

MEMORANDUM

TO: Missouri Public Service Commission
Official Case File, File No. SA-2023-0215
Confluence Rivers Utility Operating Company, Inc.

FROM: Antonija Nieto – Auditing Department
Tammy Huber – Customer Experience Department
Kelli McKinley – Financial Analysis Department
Andrew Harris, PE – Water, Sewer & Steam Department
Keri Roth – Water, Sewer & Steam Department

/s/ Keri Roth 06-05-2023
Senior Research/Data Analyst / Date

/s/ Paul Graham 06/05/2023
Staff Counsel's Office / Date

SUBJECT: Staff's Recommendation to Approve Request for Certificate of Convenience and Necessity

DATE: June 5, 2023

Case Background

On January 4, 2023, Confluence Rivers Utility Operating Company, Inc. ("Confluence Rivers") and Circuit Court Appointed Receiver ("Receiver"), Terry Jarrett, filed a *Joint Application and Motion for Waiver* ("Application") with the Missouri Public Service Commission ("Commission") requesting a Certificate of Convenience and Necessity ("CCN") authorizing it to operate the sewer system assets and provide service to customers in the Lost Valley Subdivision ("Lost Valley"), in Ralls County, Missouri. The sewer system is currently unregulated. Confluence Rivers proposes to acquire all or substantially all of the unpermitted sewer system assets for an agreed upon purchase price of ** [REDACTED] **.

On January 13, 2023, the Commission issued its *Order Directing Notice, Setting Deadline for Intervention Requests, and Directing Filing of Staff Recommendation*, ordering Staff to file its recommendation or status report no later than February 28, 2023. On February 28, 2023, Staff filed its *Status Report*, requesting additional time to file its recommendation by April 14, 2023, which was granted by the Commission on March 13, 2023. On April 6, 2023, Staff filed its initial *Recommendation* recommending the Commission deny the *Application* and request for a CCN due to the *Application* being deficient and concerns related to the proposed method of sewer treatment. On April 12, 2023, a *Joint Motion for Extension* was filed to request additional time for the Company to respond to Staff's *Recommendation*. This motion was granted by the Commission on April 13, 2023. On April 18, 2023, the Company filed a *Motion for Leave to Amend Joint Application and Amendment to the Joint Application*. The Commission issued an *Order Granting Leave to Amend and Directing a Further Staff Recommendation* on April 20, 2023. Staff's second recommendation was ordered to be filed on or before June 5, 2023.

Confluence Rivers has no overdue Commission annual reports or assessment fees. Additionally, no parties sought to intervene in the case, and to date, no public comments have been submitted.

** Denotes Confidential Information **

Appendix A

Background of Confluence Rivers Utility Operating Company, Inc.

Confluence Rivers is a regulated water and sewer utility currently providing service in Missouri. Confluence Rivers is a subsidiary of Central States Water Resources, LLC (“CSWR”), which also owns and operates several other water and sewer systems in Missouri, as well as several other operating companies in several other states. In its Application, Confluence Rivers states it currently provides water service to approximately 4,400 customers and sewer service to approximately 4,600 Missouri customers in several counties.

Background of Mr. Kenneth Jaeger and Lost Valley

According to the Application, in 2004, Kenneth Jaeger owned the unpermitted and non-compliant sewage lagoon located near the Lost Valley subdivision. In December 2021, the Missouri Attorney General’s Office filed its *Petition and Motion to Appoint Receiver* in Ralls County Circuit Court, Case No. 21RL-CV00330, citing continued violation of the Missouri Clean Water Law, Sections 644.006 through 644.150, RSMo, in that Mr. Jaeger’s sewage lagoon has periodically discharged partially treated sewage into a tributary of the Salt River. On May 3, 2022, a default judgement was entered in the above-mentioned case against Mr. Jaeger, and a Receiver was appointed.

In the *Order Appointing Receiver* (“Receivership Order”) filed with the application, the Court identifies, “This property consists of a wastewater treatment lagoon, land application field, and all assets and appurtenances thereto located in the SW ¼, SE 1/4, Section 14, Township 55, North, Range 7 West in Ralls County, Missouri.” The Receivership Order further states that Mr. Terry Jarrett “... shall preserve and protect the entire property, and shall not allow it to be subdivided ...”

The fact that the existing single-cell facultative lagoon does not currently have a permit from the Department of Natural Resources (“DNR”) means that it does not have legal authorization to operate. Such a permit would identify the conditions under which a facility could operate, including whether or not it was allowed to discharge to waters of the state, and the quality that the treated water must attain in order to be discharged. As noted above, the DNR and the Missouri Attorney General’s Office have already determined the facility is not in compliance. Staff is aware that in most situations, single cell lagoons of any kind have not been capable of meeting DNR requirements for discharge for many years due to their limited ability to provide treatment.

Thus, the current sewer treatment system is not capable of providing safe and adequate service. Rather than repair or replacement of malfunctioning parts, a new treatment system must be installed.

In order to bring the facility into compliance with DNR and PSC regulations, Confluence Rivers proposes to seek permission from DNR to convert the unpermitted single-cell lagoon to a storage basin, install pumping equipment, and utilize subsurface low pressure drip irrigation to dispose of the partially treated wastewater. Staff finds this to be a reasonable plan for remediating the present situation. However, in Staff’s experience land is often difficult to obtain for land application systems. It is also crucial that land application be conducted at every opportunity that weather

provides, and at the rates approved by DNR. Therefore, a long term lease that grants full control of the land is appropriate for temporary surface land application devices (such as a traveling gun or sprinklers), and land ownership is appropriate for permanent structures (such as subsurface drip irrigation lines). In its Application, Confluence Rivers proposes to acquire the necessary land as part of the assets, in accordance with the Receivership Order.

Staff's Investigation

Staff conducted an inspection of the sewer system in question on January 27, 2023. Staff observed the single-cell facultative lagoon near the center of the property, a lift station near the southeast corner of the property used to pump sewage to the lagoon, and a field to the north and east of the lagoon proposed for land application of the effluent from the lagoon. Staff observed that a high level discharge pipe appears to extend from the lift station pit to the adjacent creek. At the time of the inspection, Confluence Rivers employees acknowledged the need for removal of any bypass piping. According to the 21 Design engineering report, the submersible lift station pumps are both 5.0 horsepower, the site has single phase 240 volt power available, and the collection system is 4-inch and 6-inch PVC pipe.

Additionally, Staff reviewed the application for completeness as part of its investigation. Staff found that while the original application stated that a certain amount of land was to be acquired from the Receiver as part of the transaction, the maps and supporting documentation did not indicate that all of this land was in fact being acquired. Staff worked to clarify this situation by issuance of DRs¹, and through discussions² with Confluence Rivers. Despite attempts to work with Confluence Rivers as described above, Staff was unable to obtain proper documentation from Confluence Rivers to support their application and subsequently, as discussed above, filed Staff's *Recommendation to Deny the Application and Request for Certificate of Convenience and Necessity* on April 6, 2023. Following an additional meeting between Staff and Confluence Rivers representatives on April 17, 2023, Confluence Rivers on April 18 filed amended Appendix D (legal description) and amended Appendix E (service area map). On April 20, Staff submitted DR No. 0030 requesting confirmation from the design engineer that the amended area being requested was sufficient for a 10-acre land application design. On May 5, Confluence Rivers provided a response to DR No. 0030 stating, "There is approximately 10.8 acres of area available in the real estate to be obtained that could be used for this purpose." With this response, along with the amended legal description and service area map, Staff's concerns that were outlined in the previous recommendation for denial have been alleviated.

¹ DR Nos. 0027, 0028, and 0029.

² Email between Staff and Confluence Rivers, February 14, 2023. Meeting between Staff and Confluence Rivers March 20, 2023.

Proposed Capital Investments

21 Design has identified the following proposed capital investments with estimates of cost. (Note: Since breakout for an effluent pump station is not included separately; Staff makes an assumption that the estimated cost is combined with the irrigation system):

- | | |
|--|-----------|
| • Install a flow monitoring and a remote monitoring system | \$30,000 |
| • Replace the lagoon access gate | \$5,000 |
| • Acquire adequate land for the irrigation zone | Unknown |
| • Install lagoon effluent pump station and subsurface irrigation | \$175,000 |
| • Replace existing influent pumps and relocate controls | \$30,000 |
| • Improve lagoon berm slopes with installation of riprap | \$40,000 |

Preliminary cost estimates are provided in this Memorandum for informational purposes only. Staff will review all investments and the actual costs for all repair and improvements during a future rate case to be filed by Confluence Rivers.

Service Area

As discussed above, Staff recommends the filed Appendix D - AMENDED and Appendix E - AMENDED for acceptance.

Rate Base

The Auditing Department Staff reviewed information provided by Confluence Rivers in response to Staff's Data Requests (DR) and the information in Confluence Rivers' Application, which included sale agreement documents and Confluence Rivers' workpapers. Typically, Staff recommends the value of plant investment, or "rate base," by studying documentation of the original cost of constructing plant, annual depreciation expense, and whether or not interactions with non-utility parties resulted in contributed plant-in-service.

Based on the limited information provided to Staff and due to lack of the original cost documentation for the plant, Staff recommends accounting for the system to be acquired by Confluence Rivers as fully contributed plant. Staff considers all of Mr. Kenneth Jaeger's investment in the unpermitted sewer system as recovered primarily through the sale of lots in the Lost Valley subdivision. The initial costs invested in the plant, usually referred to as development costs, and recovered by the developer through sale of the lots are treated as Contribution in Aid of Construction ("CIAC") on the utility's books and records. Including this previously recovered cost into base rates would result in a double recovery of the development costs from the utility customers.

Depreciation

Staff recommends the use of Confluence Rivers' current depreciation rates. These depreciation rates are included as Attachment A.

Customer Experience

Publicity and Customer Notice

According to information provided to Staff, Confluence Rivers stated that they are not aware of any notifications or meetings held to inform the residents of this proposed acquisition of Lost Valley.

Customer Service and Billing

Lost Valley customers will not have a local business office nearby; however, customers will be able to contact Confluence Rivers' customer service department by calling the toll-free phone number 866-945-3920, or by sending an email to customer service at support@confluenceriversuoc.com. There is also a toll-free phone number available for emergency calls. The emergency number, website and email are available 24/7. Confluence Rivers stated this information will be provided on the customer brochure, the website, and in all written materials that will be sent to customers. The main office is open from 8:00 am to 5:00 pm M-F to respond to customer concerns forwarded by operations or customer service personnel. The main office is located at 1630 Des Peres Road, Suite 140, St. Louis, MO 63131. Additionally, main office customer service personnel are available to be contacted after hours for emergency calls.

Confluence Rivers will offer payment options including, check, money order, cashier's check, e-check, credit and debit cards. Other payment options include Apple pay, Google pay and PayPal Cash. The methods to pay are through the IVR ("interactive voice response"), pay online or mailing a check or money order to P.O. Box 676384, Dallas, TX 75267. Online payments can be made using check or credit/debit cards.

In order to incorporate records from the acquired customers into its billing and customer service systems, it will be necessary for Confluence Rivers to properly enter the appropriate customer information into its systems and apply the Commission-approved rates.

Rate and Tariff Matters

Currently, customers of the Lost Valley Subdivision do not pay for sewer service. Confluence Rivers proposes to charge a flat rate of \$16.67 per month for sewer service, which is consistent with the currently approved sewer charge in its Freeman Hills service area. While this rate is expected to be well below the cost of service, it is a step toward an appropriate rate and will help minimize rate shock. The system will require investment after being acquired by Confluence Rivers, which will result in a request for a rate increase at some point in the future once the system upgrades have been completed. Additionally, Confluence Rivers proposes to utilize the rules governing the rendering of service currently found in Confluence Rivers' existing P.S.C. MO No. 13 tariff for sewer service, until the Commission orders new rates and rules.

Technical, Managerial, and Financial Capacity and Tartan Energy Criteria

Staff utilizes the concepts of Technical, Managerial, and Financial capacities ("TMF") in studying applications involving existing water and/or sewer systems. Staff has reviewed and stated its position on the TMF capacities regarding each of Confluence River's affiliates in previous CCN

and transfer of assets cases before the Commission. Staff's position on Confluence Rivers' ability to meet TMF criteria remains positive regarding those affiliates, and it similarly takes the position that Confluence Rivers has adequate TMF capacity in this case. It is Staff's position that Confluence Rivers has the ability to secure funding, to oversee construction of any necessary upgrades or repairs, and the ability to successfully manage operations of the Lost Valley sewer utility system.

When considering a request for a new CCN, the Commission applies criteria originally developed in a CCN case filed by the Tartan Energy Company and referred to now as the "Tartan criteria." The Tartan criteria contemplate 1) the need for service; 2) the utility's qualifications; 3) the utility's financial ability; 4) the economic feasibility of the proposal; and, 5) promotion of the public interest. Similar to the TMF capacities, in previous CCN cases Staff investigated these criteria and that investigation relates to this proposed acquisition. The results of Staff's investigation are outlined below:

(1) Need for Service

There is both a current and future need for sewer service. The existing customer base in the Lost Valley service area has both a desire and need for service. In addition, there is a need for the necessary steps to be taken to update the Lost Valley sewer system, and to ensure the provision of safe and adequate service. Further, Lost Valley is currently in receivership and the Receiver has made the decision to sell the system to Confluence Rivers, and rely upon Confluence Rivers to properly operate and maintain the existing sewer system in order that customers will receive safe and adequate service.

(2) Applicant's Qualifications

Confluence Rivers is qualified to own and operate the Lost Valley system. Confluence Rivers is an existing water and sewer corporation and public utility subject to the jurisdiction of the Commission. Confluence Rivers is currently providing water service to approximately 4,400 customers and sewer service to approximately 4,600 customers in several service areas throughout Missouri. Additionally, Confluence Rivers has affiliates that provide water and sewer service in several other states.

(3) Applicant's Financial Ability

Confluence Rivers anticipates no need for external financing to complete this acquisition, and has demonstrated over many years that it has adequate resources to operate utility systems it owns, to acquire new systems, to undertake construction of new systems and expansions of existing systems, to plan and undertake scheduled capital improvements, and timely respond and resolve emergency issues when such situations arise.

From a Financial Analysis perspective, per review of Confluence Rivers' financial information provided in response to DR No. 0004, Confluence Rivers appears to have multiple negative financial ratios indicating a high financial risk. Confluence Rivers additionally shows consistently

negative net income and retained earnings since Q1 2020 through Q4 2022.³ Despite the high financial risk, given the purchase price for this acquisition is ** [REDACTED] **,⁴ it is reasonable to conclude that Confluence Rivers has the financial capacity to acquire this system without a significantly negative impact on their capital structure or financial ratios.

(4) Feasibility of the Proposal

Confluence Rivers' purchase of the system, utilizing the proposed sewer rate noted above, is financially feasible. Confluence Rivers can draw upon the significant resources of its parent company, should any shortfall arise prior to the next rate case.

(5) Promotion of the Public Interest

Due to Lost Valley currently being in court appointed receivership and the Receiver's decision to sell the sewer utility system and for the reasons outlined previously in this memorandum, Staff asserts that Confluence Rivers request for a CCN and related acquisition of the Lost Valley sewer assets promotes the public interest. Customers will experience enhanced service with the improvements to the sewer system. Confluence Rivers has demonstrated the ability to provide save and adequate service.

Other Issues

Lost Valley, as an unregulated sewer corporation, has no obligations due to the Commission, and has no pending actions before the Commission.

Confluence Rivers is a corporation that is in "good standing" with the Missouri Secretary of State.

Confluence Rivers is current with annual report filings with the Commission through calendar year 2022, as documented on the Commission's Electronic Filing and Information System ("EFIS").

Confluence Rivers is current on its annual assessment quarterly payments.

Confluence Rivers has other pending cases before the Commission, but none that would impact this decision.

Staff Recommendation

Based upon the above, Staff recommends that the Commission:

1. Grant Confluence Rivers a CCN to provide sewer service in the proposed Lost Valley service area;
2. Approve Confluence Rivers' proposed monthly charge of \$16.67 for sewer service, and the rules governing sewer service currently found in Confluence Rivers' sewer tariff P.S.C. MO No. 13;
3. Require Confluence Rivers to submit tariff sheets, to become effective before closing on the assets, to include the amended service area map, amended service area written description, rates and charges;

³ Confluence Rivers' response to DR No. 0005 in Case WR-2023-0006 and DR No. 0002 in Case SA-2023-0187.

⁴ Paragraph 4, Appendix B-C of the Application.

4. Require Confluence Rivers to notify the Commission of closing on the assets within five (5) days after such closing;
5. If closing on the sewer system assets does not take place within thirty (30) days following the effective date of the Commission's order approving such, require Confluence Rivers to submit a status report within five (5) days after this thirty (30) day period regarding the status of closing, and additional status reports within five (5) days after each additional thirty (30) day period, until closing takes place, or until Confluence Rivers determines that the transfer of the assets will not occur;
6. If Confluence Rivers determines that a transfer of the assets will not occur, require Confluence Rivers to notify the Commission of such no later than the date of the next status report, as addressed above, after such determination is made, and require Confluence Rivers to submit tariff sheets as appropriate that would cancel service area maps and descriptions applicable to the service area in its sewer tariff, and rate and charges sheets applicable to customers in the service area in the sewer tariff;
7. Require Confluence Rivers to keep its financial books and records for plant-in-service and operating expenses in accordance with the NARUC Uniform System of Accounts;
8. Require Confluence Rivers to adopt its current depreciation rates for the Lost Valley system and these rates are attached as Attachment A;
9. Require Confluence Rivers to provide training to its call center personnel regarding rates and rules applicable to the sewer customers in the acquired area;
10. Require Confluence Rivers to distribute to the customers in the acquired area an informational brochure detailing the rights and responsibilities of the utility and its customers consistent with the requirements of Commission Rule 20 CSR 4240-13, within thirty (30) days of closing on the assets;
11. Require Confluence Rivers to provide to the Customer Experience Department ("CXD") Staff an example of its actual communication with the Lost Valley customers regarding its acquisition and operations of the sewer, and how customers may reach Confluence Rivers, within ten (10) days after closing on the assets;
12. Require Confluence Rivers to provide to the CXD Staff a sample of five (5) billing statements from the first three month's billing for the acquired Company within ten (10) days of the billings; and,
13. Require Confluence Rivers to file notice in this case outlining completion of the above-recommended training, customer communications, notifications and billing for each acquired company within ten (10) days after such communications and notifications.
14. Require Confluence Rivers to include the Lost Valley sewer customers in its established monthly reporting to the CXD Staff on customer service and billing issues, on an ongoing basis, after closing on the assets.
15. Require Confluence Rivers to complete installation of the subsurface irrigation system within 18 months of closing.
16. Require Confluence Rivers to file notice in this case once Staff Recommendations Nos. 1-15 above have been completed.

Attachment:

- A. Depreciation Rates

Confluence Rivers Utility Operating Company

SCHEDULE OF DEPRECIATION RATES

SEWER Class B, C & D

WR-2020-0053

Villa Ridge, Mill Creek, Gladlo, Roy-L, Willows, Majestic Lakes,
Calvey Brook and Auburn Lakes

ACCOUNT NUMBER	ACCOUNT DESCRIPTION	DEPRECIATION RATES
COLLECTION PLANT		
311/351	Structures & Improvements	4.0%*
352.1	Collection Sewers (Force)	2.0%*
352.2	Collection Sewers (Gravity)	2.0%*
354	Services	2.0%*
355	Flow Measurement Devices	3.3%*
PUMPING PLANT		
361	Structures and Improvements	4.0%*
362	Receiving Wells	4.0%*
363	Electric Pumping Equipment	10.0%*
TREATMENT & DISPOSAL PLANT		
371	Structures and Improvements	4.0%*
372	Oxidation Lagoons	4.0%*
373	Treatment & Disposal Facilities	5.0%*
374	Plant Sewers	2.5%*
375	Outfall Sewer Lines	2.0%*
GENERAL PLANT		
390	Structures and Improvements	4.0%*
391	Office Furniture & Equipment	5.0%*
391.1	Office Electronic & Computer Equip.	14.3%*
392	Transportation Equipment	13.0%*
393	Other General Equipment/Stores Equipment	10.0%*
394	Tools/Shop/Garage Equip.	5.0%*
395	Lab Equipment	5.0%*
396	Power Operated Equipment	6.7%*
397	Communication Equipment	6.7%*

*Designates a rate proposed in this case, rather than a rate ordered by the Commission in a previous case.

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

In the Matter of the Application of Confluence)
Rivers Utility Operating Company, Inc. and) File No. SA-2023-0215
Terry Jarrett, Receiver, for Confluence Rivers)
to obtain a Certificate of Convenience and)
Necessity and to Acquire Certain Sewer Assets)

AFFIDAVIT OF ANDREW HARRIS

STATE OF MISSOURI)
) ss.
COUNTY OF COLE)

COMES NOW ANDREW HARRIS and on his oath declares that he is of sound mind and lawful age; that he contributed to the foregoing *Staff Recommendation* in memorandum form; and that the same is true and correct according to his best knowledge and belief.

Further the Affiant sayeth not.

Andrew Harris

ANDREW HARRIS

JURAT

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of Cole, State of Missouri, at my office in Jefferson City, on this 2nd day of June 2023.

D. SUZIE MANKIN
Notary Public - Notary Seal
State of Missouri
Commissioned for Cole County
My Commission Expires: April 04, 2025
Commission Number: 12412070

D. Suzie Mankin

Notary Public

BEFORE THE PUBLIC SERVICE COMMISSION

OF THE STATE OF MISSOURI

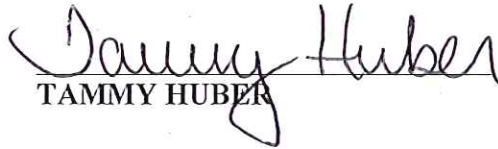
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AFFIDAVIT OF TAMMY HUBER

STATE OF MISSOURI)
) ss.
COUNTY OF COLE)

COMES NOW TAMMY HUBER and on her oath declares that she is of sound mind and lawful age; that she contributed to the foregoing *Staff Recommendation* in memorandum form; and that the same is true and correct according to her best knowledge and belief.

Further the Affiant sayeth not.


TAMMY HUBER

JURAT

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of Cole, State of Missouri, at my office in Jefferson City, on this 2nd day of June 2023.

D. SUZIE MANKIN
Notary Public - Notary Seal
State of Missouri
Commissioned for Cole County
My Commission Expires: April 04, 2025
Commission Number: 12412070


Notary Public

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AFFIDAVIT OF KELLI McKINLEY

STATE OF MISSOURI)
) ss.
COUNTY OF COLE)

COMES NOW KELLI McKINLEY and on her oath declares that she is of sound mind and lawful age; that she contributed to the foregoing *Staff Recommendation* in memorandum form; and that the same is true and correct according to her best knowledge and belief.

Further the Affiant sayeth not.


KELLI McKINLEY

JURAT

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of Cole, State of Missouri, at my office in Jefferson City, on this 5th day of June 2023.

D. SUZIE MANKIN
Notary Public - Notary Seal
State of Missouri
Commissioned for Cole County
My Commission Expires: April 04, 2025
Commission Number: 12412070


Notary Public

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AFFIDAVIT OF ANTONIJA NIETO

STATE OF MISSOURI)
) ss.
COUNTY OF JACKSON)

COMES NOW ANTONIJA NIETO and on her oath declares that she is of sound mind and lawful age; that she contributed to the foregoing *Staff Recommendation* in memorandum form; and that the same is true and correct according to her best knowledge and belief.

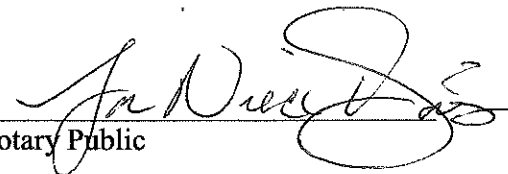
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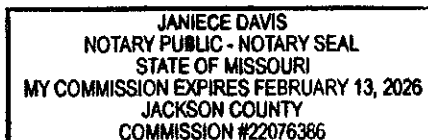
ANTONIJA NIETO

JURAT

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of JACKSON, State of Missouri, at my office in KANSAS CITY, on this 5th day of June 2023.



Notary Public



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AFFIDAVIT OF KERI ROTH

STATE OF MISSOURI)
) ss.
COUNTY OF COLE)

COMES NOW KERI ROTH and on her oath declares that she is of sound mind and lawful age; that she contributed to the foregoing *Staff Recommendation* in memorandum form; and that the same is true and correct according to her best knowledge and belief.

Further the Affiant sayeth not.

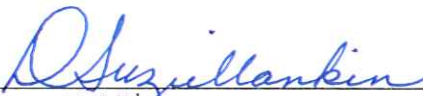


KERI ROTH

JURAT

Subscribed and sworn before me, a duly constituted and authorized Notary Public, in and for the County of Cole, State of Missouri, at my office in Jefferson City, on this 2nd day of June 2023.

D. SUZIE MANKIN
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Notary Public