

RESOLUTION NO. 639 2013

A RESOLUTION AUTHORIZING THE MAYOR, ON BEHALF OF THE URBAN COUNTY GOVERNMENT, TO EXECUTE A LEASE AGREEMENT WITH JAMES R. KEMPER FOR PROPERTY LOCATED AT 951 ENTERPRISE DRIVE FOR RELOCATION OF DIVISION OF WATER QUALITY MAINTENANCE OPERATIONS, FOR AN INITIAL TERM OF 48 MONTHS WITH ANNUAL RENT NOT TO EXCEED \$86,592.96.

BE IT RESOLVED BY THE COUNCIL OF THE LEXINGTON-FAYETTE URBAN COUNTY GOVERNMENT:

Section 1 - That the Mayor, on behalf of the Lexington-Fayette Urban County Government, be and hereby is authorized to execute the Lease Agreement, which is attached hereto and incorporated herein by reference, with James R. Kemper for property located at 951 Enterprise Drive for the Division of Water Quality.

Section 2 - That a total amount, not to exceed the sum of \$86,592.96 annually, be and hereby is approved for payment to James R. Kemper from account # 4002-303401-71302 pursuant to the terms of the Lease Agreement.

Section 3 - That this Resolution shall become effective on the date of its passage.

PASSED URBAN COUNTY COUNCIL: December 5, 2013

MAYOR



ATTEST:


CLERK OF URBAN COUNTY COUNCIL

LEASE AGREEMENT

THIS AGREEMENT, made and entered into this 5th day of December, by and between **JAMES R. KEMPER**, with offices located at 1484 Copper Run Boulevard, Lexington, Kentucky 40514, (the "Lessor"), and **LEXINGTON FAYETTE URBAN COUNTY GOVERNMENT**, whose address is 200 East Main Street, Lexington, Kentucky 40507, (the "Lessee").

WITNESSETH

THAT WHEREAS, the Lessor is the sole owner of the premises described below and desires to lease said premises to a suitable Tenant for business purposes, and;

WHEREAS, Lessee desires to lease the premises for the purpose of conducting its business thereon, and;

WHEREAS, the Parties desire to enter into a lease agreement defining their rights, duties and liabilities relating to the premises;

NOW, THEREFORE, for and in consideration of the mutual covenants contained herein, the Parties agree as follows:

1. PREMISES

Lessor hereby leases to Lessee all of the building (approximately 13,322 square feet) and land located in the City of Lexington, County of Fayette, Commonwealth of Kentucky, and more particularly described as all that certain lot and parcel of real property together with the improvements thereon known and designated as **951 Enterprise Drive**, Lexington, Fayette County, Kentucky (see Exhibit B). This property is to be used and occupied by the Lessee solely for the purpose of conducting its business operations thereon.

2. TERM

The premises hereinabove described shall be leased to Lessee for an initial period of 48 months, commencing on the 16th day of December 2013 and ending on the 16th day of Dec. 2017. Provided, however, that in the event the Lexington Urban County Council does not appropriate funds for the continuation of this Lease for any fiscal year and there are no funds to continue payment from other appropriations, this Lease shall be terminated. In the event of such termination, the Tenant shall not be obligated to pay any amounts due for rent, utilities, or maintenance beyond the end of the current funded fiscal year. Such termination shall not constitute a default under this Lease. Tenant shall notify the Landlord without delay and ninety (90) days prior to the end of the Tenant's fiscal year when this option shall be exercised.

The initial term of this Agreement may be renewed for five (5) subsequent terms of one year each. The Lessee may request an extension of the

Agreement from year-to-year after the expiration of the initial lease term or any extension term by giving such written notice to the Lessor, ninety (90) days prior to the expiration of the initial or an extension term. Lessor shall respond to request for an extension of the lease within thirty (30) days of receipt of the Lessee's request. All terms and conditions of the Lease shall remain the same except for the rent, which shall increase as follows: A three percent (3%) rental increase during the first year of the renewal period, a one and one half (1 1/2%) percent annual increase for the 2nd and 3rd years of the renewal period and a one half of one tenth percent (.05%) annual increase for years 4 and 5 of the renewal period.

3. RENTAL

The Lessee agrees to pay to the Lessor as rent for said premises Six Dollars and fifty cents (\$6.50) per square foot annually, equaling monthly installments of Seven Thousand Two Hundred Sixteen Dollars and eight cents (\$7,216.08) during the term of this lease. Said rental shall be payable monthly, in advance, on or before the 1st day of each month to the Lessor at 1484 Copper Run Boulevard, Lexington, Kentucky 40514. All rents paid after the sixth (6th) of the month are subject to a "late" fee of \$50 per day for each additional day after the 6th day of the month, excepting July payments whereas a late fee shall not apply until after the 15th of the month to allow for changeover to the new Fiscal Year. The following improvements to the property shall be provided by Lessor and paid by Lessee within 30 business days upon completion and delivery of final invoice to Lessee.

- (i) Extend the drive around the back and side of the building plus provide an additional 8 parking spaces, in a mutually acceptable location. Not to exceed \$40,000.00, inclusive of a five (5%) percent for Lessor administration fee. Proposed improvements are shown on attached Exhibit B.
- (ii) Demo 2 existing offices in the warehouse and relocate and install one of the existing office doors to provide additional access to the warehouse. Not to exceed \$ 4,500.00, inclusive of a five (5%) percent for Lessor administration fee. Proposed improvements are shown on attached Exhibit A.

4. UTILITIES

All applications and connections for necessary utility service on the demised premises shall be made in the name of Lessee only and Lessee shall be solely liable for utility charges as they become due, including those for sewer pumping, water, gas, electricity, and telephone services. Lessor warrants that

all mechanical, heating; plumbing, and electrical systems are in working order.

5. CONDITION OF PREMISES

Premises shall be in good and satisfactory condition at time of possession by Lessee, a "walk-through" shall be performed by the Parties, and any deficiencies identified shall be noted and addressed at Lessor's expense. No additional representation or promises respecting the condition of the leased premises, or the development in which same are situated, have been made to the Lessee, except such as are contained herein or upon the Plat of same Development which is on file in the office of the Fayette County Court Clerk, and the taking of possession of said premises by the Lessee shall be conclusive evidence as against the Lessee that same were in good and satisfactory condition and as represented when possession thereof was taken by the Lessee.

6. ALTERATIONS

No alterations in, or additions to, said premises shall be made by the Lessee without first obtaining the consent of the Lessor. Lessee agrees that all fit-up improvements and/or renovations to the property shall be made at the Lessee's expense. The Lessee shall not hold the Lessor liable for any expense incurred therein. Lessee also understands that any leasehold improvements and/or renovations made to the property that can be readily removed and relocated shall remain the property of the Lessee whereas other permanent improvements (restroom facilities for example) shall become the property of the Lessor and that changes without prior consent from the Lessor may be subject to returning that change to its original condition at the expense of the Lessee.

7. MAINTENANCE

Lessee will carefully and economically occupy and use said demised premises and will forthwith, at its own expense, be responsible for all maintenance and repairs to said demised premises, except for repairs of a structural nature for which Lessee is not responsible and for permanent fixtures, defined to include those fixtures which cannot be readily removed and relocated for use by the Lessee, including permanent light fixtures, HVAC, plumbing, pipes, sprinkler systems, etc. Lessee will be responsible for all damages that may happen or accrue to said premises or any part thereof during the term of this Lease, excepting reasonable wear and use, damages by accidental fire not due to negligence of Lessee, and damages by the elements alone.

Lessor shall be responsible for and make a payment of all maintenance and repairs to the demised premises of a structural nature for which Lessee is not responsible hereunder. Lessor will also maintain and repair all permanent fixtures on the premises, defined as those fixtures which cannot be readily removed and relocated for use by Lessee, including permanent light fixtures, HVAC, plumbing, pipes, sprinkler systems, etc.

8. ACCESSIBILITY

Lessee agrees that the Lessor and its agents, including any contractor employed by the Lessor, shall have the right to enter the demised premises at reasonable hours of the day for the purpose of inspecting same and of making such alterations and repairs as are, in the opinion of the Lessor, reasonably necessary for the safety and preservation of the demised premises.

9. TAXES AND INSURANCE

Lessor shall pay all ad valorem property taxes that may be assessed against the hereinabove-described property during the term of this lease. Lessor shall further be obligated to pay any and all liability, fire and casualty insurance premiums as required by law in such amounts as are necessary to maintain adequate coverage for the improvements on the above-described property throughout the term of this lease and annually for any extensions thereof. Lessor shall, at a minimum, maintain liability limits in an amount not less than \$1,000,000 per occurrence with an aggregate of not less than \$2,000,000.

10. DESTRUCTION BY FIRE OR ELEMENTS

If the demised premises or the building containing the demised premises shall be damaged by fire or other casualty attributable to the elements, within thirty (30) days of such damage, the Lessor or the Lessee may elect to terminate this Lease as of such damage and have no further liability to the other by giving notice in writing of such termination. In the event of such damage, if the Lessor or the Lessee does not terminate the Lease, Lessor shall restore the demised premises within a reasonable period of time. In the event of restoration as provided above, it shall be at the cost of the Lessor and the rent or a just and proportionate portion thereof shall be abated until such restoration is complete unless said damage was caused by the acts or neglect of the Lessee or servants, agents, employees, licensees, or invitees of Lessee, in which later event there shall be no abatement of rent and the Lessor shall be fully reimbursed by the Lessee for such restoration.

11. LIABILITY

Lessee agrees to hold Lessor harmless from any liability that may result or arise from any use of said premises by the Lessee.

12. USAGE

Lessee agrees to use and occupy the demised premises in a prudent and careful manner, and to return same to Lessor upon the termination of this lease, in as good condition as when received, excepting ordinary wear and tear incident to its use for commercial purposes, natural decay and damages by fire, the elements and acts of God.

The Lessee further agrees to obey, observe and promptly comply with all present and future laws, ordinances, rules, regulations, orders and requirements of all governmental authorities or agencies respecting its use and occupancy of said premises, and not to use, or permit same to be used, in such a manner as to create a nuisance or disturb the occupants of any neighboring property.

13. WASTE REMOVAL & GROUNDS CARE

Garbage shall be disposed of the Lessee in strict accordance with the rules and regulations set forth by law or order of any state or local government agency and the Lessor. Lawn and Grounds are to be cut and controlled by Lessee. Lessee is responsible for snow removal.

14. DEFAULT

If default shall at any time be made by the Lessee in the payment of the rent hereby reserved, or any installment therefore, or if default shall be made in any of the covenants herein contained, to be kept, observed and performed by the Lessee, then, and in any of said cases, if the default continues for a period of ten (10) days after written notification of such default from Lessor to Lessee, the Lessor may, at its option, terminate this lease, the Lessee agreeing that the covenants and agreements made by it herein shall be termed conditions as well as covenants. Upon the termination of this lease at the option of the Lessor as aforesaid, or at the expiration of this Lease by a lapse of time, the Lessee will at once surrender possession of said premises to the Lessor, and if such possession be not immediately surrendered, the Lessor may forthwith reenter said premises and repossess itself thereof as of its former estate, using only such force as may be necessary, without being termed guilty of any manner of trespass or forcible entry or detainer. No receipt of money by the Lessor from the Lessee, or either of them, after this Lease has been terminated in any way shall reinstate, continue or extend the

term of this Lease, or affect any notice given to the Lessee prior to the receipt of such money, it being agreed that after the service of notice or the commencement of a suit, or after final judgment for the possession of said premises, the Lessor may receive and collect any rent due, and the payment of said rent shall not waiver or affect said notice, said suit or said judgment.

If the Lessor defaults in the performance of any condition of this lease for which the Lessor is responsible, thirty (30) days after Lessee gives written notice to Lessor to correct the same, then the Lessee may terminate this lease without further notice.

15. TERMINATION

It is mutually understood and agreed that no surrender of the demised premises, or of the remainder of the term hereby created, shall be valid unless accepted by the Lessor in writing. The Lessee agrees immediately upon the termination of this Lease by the Lessor for any of the causes specified hereinabove, or upon the expiration of said lease by lapse of time, to remove all effects belonging to Lessee from said premises, and vacate and surrender to the Lessor possession thereof, including additions and improvements added thereto by either Party as specified within Section 6. of this agreement.

16. CONTINGENCY

Lessor agrees that due to insufficient on-site parking at the facility, this lease is contingent upon the Lessor's ability to secure adequate adjacent land, as shown in Exhibit B for the lease terms and durations stated in this lease. Failure of the Lessor to provide continuous access to the land shown on Exhibit B would constitute a default of this lease

17. SUCCESSORS AND ASSIGNS

All rights and liabilities herein given to, or imposed upon either of the parties hereto shall extend to the successors and assigns of said parties, and so far as the same may be assigned by the Lessee hereunder, with prior written consent of the Lessor thereto, to the Lessee's assigns. It is specifically intended by the parties for this Lease to remain in full force and effect for the term of such Lease in the event the Lessee is purchased, sold, acquired, merged or otherwise combined with or by another entity.

18. QUIET ENJOYMENT

Lessor warrants and represents that it has full power and authority to make this Lease, and that during the term thereof, the Lessee, not being in default with respect to the payment of rent or the performance of any of the

covenants and agreements made hereby by it, shall peaceably occupy and quietly enjoy the demised premises.

19. NOTICES

All notices required under this Lease Agreement shall be given by certified mail. Notices to Lessor shall be addressed to:

James R. Kemper
1484 Copper Run Boulevard
Lexington, KY 40514

Notices required to be sent to Lessee shall be addressed to:

Division of Water Quality
Attn: Deputy Director Administrative Services
125 Lisle Industrial Avenue, Suite 180
Lexington, KY 40511

20. ENTIRE AGREEMENT

This Lease Agreement, together with any written agreements which shall have been executed simultaneously herewith and referred to herein, contains the entire agreement and understandings, terms, conditions, and neither party has relied upon any representations, expressed or implied, not contained in this Lease Agreement or the simultaneous writings heretofore referred to. All prior understandings, terms, or conditions are deemed merged in this Lease Agreement. This Lease Agreement cannot be changed or supplemented orally.

21. SEVERABILITY


If any provision of this Lease Agreement shall be declared invalid or unenforceable, the remainder of the Lease shall continue in full force and effect.

22. Brokers

The Lessee represents and warrants that it is not represented in this transaction by a real estate broker. Lessee shall indemnify Landlord if there is a breach of this representation. The Lessor is represented by Isaac Commercial Properties, Inc., d/b/a NAI Isaac. The Lessor shall pay all brokerage commission or fees payable with respect to this transaction as per a separate written agreement between Lessor and NAI Isaac and the Lessee will not be responsible for the payment of any such fees or commissions.

IN TESTIMONY WHEREOF, witness the hand of the authorized agent for the Party of the first Part, and the hand of the authorized agent for the Party of the Second Part, the day and year first above written.

LESSOR: James R. Kemper

BY: 

LESSEE: Lexington Fayette Urban County Government

BY: 
JIM GRAY, MAYOR

COMMONWEALTH OF KENTUCKY

COUNTY OF Fayette

Sworn, subscribed to and acknowledged before me, a Notary Public in and for the jurisdiction aforesaid, personally appeared James R. Kemper, known to me to be the individual described herein who executed the foregoing instrument on this 30 day of October.

My commission expires: 1/16/16

457223

ID: No.


NOTARY PUBLIC

COMMONWEALTH OF KENTUCKY

COUNTY OF FAYETTE

Sworn, subscribed to and acknowledged before me, a Notary Public in and for the jurisdiction aforesaid, personally appeared Jim Gray, Mayor, known to me to be the individual described herein who executed the foregoing instrument on this 16th day of December 2013

My commission expires: 6/9/16

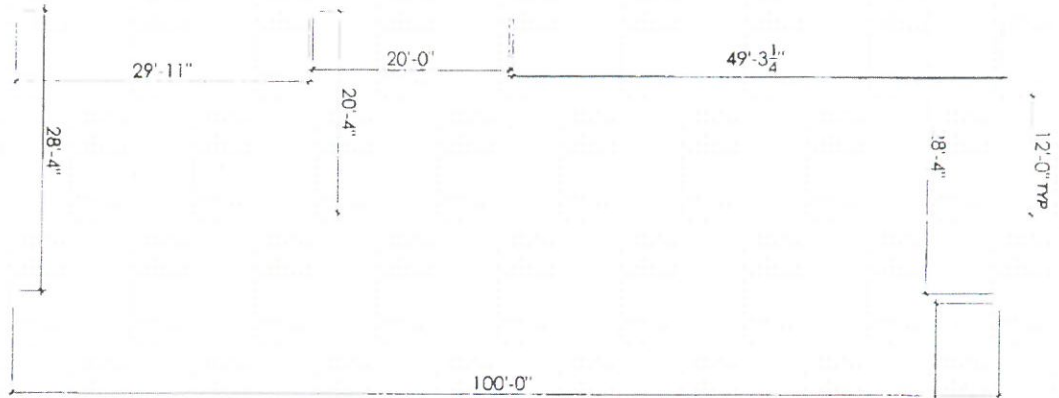
457846

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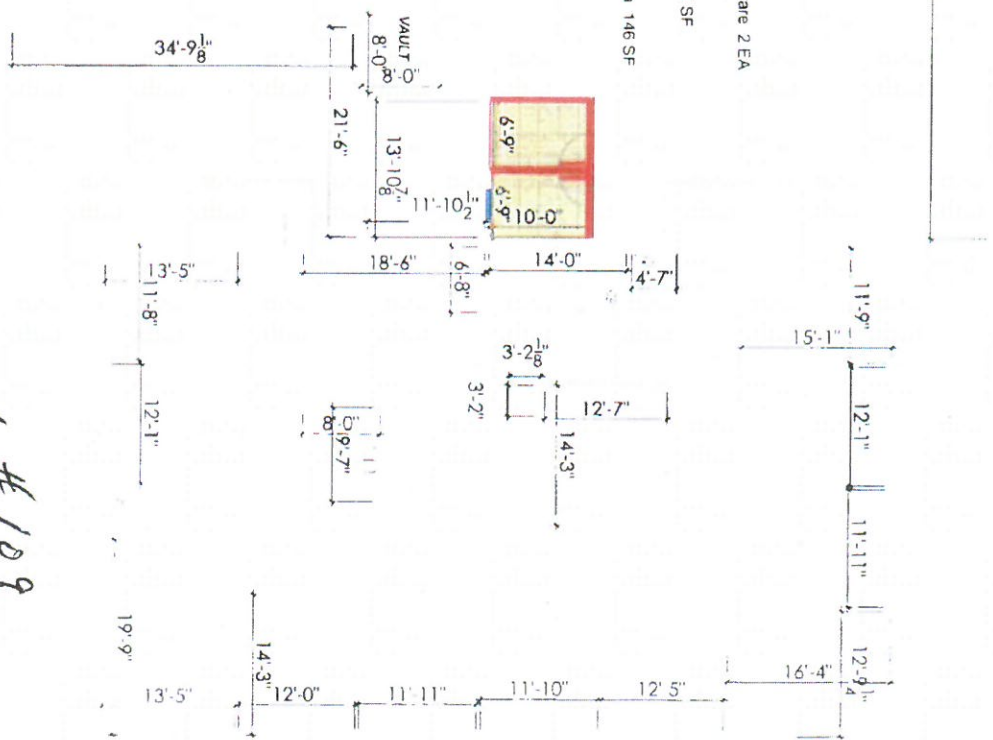

NOTARY PUBLIC

EXHIBIT A

Exhibit A
951 Enterprise



- Demo/Save Door Frame Hardware 2 EA
- Demo Wall 34 LF
- Demo Flooring and Ceiling 131 SF
- Cut New Door Opening 1 EA
- Demo Lighting, Power/Comdata 146 SF



Proposal # 109

EXIST

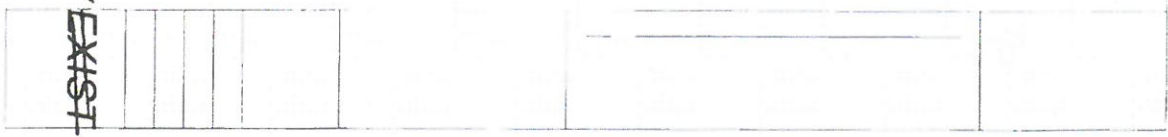
Exhibit A
951 Enterprise

- Drywall Scar Patch 5 EA
- Paint Wall to Match existing 454 SF
- Reinstall Existing Door 1 EA
- ▲ New Light Switch 1 EA



Proposal #109

NEW
~~EXIST~~



PROPOSAL

Exhibit A

109

JARBOE CONSTRUCTION, INC.
1017 S. Broadway
LEXINGTON, KY 40504

(859) 277-2403 FAX (859) 277-9109

TO: Davis H Elliot
673 Blue Sky Parkway
Lexington KY 40509

PHONE	DATE
859-263-5148	10/23/2013
JOB NAME / LOCATION	
Old Elliot Electric Office Renovation 951 Enterprise Drive Lexington, Kentucky 40510	
JOB NUMBER	JOB PHONE

We hereby submit specifications and estimates for:

Work per two page plan attached. Remove 2 offices, relocate one salvaged door.

Description	Units	Type	Unit Price	Extension	Lump	Cost	Price
Superintendent/Project Mngt	12	HR	\$30.00	\$360.00	\$0.00	\$360.00	\$414.00
General Laborer/Final Cleaning	16	HR	\$25.00	\$400.00	\$0.00	\$400.00	\$460.00
Dumptruck/Transfer Station Fee	1	EA	\$155.00	\$155.00	\$45.00	\$200.00	\$230.00
Demo Flooring and Ceiling	131	SF	\$3.00	\$393.00	\$0.00	\$393.00	\$451.95
Demo Wall	34	LF	\$15.00	\$510.00	\$0.00	\$510.00	\$586.50
Demo/Save Door Frame Hardware	2	EA	\$55.00	\$110.00	\$0.00	\$110.00	\$126.50
Cut/Reframe New Door Opening	1	EA	\$110.00	\$110.00	\$0.00	\$110.00	\$126.50
Drywall Scar Patch	5	EA	\$100.00	\$500.00	\$0.00	\$500.00	\$575.00
Paint Wall to Match existing	454	SF	\$0.70	\$317.80	\$0.00	\$317.80	\$365.47
Reinstall Existing Door	1	EA	\$200.00	\$200.00	\$0.00	\$200.00	\$230.00
Demo Lighting, Power/Comdata	146	SF	\$4.00	\$584.00	\$0.00	\$584.00	\$671.60
New Light Switch	1	EA	\$185.00	\$185.00	\$0.00	\$185.00	\$212.75
TOTAL						\$3,869.80	\$4,450.27

We Propose hereby to furnish material and labor — complete in accordance with the above specifications, for the sum of **Four Thousand Four Hundred Fifty and 27/100 Dollars** dollars \$ **4,450.27**

Payment to be made as follows

In full upon completion, net 20 days

All material is guaranteed to be as specified. All work to be completed in a professional manner according to standard practices. Any alteration or deviation from above specifications Authorized involving extra costs will be executed only upon written orders, and will become an extra. Signature charge over and above the estimate. All agreements contingent upon strikes, accidents, or delays beyond our control. Owner to carry fire, tornado, and other necessary insurance. Our workers are fully covered by Workers Compensation insurance.



Note: This proposal may be withdrawn by us if not accepted within

30 days

Acceptance of Proposal — The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above.

Signature _____

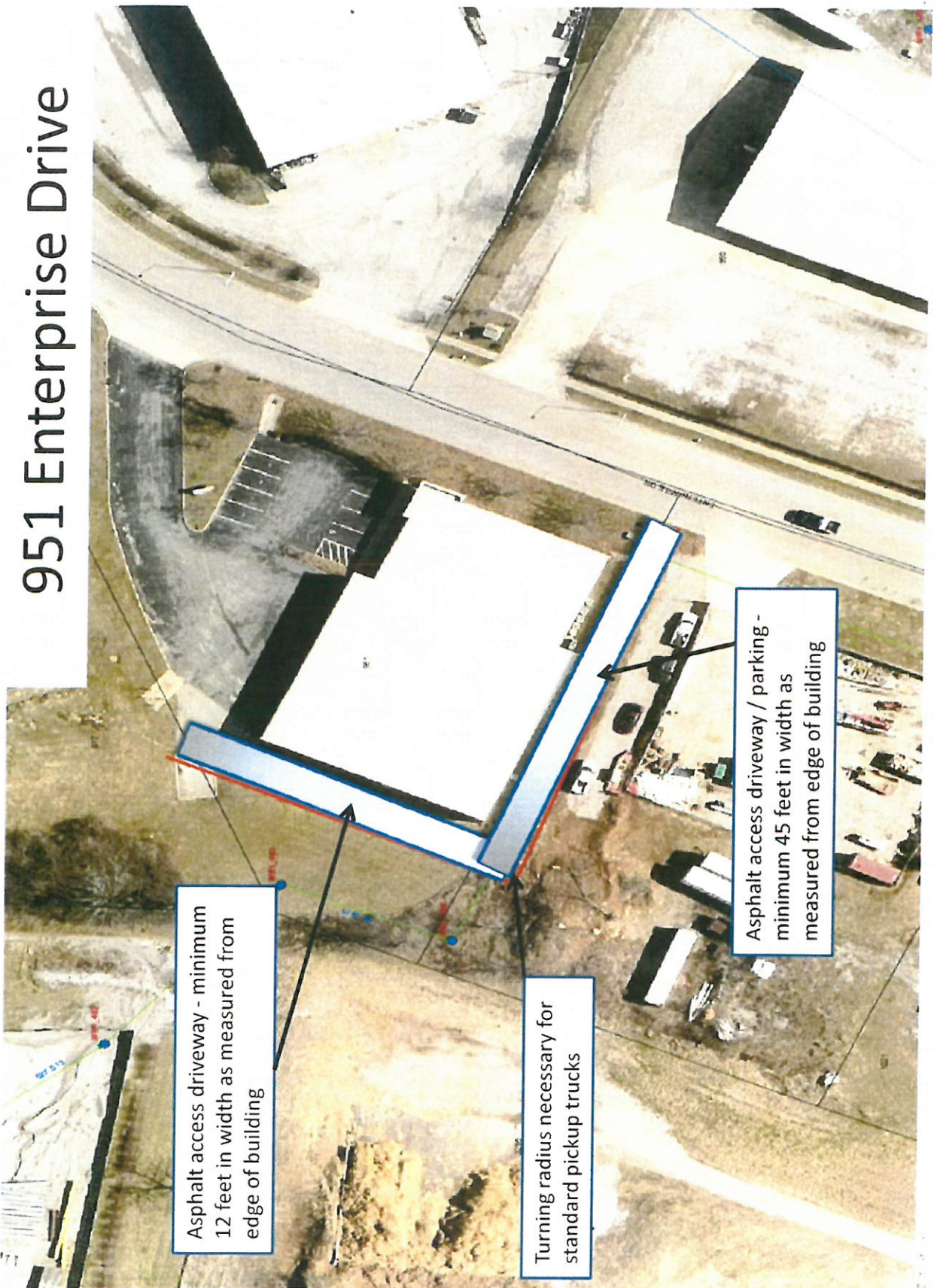
Signature _____

Date of Acceptance: _____

Exhibit B

EXHIBIT B

951 Enterprise Drive



Asphalt access driveway - minimum 12 feet in width as measured from edge of building

Turning radius necessary for standard pickup trucks

Asphalt access driveway / parking - minimum 45 feet in width as measured from edge of building

Exh. 6.7 L

C&R Asphalt, LLC
 415 Rebmann Lane
 Lexington, Ky 40504
 (859) 255-0077 Office
 (859) 255-2570 Fax
 (859)-621-1800
 www.asphaltanimals.com
 josh999@hotmail.com



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- *Jennite Authorized Installer
- *Snow Removal /Tennis Courts
- *Infrared Patching/Concrete Work
- *Member Better Business Bureau

Proposal Submitted To Davis H. Elliot		Contact Person Jim Kemper		Work Phone	
Street 673 Blue Sky Parkway		Home Phone		Mobile 859-6850557	
City Lexington		State KY	Zip 40509	Fax	
Email Address jkemper@davishelliot.com		Project Name		C & R Contact: Josh Coleman	Cell Phone (859)-621-1800
Terms: Net on Completion		Proposal Number 13-jc-2770	Proposal Date 10/22/2013	Quotation Expires 11/15/2013	
Project Location	9510 Enterprise Dr				Lexington
Footage	Description				Amount
9310 SF	NEW DRIVE AND PARKING SLOTS				\$37,485.00
	Install 150 lf of silt fence Install 150 lf of silt fence Excavate grassy areas to a depth of 10" Haul off spoils, install 6" of aggregate, into new areas Grade and contour lot for positive drainage Install 4 oz Geotxtile Fabric, entirely Install 4" of # 2 rock, in 2 courses, grade and compact. Install 4" of DGA rock Install 2" of Grade 1 Base Mix Asphalt Install 1" of Grade 1 Surface Mix Asphalt				
	Temp Seed and straw (includes fine grade of topsoil)				\$640.00
	Drive Lanes: 22' wide Parking Stall and Drive Lane: 40' wide				
	Not responsible for relocation of AC Units no solid rock hoe-ramming included no permits or fees no landscaping or yard dress up				

All material is guaranteed for one year as specified, and the above work to be performed in accordance with the drawings and/or specifications submitted for above work and completed in a substantial workmanlike manner.

C & R Asphalt, LLC.

C & R Authorized
Signature

Josh Coleman

ACCEPTANCE
OF
PROPOSAL

The above prices, specifications and conditions are satisfactory and are hereby accepted. You are authorized to do the work as specified. Payment will be made as outlined above. Legal fees and court costs incurred in the collection of monies owed according to this contract will be borne by the customer. A service charge of 2% per month or 24% per annum will be added to all balances over 30 days. A fuel surcharge of 2% may be added to total price. Price is subject to any increases in material costs incurred by C & R Asphalt, LLC from proposal date of contract. C & R Asphalt, LLC is not responsible for damage to existing concrete, pavements, or structures. Warranty is exclusive of issues caused by vegetation growth or weather related. Warranty will be void on new paving if sealcoated by another contractor. It is the customers' responsibility to call 811 to have any questionable underground utilities marked & for any/all needed permits/fees. Sealcoat warranty does not cover damage that is a result of snow plowing/removal. Payment via creditcard will incur an additional fee of 2% for Visa/Mastercard/American Express.

Customer Signature _____

Date _____