

9. INOCULATION REQUIREMENT. Every owner of a dog or other animal four months or more of age shall cause such dog or other animal to be inoculated against rabies by a licensed veterinarian annually or every three years depending on the type of vaccine used and a valid certificate shall be issued. A Rabies inoculation tag shall be attached to the collar or harness and worn by the dog or other animal. (Consideration by Administrator or appointed representative shall be given to farm or hunting dogs or other special cases).

If a licensed veterinarian determines in writing that a rabies inoculation would compromise an animal's health, then the animal shall be exempt from the rabies inoculation requirement, however, the owner is still responsible for the tag fees.

If a bite occurs from an exempt animal, the exempt animal shall be treated as an unvaccinated animal. If the animal is exempt, the animal shall be re-examined by a licensed veterinarian on no less than an annual basis and be vaccinated against rabies as soon as the animal's health permits.

10. REGISTRATION. Every owner of a dog four months or more of age shall register such dog with the Fayette County Animal Control Administrator. Said registration shall include the documentation of a current inoculation. The following fees apply at the time of registration:

- 1 Year Registration of an Altered Animal: $5.00
- 1 Year Registration of an Un-Altered Animal: $15.00
- 3 Year Registration of an Altered Animal: $12.50
- 3 Year Registration of an Un-Altered Animal: $37.50
11. IMPOUNDMENT. The Animal Control Officer shall, and any peace officer may, apprehend and impound the following dogs:

   a. Dog or other animal which has bitten a person;
   b. Dogs or other animals four months or more of age which have not been inoculated against rabies by a licensed veterinarian;
   c. Dogs or other animals not on the premises of their owners and which do not have a currently valid rabies inoculation tag attached to their collar or harness; except for special circumstances or exemptions listed herein.
   d. Dogs or other animals which are not on the premises occupied by the owner and are not accompanied or supervised by the owner and are not on a leash when a complaint has been received by the Animal Control Officer.

12. When a dog or other animal whose owner is known is impounded, the Administrator or his authorized representative shall make diligent efforts to personally serve said owner with an impound notice. If the notice cannot be given personally to the owner, the notice shall be left with any person thirteen years or older residing at the address provided on the Inoculation Certificate or the last known address of the owner or by attaching the notice to the main entrance of the owner’s residence. An affidavit or testimony of the Administrator or his authorized representative who gives notice shall be prima facie evidence of the receipt of such notice by the owner. In the case of dogs impounded pursuant to paragraphs 11.b through 11.d of this Ordinance, if the dog is not redeemed within ten days of the date the notice was given of the dog impounded, the impounded dog shall be humanely dispatched, made available for adoption, or otherwise disposed of by the impounding facility as a stray dog in accordance with the laws that exist or may hereafter exist. When an owner cannot be identified, the animal shall be deemed a stray and if unclaimed for ten days shall be humanely dispatched, or made available for adoption, or otherwise disposed of by the impounding facility as a stray dog in accordance with the laws that exist or may hereafter exist. Should the owner become known after the three day period, all rights to the animal shall have been forfeited.

13. REDEMPTION. When the owner of any animal impounded pursuant to Paragraph 11.b through 11.d of this Ordinance desires to redeem the animal, the following procedure shall be followed:

   a. The Animal Control Officer shall collect a fee of $25.00 as a penalty for the first impoundment of the animal and ($100) for each subsequent impoundment of the same animal and ($10) per day for the Boarding of each animal, as allowed for by statutes, to be paid to the Treasurer of Fayette County, and this collection fee shall be effective immediately.

   At the time of release, the owner shall present a current registration and rabies inoculation certificate. If no current rabies inoculation certificate is available, a receipt from a licensed veterinarian showing fee for rabies inoculation has been paid must be presented prior to release.

14. PREVENTION OF SPREAD OF RABIES. Whenever a case of rabies has occurred in a locality, or when the proper officials of a government unit are apprehensive of the spread of rabies, the Administrator may order any or all of the following:
a. That all dogs or other animals in the locality be:
   i. Kept confined within an enclosure, or
   ii. Kept muzzled and restrained by leash.

b. That all owners or keepers of dogs or other animal take prophylactic measures as it deems necessary to prevent the spread of rabies.

c. Other measures as may be necessary to control the spread of rabies. The Administrator may determine the area of the locality in which, and the period during which, such orders shall be effective.

15. APPREHENSION AND INVESTIGATION. For the purpose of carrying out the provisions of their Ordinance, the Administrator or his authorized representative or any peace officer may enter onto private property to apprehend a dog or other animal thought to be infected with rabies, to apprehend a straying dog or other animal; or, to apprehend a dog or other animal who has bitten any person. At the request of the owner or occupier of private property, the Administrator or his authorized representative may enter onto such property to apprehend any dog whether said dog is wearing a rabies inoculation tag or an identification tag.

16. DUMPING OF ANIMALS. No person shall cause any animal to be dumped or abandoned in any area of Fayette County. Any person who has pled or is found guilty of such an offense shall be guilty of a petty offense and shall be fined not less than $100.00 or not more than $500.00.

17. SEVERABILITY. The invalidity of the provision or parts of provisions of this Ordinance or any rule or regulation pursuant thereto shall not affect the validity of the remainder of the Ordinance.

18. EFFECTIVE DATE. This Ordinance shall be effective ten (10) days after publication after passage by the Fayette County Board.
PASSED AND APPROVED by the Fayette County Board during their meeting held the 10th day of December, 2019.

JENNIFER WAGGONER YEA
JACOB HARRIS YEA
JEFFREY E. BECKMAN YEA
MERRELL H. COLLINS YEA
PATRICK G. CLICK, JR. YEA
GLEN W. DANIELS YEA
DEAN J. BERNHARDT YEA
DEBRA L. WARNER YEA
KEITH COLE YEA
DARRELL SCHAAL YEA
BRYCE KISTLER NAY
GLENN L. GURTNER YEA
GLENDRA BARTELS YEA
JOE A. WILLS YEA

Jeffery Beckman
Fayette County Board

ATTEST:

Vicky L. Conder
Fayette County Clerk
RESOLUTION NO. 2019-12-10-E

AUTHORIZING THE EXECUTION AND DELIVERY OF A TAX-FREE EQUIPMENT LEASE PURCHASE AGREEMENT AND RELATED DOCUMENTS, AND AUTHORIZING THE CHAIRMAN TO ENTER INTO A MEASUREMENT AND VERIFICATION SERVICES AGREEMENT WITH SMARTWATT

WHEREAS, Fayette County, IL issued a Request for Proposals (RFP) dated 01/09/2019 under Illinois Local Government Energy Conservation ACT, 50 ILCS 515 seeking proposals from qualified contractors to provide a comprehensive energy management and building-related capital improvement services to reduce utility and operating costs and selected SmartWatt for these services; AND

WHEREAS, projects have been identified under these services and Fayette County desires to implement energy savings; AND

WHEREAS, the savings will be used to fund the expense of the improvements; AND

WHEREAS, the Fayette County Board has reviewed and approved of this project; AND

WHEREAS, to proceed with these projects it is necessary to enter into a Guaranteed Energy Savings Contract to execute the energy saving facility improvements; AND

WHEREAS, it is now desired to approve the potential financing of this Project, at a maximum total project cost of $455,557 and to authorize various actions with the best financing option available, which may be determined via a forthcoming resolution, if necessary, once financing negotiations are completed, in substantially the form presented at this meeting, as well as related documents, AND

WHEREAS, it is necessary to enter into a Measurement & Verification, and Support Services Agreement with SmartWatt, to delineate the terms of the agreement and document the guaranteed energy savings.
NOW THEREFORE BE IT RESOLVED AS FOLLOWS:

Section 1. Upon the review and approval of the State’s Attorney, the Chairman of the Board, is hereby authorized to execute the Lease and related escrow contract in order to finance the Project described in the preambles hereof.

Section 2. The County Treasurer and other officers of the County are hereby authorized to take all action necessary or reasonably required in order to effectuate the intent of this resolution.

Section 3. The Chairman of the Board is hereby authorized to enter into a Measurement & Verification, and Support Services Agreement with SmartWatt.

Section 4. This resolution shall take effect immediately.
GUARANTEED ENERGY SAVINGS CONTRACT

THIS GUARANTEED ENERGY SAVINGS CONTRACT (this “Agreement”) is made and effective December 10, 2019 (the “Effective Date”), by and between FAYETTE COUNTY, ILLINOIS (“Owner”), with an address at 221 South 7th Street, Vandalia, IL 62471, and SMARTWATT ENERGY, INC. (“SmartWatt”), with an address at 3 Rosell Drive, Ballston Lake, New York 12019. Owner and SmartWatt are sometimes referred to herein, individually, as a “Party”, and, collectively, as the “Parties”.

RECITALS

A. Owner is a County incorporated under the laws of the State of Illinois, and is a Unit of Local Government within the meaning of the Illinois Local Government Energy Conservation Act, 50 ILCS 515 (the “Act”).

B. Owner owns and operates certain facilities described on the attached Schedule 1 (the “Facilities”), and desires to procure long-term energy cost savings and reduce related expenses in the operation of such Facilities.

C. SmartWatt is a New York business corporation and is duly authorized to do business in the State of Illinois, and is a Qualified Provider within the meaning of the Act, engaged in the business of and having experience and capabilities in providing energy efficiency services, including Energy Conservation Measures (“ECMs”), as defined in the Act.

D. Heretofore, Owner issued a Request for Proposals for the implementation and installation of ECMs at the Facilities, and, based on a full evaluation of all Proposals submitted, Owner selected the Proposal of SmartWatt as best meeting its needs herein.

E. Thereafter, and pursuant to SmartWatt’s Proposal, SmartWatt and Owner entered into an Investment Grade Audit Agreement, pursuant to which SmartWatt conducted an investment grade audit and delivered to Owner a detailed engineering and economic report (the “IGA Report”) that specifically identifies the ECMs that are recommended to be installed and/or implemented at the Facilities.

F. Pursuant to the IGA Report, Owner now desires to enter into this Agreement with SmartWatt as a Guaranteed Energy Savings Contract for the installation and implementation of the ECMs at the Facilities (the “Project”).

NOW, THEREFORE, the Parties agree as follows:

ARTICLE I
PRELIMINARY MATTERS

1.1 INCORPORATION. The Recitals set forth above are hereby incorporated into the body of this Agreement and made a binding part hereof.
1.2 THE IGA REPORT. The IGA Report is attached hereto as Exhibit A. Owner acknowledges that it has approved and accepted the IGA Report, which identifies all ECMs to be performed under this Agreement.

1.3 CONTRACT DOCUMENTS. The entire agreement of the Parties with respect to the Project is contained in the “Contract Documents”, which consist of: I) this Agreement ii) any Change Orders or other amendments to this Agreement, and iii) the following Exhibits and Schedules:

Exhibit A: The IGA Report  
Exhibit B: Certificate of Substantial Completion  
Schedule 1: The Facilities  
Schedule 2A: Scope of ECM Work  
Schedule 2B: Scope of MM&V Services  
Schedule 3: ECM Work Schedule  
Schedule 4: As-Built Drawings Requirements  
Schedule 5: Energy Savings Schedule  
Schedule 6A: ECM Work Schedule of Values  
Schedule 6B: MM&V Services Schedule of Values

The provisions of this Agreement shall control in the event of any conflict between its terms and those contained in any of the Exhibits or Schedules

ARTICLE II  
SCOPE AND TERM

2.1 SCOPE OF THE PROJECT. The Project shall consist of two phases: 1) the “Construction & Installation Phase”, in which the Equipment (as hereinafter defined) will be designed, constructed and/or installed into the Facilities and the ECMs shall be otherwise implemented (the “ECM Work”), and 2) the “MM&V Services Phase”, in which SmartWatt will provide ongoing energy savings monitoring and reporting services, and management and/or modification of the Equipment (the “MM&V Services”). The full scope of the ECM Work and the MM&V Services are set forth and detailed, respectively, on the “Scope of ECM Work” attached as Schedule 2A, and the “Scope of MM&V Services” attached as Schedule 2B. SmartWatt shall be responsible for the professional and technical accuracy of the ECM Work and the MM&V Services, whether performed by SmartWatt or by subcontractors or others on its behalf.

2.2 TERM. The term of this Agreement (the “Term”) shall commence on the Effective Date, and, unless sooner terminated in accordance with the terms hereof, shall continue for a period of fifteen (15) years from the MM&V Services Commencement Date (as hereinafter defined), but subject to the termination rights provided in Sections 2.2.1.
2.2.1 **RIGHT TO PARTIAL TERMINATION.** At any time following the first (1st) anniversary of the MM&V Services Commencement Date, and upon at least sixty (60) days’ prior written notice to SmartWatt, Owner shall have the right to terminate non-required MM&V Services set forth on Schedule 2B. If Owner so elects to partially terminate, all of the then-applicable terms and provisions of this Agreement shall continue in full force and effect, except that the MM&V Services Fee shall be equitably adjusted by the Parties in a manner consistent with Schedule 6B.

**ARTICLE III**
**THE ECM WORK**

3.1 **CONSTRUCTION AND INSTALLATION OF THE ECM WORK.** Subject to the other provisions of this Agreement, SmartWatt will act as a turn-key design-builder assuming total responsibility for the design, procurement of labor and materials for the improvements to the Facilities, and the installation and start-up of the energy efficiency equipment (the “Equipment”), as set forth in and in accordance with the Scope of ECM Work.

3.1.1 **CONSTRUCTION SCHEDULE.** The Construction and Installation Phase will commence upon either the issuance by Owner of a written notice to proceed or the written agreement of the Parties fixing such commencement date. The performance of the ECM Work shall be carried out and proceed in accordance with the schedule (the “ECM Work Schedule”) attached as Schedule 3. The ECM Work Schedule may be amended from time to time by the Parties due to changes in the ECM Work or other events affecting the completion of the ECM Work.

3.1.2 **STATUTORY COMPLIANCE.** In the performance of the ECM Work, including the installation of the Equipment, SmartWatt shall, and shall require all of its contractors, subcontractors, and all subcontractors under them to, as applicable, comply with the requirements of all applicable statutes and regulations. Without limiting the foregoing, SmartWatt shall otherwise give all notices and comply with all laws and ordinances legally enacted at the date of execution of the Agreement that govern the proper performance of the ECM Work.

3.1.3 **PERMITS AND APPROVALS.** SmartWatt shall be responsible for obtaining all necessary permits and approvals for the ECM Work, including the installation of the Equipment, and shall pay any and all permit fees. Owner shall use its best efforts to assist SmartWatt in obtaining all such necessary permits and approvals. The Equipment and the operation of the Equipment by SmartWatt shall conform to all federal, state and local code requirements in effect at the time of installation. Before SmartWatt commences any portion of the ECM Work that requires a permit or license, SmartWatt shall furnish copies of each such permit or license to Owner.

3.1.4 **PERFORMANCE.** Owner and SmartWatt shall coordinate the activities associated with the installation of the Equipment by SmartWatt with any ECM Work or installations of Owner, its employees and agents. SmartWatt shall not commit or permit any act that will materially interfere with the performance of business activities conducted
by Owner or its employees without the prior written approval of Owner, which shall not be unreasonably withheld, and provided that the ECM Work Schedule shall be modified if Owner requires SmartWatt to delay or re-sequence the ECM Work in order to accommodate Owner's operations. SmartWatt shall perform all of the ECM Work in such a manner so as not to harm the structural integrity of the Facilities or their operating systems. SmartWatt shall repair and restore to its original condition any area of damage caused by SmartWatt's performance under this Agreement. Owner reserves the right to review the ECM Work and to direct SmartWatt to take corrective action if, in the reasonable opinion of Owner, the structural integrity of the Facilities or its systems is or will be harmed. All costs associated with such corrective action to damage caused by SmartWatt's performance of the ECM Work shall be borne by SmartWatt. In addition, SmartWatt shall be responsible for the professional and technical accuracy of all ECM Work performed, whether by its own forces or by its subcontractors or others on its behalf. SmartWatt is responsible for general broom cleaning, and shall, to the fullest extent practicable, at all times keep the Facilities clean and free of debris, rubbish and dust. At the completion of the ECM Work, SmartWatt shall remove from the worksite all construction equipment, tools, surplus materials, waste materials and debris.

3.2 DESIGN AND CONSTRUCTION DOCUMENTS. Drawings, specifications, and other documents, including those in electronic form, furnished or utilized by SmartWatt are instruments of service (the "Instruments of Service"). SmartWatt shall retain all common law, statutory and other reserved rights, including copyrights in the Instruments of Service. Drawings, specifications, and other documents and materials and electronic data are furnished for use solely with respect to the Project.

3.2.1 SmartWatt grants to Owner a non-exclusive license to reproduce and use the Instruments of Service solely in connection with the Project, provided that Owner shall comply with all obligations, including prompt payment of sums when due. Owner shall not assign or transfer any license herein to another party without prior written agreement of SmartWatt. Any unauthorized reproduction or use of the Instruments of Service by Owner or others shall be at Owner's sole risk and expense without liability to SmartWatt, and its design professionals. Termination of this Agreement due to the default of Owner shall terminate this license. If this Agreement is terminated for any reason other than the default of Owner, Owner shall have a non-exclusive license to use the Instruments of Service for the completion, use and maintenance of the Project. Submission or distribution of SmartWatt's documents to meet official regulatory requirements or for similar purposes in connection with the Project is not to be construed as publication in derogation of the rights reserved here.

3.2.3 SmartWatt shall pay all royalties and license fees that may be due on the inclusion of any patented or copyrighted materials, methods or systems selected by SmartWatt and incorporated in the ECM Work. SmartWatt shall defend, indemnify and hold Owner harmless from all suits or claims for infringement of any patent rights or copyrights arising out of such selection. Owner agrees to defend, indemnify and hold SmartWatt harmless
from all suits or claims of infringement of any patent rights or copyrights arising out of any patented or copyrighted materials, methods or systems specified by Owner.

3.2.4 SmartWatt shall prepare and submit to Owner final marked up as-built drawings to the extent and as set forth in the attached Schedule 4.

3.3 WARRANTIES.

3.3.1 SmartWatt warrants that all materials and equipment furnished under the Construction and Installation Phase of this Agreement will be new unless otherwise specified, of good quality, in conformance with the Scope of ECM Work and all documents associated therewith, and free from defective workmanship and materials. Warranties with respect to the ECM Work, or applicable portion of the ECM Work, as the case may be, shall commence on the date of Substantial Completion thereof (as hereinafter defined). SmartWatt agrees to correct all ECM Work that is defective in workmanship or materials within a period of one (1) year from the date of Substantial Completion, or such longer periods of time as may be set forth with respect to specific warranties required hereunder.

3.3.2 SmartWatt shall collect, deliver, and, to the extent permissible, assign all manufacturers' warranties and Equipment manuals to Owner. There are no warranties that extend beyond the description on the face of any such warranty.

3.3.3 EXCEPT AS SET FORTH IN SECTIONS 3.3.1 AND 3.3.2, ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE WARRANTY OF MERCHANTABILITY AND THE WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, ARE EXPRESSLY DISCLAIMED. In addition, the warranties under this Section 3.3 shall be void and do not extend to any ECM Work that has been abused, altered, or misused, or that has been repaired by Owner or third parties without the supervisions or prior written approval of SmartWatt.

3.4 SAFETY OF PERSONS AND PROPERTY. SmartWatt shall endeavor to avoid injury, loss or damage to persons or property by taking reasonable steps to protect: a) its employees and other persons at the worksite, and b) and materials, supplies and equipment stored at the worksite for use in performance of the ECM Work. SmartWatt shall also oversee the safety precautions and programs of its subcontractors and suppliers at the worksite.

3.5 HAZARDOUS MATERIALS.

3.5.1 A “Hazardous Material” is any substance or material identified now or in the future as hazardous under any federal, state or local law or regulation, or any other substance or material that may be considered hazardous or otherwise subject to statutory or regulatory requirements governing handling, disposal and/or clean-up. SmartWatt shall not be obligated to commence or continue the ECM Work until all Hazardous material discovered at the Project site has been removed, rendered or determined to be harmless by Owner as certified by an independent testing laboratory approved by the appropriate government agency.
3.5.2 If after the commencement of the ECM Work, Hazardous Material is discovered at the Project site, SmartWatt shall be entitled to immediately stop ECM Work in the affected area. SmartWatt shall report the condition to Owner and, if required, the government agency with jurisdiction. Owner shall be responsible for retaining any independent testing laboratory to determine the nature of the materials encountered and whether it is a Hazardous Material requiring corrective measures and/or remedial action. Such measures shall be the sole responsibility of Owner, and shall be performed in a manner minimizing any adverse effects upon the ECM Work. SmartWatt shall resume ECM Work in the area affected by any Hazardous Material only upon written agreement between the Parties after the Hazardous Material has been removed or rendered harmless and only after approval, if necessary, of the governmental agency or agencies with jurisdiction.

3.5.3 SmartWatt shall not be required to perform any ECM Work relating to or in the area of Hazardous Material without written mutual agreement.

3.5.4 If SmartWatt incurs additional costs and/or is delayed due to the presence or remediation of Hazardous Material, SmartWatt shall be entitled to an equitable adjustment in compensation and/or the ECM Work Schedule.

3.5.5 To the extent not caused by the negligent acts or omissions of SmartWatt, or its subcontractors or suppliers, and their agents, officers, and employees of each of them, Owner shall defend, indemnify and hold harmless SmartWatt, its subcontractors, suppliers, and their agents, officers and employees, from and against any and all claims, damages, penalties, losses, expenses, and other liabilities, including attorney’s fees, arising out of or relating to the performance of the ECM Work in any area affected by Hazardous Material.

3.5.6 During the performance of the ECM Work, SmartWatt shall be responsible for the proper handling of all materials brought by it to the worksite. The provisions of this Section 3.5 shall also apply to the MM&V Services, and, without limiting the foregoing, on and after the MM&V Services Commencement Date, Owner shall be responsible under this Section 3.5 for materials and substances brought to the site by SmartWatt if such materials or substances are required by the Contract Documents.

3.5.7 The terms of this Section 3.5 shall survive the completion of the ECM Work and the termination of this Agreement.

3.6 SYSTEMS START-UP AND TRAINING.

3.6.1 Upon Substantial Completion of the ECM Work, with the assistance of Owner’s personnel, SmartWatt shall direct the checkout of Equipment and start-up operations, and adjusting and balancing of Equipment and for readiness. SmartWatt shall also secure required certificates of inspection, testing or approval and deliver them to Owner.
3.6.2 SmartWatt shall conduct the training program described in Schedule 2A. The training specified in Schedule 2A shall be completed prior to Final Completion (as hereinafter defined) of the ECM Work.

3.7 SUBSTANTIAL COMPLETION/FINAL COMPLETION

3.7.1 “Substantial Completion” means that stage in the progress of the ECM Work when the ECM Work, or designated portion thereof, is sufficiently complete in accordance with this Agreement so that Owner can use or occupy the Facilities and utilize the ECM Work or designated portion thereof for its intended use. Upon Substantial Completion, the Parties shall execute a Certificate of Substantial Completion fixing the date of Substantial Completion and listing all unfinished items of ECM Work, in substantially the form attached hereto as Exhibit B.

3.7.2 “Final Completion” means the point when all of the ECM Work is fully and finally complete in accordance with the requirements of this Agreement, and Owner has accepted the ECM Work, which acceptance shall not be unreasonably delayed or conditioned by Owner.

ARTICLE IV
THE MM&V SERVICES

4.1 COMMENCEMENT OF THE MM&V SERVICES. The date of the commencement of SmartWatt’s obligations under the MM&V Services Phase (the “MM&V Services Commencement Date”) shall be the date that: (i) Substantial Completion has been achieved for all portions of the ECM Work, and (ii) the systems start-up and training obligations under Section 3.6 have been completed. SmartWatt’s obligations under the MM&V Services Phase shall thereafter continue until the conclusion of the Term or any earlier termination of this Agreement.

4.2 THE MM&V SERVICES.

4.2.1 During the MM&V Services Phase SmartWatt shall perform those MM&V Services set forth in and in accordance with the Scope of MM&V Services. Without limiting the foregoing, SmartWatt shall perform and carry out the duties and obligations set forth below in Section 4.2.2.

4.2.2 For each year after the MM&V Services Commencement Date, within sixty (60) days of the anniversary date of the MM&V Services Commencement Date, SmartWatt shall provide Owner with an annual energy savings guarantee reconciliation report, that calculates annual energy savings according to the Energy Savings Methodologies defined in the “Energy Savings Schedule” attached hereto as Schedule 5. SmartWatt will provide Owner with an explanation as to any variations between annual energy savings and the Guaranteed Energy Savings (as hereinafter defined) shown in the Savings Reconciliation Report. The Savings Reconciliation Report shall initially be submitted by SmartWatt to Owner in draft form whereupon SmartWatt and Owner shall use their best efforts to resolve any discrepancies in the draft Savings Reconciliation Report as soon as possible so as to
arrive at mutually acceptable Savings Reconciliation Report. SmartWatt and Owner will indicate their acceptance of the Savings Reconciliation Report by signing at the end thereof.

4.3 GUARANTEED ENERGY SAVINGS.

4.3.1 SmartWatt has formulated and hereby guarantees the energy and operations savings (the “Guaranteed Energy Savings”) to be achieved as a result of the installation and operation of the ECM Work and the provisions of the MM&V Services, as set forth in the Energy Savings Schedule (Schedule 5). The amount of the Guaranteed Energy Savings is subject to modification based upon i) changes in the ECM Work after the Effective Date, ii) changes in the MM&V Services after the Effective Date, and iii) Material Changes, and the Parties shall reflect all such modifications by revising accordingly the Guaranteed Energy Savings and any other applicable portions of the Energy Savings Schedule.

4.3.2 Commencing with the first twelve (12) month period following the MM&V Services Commencement Date, and for each additional twelve (12) month period of the term where the energy savings, as calculated using the method defined in the Energy Savings Schedule, are less than the Guaranteed Energy Savings, SmartWatt agrees to pay to Owner the difference between the Guaranteed Energy Savings and the sum of the actual energy savings as calculated. SmartWatt will make any such Guaranteed Energy Savings payment within ninety (90) days of the date of Owner’s acceptance of the Savings Reconciliation Report pursuant to Section 4.3.1.

4.4 EQUIPMENT SERVICE AND MODIFICATION.

4.4.1 Owner shall not move, remove, modify, alter, or change the Equipment or any part thereof ("Alterations") in any way without the prior written approval of SmartWatt, except in the event of a bona fide emergency where it is not reasonably possible to notify SmartWatt before carrying out Alterations. In the event of such an emergency, Owner shall take reasonable steps to protect the Equipment from damage or injury, shall follow any instructions for emergency action provided in advance by SmartWatt, and shall notify SmartWatt within three (3) business days of such emergency. Any telephonic notice of such emergency shall be followed within one (1) business day by written notice to SmartWatt from Owner. Owner agrees to maintain the Facilities in good repair and to protect and preserve all portions thereof that may in any way affect the operation or maintenance of the Equipment.

4.4.2 In the event that any actions of Owner, including but not limited to the carrying out of Alterations, affect the performance of the Equipment, the Guaranteed Energy Savings shall be adjusted to reflect the impact of such actions. If Owner unreasonably delays in notifying SmartWatt of changes resulting from an emergency and/or Owner does not receive written approval to carry out Alterations, all Guaranteed Energy Savings obligations of SmartWatt under Section 4.3 and elsewhere in this Agreement shall automatically cease and be of no further force or effect.
4.4.3 At all times during the Term, SmartWatt shall have the right, subject to Owner's prior written approval, which approval shall not be unreasonably withheld, to change the Equipment or any related energy automation management systems, revise any procedures for the operation thereof, and/or implement other energy saving actions in the Facilities, provided that: (i) such modifications are necessary, in SmartWatt’s reasonable judgment, to enable SmartWatt to achieve the Guaranteed Energy Savings at the Facilities, and (ii) any cost incurred relative to such modifications, additions or replacement of the Equipment, or operational changes or new procedures shall be the responsibility of SmartWatt. All such modifications, additions or replacements of the Equipment or revisions to operating or other procedures shall be described in a supplemental schedule to be provided to Owner.

ARTICLE V
OWNER’S RESPONSIBILITIES

5.1 GENERAL RESPONSIBILITIES.

5.1.1 Upon request of SmartWatt, Owner shall provide all available information in a timely manner regarding requirements for the Project, including all existing reports or studies regarding the physical characteristics of the site (such as surveys, site evaluations and existing conditions reports), legal descriptions, plans and drawings, building controls, systems, apparatus, equipment and machinery.

5.1.2 Owner shall promptly notify SmartWatt of all known unusual or materially change operating conditions that affect any Facilities, or any condition that may affect the ECM Work or the MM&V Services.

5.1.3 Owner shall appoint an authorized representative to facilitate SmartWatt’s performance of the ECM Work and the MM&V Services. The representative shall:

a) be fully acquainted with the ECM Work and the MM&V Services;

b) agree to furnish the information and MM&V Services required of Owner so as not to delay SmartWatt’s performance of its obligations under this Agreement; and

c) shall have authority to bind Owner in all matters requiring Owner’s approval, authorization or written notice. If Owner changes its representative or the representative’s authority as listed above, Owner shall notify SmartWatt in advance.
5.2 RESPONSIBILITIES DURING CONSTRUCTION & INSTALLATION PHASE.

5.2.1 Owner shall review the ECM Work Schedule as set forth in Section 3.1.1, timely approve any milestone dates set forth, and timely respond to its obligations thereunder.

5.2.2 Owner shall provide sufficient space at the site for the performance of the EPC Work. Owner shall provide access to the site and Facilities for SmartWatt to perform any function related to this Agreement during regular business hours, and at such other reasonable times as may be requested by SmartWatt. Owner shall not unreasonably restrict SmartWatt's access to the site or Facilities to make emergency repairs or corrections as SmartWatt may determine are needed.

5.2.3 Owner shall provide inspection and testing services during construction as required by law or as mutually agreed.

5.2.2 If Owner becomes aware of any error, omission or failure to meet the requirements of this Agreement or any fault or defect in the ECM Work, Owner shall give prompt written notice to SmartWatt.

5.3 RESPONSIBILITIES DURING THE MM&V SERVICES PHASE.

5.3.1 Owner shall provide SmartWatt with complete energy usage information and energy-using equipment information, as requested by SmartWatt. This information will include, but not be limited to:

a) Copies of all utility and fuel bills for the Facilities; for the two years prior to the MM&V Services Commencement Date and ongoing throughout the Term.

b) Direct access, by telephone modem or other reasonable means installed at SmartWatt's expense, to any and all energy management systems or building automation systems installed in or used in connection with the Facilities, with permission granted to SmartWatt to download any and all information from these systems and to store such information for the Term;

c) Permission to install, at SmartWatt's expense, add-on devices to any and all utility and energy use meters, to enable SmartWatt to directly observe Facility utility usage, with permission granted to SmartWatt to download any and all information from these systems and to store such information for the Term;

d) Permission, as an agent of Owner, to obtain and utilize any and all energy usage information from any and all utilities or energy suppliers providing service to the Facilities, with permission granted to SmartWatt to download any and all information from these systems and to store such information for the Term. In connection herewith, Owner agrees to execute such permission or authorization forms, which utilities or energy suppliers may from time to time require to release such information to SmartWatt; and
e) Copies of any and all energy-using equipment repair orders or invoices for repairs or maintenance ECM Work not subject to the direct control of SmartWatt.

5.3.2 Failure by Owner to provide the information required in this Section 5.3 or otherwise comply with its obligations under this Agreement in timely fashion, will suspend the Energy Savings Guarantee described in the Energy Savings Schedule until the information is provided or other obligation is met. The failure of Owner to provide this information within ninety (90) days of the end of the applicable annual period shall be deemed a material breach of this Agreement in accordance with Section 8.2.1(d) hereof.

ARTICLE VI
COMPENSATION AND PAYMENT

6.1 COMPENSATION FOR THE ECM WORK.

6.1.1 For the performance of the ECM Work, and all obligations in connection therewith under this Agreement, Owner agrees to pay SmartWatt the following sum (the “ECM Work Price”): four hundred fifty five thousand five hundred fifty seven dollars ($455,557). A detailed “ECM Work Schedule of Values”, setting forth the breakdown of the total ECM Work Price, is attached hereto as Schedule 6A.

6.1.2 Based upon itemized applications for payment submitted to Owner by SmartWatt during the Construction and Installation Phase, Owner shall make payment to SmartWatt of the ECM Work Price as follows:

a) The period covered by each application for payment shall be one calendar month ending on the last day of the month. Provided an application for payment is received by Owner not later than the 5th day of a month, Owner shall make payment pursuant to such application to SmartWatt not later than the 20th day of the same month. If an application for payment is received by Owner after the application date fixed above, payment shall be made by Owner not later than twenty (20) days after receipt of the application for payment.

b) Each application for payment shall provide such detail and back-up information or data as Owner may reasonably require, and shall be based upon the ECM Work completed and materials stored on site and/or at locations approved by Owner in its reasonable discretion for the period ending on the last day of the applicable month. The ECM Work Schedule of Values shall be used in establishing percentages of completion in payment applications.

c) Final payment, constituting the entire unpaid balance of the ECM Work Price, shall be made by Owner to SmartWatt within fifteen (15) days of the date of Final Completion.
d) Payments due and unpaid shall bear interest from the date due at the legal rate prevailing from time to time at the place where the Project is located.

6.2 COMPENSATION FOR THE MM&V SERVICES.

6.2.1 For the performance of the MM&V Services during the Term, Owner agrees to pay SmartWatt the “MM&V Services Fee”, attached hereto as Schedule 6B. The detailed “MM&V Services Schedule of Values”, sets forth the breakdown of the total MM&V Services Fee for each item of MM&V Services.

6.2.3 The Service Fee shall be paid in arrears in equal annual installments on the first (1st) day of the month in which the anniversary of the MM&V Services Commencement Date occurs.

ARTICLE VII
CHANGES

7.1 CHANGE ORDERS. Changes in the ECM Work or MM&V Services that are within the general scope of this Agreement, and that are not minor changes in the ECM Work or MM&V Services, shall be accomplished without invalidating this Agreement by a written instrument executed by both Parties in accordance with this Article VII (a “Change Order”). SmartWatt may request or Owner may order changes in the ECM Work or MM&V Services within the general scope of this Agreement consisting of adjustment to the ECM Work Price and/or MM&V Services Fee, respectively, or the ECM Work Schedule. All such changes in the ECM Work shall be authorized by applicable Change Order.

7.1.1 Owner and SmartWatt shall negotiate in good faith an appropriate adjustment, as applicable, to the ECM Work Price, MM&V Services Fee and/or the ECM Work Schedule, and shall conclude these negotiations as expeditiously as possible. Acceptance of the Change Order and any adjustment in the ECM Work Price, MM&V Services Fee and/or ECM Work Schedule shall not be unreasonably withheld. An increase or decrease in the ECM Work Price or MM&V Services Fee resulting from a change in the scope of the ECM Work or MM&V Services shall be determined by one or more of the following methods:

a) unit prices set forth in this Agreement or as subsequently agreed;

b) a mutually accepted, itemized lump sum; or

c) if an increase or decrease cannot be agreed upon as set forth in this Section 7.1, the adjustment in the ECM Work Price or MM&V Services Fee shall be determined by the reasonable expense and savings of the performance of the ECM Work resulting from the change. If there is a net increase in the ECM Work Price or MM&V Services Fee, then a reasonable adjustment shall be made for SmartWatt’s overhead and profit. In the case of a net decrease in cost,
the amount of the decrease in the ECM Work Price or MM&V Services Fee shall not include reduction for overhead and profit.

7.2 **MINOR CHANGES IN THE ECM WORK.** SmartWatt may make minor changes in the design and construction of the ECM Work consistent with the intent of this Agreement that do not involve an adjustment in the ECM Work Price or MM&V Services Fee or the ECM Work Schedule, so long as such changes do not materially and adversely affect the ECM Work, the quality of the materials or equipment specified herein, the performance of any materials, equipment or systems specified herein, or the quality of the workmanship required by this Agreement.

7.3 **CHANGES AFFECTING THE GUARANTEED ENERGY SAVINGS.** The Parties acknowledge that changes that negatively or positively affect the scope of the ECM Work will necessarily affect the Guaranteed Energy Savings set forth in Section 4.3. Change Order documents containing such scope changes shall also delineate the corollary Guaranteed Energy Savings adjustments.

7.4 **UNKNOWN CONDITIONS.** If in the performance of the ECM Work or the MM&V Services SmartWatt finds latent, concealed or other conditions that materially differ from the conditions SmartWatt reasonably anticipated, or if the physical conditions are different from those normally encountered and generally recognized as inherent in the kind of ECM Work or MM&V Services provided for in this Agreement, then the ECM Work Price or the MM&V Services Fee shall be equitably adjusted, and, as applicable, the ECM Work Schedule and Guaranteed Energy Savings shall be appropriately modified, by a Change Order within a reasonable time after the conditions are first observed. SmartWatt shall provide Owner with written notice of its discovery of any of the foregoing conditions as soon as practicable after such discovery.

7.5 **EMERGENCIES.** In any emergency affecting the safety of persons or property, SmartWatt shall act, at its discretion, to prevent threatened damage, injury or loss. Any change in the ECM Work Price, MM&V Services Fee or ECM Work Schedule on account of such emergency ECM Work shall be determined as provided in this Article VII.

7.6 **CHANGES IN LAW.** In the event any changes in laws or regulations affecting the performance of the ECM Work are enacted after the date of this Agreement, the ECM Work Price, the MM&V Services Fee and/or the ECM Work Schedule or Guaranteed Savings shall be equitably adjusted by Change Order.

7.7 **MATERIAL CHANGES.**

7.7.1 **Definition.** A "Material Change" is any change in or to the Facilities, whether structural, operational or otherwise in nature that reasonably can be expected, in the judgment of Owner and SmartWatt to decrease annual energy savings in accordance with the provisions and procedures set forth in the Energy Savings Schedule (Schedule 5) after adjustments for climatic variations. Actions by Owner that may result in a Material Change include, but are not limited to the following:
a) The manner of use of the Facilities by Owner;

b) The hours of operation for the Facilities or for any Equipment or energy using systems operating at the Facilities;

c) Permanent changes in the comfort and service parameters set forth in Scope of ECM Work (Schedule 2A);

d) Occupancy of the Facilities;

e) The structure of the Facilities;

f) The types and quantities of equipment used at the Facilities;

g) The modification, renovation or construction at the Facilities (other than the ECM Work);

h) Owners’ failure to provide maintenance of and repairs to the Equipment; or

i) Any other conditions other than climate affecting energy use at the Facilities.

7.7.2 Reported Material Changes. Owner shall use best efforts to deliver to SmartWatt a written notice describing all actual or proposed Material Changes at least thirty (30) days prior to the implementation of such Material Change, or as soon as is practicable after an emergency or other unplanned event. After SmartWatt’s review of the notice, the Parties shall meet as soon as practicable to agree upon adjustments to the Energy Savings Schedule and the MM&V Services Fee, which adjustments shall be set forth in a Change Order.

ARTICLE VIII
TERMINATION

8.1 TERMINATION BY OWNER FOR CAUSE. Upon thirty (30) days’ advance written notice to SmartWatt, Owner may terminate this Agreement for Cause (as hereinafter defined) if after giving SmartWatt written notice of such Cause, SmartWatt fails to cure the same within thirty (30) days following receipt of such notice or, if such cure cannot reasonably be effected within thirty (30) days, such cure is undertaken within such time period and is thereafter continued diligently until completion.

8.1.1 For purposes of this Agreement, “Cause” shall mean the occurrence of any of the following:

a) Any material failure on the part of SmartWatt to perform or comply with the terms and conditions of this Agreement; or

b) The commencement by or on behalf of SmartWatt of any voluntary or involuntary case or matter relating to or associated with the U.S. Bankruptcy
Code, or for liquidation, reorganization, or an arrangement pursuant to any other U.S. or state bankruptcy Laws, or SmartWatt being adjudicated a debtor or declared bankrupt or insolvent under the U.S. Bankruptcy Code, or any other U.S. Federal or state laws relating to bankruptcy, insolvency, winding-up, or adjustment of debts, or SmartWatt making a general assignment for the benefit of creditors, or admitting in writing its inability to pay its debts generally as they become due, and/or if a custodian, receiver, trustee or liquidator of SmartWatt, all or substantially all of the assets or business of SmartWatt or of SmartWatt's interest in this Agreement, is appointed in any proceeding.

8.1.2 If termination occurs during the Construction and Installation Phase, Owner shall be responsible for paying for all ECM Work performed by SmartWatt through the effective date of termination, and Owner may deduct from the amount due to SmartWatt the reasonable cost to Owner of any necessary remediation required with respect to the matters resulting in such termination. In the event that SmartWatt is terminated by Owner under this provision and it is later determined that such termination was improper, SmartWatt shall be entitled to the remedies set forth in Section 8.3 below.

8.1.3 If termination occurs during the MM&V Services Phase, Owner shall be responsible for paying for all reasonable costs and expenses incurred by SmartWatt under Section 4.4 hereof prior to the effective date of termination, but subject to Owner’s right to deduct its remediation costs in the same manner as provided in Section 8.1.2.

8.2 TERMINATION BY SMARTWATT.

8.2.1 Upon ten (10) days’ advance written notice to Owner, SmartWatt may, in addition to any other rights or remedies, terminate this Agreement for any of the following reasons:

a) If the ECM Work has been stopped for at least thirty-day period under court order or order of other governmental authorities having jurisdiction, or as a result of the declaration of a national emergency or other governmental act during which, through no fault of SmartWatt, materials, supplies, tools, and construction equipment and machinery for the ECM Work are not available;

b) If Owner has failed to pay any compensation due to SmartWatt in accordance with this Agreement for a period of thirty (30) days or more;

c) If the ECM Work has been suspended for any reason by Owner for a continuous period exceeding sixty (60) days;

d) If Owner has materially hindered or delayed SmartWatt in the performance of any of its obligations, or Owner has otherwise has materially breached any covenant, agreement, warranty or representation set forth in this Agreement, and if after giving Owner written notice of thereof Owner fails to cure the same within thirty (30) days following receipt of such notice or, if such cure cannot
reasonably be effected within thirty (30) days, such cure is undertaken within such time period and is thereafter continued diligently until completion.

8.2.2 Upon such termination, SmartWatt shall be entitled to recover from Owner as provided in Section 8.3.

Upon the payment of amounts due under this Section 8.2, neither Party shall have any further liability to the other except for those obligations expressly specified in this Agreement to survive its termination.

8.3 TERMINATION BY OWNER WITHOUT CAUSE.

8.3.1 If Owner terminates this Agreement other than pursuant to Section 8.1, SmartWatt shall be entitled to recover from Owner as follows:

a) If termination occurs during the Construction and Installation Phase, Owner shall be responsible for paying for all ECM Work performed by SmartWatt through the effective date of termination;

b) If termination occurs during the MM&V Services Phase, Owner shall be responsible for paying for all reasonable costs and expenses incurred by SmartWatt under Section 4.2 hereof prior to the effective date of termination;

c) Owner shall pay for all demobilization costs incurred by SmartWatt, and purchase or rental costs incurred by SmartWatt, for any equipment acquired by the SmartWatt in connection with the ECM Work and MM&V Services;

8.3.2 In addition to the foregoing, Owner shall further assume and become liable for obligations, commitments, and unsettled claims that SmartWatt has previously undertaken or incurred in good faith on behalf of Owner in connection with the Project hereof.

8.4 GUARANTEED ENERGY SAVINGS. Upon the termination of this Agreement pursuant to either Section 8.2 or Section 8.3, all Guaranteed Energy Savings obligations of SmartWatt under Section 4.3 and elsewhere in this Agreement shall automatically cease and be of no further force or effect.

ARTICLE IX
INDEMNIFICATION/INSURANCE/BONDING/WAIVERS

9.1 INDEMNIFICATION.

9.1.1 SmartWatt shall indemnify and hold Owner and its employees harmless from and against all claims, losses, or damages arising from the performance of the ECM Work or the MM&V Services provided that the same are attributable to bodily injury, death and/or damage to property, but only to the extent caused by the negligent, reckless or wrongful acts or omissions acts or omissions of SmartWatt or anyone for whose acts SmartWatt is
liable. In no event shall this indemnification apply to liability to the extent caused by the negligence or willful misconduct of the party to be indemnified or held harmless. This indemnification shall not be limited to damages, compensation or benefits payable under insurance policies, any worker's compensation act, or other employee benefit acts.

9.1.2 Owner shall indemnify and hold SmartWatt and its employees and subcontractors and agents harmless from and against all claims for bodily injury, death, and/or damage to property (excluding damage for which Owner assumes the risk of loss or damage to the ECM Work itself) that may arise in connection with the Project but only to the extent caused by the negligent, reckless or wrongful acts or omissions acts or omissions of Owner or anyone for whose acts Owner is liable. In no event shall this indemnification apply to liability to the extent caused by the negligence or willful misconduct of the party to be indemnified or held harmless. This indemnification shall not be limited to damages, compensation or benefits payable under insurance policies, any worker's compensation act, or other employee benefit acts.

9.2 SMARTWATT'S INSURANCE. At all times during the Term, SmartWatt shall provide and maintain the insurance set forth in this Section 9.2. All insurers shall be authorized and licensed to provide insurance in the State of Illinois, and shall be rated as A- or better by A.M. Best

9.2.1 Workers' Compensation. SmartWatt shall obtain and maintain Worker's Compensation insurance with statutory limits and Employers' Liability insurance of at least $1,000,000 per accident/occurrence.

9.2.2 Commercial General Liability. SmartWatt shall obtain and maintain Commercial General Liability Insurance written on an occurrence basis, including contractual liability coverage, broad form property damage including coverage for explosion, collapse and underground hazards, personal injury and advertising insurance coverage, and products and completed operations coverage (for a period of 3 years), with not less than the following limits of liability:

Each Occurrence Limit: $1,000,000
General Aggregate Limit: $2,000,000
Products/Completed Operations Aggregate Limit: $2,000,000
Personal and Advertising Injury Limit: $1,000,000
Medical Pay: $5,000
9.2.3 **Automobile Liability.** SmartWatt shall obtain and maintain Business Automobile Liability Insurance covering owned, non-owned, and hired automobiles, with not less than the following limits of liability:

- Combined Single Limit
- Bodily Injury and Property Damage: $1,000,000 Each Occurrence

9.2.4 **Professional Liability.** SmartWatt shall obtain and maintain professional liability or errors & omissions insurance for claims arising from the negligent performance of any professional MM&V Services under this Agreement, which shall be General Office Coverage, with not less than the following limits:

- Per claim: $1,000,000
- Aggregate: $2,000,000

9.2.5 **Excess Umbrella.** All liability insurance may be arranged under a single policy for the full limits required or by a combination of primary, excess, and/or umbrella liability policies.

9.2.6 **Policy Terms.** Owner shall be named as an additional insured on all coverage obtained by SmartWatt under all liability policies except Professional Liability and Workers’ Compensation, on a primary and non-contributory with respect to any liability coverage maintained by Owner. The foregoing policies shall contain a provision that coverage will not be cancelled or not renewed until at least thirty (30) days’ prior written notice has been given to Owner. Certificates of Insurance showing such coverage to be in force shall be filed with Owner prior to commencement of the ECM Work and the MM&V Services.

9.3 **OWNER'S INSURANCE.**

9.3.1 **Liability Insurance.** Owner shall obtain and maintain its own liability insurance for protection against claims arising out of the performance of this Agreement.

9.3.2 **Property Insurance.**

a) Owner shall obtain and maintain Builder’s Risk or equivalent property insurance in a form reasonably acceptable to SmartWatt upon the entire Project, including the Equipment and the Facilities and all other existing structures in which any of the ECM Work is to be performed, as well as all Project structures that are fully or partially owned or occupied by Owner or its affiliates, for the full cost of replacement at the time of any loss. This insurance shall include as insureds Owner, SmartWatt, SmartWatt’s subcontractors, and all other subcontractors and suppliers, as their interests may appear. This insurance shall insure against loss from the perils of fire and extended coverage, and shall include “all risk” coverage including at a minimum coverage for theft,
vandalism, malicious mischief, inland transit, collapse, temporary buildings, debris removal, flood, earthquake, wind, testing, and damage resulting from defective design, workmanship, or material. Owner shall increase limits of coverage, if necessary, to reflect estimated replacement cost. Owner shall be responsible for all premiums and any co-insurance penalties, exclusions, sublimits, or deductibles.

b) On or before the MM&V Services Commencement Date, Owner shall procure and thereafter maintain at all times during the Term, at its sole cost and expense a policy or policies of property damage insurance on all fixtures and improvements and betterments to the Facilities, including the Equipment, against any peril generally included within the classification “all risks”, including, but not limited to, risks covered by fire, extended coverage, vandalism and malicious mischief, in amounts at least equal to the full replacement cost thereof (without deduction for depreciation). Such coverage shall include boiler and machinery and equipment breakdown insurance. SmartWatt shall be included as an insured or loss payee on all such policies, as its interests may appear.

9.3.3 Policies. Upon SmartWatt’s request, Owner shall provide SmartWatt with a copy of all policies including all endorsements thereto. SmartWatt shall be given thirty (30) days’ prior written notice of cancellation, non-renewal, or any endorsements restricting or reducing coverage.

9.3.4 Loss Adjustment. Any insured loss shall be adjusted with Owner and SmartWatt and made payable to Owner as trustee for the insureds, as their interests may appear, subject to any applicable mortgagee clause.

9.4 WAIVER OF CLAIMS AND SUBROGATION.

9.4.1 Property Damage. Owner and SmartWatt waive all claims and other rights they may have against each other for loss of and/or damage to (i) the Project, including the Equipment and Facilities, (ii) all materials, machinery, equipment, and other items used in accomplishing the ECM Work and/or to be incorporated into the Project, while the same are in transit, at the Project site, during erection, and otherwise, and (c) all property owned by or in the custody of Owner and its affiliates, however such loss or damage shall occur, except the rights each Party has to the proceeds of such insurance held by Owner as trustee in accordance with Section 9.3.4.

9.4.2 Waiver of Subrogation. Owner and SmartWatt shall have their respective insurers waive all rights of subrogation they may have against one another for claims arising thereunder. If the policies of insurance referred to in this Article IX require an endorsement to provide for continued coverage where there is a waiver of subrogation, the Parties will cause them to be so endorsed.
9.4.3 **Damages Waiver.** Except to the extent of applicable insurance coverage under insurance policies procured pursuant to this Agreement, Owner and SmartWatt agree to waive all claims against the other for all special, indirect, consequential, remote, punitive, exemplary, or similar damages that may arise out of or relate to this Agreement. This waiver includes, but is not limited to, Owner’s loss of use of the Facilities, all rental expenses incurred, loss of services of employees, or loss of reputation, and SmartWatt’s loss of business, loss of financing, principal office overhead and profits, loss of profits not related to this Project, or loss of reputation. The provisions of this Section 9.4.3 shall survive the termination of this Agreement.

9.4.4 **Limitation of Liability.** The Parties have discussed the risk and rewards associated with the ECP Work, as well as SmartWatt’s compensation for the MM&V Services. The Parties agree that SmartWatt shall procure and maintain insurance policies with such coverages and amounts and for such periods of time as required by this Agreement. In light of the foregoing, Owner agrees that SmartWatt’s liability under this Agreement, regardless of the form of action, shall in no event exceed the amount of the compensation actually received by SmartWatt pursuant to Section 6.1 and Section 6.2 of this Agreement, unless and only to the extent that such liability is covered by a policy of insurance procured pursuant to this Agreement. The provisions of this Section 9.4.4 shall survive the termination of this Agreement.

9.5 **BONDING.**

9.5.1 Performance and Payment Bonds are required of SmartWatt as a condition to the commencement and performance of the ECM Work and the MM&V Services. All Bonds must be acceptable to Owner, and its reasonable discretion, and shall: i) be issued by good and sufficient sureties licensed in the State of Illinois, ii) fully comply with the requirements of the Illinois Public Construction Bond Act (30 ILCS 550).

**ARTICLE X**

**CASUALTY AND CONDEMNATION**

10.1 **CASUALTY.**

10.1.1 After the MM&V Services Commencement Date, Owner assumes and shall bear the risk of damage, loss, theft, or destruction, partial or complete, of the Equipment and the Facilities (a “Casualty Loss”), however arising, except to the extent that the same may be caused by the negligent or willful acts or omissions of SmartWatt that not covered by insurance to be procured pursuant to this Agreement. If Owner fails to repair or replace any Casualty Loss within a reasonable time, and in no event more than one hundred twenty (120) days from its occurrence (except to the extent that the same is the responsibility of SmartWatt in accordance with the foregoing), SmartWatt may, at its option: (i) terminate this Agreement by delivery of a written notice to Owner, and such termination shall be deemed a termination without Cause and will be subject to the provisions of Section 8.3 hereof, or (ii) require Owner to amend this Agreement in a manner that equitably accounts for the loss of such Equipment and/or Facilities.
10.1.2 In the event of a Casualty Loss caused by the negligent or willful acts or omissions of SmartWatt that is not covered by insurance to be procured pursuant to this Agreement, Owner may require SmartWatt to promptly repair or replace the damaged or destroyed Equipment and/or Facilities, and in the event of SmartWatt’s failure to do so, Owner may, at its option: (i) repair or replace such items and recover the reasonable cost thereof from SmartWatt, or (ii) terminate this Agreement for Cause pursuant to Section 8.1 hereof.

10.2 CONDEMNATION.

10.2.1 In the event of the condemnation resulting in a taking of substantially all of the Facilities, this Agreement shall terminate upon the effective date of such taking, and such termination shall be deemed a termination without Cause in accordance with Section 8.3 hereof, provided, however, that the proceeds of such condemnation shall belong to Owner.

10.2.2 In the event of a condemnation resulting in a taking of less than substantially all of the Facilities, the Parties shall amend this Agreement in a manner that equitably accounts for such taking.

ARTICLE XI
COMPLIANCE OBLIGATIONS

11.1 STATUTORY AND REGULATORY COMPLIANCE. SmartWatt will comply with all applicable provisions of federal, state and local law when performing the ECM Work AND the MM&amp;V Services. Where required by law, all drawings, plans, reports, and other documents delivered to Owner as part of the ECM Work must bear the stamp or seal of architects or engineers licensed by the State of Illinois. Without limiting the generality of the foregoing, SmartWatt shall, to the extent applicable, comply with the following:

i) The Illinois Human Rights Act (775 ILCS 5);
ii) The Prevailing Wage Act (820 ILCS 130);
iii) The Public Construction Bond Act (30 ILCS 550);
iv) The Public Works Preference Act (30 ILCS 560);
v) The Employment of Illinois Workers on Public Works Act (30 ILCS 570);
vi) The Freedom of Information Act (5 ILCS 140);
vii) The Open Meetings Act (5 ILCS 120);
viii) The Illinois Architecture Practice Act of 1989 (225 ILCS 305);
ix) The Professional Engineering Practice Act of 1989 (225 ILCS 325);
x) The Structural Engineering Practice Act of 1989 (225 ILCS 340);
xii) The Contractor Unified License and Permit Bond Act (50 ILCS 830);
xiii) All Anti-Terrorism Laws, including Executive Order No. 13224 on Terrorist Financing and regulations of the U.S. Treasury Department’s Office of Foreign Assets Control (OFAC) related to Specially Designated Nationals and Blocked Person (SND’s OFAC Regulations), and/or the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Public Law 107-56);

xv) The Illinois Human Rights Act, 775 ILCS 5/1-101 et seq. (1990), as amended; the Discrimination in Public Contracts Act, 775 ILCS 10/0.01 et seq. (1990), as amended; the Environmental Barriers Act, 410 ILCS 25/1 et seq; and all federal non-discrimination laws and regulations.

11.2 FAILURE TO COMPLY. If SmartWatt performs and ECM Work or MM&V Services knowing or having reason to know that such Work or Services are contrary to applicable laws, rules and/or regulations, SmartWatt shall be responsible for payment of all reasonable costs and expenses arising therefrom.

ARTICLE XII
GENERAL PROVISIONS

12.1 NOTICE. All notices required under this Agreement shall be in writing and shall be given either by: (i) personal delivery; or (ii) a nationally-recognized overnight delivery service that provides proof of delivery and addressed to the other Party at such Party's address specified below. Such address may be changed by a Party giving notice thereof in accordance with this provision.

To Owner: Fayette County
221 South 7th Street
Vandalia, IL 62471
Attn: XXXXXXX

To SMARTWATT: SmartWatt Energy, Inc.
3 Rosell Drive, Ballston Lake
New York 12019
Attn: Christopher Covell

12.2 INDEPENDENT CAPACITY. The Parties agree that SmartWatt is an independent contractor, and that SmartWatt and its employees and agents, shall act in an independent capacity in the performance of this Agreement, and shall not be construed as officers, employees, or agents of Owner. In addition, this Agreement shall not be construed as creating any partnership or joint venture between the Parties.

12.3 FORCE MAJEURE. If causes beyond a Party's reasonable control delay, impair or prevent the performance of any of such Party's obligations hereunder, expressly excepting, however, the payment of money, the time for such performance shall be extended for a reasonable period of time commensurate with the time and nature of the cause. Such causes shall include, but not be limited to: changes ordered in the ECM Work, acts or omissions of the other Party or others beyond the control of the Party whose performance is required, adverse weather conditions not reasonably anticipated, fire, unusual transportation delays, general labor disputes impacting the ECM Work, acts of governmental agencies, or unavoidable accidents or circumstances, Hazardous Materials or differing site conditions.
12.4 FURTHER DOCUMENTS. The Parties agree to execute and deliver all further documents and perform all further acts that may be reasonably necessary to effectuate the provisions of this Agreement.

12.5 GOVERNING LAW. This Agreement shall be construed in accordance with and governed by the laws of the State of Illinois, without regard to conflicts of laws rules or principles of this State or any other jurisdiction.

12.6 SEVERABILITY. The partial or complete invalidity of any one or more provisions of this Agreement shall not affect the validity or continuing force and effect of any other provision.

12.7 NO WAIVER OF PERFORMANCE. The failure of either Party to insist, in any one or more instances, on the performance of any of the terms, covenants or conditions of this Agreement, or to exercise any of its rights hereunder, shall not be construed as a waiver or relinquishment of such term, covenant, condition or right with respect to further performance.

12.8 INTERPRETATION. The Parties agree that the following shall govern the interpretation of this Agreement:

12.8.1 Headings and captions are for convenience of reference only and shall not affect the construction or interpretation of this Agreement.

12.8.2 The grouping of the articles in this Agreement and of specifications under the various headings is solely for the purpose of convenient organization and in no event shall the grouping of provisions, the use of paragraphs or the use of headings be construed to limit or alter the meaning of any provisions.

12.8.3 The terms “herein,” “hereof” and “hereunder,” and words of similar import, refer to this Agreement as a whole and not to any particular Section, Subsection or Schedule or Exhibit.

12.8.4 The Parties have participated jointly in the negotiation and drafting of this Agreement, and no presumption or burden of proof shall arise favoring or disfavoring either Party by virtue of the authorship of any of the provisions hereof.

12.9 SMARTWATT PROPERTY. All property used by SmartWatt in connection with the ECM Work and the MM&V Services, including equipment, tools, drawings, designs, documentation, schematics, test equipment, software, and associated media remain the exclusive property of SmartWatt. Owner agrees not to use such property for any purpose at any time. Owner agrees to allow SmartWatt personnel to retrieve and to remove all such materials remaining after the ECM Work has been completed or at the end of the Term. Owner acknowledges that any SmartWatt software included in the ECM Work is proprietary and will be delivered only after execution of and pursuant to a SmartWatt standard licensing agreement.
12.10 BINDING EFFECT. This Agreement and the Contract Documents shall inure to the benefit of, and be forever binding upon, the Parties and their respective successors, legal representatives and permitted assigns.

12.11 AMENDMENT. This Agreement may be amended, modified or supplemented only by written agreement signed by the Parties.

12.12 ASSIGNMENT. SmartWatt acknowledges that Owner is induced to enter into this Agreement by, among other things, the qualifications of SmartWatt. Accordingly, SmartWatt agrees that this Agreement shall not be assigned in whole or in part to another person or entity, without the prior written approval of Owner.

12.13 ENTIRE AGREEMENT. This Agreement, including all Schedules and Exhibits hereto, constitutes the entire agreement and understanding of the Parties and supersedes all prior agreements and understandings between the Parties with respect to the subject matter hereof. Each Party acknowledges that no Party has made any promises, representations, warranties, covenants or understandings other than those expressly set forth herein.

12.14 EXECUTION. This Agreement may be executed in several counterparts, each of which, when executed, shall be deemed to be an original, but all of which together shall constitute one and the same instrument. The transmission of the signature of a Party by facsimile, email or other electronic means shall be deemed an original thereof by the Party receiving such signature.

[Signature Page Immediately Follows]
IN WITNESS WHEREOF, the Parties have executed this Agreement by their duly authorized representatives as of the Effective Date.

SMARTWATT ENERGY, INC.

By: ________________________________

Name: ________________________________

Title: ________________________________

FAYETTE COUNTY, IL

[Signature]

By: ________________________________

Name: Jeffrey E. Beckman

Title: Co. Board Chairman
COUNTY OF FAYETTE, ILLINOIS

ORDINANCE NUMBER 2019-12-10-F

AN ORDINANCE APPROVING THE FAYETTE COUNTY
SOLID WASTE COORDINATOR AGREEMENT

ADOPTED BY THE FAYETTE COUNTY BOARD
OF THE COUNTY OF FAYETTE, ILLINOIS
THIS 10 DAY OF DECEMBER, 2019

PUBLISHED BY THE AUTHORITY OF
THE COUNTY BOARD OF FAYETTE COUNTY
THIS 10 DAY OF DECEMBER, 2019
ORDINANCE NO. 2019-12-10-F

AN ORDINANCE APPROVING THE FAYETTE COUNTY SOLID WASTE COORDINATOR AGREEMENT

WHEREAS, Fayette County, Illinois (the "County"), has therefore been duly organized and is now operating as a county under the provisions of the Illinois Counties Code, and all laws amendatory thereof and supplementary thereto (the "Code"); and

WHEREAS, the Fayette County Health Department has provided solid waste management on behalf of Fayette County over the year pursuant to prior annual Agreements; and,

WHEREAS, Fayette County is best served in countinuing to allow the Fayette County Health Department to handle solid waste issues and to appoint a Coordinator to manage such pursuant to the Agreement attached hereto as Exhibit A; and,

WHEREAS, it is in the best interests of the County to approve the attached Agreement.

NOW THEREFORE, BE IT ORDAINED BY THE COUNTY BOARD OF FAYETTE COUNTY, ILLINOIS:

SECTION 1. INCORPORATION OF PREambles.

The County hereby finds that the recitals contained in the preambles to this Ordinance are true and correct and does incorporate them into this Ordinance by the reference.

SECTION 2. APPROVAL OF RECOMMENDATION.

The County hereby approves the Agreement for the Fayette County Solid Waste Coordinator.

SECTION 3. AUTHORIZING TO OFFICERS.

The County Board Chairman is authorized, empowered and directed to execute the Agreement in the name of the County. The County Clerk is hereby authorized empowered and directed to attest the signature of the County Board Chairman on such Contract. Upon passage
and signing of this Ordinance and the Contract, the County Clerk shall file a certified copy of such executed documents.

**SECTION 4. AUTHORIZATION TO OTHERS.**

All Officers, Employees and Agents of the County are hereby authorized, empowered and directed to take any and all actions necessary, appropriate or convenient to effectuate the purposes of this Ordinance and complete the execution of the Contract.

**SECTION 5. SEVERABILITY.**

If any section, paragraph, clause or provision of this Ordinance shall be held invalid, the invalidity of such section, paragraph, clause or provision shall not affect any of the other provisions of this Ordinance.

**SECTION 6. REPEALER.**

All ordinances, resolutions, or orders, or parts thereof, in conflict with the provisions of this Ordinance are to the extent of such conflict hereby repealed.
ADOPTED by the County Board of the Fayette County, Illinois on the 10th day of December, 2019, upon yea and nay vote as follows:

JENNIFER WAGGONER       YEA
JACOB HARRIS             YEA
JEFFREY E. BECKMAN       YEA
MERRELL H. COLLINS       YEA
PATRICK G. CLICK, JR.    YEA
GLEN W. DANIELS          YEA
DEAN J. BERNHARDT        YEA
DEBRA L. WARNER          YEA
KEITH COLE               YEA
DARRELL SCHAAAL          YEA
BRYCE KISTLER            YEA
GLENN L. GURTNER         YEA
GLENDA BARTELS           YEA
JOE A. WILLS             YEA

APPROVED by the Chairman of the Fayette County Board, Illinois on the 10th day of December, 2019.

Jeffrey E. Beckman, Chairman
Fayette County Board, Illinois

ATTEST:

Vicky L. Conder
Fayette County Clerk

{SEAL}
FAYETTE COUNTY SOLID WASTE COORDINATOR

THE PARTIES to this AGREEMENT are the Fayette County Board and the Fayette County Health Department.

THE PURPOSE of this agreement is to provide a Solid Waste Coordinator for Fayette County through the Fayette County Health Department.

THE TERMS of the AGREEMENT are as follows:

1. It is estimated that the Fayette County Health Department will expend up to an average of .15FTE of staff employee time and a minimum 0.02 FTE of supervisory time in fulfilling its obligation under this AGREEMENT.

2. The Fayette County Health Department shall:
   a. Coordinate all activities as agreed upon with the Fayette County Board
   b. Assist with the organization and presentation of meetings and activities within Fayette County.
   c. Represent Fayette County on the six county Solid Waste Management Advisory Committee and attend pertinent regional meetings.
   d. Report to the Solid Waste Committee of the County Board on activities and meetings held within the county concerning the Solid Waste Plan.
   e. Perform such other reasonable duties at the direction of the County Board, which may become necessary in developing and implementing the County’s Solid Waste Plan, providing that such additional duties shall be subject to the approval of the Administrator of the Fayette County Health Department.
   f. The Fayette County Health Department shall pay all in-county travel expenses incurred by the Solid Waste Coordinator in the course of this employment as such.

3. In exchange for the above listed services by the Fayette County Health Department, the Fayette County Board shall:
   a. Pay to the Fayette County Health Department the sum of $1500.00 per quarter for four (4) consecutive quarters beginning 12/01/19 to 11/30/22.
   b. Pay out-of-county travel and meeting expenses incurred by the Fayette County Health Department in fulfilling obligations under this agreement. Said expenses shall not exceed $700.00 per year. Any travel and meeting expenses in excess of $700.00 per year shall be subject to the approval of the County Board.
Solid Waste Agreement – page two

This AGREEMENT is entered into pursuant to a motion made and approved at the Fayette County Board Meeting. The terms of this AGREEMENT are effective and binding on each party hereto as of 12/01/19 and until 11/30/22. The agreement may be terminated by either party upon a 60 day written notice.

APPROVED:

Jeff Beckman, Chairman
Fayette County Board

Melissa Storck, Administrator
Fayette County Health Department

ATTESTED:

Vicky Conder
Fayette County Clerk & Recorder

Date: 12-5-19