

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

JOINT PETITION OF HOWARD COUNTY )  
UTILITIES, INC. (“SELLER”), AND GREEN )  
ACRES SUBDIVISION SEWER SYSTEM, )  
INC. (“PURCHASER”) FOR: (A) APPROVAL )  
OF THE TRANSFER OF SELLER’S )  
FRANCHISE, WORKS, SYSTEM, AND )  
CERTIFICATE OF TERRITORIAL )  
AUTHORITY TO PURCHASER PURSUANT )  
TO AN AGREEMENT FOR ACQUISITION ) CAUSE NO. 45360  
OF ASSETS; (B) APPROVAL OF RATES )  
THAT PURCHASER MAY CHARGE UPON )  
CLOSING THE ACQUISITION; AND (C) )  
AUTHORITY FOR PURCHASER TO ISSUE )  
BONDS, NOTES, OR OTHER )  
OBLIGATIONS, INCLUDING A MORTGAGE )  
ENCUMBRANCE THEREON. )

**STIPULATION AND SETTLEMENT AGREEMENT**

Howard County Utilities, Inc. (“HCU”) and Green Acres Subdivision Sewer System, Inc. (“Green Acres”) (“Joint Petitioners”) and the Indiana Office of Utility Consumer Counselor (“OUCC”) (collectively, the “Settling Parties”), by their respective counsel, respectfully request the Indiana Utility Regulatory Commission (“Commission”) to approve this Stipulation and Settlement Agreement (“Stipulation”). The Settling Parties agree that the terms and conditions set forth below represent a fair and reasonable resolution of the issues described herein, subject to incorporation into a final order of the Commission, which approves this Stipulation without any modification or condition that is not acceptable to the Settling Parties.

1. In this proceeding, this Stipulation follows the submission of both Joint Petitioners’ and the OUCC’s case-in-chief testimony, and reflects Joint Petitioners’ acceptance, with limited exceptions, of the OUCC’s positions stated in its Settlement Testimony. It coincides with the Settling Parties’ filing of supplemental testimony in support of this Stipulation. Since the time of the OUCC’s filing of its

case-in-chief in this Cause, the parties have engaged in discussions to address items the OUCC has identified in testimony as its primary issues in this Cause. Those interactions have framed the discussions between the Settling Parties, and formed the basis for the Settling Parties to reach agreement on the terms reflected in this Stipulation. A basic component of each party's willingness to enter this agreement is the overall result that is achieved hereby. The Settling Parties have agreed to concessions on individual issues to which the Settling Parties would not be willing to agree but for the overall result produced by this Stipulation and Settlement Agreement. In other words, each party is agreeing to forego or compromise on positions on individual issues in exchange for the overall result produced collectively by all of the concessions. As set forth below, the parties have negotiated terms that resolve all issues in this proceeding. In most cases, the agreed upon terms are founded upon documented positions that are in the record in this proceeding, including in Settlement Testimony that the Settling Parties have agreed each of them will file in support of this Stipulation.

2. For purposes of settlement of the revenue requirement issues, the Settling Parties stipulate and agree as follows:

- a. **Establishment of E&R Restricted Account.** Green Acres shall establish an E&R Restricted Account and place the agreed-upon E&R revenue requirement amount of \$44,700 in this account. Funds placed in this account shall be used only on capital improvement projects of the wastewater utility as follows:
  - i. Extensions of the collection system or treatment system;
  - ii. Replacements of the collection system or treatment system; and
  - iii. For any capital improvement required to comply with an Indiana Department of Environmental Management ("IDEM") mandate.

b. **Miscellaneous Unspecified Maintenance and Repairs.** (a) The Settling Parties stipulate a *pro forma* O&M revenue requirement of \$10,000, to be expended for the following purposes:

- i. For periodic maintenance;
- ii. For IURC required maintenance or repair items that no specific revenue requirement amount has been allocated for in this Settlement or the Final Order in this Cause; and
- iii. For any required maintenance or repair action to comply with an IDEM mandate.

(b) Any portion of the \$10,000 not used for the foregoing may also be used for any E&R expenditures listed above in Paragraph 2a. At the end of each fiscal year, any unexpended amount shall be placed in the E&R Restricted Account.

c. **Annual Reporting of E&R Restricted Account and Unspecified Maintenance and Repairs Expenditures.** Included with its annual report submitted to the Commission, Green Acres shall provide information to the Commission and the OUCC describing the capital improvements funded through its E&R Restricted Account and any expenditure funded through the \$10,000 amount allocated for miscellaneous unspecified maintenance and repairs.

d. **Other Revenue and Expense Adjustments.** For purposes of Settlement, the Settling Parties agree to the following:

(a) Operating Revenues. The Settling Parties agree to *pro forma* operating revenues of \$179,519. This amount reflects the actual 2018 total operating receipts reflected on HCU's 2018 income statement.

(b) Building Rental Expense. The Settling Parties agree that Joint Petitioners' proposed *pro forma* rental expense of \$10,056 for renting the Green Acres Golf Course club house shall be disallowed, as Green Acres will be the owner of the club house after Closing. For purposes of Settlement, the Settling Parties therefore agree to *pro forma* rental expense of \$0.

(c) Contract Legal Expense. The Settling Parties agree to *pro forma* contract legal expense of \$16,000 per year. This amount reflects a compromise between Joint Petitioners' original proposal of \$24,000 and the OUCC's proposal \$8,383.

(d) Insurance and Utilities Expense. The Settling Parties agree that Joint Petitioners' proposed *pro forma* insurance expense of \$2,187 and *pro forma* utilities expense of \$1,455 associated with operating the club house shall be disallowed, as Green Acres will be the owner of the club house after Closing. For purposes of Settlement, the Settling Parties therefore agree to *pro forma* insurance expense of \$0 and *pro forma* utilities expense of \$0.

(e) Indiana Utility Receipts Tax. The Settling Parties agree that Joint Petitioners' proposed adjustment to Indiana Utility Receipts Tax ("URT") of \$5,482 be disallowed, based on the assumption Green Acres is exempt under Indiana law from paying URT. However, if it is determined at a later date that Green Acres is not exempt from paying URT, Green Acres shall be permitted to submit a tariff revision for purposes of adding URT expense to its revenue requirement.

(f) IURC and IDEM Fee. The Settling Parties agree to a *pro forma* IURC adjustment of \$175 and a *pro forma* IDEM fee of (\$999). The IURC Fee and IDEM Fee are calculations based on operating revenues and customer count, respectively.

(f) Sludge Removal Expense. The Settling Parties agree to a *pro forma* Sludge Removal Expense of \$3,000 per year, which is in addition to the \$10,000 allocated for Miscellaneous Unspecified Maintenance and Repair activities as set forth in Paragraph 2b.

(g) Working Capital. The Settling Parties agree that Joint Petitioners' proposed annual working capital revenue requirement of \$5,376 be disallowed, as a working capital provision of \$24,000 is included in Joint Petitioners' estimated non-construction costs in the financing.

(h) Debt Service Reserve. The Settling Parties agree that there be no revenue requirement for funding a Debt Service Reserve account as initially requested, because First Farmers Bank & Trust is not requiring a debt service reserve as a condition of the financing.

e. **Requested Financing, True-Up Report and Revision of Tariff**. The Settling Parties agree that Joint Petitioners' proposed financing shall be approved. Within thirty (30) days of closing on the financing, Green Acres shall file in this Cause a true-up report describing the final terms of the financing. Green Acres shall also restate in its true-up report the precise terms of this section of the settlement agreement. Within fourteen (14) calendar days of service of the true-up report, the OUCC shall state whether it objects or disagrees with the true-up report. If there is no objection or disagreement, and if the annual debt service payment on the financing differs from the originally estimated total of \$136,176, Green Acres shall file with the IURC a revised tariff adjusting the rates to include the final amount of annual interest payments on the financing. However, Green Acres need not file a revised tariff if both Green Acres and the OUCC state in writing that they consider

the difference to be immaterial for purposes of revising Green Acres' rates. In such case, Green Acres shall file the written statement.

3. For purposes of settlement of the non-revenue requirement issues, the Settling Parties stipulate and agree as follows:

a. **HCU Records.** (a) Prior to the final hearing in this Cause, the owner of HCU agrees to determine and physically mark (with spray paint) the location of all underground electric lines and piping that conveys air or wastewater starting from the lift station and continuing to and throughout the wastewater treatment plant. HCU shall photograph the markings so that the markings can be seen in relation to adjacent above ground plant and provide copies to Green Acres and the OUCC.

(b) Prior to the final hearing in this Cause, the owner of HCU shall legibly mark on its plans and drawings the locations as constructed of all electric lines and any piping that conveys air or wastewater starting from the lift station and continuing to and throughout the wastewater treatment plant.

(c) A copy of the marked-up plans/drawings shall be provided to both Green Acres and the OUCC. The mark-ups shall be made on plans and drawings that are of the highest quality of legibility (e.g. CAD files) so that all numbers and lines can be transmitted electronically so that legibility may be retained for all reasonably expected uses. The mark-up should include location of the underground asset and description including type (e.g. electrical, I&C, air sewage, water), diameter and depth.

(d) For purposes of this Paragraph, "electric lines" should include all lines on the property, including, but not limited to:

- (i) Power company lines (buried) on property from the County Road to the Power Company owned pad transformer/meter.
  - (ii) Buried electric lines from the pad transformer to the WWTP Motor Control Center.
  - (iii) Buried electric lines from the standby generator to the Automatic Transfer Switch (ATS) in the Control Building.
  - (iv) Buried electric lines from the Control Building to the Influent Pump Station, Equalization Tank pumps, UV Disinfection System, and instrumentation.
  - (v) Instrumentation and control (“I&C”) wiring between field mounted panels and the Control Panel(s) in the Control Building.
- b.     **Easement and Other Access Issues.** Joint Petitioners agree to include a parcel map and property description of the three (3) acres that will be transferred at Closing. Joint Petitioners further agree that Green Acres shall obtain and record its property interest in the three (3) acre parcel for permanent access road to the treatment plant.
- c.     **Erosion in Gullies.** Joint Petitioners agree that HCU shall correct the erosion problem in eroded gullies and reseed the area to establish cover vegetation by September 15, 2020.
- d.     **Capital Repairs and Maintenance Terms.**
- (a) Budget for Repairs. Green Acres shall budget for emergency repairs, regular sewer cleaning and televising, and sewer and manhole repairs and replacements.
  - (b) Effluent Flow. Green Acres shall investigate effluent flow meter readings to determine if reported flows are erroneously high and, if the flows are accurate, Green Acres shall focus on finding and removing I&I sources.

(c) Sludge Removal. Green Acres shall develop, implement, and permit a regular program of off-site sludge disposal.

(d) Painting Program. Green Acres shall develop and implement a maintenance program to paint all rusted and corroded metal within the treatment plant.

(e) Expenditures. Green Acres shall be permitted to fund any expenditure associated with the activities set forth in Paragraph 3d(a) through (d) from funds in the E&R Restricted Account or from the \$10,000 allocated for Miscellaneous Unspecified Maintenance and Repair for maintenance activities, as applicable.

e. **Miscellaneous Provisions.** The OUCC views the proposed transfer in the larger context and considers the purchase price includes values and benefits to the acquiring party beyond the value of the used and useful property. Accordingly, as a condition of this Settlement of all issues, the Settling Parties agree that nothing herein shall be construed as an admission or agreement with respect to the value of the used and useful utility property. The Settling Parties agree the authorizations sought in this Cause and provided for in this Settlement do not require or imply a finding with respect to the fair value of HCU's used and useful utility property.

4. **Rates.** The Settling Parties stipulate that, upon Closing, Green Acres shall be permitted to charge its customer rates as follows: The revenue requirement shall be calculated to produce annual operating revenues of \$320,752. The rates shall be in effect upon Closing.

5. **Stipulation Effect, Scope and Approval.** The Stipulation is conditioned upon and subject to its acceptance and approval by the Commission in its entirety without any change or condition that is unacceptable to any Settling Party. Each term of the Stipulation is in consideration and support of each and every other term. If the Commission does not approve the Stipulation in its entirety or if the Commission makes modifications that are unacceptable to any Settling Party, the Stipulation shall be



null and void and shall be deemed withdrawn upon notice in writing by any party within 10 days after the date of the final order stating that a modification made by the Commission is unacceptable to the Settling Party.

The Stipulation is the result of compromise in the settlement process and neither the making of the Stipulation nor any of its provisions shall constitute an admission or waiver by any Settling Party in any other proceeding, now or in the future. The Stipulation shall not be used as precedent in any other current or future proceeding or for any other purpose except to the extent provided for herein or to the extent necessary to implement or enforce its terms.

The evidence to be submitted in support of the Stipulation, together with evidence already admitted, constitutes substantial evidence sufficient to support the Stipulation and provides an adequate evidentiary basis upon which the Commission can make any findings of fact and conclusions of law necessary for the approval of the Stipulation.

The communications and discussions and materials produced and exchanged during the negotiation of the Stipulation relate to offers of settlement and shall be privileged and confidential.


The undersigned represent and agree that they are fully authorized to execute the Stipulation on behalf of the designated party who will be bound thereby.


The Settling Parties will either support or not oppose on rehearing, reconsideration and/or appeal, an IURC Order accepting and approving this Stipulation in accordance with its terms.

**ACCEPTED and AGREED this 8th day of September, 2020.**

Howard County Utilities, Inc.

Indiana Office of Utility Consumer Counselor

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