

PRE-ANNEXATION AGREEMENT

This Pre-Annexation Agreement (the "Agreement") is made and entered into this _____ day of _____, 2017, by and between ARC Sawmill LLC, an Indiana Limited Liability Company (hereinafter the "Landowner") and the City of Powell, Ohio, an Ohio municipal corporation organized and existing under the Constitution and laws of the State of Ohio and its municipal charter (hereinafter the "City"), under the circumstances summarized in the following recitals.

RECITALS:

WHEREAS, Landowner owns or controls approximately 1.1186 +/- acres of land located at 9110 Bunker Lane (which land is depicted on Exhibit A and referred to herein as the "Property") which is contiguous with the boundaries of the City; and

WHEREAS, the Property would benefit from certain City services, including in particular police protection and comprehensive planning and zoning services; and

WHEREAS, the City is capable of providing and hereby agrees to offer its municipal services to the Property if the Property is annexed to the City; and

WHEREAS, the Parties agree that it is in their mutual interest during the annexation process to enter into this Agreement for the development of the Property for the mutual benefit of Landowner and the City; and

NOW THEREFORE, in consideration of the covenants and agreements contained herein, Landowner and the City covenant and agree as follows:

Section 1. Annexation Petitions and Related Approvals.

A. Petition(s) for Annexation; Annexation. The City agrees to prepare or has already prepared, at its expense, an annexation petition, map, legal description and other related information, as may be required by the Ohio Revised Code ("ORC"), to annex the Property to the City. The annexation process shall be an "Expedited Type II" annexation as provided in ORC Section 709.023. Landowner agrees that they will execute (or have already executed) or will cause (or have already caused) the underlying property owners to execute any necessary annexation petitions, as appropriate, and will not remove names from the petitions within the statutory period, and will execute any other documents reasonably necessary to effectuate the annexation as may be required by law as long as Landowner does not thereby incur additional cost or expense. The annexation petition shall appoint Powell Law Director Eugene L. Hollins as the petitioner's agent and may be filed solely with the Property or may be filed as a joint annexation petition with other parcels so long as all other parcels so joined are supported by one hundred (100%) of the owners of each parcel and the joinder of any such additional parcels will in no way affect the agreements of the parties memorialized in this Agreement. The petition will be filed with the Delaware County Commissioners. The City agrees that all costs and expenses in petitioning for the annexation will be borne by the City. Should Landowner desire for its own attorney to represent its interests with regard to the annexation petition, those costs will be borne by Landowner. Landowner further agrees that they will continue to support the annexation to the City throughout the process, including any appeal or court action at no further expense to Landowner; provided, however, Landowner's continued cooperation in the annexation of the Property shall be subject to and conditioned upon the City's performance of its duties and obligations as memorialized in this Agreement.

B. City Service Resolution. Pursuant to and in accordance with the ORC, the City agrees to enact (or has already enacted), prior to twenty (20) days after the date of filing the annexation petition(s) with the Board of County Commissioners of Delaware County, Ohio (the "Commissioners"), the appropriate Service Resolution stating that the services that will be provided to the Property upon annexation. The Service Resolution, once adopted, shall be immediately certified and filed with the Clerk of the Commissioners.

C. Development Considerations. Landowner's intended use of the Property is that of a Verizon Retail Store. Landowner's proposed use is set forth in more detail on the attached Development Plan for the Property, attached hereto as Exhibit B, and incorporated herein by reference.

1. **Zoning.** The Property is currently zoned under the Liberty Township zoning ordinance, granting the Property development plan approved for the proposed Verizon retail store (the "Approved Township Zoning"). City and Developer acknowledge and agree that the Zoning Code of the City permits the City to annex the Property as currently zoned pursuant to the Approved Township Zoning. Upon annexation, as provided in the Annexation Agreement, the City will accept and implement the Approved Township Zoning as the zoning for the Property and will permit the Property to be developed pursuant to the Approved Township Zoning, subject to the further provisions of the Annexation Agreement, and the annexation ordinance adopted by the City shall expressly state, confirm and reconfirm that the Approved Township Zoning shall be the approved and final zoning for the Property in the City. No further planning or zoning review, fees, other requirements or standards will be required

by the City beyond administration of the Approved Township Zoning and standard fees for building permits.

2. **Engineering.** The Property has been fully and finally engineered pursuant to Delaware County engineering standards and the approved engineering plans are on file in the office of the County Engineer (the “Approved County Engineering”). The City has reviewed the Approved County Engineering and covenants and agrees that upon annexation of the Property to the City, the City will accept the Approved County Engineering as the final approved engineering for the Property and will permit the Property to be developed pursuant to the Approved County Engineering. No further engineering review will be required by the City beyond administration of the Approved County Engineering.
3. **Land Development.** Due to the fact that, pursuant to the terms of this Agreement, the City has agreed to permit the Developer to proceed with the development of the Property in accordance with the Approved Township Zoning and the Approved County Engineering, Developer shall be permitted to proceed with full scale development activities on the Property during the pendency of the annexation of the Property.

D. Approval and Permit Regulation.

(i) **Compliance Statement.** Nothing in this Agreement shall absolve the Parties hereto from the responsibility to comply with the zoning and development plan as approved by Liberty Township.

(ii) **Council Action.** The obligations of and agreements by the City contained herein shall be effective and enforceable upon the approval of all necessary legislation and/or motions by Council. It is acknowledged that the initial legislation approving this Agreement is merely the first in a series of legislative acts implementing this Agreement. All subsequent Council actions implementing this Agreement shall be considered to be in furtherance of this Council Action.

(iii) **Permits.** Landowner will obtain all necessary permits from all levels of government to allow Landowner to build and develop Property consistent with its intended use.

Section 2. **Miscellaneous**

A. **Intent of Parties.** This Agreement shall be binding upon the Parties hereto and their respective successors and/or assigns, and by execution hereof, all Parties represent that they are duly authorized to sign it. By passage of Ordinance No. _____ on _____, the City authorized the execution of this Agreement.

B. **Cancellation or Termination.** This Agreement may be cancelled or otherwise terminated by mutual written agreement of the Parties hereto or pursuant to the terms of this Agreement as to conflict in law, impracticality and/or acts of God.

C. **Remedies.** Except as otherwise limited by Chapter 2744 of the Ohio Revised Code as to action for or against the City, the Parties hereto shall be afforded and do possess the right to seek every remedy available at law or in equity provided for under the laws of the State of Ohio as pertains to the terms and conditions, duties, obligations, privileges and rights of this Agreement and the enforcement thereof.

D. Enforcement. Unless this Agreement is cancelled or otherwise terminated, this Agreement will be enforceable against any Party hereto per the laws, ordinances, resolutions, regulations or policies in effect at the time of the execution of this Agreement.

F. Assignment of Agreement. Landowner shall not assign this Agreement, or any part thereof or any duty, obligation, privilege or right granted under this Agreement, without the express written consent of the City, which shall not unreasonably be withheld.

G. Relative Rights. The rights and obligations of the parties hereunder shall be subject to the terms and conditions hereof, and will inure to the benefit of, and be binding on, the respective successors and assigns.

H. Entire Agreement Merger Clause; Statement of Incorporation. It is agreed that the Agreement merges all of the oral negotiations, representations, discussions and understandings between the Parties, their legal counsel, agents or representatives. This Agreement contains the entire Agreement of the Parties with respect to its subject matter. All documents related to this Agreement and/or attached hereto as exhibits or addendums shall be incorporated into this Agreement by reference as if fully set out at length herein.

I. Severability. If any clause, sentence, paragraph or part of this Agreement shall, for any reason, be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair, or invalidate the remainder of this Agreement and the remainder of said Agreement shall continue in full force or effect.

J. Cooperation. The City will cooperate with Landowner to obtain any required and/or necessary permit from any government or governmental agency not a party to this Agreement.

K. Modifications or Amendment of Agreement. No modifications, amendments, alterations or additions shall be made to this Agreement except in a writing signed by all Parties hereto.

L. Recitals. The Parties acknowledge and agree that the facts and circumstances as described in the Recitals hereto are an integral part of this Agreement and as such are incorporated herein by reference.

M. Executed Counterparts. This Agreement may be executed in several counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same agreement. It shall not be necessary in proving this Agreement to produce or account for more than one of those counterparts.

N. Captions. The captions and headings in this Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Agreement.

O. Survival of Representations and Warranties. All representations and warranties of Landowner and the City in this Agreement shall survive the execution and delivery of this Agreement.

P. Effective Date. This Agreement shall be effective when signed by all the Parties hereto.

Q. Time. Time shall be of the essence in doing and performing all things to be done under the terms of this Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their
duly authorized representatives this _____ day of _____, 2017.

CITY OF POWELL, OHIO

By: _____

Printed: Stephen A. Lutz

Title: City Manager

ARC SAWMILL LLC

By: _____

Printed: Alan S. Muncy

Title: Manager

INDEX OF EXHIBITS

- A. Description of Property
- B. Development Plan

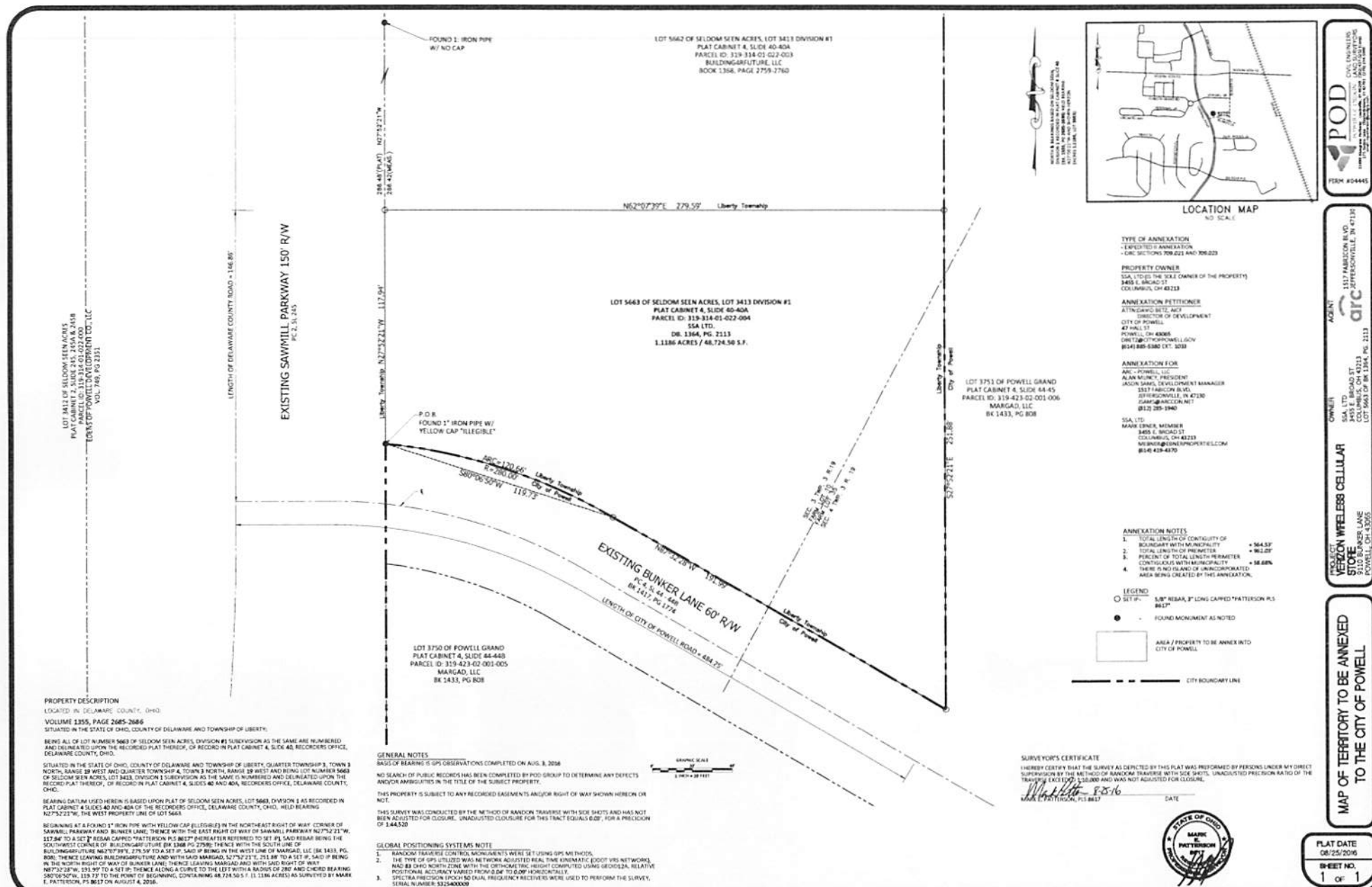
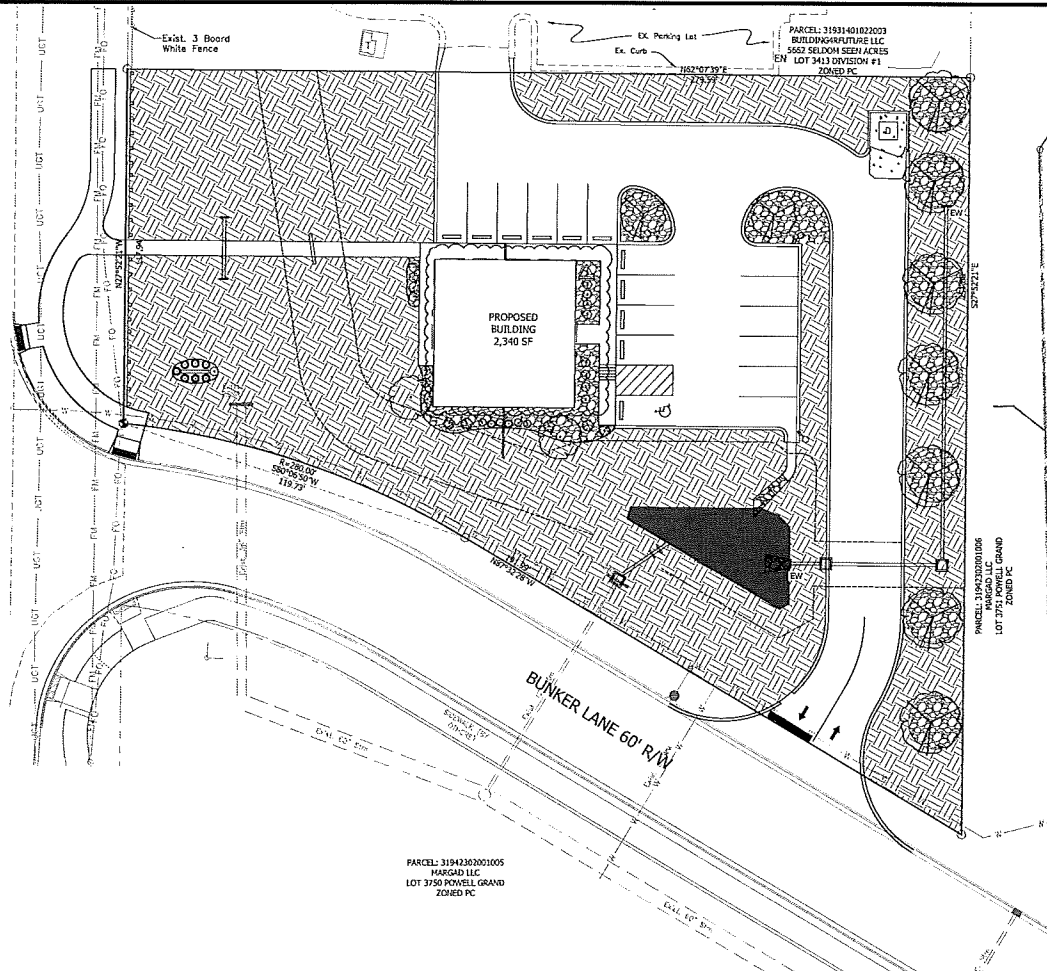


EXHIBIT B



M

Mccue Design Group, LLC
 LANDSCAPE ARCHITECTS
 P.O. BOX 234
 WILLOUGHBY, OHIO 44096
 440.954.9790 LH
 440.954.9791 LH

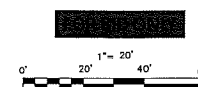


LEGEND:

- EXISTING CONTOURS
- EXISTING LIGHT POLE
- UGT — EXISTING UNDERGROUND TELEPHONE
- W — EXISTING WATERLINE
- G — EXISTING GAS LINE
- FM — EXISTING FORCE MAIN
- FO — EXISTING FIBER OPTIC
- SS — EXISTING SANITARY SEWER WITH MANHOLE
- S — EXISTING STREET SIGN
- F — FOUND MONUMENT AS NOTED
- S — EXISTING STORM SEWERS AND STRUCTURE
- CB — CATCH BASIN
- AREAS TO BE SEEDED W/ STRAW BLANKET PROTECTION
- AREA TO BE MULCHED WITH HARD WOOD MULCH (3" DEPTH W/ FABRIC)
- EROSION CONTROL BLANKET
- PROPOSED SHRUBS/PLANTINGS AS SPECIFIED
- PROPOSED ORNAMENTAL TREE AS SPECIFIED
- PROPOSED SHADE TREE AS SPECIFIED

WOOD MULCH
 AREA = 3,030 SF

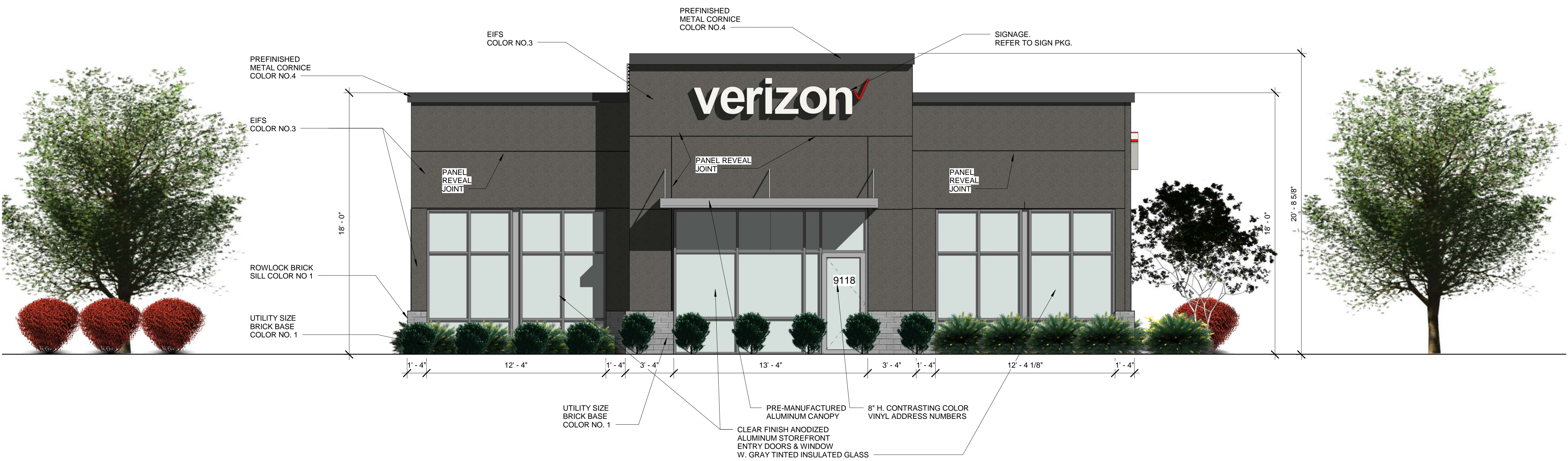
SEED AND STRAW
 AREA = 27,495 SF



OWNER		PROJECT		SEEDING / MULCHING PLAN	
ARC SWANWELL LLC 5575 ELLERBROOK BLVD JEFFERSONVILLE, IN 47130 PHONE 812-285-2940 LOT 5863 19 BUCK 154K, PG 2113		VERIZON WIRELESS CELLULAR STORE LOT 5863 Seldon Seen Acres 9110 BUNKER LANE JEFFERSONVILLE, IN 47130 PHONE 812-285-2940 LIBERTY TOWNSHIP, OHIO 43065			
DEVELOPER		DATE		SHEET NO.	
		10/28/2018		C702	
MODIFIED BUILDING FOOTPRINT		DATE		BY	
1 7/16/17		12/15/18			
2 12/15/18					
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① East Elevation (Front Entry / Parking Lot)
1/4" = 1'-0"



② West Elevation (Sawmill Parkway)
1/4" = 1'-0"

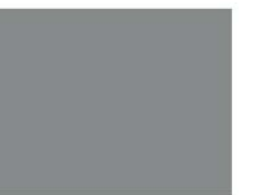
Exterior Finish Material Legend



Color No.1 Light Gray.
Allowance \$400-\$500 / Thousand Brick
Utility Size Brick 3 5/8" x 3 5/8" x 11 5/8"



Color No.3 EIFS.
Color Equal to Sherwin Williams "Grizzle Gray"



Color No.4 Prefinished Metal Cornice
Firestone Una-Clad "Slate Gray"



Color No.5 Clear Anodized Aluminum w.
Gray insulated glass

NO.	ISSUE	DATE



ARRASMITH JUDD RAPP CHOVAN INC.
ARCHITECTS & PLANNERS
620 S. 3rd Street, Suite 601
Louisville, KY 40202
(502) 581-0042



ARC
1517 Fabricon Blvd.
Jeffersonville, IN 47130

Verizon Wireless
Liberty Township - Powell, Ohio

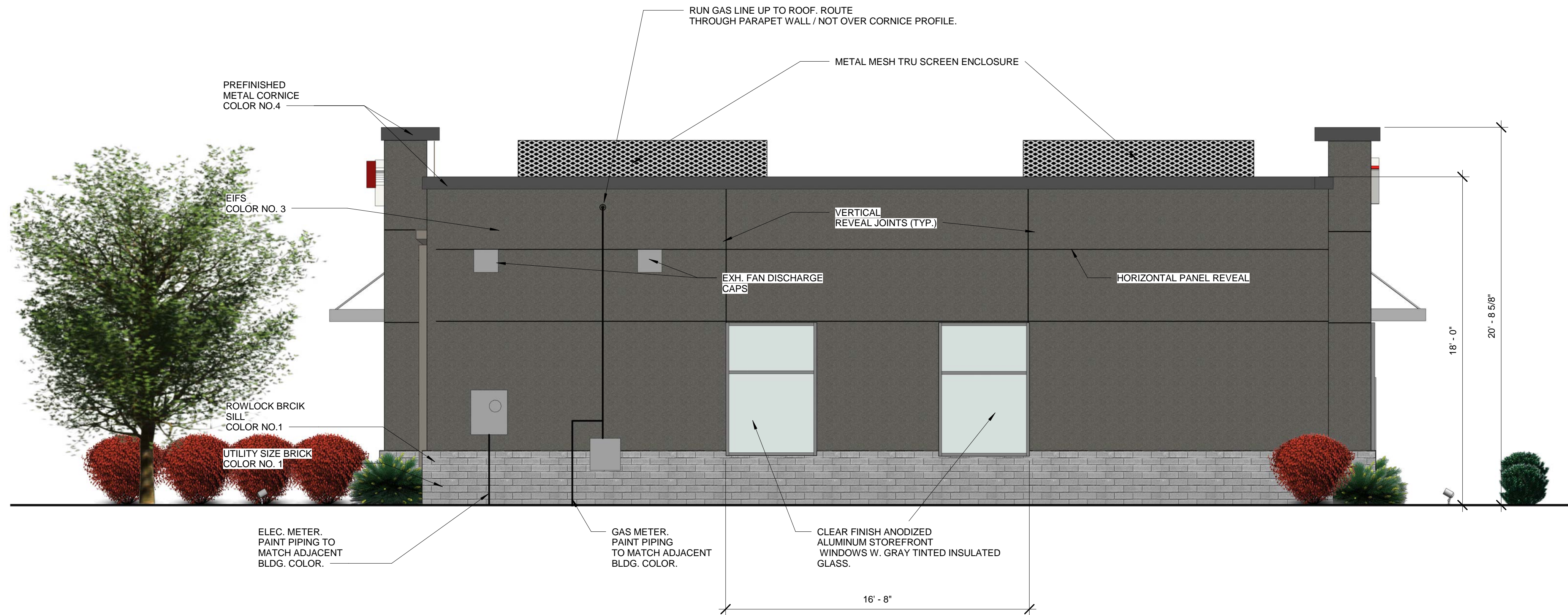
East & West Elevations

DATE: 09/16/16
DESIGNED: Designer
DRAWN: Author
APPROVED: Approver

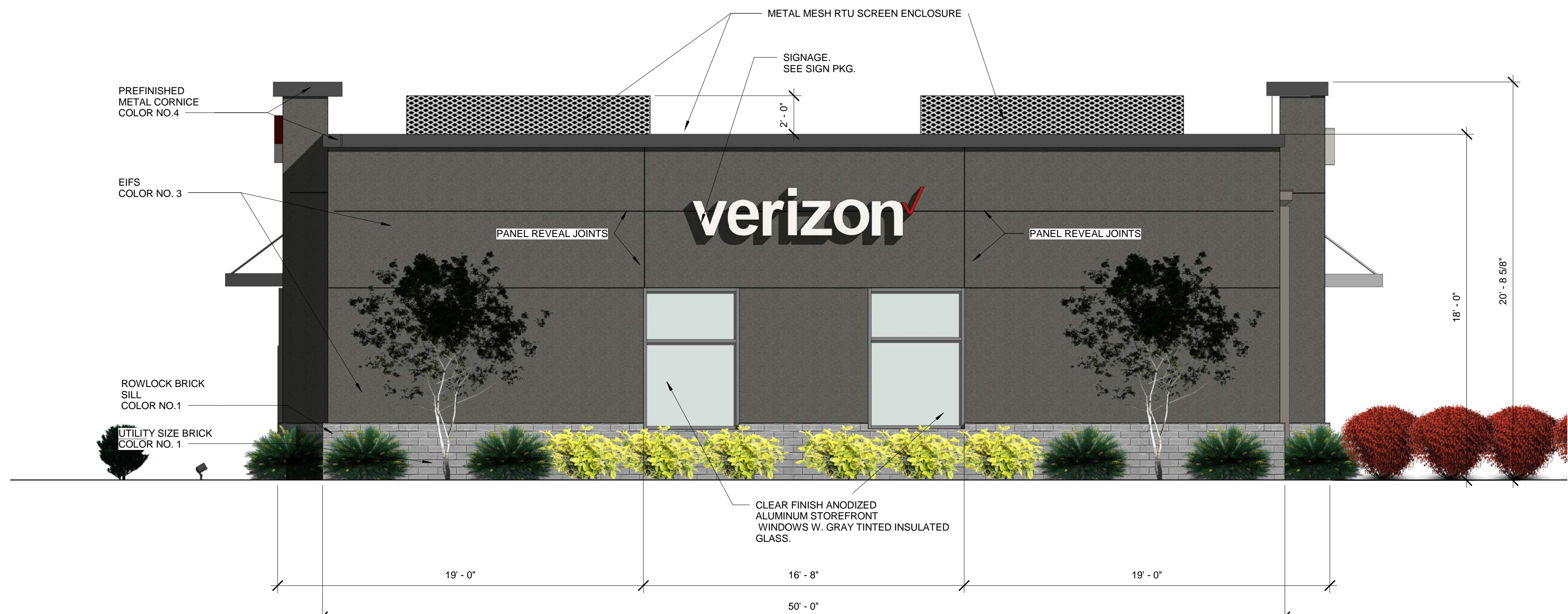
SCALE: 1/4" = 1'-0"

AJRC PROJECT NUMBER
16036.00

A5.1



① North Elevation (Existing Daycare Facility)
1/4" = 1'-0"



② South Elevation - (Proposed Bunker Ln.)
1/4" = 1'-0"

Exterior Finish Material Legend



Color No.1 Dark Gray.
Allowance \$400-\$500 / Thousand Brick
Utility Size Brick 3 5/8" x 3 5/8" x 11 5/8"



Color No.3 EIFS.
Color Equal to Sherwin Williams "Grizzle Gray"



Color No.4 Prefinished Metal Cornice
Firestone Una-Clad "Slate Gray"



Color No.5 Clear Anodized Aluminum w.
Gray insulated glass

NO.	ISSUE	DATE



ARRASMITH JUDD RAPP CHOVAN INC.
ARCHITECTS & PLANNERS
620 S. 3rd Street, Suite 601
Louisville, KY 40202
(502) 581-0042



ARC
1517 Fabricon Blvd.
Jeffersonville, IN 47130

Verizon Wireless

Liberty Township - Powell, Ohio

North & South Elevations

DATE: 09/16/16
DESIGNED: Designer
DRAWN: Author
APPROVED: Approver

SCALE: 1/4" = 1'-0"

AJRC PROJECT NUMBER
16036.00

A5.2