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ORDINANCE 13-28

**ORDINANCE APPROVING STIPULATION AND SETTLEMENT AGREEMENT
REGARDING THE SALE OF THE WESTFIELD WATER AND SEWER UTILITIES**

WHEREAS, The City of Westfield, ("City") is a duly formed municipal corporation within the State of Indiana, governed by its duly elected Mayor and Common Council ("Council"); and,

WHEREAS, it is the duty and the responsibility of the Council to manage and maintain the water and sewer utilities owned by the City, and

WHEREAS, Ordinance 12-32 authorized a sale of the water and sewer assets with certain expectations and conditions, and;

WHEREAS, the adversarial proceeding conducted by the Indiana Regulatory Commission has resulted in a proposed Stipulation and Settlement Agreement ("Agreement") that may impact certain expectations and conditions as contained in Ordinance 12-32 but does not amend the purchase price and remains in the best interests of the City.

NOW, THEREFORE, BE IT ORDAINED by the Westfield City Common Council meeting in session as follows:

Section 1. That the Council now has reviewed and been advised of the proposed Agreement as well as the impact it may have on the sale of the water and sewer utility as anticipated by the Council.

Section 2. That Council finds that the Agreement does not negatively impact the fiscal benefits of the sale and further finds that the Agreement is in the best interests of the City and hereby authorizes the City's execution of the Agreement and the amendment of the Asset Purchase Agreement and any other document necessary to accomplish the sale pursuant to the Agreement, including the elimination of lawn irrigation permit fees.

Section 3. This Ordinance shall be in full force and effect in accordance with Indiana law, upon the passage of any applicable waiting periods, all as provided by the laws of the State of Indiana. All ordinances or parts thereof that are in conflict herewith are hereby ordered repealed. All acts undertaken to develop this Ordinance are hereby ratified.

ALL OF WHICH IS ORDAINED THIS 15 DAY OF Oct 2013.

WESTFIELD CITY COUNCIL

Voting For

Voting Against

Abstain


Jim Ake

Jim Ake

Jim Ake

Councilor

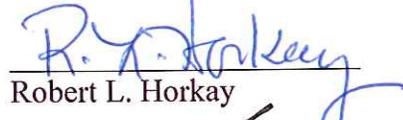
Councilor

Councilor


Steven Hoover

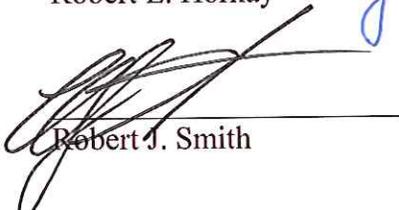
Steven Hoover

Steven Hoover


Robert L. Horkay

Robert L. Horkay

Robert L. Horkay


Robert J. Smith

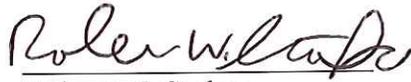
Robert J. Smith

Robert J. Smith

Cindy Spoljaric


Cindy Spoljaric

Cindy Spoljaric


Robert W. Stokes

Robert W. Stokes

Robert W. Stokes

ATTEST:


Cindy Gossard, Clerk Treasurer



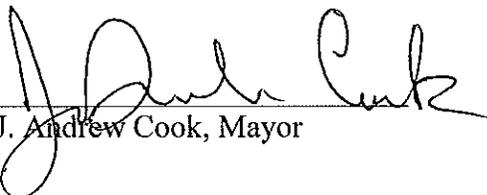
I hereby certify that ORDINANCE 13-28 was delivered to the Mayor of Westfield

on the 15 day of Oct, 2013, at 7:30 A m.


Cindy Gossard, Clerk-Treasurer

I hereby APPROVE ORDINANCE 13-28

this 15 day of October, 2013.


J. Andrew Cook, Mayor

I hereby VETO ORDINANCE 13-28

this _____ day of _____, 2013.

J. Andrew Cook, Mayor

This document prepared by
Brian J. Zaiger, Esq.
KRIEG DEVAULT, LLP
(317) 238-6266

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

JOINT PETITION OF CITIZENS WATER OF WESTFIELD, LLC, CITIZENS WASTEWATER OF WESTFIELD, LLC AND THE CITY OF WESTFIELD, INDIANA FOR APPROVALS IN CONNECTION WITH THE PROPOSED TRANSFER OF CERTAIN WATER UTILITY ASSETS TO CITIZENS WATER OF WESTFIELD, LLC AND THE PROPOSED TRANSFER OF CERTAIN WASTEWATER UTILITY ASSETS TO CITIZENS WASTEWATER OF WESTFIELD, LLC, INCLUDING: (1) APPROVAL OF THE ACQUISITION BY CITIZENS WATER OF WESTFIELD, LLC AND CITIZENS WASTEWATER OF WESTFIELD, LLC OF CERTAIN WATER AND WASTEWATER UTILITY ASSETS; (2) APPROVAL OF ACCOUNTING AND RATE BASE TREATMENT OF THE WATER AND WASTEWATER ASSETS; (3) APPROVAL OF THE ISSUANCE OF DEBT AND EQUITY BY CITIZENS WATER OF WESTFIELD, LLC AND CITIZENS WASTEWATER OF WESTFIELD, LLC; (4) APPROVAL OF INITIAL RATES AND RULES FOR WATER AND WASTEWATER SERVICE; (5) TO THE EXTENT NECESSARY, APPROVAL OF CERTAIN OPERATING AND AFFILIATE AGREEMENTS; (6) APPROVAL OF DEPRECIATION RATES; (7) APPROVAL OF A CERTIFICATE OF TERRITORIAL AUTHORITY FOR THE PROVISION OF WASTEWATER UTILITY SERVICE BY CITIZENS WASTEWATER OF WESTFIELD, LLC TO CUSTOMERS LOCATED IN RURAL AREAS; AND (8) ANY OTHER APPROVALS NEEDED IN CONNECTION THEREWITH

CAUSE NO. 44273

STIPULATION AND SETTLEMENT AGREEMENT

This Stipulation and Settlement Agreement ("Settlement Agreement") is made as of this 15th day of October, 2013 and entered into by and among the City of Westfield ("Westfield"), Citizens Water of Westfield, LLC ("Citizens Water of Westfield"), Citizens Wastewater of

Westfield, LLC ("Citizens Wastewater of Westfield"), and the Indiana Office of Utility Consumer Counselor ("OUCC") (collectively the "Settling Parties"). Westfield, Citizens Water of Westfield and Citizens Wastewater of Westfield are sometimes referred to collectively herein as the "Joint Petitioners." Citizens Water of Westfield and Citizens Wastewater of Westfield are sometimes referred to collectively herein as the Citizens Joint Petitioners.

WHEREAS, on November 20, 2012, in Cause No. 44273 the Joint Petitioners filed their Verified Joint Petition requesting approvals from the Indiana Utility Regulatory Commission ("Commission") relating to the proposed acquisition of certain Westfield water and wastewater utility assets by Citizens Water of Westfield and Citizens Wastewater of Westfield pursuant to Asset Purchase Agreements that were admitted into evidence as Joint Petitioners' Exhibit ADJ-2 ("Water Asset Purchase Agreement") and ADJ-3 ("Wastewater Asset Purchase Agreement") (collectively the "Asset Purchase Agreements");

WHEREAS, the Settling Parties have engaged in communications and exchanged information related to the relief requested by Joint Petitioners in the Verified Joint Petition and other matters; and

WHEREAS, as a result of communication and negotiations, the Settling Parties agree that the Terms and Conditions set forth in this Settlement Agreement represent a fair, just and reasonable resolution of the issues raised in this Cause;

NOW THEREFORE, subject to the Commission's approval of this Settlement Agreement in its entirety without modification, or imposition of any other term or condition that is unacceptable to any Settling Party, the Settling Parties agree as follows:

A. NET ORIGINAL COST OF CERTAIN UTILITY PLANT AND FAIR VALUE INCREMENT

1. The Settling Parties stipulate and agree that the net original cost of Utility Plant that will be conveyed to Citizens Water of Westfield and Citizens Wastewater of Westfield, respectively, as it existed as of December 31, 2011, as set forth on Part (a) of Schedule 12.10(b) of each Asset Purchase Agreement, is deemed to be \$12,470,000 for the water utility and \$30,530,000 for the wastewater utility net of contributions of plant or cash (contributions-in-aid of construction or "CIAC") and net of accumulated depreciation. The foregoing stipulation is for purposes of this Settlement Agreement and for ratemaking purposes in the future. The Settling Parties further agree that the foregoing stipulation will not constitute an acceptance by any party of any other party's methodology for defining and accounting of items as contributions-in-aid of construction or contributed property. The Settling Parties further agree that no determination will be made in this proceeding regarding whether Citizens Water of Westfield's or Citizens Wastewater of Westfield's contributions-in-aid of construction ("CIAC") should be amortized or how any such amortization would affect ratemaking.

2. Within 60 days of the Closing Date, Citizens Water of Westfield and Citizens Wastewater of Westfield shall each file in this Cause a report listing the Utility Plant conveyed to Citizens Water of Westfield and Citizens Wastewater of Westfield respectively pursuant to the applicable Asset Purchase Agreement. The report shall also identify the Utility Plant conveyed that existed as of December 31, 2011 and included in the Utility Plant for purposes of Part (a) of Schedule 12.10(b) of the applicable Asset Purchase Agreement. Citizens Water of Westfield and Citizens Wastewater of Westfield shall have one year from the date of closing within which to prepare their opening balance sheets, which shall be provided to the OUCG within 10 days of completion.

3. The Settling Parties agree that the acquisitions are reasonable and in the public interest. The Settling Parties stipulate and agree that in addition to any return Citizens Water of Westfield and Citizens Wastewater of Westfield are authorized in future rate cases to earn on their respective utility plant, each utility should be allowed to earn a return on, but not of, a fair value increment in the amount of \$6,960,000 for the water utility and \$17,040,000 for the wastewater utility. The Settling Parties agree that no determination shall be made in this proceeding as to a methodology to be used to establish a rate of return to be applied to the fair value increment agreed to herein.

4. Citizens Water of Westfield and Citizens Wastewater of Westfield will each amortize its fair value increment over 40 years from the date of closing. Until the end of the foregoing amortization period, Citizens Water of Westfield and Citizens Wastewater of Westfield will each be authorized to earn a return on, but not of, the unamortized portion of its fair value increment.

5. With respect to the fair value increments agreed to in this Cause, the OUCC acknowledges Citizens Water of Westfield and Citizens Wastewater of Westfield may seek a fair rate of return in future rate cases. However, the Settling Parties agree that if either utility seeks a finding that the fair value of the Utility Plant set forth on Part (a) of Schedule 12.10(b) of the applicable Asset Purchase Agreement as of December 31, 2011 exceeds the amounts stipulated to in Paragraph A.3 above, the OUCC shall not be precluded from providing evidence as to any fair value of the utility's rate base. Notwithstanding the preceding sentence, the Settling Parties agree that before depreciation and amortization, (a) the sum of the net original cost of Utility Plant that will be conveyed to Citizens Water of Westfield as of December 31, 2011, as set forth on Part(a) of Schedule 12.10(b) of the Water Asset Purchase Agreement and the fair value

increment for Citizens Water of Westfieldt will not be greater than \$21,581,800 or less than \$19,430,000; and (b) the sum of the net original cost of Utility Plant that will be conveyed to Citizens Wastewater of Westfield, respectively, as of December 31, 2011, as set forth on Part(a) of Schedule 12.10(b) of the Wastewater Asset Purchase Agreement, and the fair value increment for Citizens Wastewater of Westfield will not be greater than \$52,838,200 or less than \$47,570,000.

B. RATE PROVISIONS

1. The Settling Parties recommend that the Commission authorize, as just and reasonable, Citizens Water of Westfield's and Citizens Wastewater of Westfield's implementation of the schedules rates and charges as approved by the Westfield City Council and effective on the date of closing. Westfield will include all applicable rate ordinances in its supplemental testimony to be filed in support of the Settlement Agreement.

2. Citizens Water of Westfield agrees not to file for a Distribution System Improvement Charge prior to January 1, 2018.

3. Prior to January 1, 2017, Citizens Water of Westfield and Citizens Wastewater of Westfield may not implement new rates other than the rates referenced in Paragraph B.1 above except in the case of an emergency as set forth in I.C. §8-1-2-113 including for instance rate increases necessary to make make bond payments to avoid a default.

4. At closing, Westfield will assign its cell tower rental contracts to Citizens Water of Westfield. In subsequent general rate case proceedings, Citizens Water of Westfield will recognize cell tower rental revenue and use such revenue to offset the Utility's revenue requirement.

C. PUBLIC INTEREST OF TRANSACTIONS

1. The Settling Parties recommend that the Commission find that Citizens Water of Westfield and Citizens Wastewater of Westfield have the technical, managerial, operational and financial capabilities to own and operate successfully the Westfield water and wastewater utilities and therefore approve, as in the public interest, the proposed acquisitions as reflected in the Water and Wastewater Asset Purchase Agreements.

2. The Settling Parties recommend that the Commission authorize, as in the public interest, the issuance of equity and debt (debt to be issued at an interest rate not to exceed 5.5 percent) as proposed by the Citizens Joint Petitioners to fund the acquisitions. Citizens Water of Westfield and Citizens Wastewater of Westfield each will file a written report in this Cause within thirty (30) days of any debt issuance it makes to fund the acquisitions that provides the debt amount, interest rate, terms and conditions and other information the Citizens Joint Petitioners deem relevant.

3. The Settling Parties recommend that the Commission issue to Citizens Wastewater of Westfield a Certificate of Territorial Authority to provide wastewater service within any "rural area" that Westfield serves, i.e., areas in Washington Township outside the incorporated city limits, which do not include the area served by Intervenor JLB Development, Inc. as authorized by the Commission in Cause Nos. 39868 and 43916.

4. The Settling Parties recommend that the Commission consent to Hamilton County granting the Citizens Joint Petitioners permits or franchises or licenses for the use of county-owned property in connection with the provision of water and wastewater utility service.

D. APPROVAL OF OPERATING AND RAW WATER PURCHASE AGREEMENTS

1. Within 30 days of closing, Citizens Water of Westfield and Citizens Wastewater of Westfield both agree to have separate Management and Operating Agreements with Citizens Energy Group ("CEG") and file such agreements, each of which will include a list and definition of services, which list will be similar to the list included in the service agreement between Citizens Gas of Westfield, LLC and CEG, and which it will file with the Commission along with any updates or amendments and provide copies of the same to the OUCC. Citizens Water currently purchases raw water from the City of Westfield. Joint Petitioners have requested that this agreement be transferred from the City of Westfield to Citizens Water of Westfield. The OUCC agrees the proposed transfer of the Raw Water Purchase Agreement should be approved.

E. DEPRECIATION RATES

1. The Settling Parties recommend the Commission authorize Citizens Water of Westfield to use, for ratemaking purposes, a two (2) percent depreciation rate for water utility plant in service until such time as the Commission orders a different depreciation rate for ratemaking purposes. However, the depreciation rate recommended by this paragraph shall, once approved, remain effective until at least implementation of rates following Citizens Water of Westfield's first rate case.

2. The Settling Parties recommend the Commission authorize Citizens Wastewater of Westfield to use, for ratemaking purposes, a two and one-half (2.5) percent depreciation rate for wastewater utility plant in service until such time as the Commission orders a different depreciation rate for ratemaking purposes. However, the depreciation rate recommended by this

paragraph shall, once approved, remain effective until at least implementation of rates following Citizens Wastewater of Westfield's first rate case..

F. MISCELLANEOUS PROVISIONS

1. Subject to the modifications discussed below, the Settling Parties recommend the Commission authorize Citizens Water of Westfield and Citizens Wastewater of Westfield to implement the Terms and Conditions for water and wastewater utility service proposed by the Citizens Joint Petitioners in their case-in-chief testimony until such time as the Commission approves revised Terms and Conditions for service. Citizens Wastewater of Westfield will modify its Terms and Conditions by eliminating language that indicates the utility may compel homeowners to connect to the utility system. Citizens Water of Westfield shall modify its tariff and Terms and Conditions by eliminating any reference to the Lawn Irrigation Permit Fee.

2. For purposes of the Joint Petitioners' requests for approval of financing, the OUCC agrees the capital plans of Citizens Water of Westfield and Citizens Wastewater of Westfield provide sufficient support for the requested authority for financing.

3. Within thirty days of closing, Westfield shall refund customer deposits held by Westfield as of the closing date to those respective customers or turned over to Citizens Joint Petitioners to be held as deposits on the respective customers' accounts.

G. PRESENTATION OF THE SETTLEMENT AGREEMENT TO THE COMMISSION

1. The Settling Parties shall support this Settlement Agreement before the Commission and request that the Commission expeditiously accept and approve the Settlement Agreement. Evidence shall be offered into the record of this proceeding without objection and

subject to agreement on the settlement testimony to be offered, the Settling Parties hereby waive cross-examination of each others' witnesses. The Settling Parties propose to submit this Settlement Agreement and the supporting evidence conditionally, and if the Commission fails to approve this Settlement Agreement in its entirety without any change or with condition(s) unacceptable to any Party, the Settlement Agreement and supporting evidence shall be withdrawn and the proceedings in Cause No. 44273 shall resume at the point they were suspended by the filing of this Settlement Agreement.

2. The Settling Parties shall prepare and file an agreed order with the Commission. This Settlement Agreement is contingent upon the filing of said order. If the Settling Parties do not submit an agreed order in this proceeding, the Settlement Agreement and supporting evidence shall be withdrawn and the proceedings in Cause No. 44273 shall resume at the point they were suspended by the filing of this Settlement Agreement.

3. A Final Order approving this Settlement Agreement shall be effective immediately, and the agreements contained herein shall be unconditional, effective and binding on all Settling Parties as an Order of the Commission.

H. The Settling Parties shall jointly agree or coordinate on the form, wording and timing of any public/media announcements of this Settlement Agreement and the terms thereof. No Party shall release any information to the public or media prior to the aforementioned announcement or coordination. However, the parties may post on their respective websites without delay this executed stipulation and any settlement documents filed with the Commission. The Settling Parties may respond individually without prior approval of the other Settling Parties to questions from the public or media, provided that such responses are consistent with such announcement and do not disparage any of the Settling Parties.

I. EFFECT AND USE OF SETTLEMENT AGREEMENT

1. It is understood that this Settlement Agreement is reflective of a negotiated settlement and neither the making of this Settlement Agreement nor any of its provisions shall constitute an admission by any Party to this Settlement Agreement in this or any other litigation or proceeding. It is also understood that each and every term of this Settlement Agreement is in consideration and support of each and every other term.

2. This Settlement Agreement shall not constitute and shall not be used as precedent by any person in any other proceeding or for any other purpose, except to the extent necessary to implement or enforce the terms of this Settlement Agreement.

3. This Settlement Agreement is solely the result of compromise in the settlement process and except as provided herein, is without prejudice to and shall not constitute a waiver of any position that any of the Parties may take with respect to any or all of the items resolved here and in any future regulatory or other proceedings.

4. The Settling Parties agree that the evidence in support of this Settlement Agreement constitutes substantial evidence sufficient to support this Settlement Agreement 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 this Settlement Agreement, as filed.

5. The communications and discussions during the negotiations and conferences and any materials produced and exchanged concerning this Settlement Agreement all relate to offers of settlement and shall be privileged and confidential, without prejudice to the position of any Party, and are not to be used in any manner in connection with any other proceeding or otherwise.

6. The undersigned Settling Parties have represented and agreed that they are fully authorized to execute the Settlement Agreement on behalf of their designated clients, and their successors and assigns, who shall be bound thereby.

7. The Settling Parties shall not appeal or seek rehearing, reconsideration or a stay of the Final Order approving this Settlement Agreement in its entirety and without change or condition(s) unacceptable to any Party (or related orders to the extent such orders are specifically implementing the provisions of this Settlement Agreement). The Settling Parties shall support or not oppose this Settlement Agreement in the event of any appeal or a request for a stay by a person not a party to this Settlement Agreement if this Settlement Agreement is the subject matter of any other state or federal proceeding.

8. The provisions of this Settlement Agreement shall be enforceable by any Party before the Commission and thereafter in any state court of competent jurisdiction as necessary.

9. This Settlement Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

ACCEPTED and AGREED as of the 15th day of October, 2013.

CITY OF WESTFIELD, INDIANA

Name: Todd Burtron
Its: Chief of Staff

INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR

Name: A. David Stippler
Its: Utility Consumer Counselor

CITIZENS WATER OF WESTFIELD, LLC

Name: Michael D. Strohl
Its: President

CITIZENS WASTEWATER OF WESTFIELD, LLC

Name: Michael D. Strohl
Its: President