

**BEFORE THE PUBLIC SERVICE COMMISSION
OF THE STATE OF MISSOURI**

In the Matter of the Joint Application of)	
West 16 th Street Sewer Company, W.P.C. Sewer)	
Company, Village Water and Sewer Company,)	
Inc. and Raccoon Creek Utility Operating)	File No. SM-2015-0014
Company, Inc., for Raccoon Creek to Acquire)	
Certain Sewer Assets and, in Connection)	
Therewith, Issue Indebtedness and Encumber)	
Those Assets.)	

NONUNANIMOUS STIPULATION AND AGREEMENT

COME NOW Raccoon Creek Utility Operating Company, Inc. (“Raccoon Creek”); and the Staff of the Missouri Public Service Commission (“Staff”) (collectively the “Signatories” or individually, a “Signatory”), and respectfully submit the following Nonunanimous Stipulation and Agreement (“Stipulation”) to the Missouri Public Service Commission (“Commission”). The Office of the Public Counsel (“OPC”), while not a signatory, has indicated through its counsel that it does not oppose nor request a hearing as to this Stipulation. In support of the Stipulation, the Signatories state as follows:

BACKGROUND

On July 14, 2014, West 16th Street Sewer Company (West 16th), W.P.C. Sewer Company (WPC), Village Water and Sewer Company, Inc. ("Village"), and Raccoon Creek (collectively the “Applicants”), filed a *Joint Application and if Necessary Motion for Waiver* (Application) with the Commission.

The Applicants requested authorization for West 16th, WPC, and Village to sell and transfer assets to Raccoon Creek. Additionally, Raccoon Creek requested Commission Authority to allow

it to collateralize the system's assets for purposes of raising up to \$1,600,000 in funds through a loan from Fresh Start Ventures LLC (Fresh Start).

APPROVAL OF THE TRANSACTION

The Signatories agree that:

A. GENERAL

The Commission should issue its Order (subject to the Conditions outlined below):

1. Authorizing West 16th, WPC, and Village to sell and Raccoon Creek to acquire the assets of West 16th, WPC, and Village identified in the Joint Application and immediately grants Raccoon Creek CCN's to provide sewer service in West 16th, WPC, and Village's existing service areas, to be exercised upon closing of the respective Applicants' assets;
2. Authorizing Raccoon Creek to enter into, execute and perform in accordance with the terms described in the Agreement attached to the Joint Application and to take any and all other actions which may be reasonably necessary and incidental to the performance of the acquisition;
3. Authorizing Raccoon Creek to enter into, execute and deliver loan agreements with Fresh Start Ventures LLC to incur indebtedness;
4. Authorizing Raccoon Creek to create and make effective a first lien on all of the franchises, certificates of convenience and necessity, plant and system of Raccoon Creek, to secure its obligations under the loan;
5. Authorizing Raccoon Creek to enter into, execute, deliver and perform the necessary promissory notes, loan agreements and other documents necessary to effectuate the financing transaction; and,

6. Prohibiting Raccoon Creek from closing on assets or operating as a sewer utility unless it has operation, billing, and emergency answering arrangements (contracts) that can be in place and exercised immediately, respective of the assets of each of the Applicants, upon closing;

7. Requiring Raccoon Creek to notify the Commission of closing on the assets of each of the Applicants within five (5) days after such closings; and,

8. Authorizing West 16th, WPC, and Village to cease providing service immediately after closing on the respective assets, then after closing and notification of such cancel the CCN's currently issued to West 16th, WPC, and Village, respectively and appropriately, for sewer service.

B. CONDITIONS

The authority granted above should be subject to the following conditions:

1. Raccoon Creek is required to notify the Commission of closing on each of the Applicants assets within five (5) days after such closing;

2. If closing on any of the Applicants does not take place within thirty (30) days following the effective date of the Commission's order, Raccoon Creek is required 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 Raccoon Creek determines that a sale will not occur;

3. If Raccoon Creek determines that a sale will not occur for any of the Applicants assets, Raccoon Creek is required to notify the Commission of such, after which time the Commission may cancel, or deem null and void, the CCN issued to Raccoon Creek for the respective service area;

4. Raccoon Creek is required to file tariff adoption notice sheets for West 16th, WPC, and Village's sewer tariffs within thirty (30) days after closing of the respective assets, to adopt existing rules, rates and service charges;
5. Raccoon Creek is authorized to utilize depreciation rates that are currently approved for West 16th, WPC, and Village sewer assets;
6. Raccoon Creek is required to keep its financial books and records for plant-in-service and operating expenses in accordance with the NARUC Uniform System of Accounts;
7. Raccoon Creek is required to keep operations records including those for customer complaints/inquiries, meter placement and replacement/testing, vehicle, equipment and telephone use records and customer account records;
8. Raccoon Creek is required to comply with all Commission Rules including the filing of the annual report and keeping current on the Commission's assessments;
9. Either West 16th, WPC, and Village, on one hand, or Raccoon Creek, on the other, as the Applicants may be able to agree upon, shall pay the past due assessments and assessment amounts remaining for Fiscal Year 2015 in the amounts of \$1,156.25 for West 16th; \$579.33 for WPC; and, \$650.23 for Village, no later than thirty (30) days after closing on the respective assets;
10. The signatories agree that the account balances shown in Attachment A (West 16th) and B (WPC to the September 30, 2014 Staff Memorandum filed with the Staff's Recommendation to Conditionally Approve the Transfer of Assets, and Issuance of a Certificate of Convenience and Necessity (Staff Memorandum) shall be the account balances to be used by Raccoon Creek as of July 1, 2014, for West 16th and WPC. For Village, Raccoon Creek will use the account balances shown in Attachment C to the Staff Memorandum as further adjusted by such additional contributions in aid of construction (CIAC) as is necessary to establish a rate base of \$60,000, as of

closing. Further, in Raccoon Creek's first rate case, the rate base associated with the Village system as of closing for ratemaking purposes will be the lesser of: (1) \$60,000.00; or, (2) the rate base as of closing determined in that rate case;

11. The Signatories understand that the Commission's approval of this Stipulation and Agreement does not constitute a finding of the value of this transaction for ratemaking purposes. The Commission will reserve the right to consider the ratemaking treatment to be afforded the financing related to this transaction and its effect on cost of capital in any later proceeding;

12. Raccoon Creek ** _____
 _____ ** are required to provide Staff and OPC access, upon reasonable written notice during normal working hours, to all books and records related to investments in Missouri regulated utility assets. The access to information shall include, but not be limited to information provided to or received from the proposed debt investor, Fresh Start Ventures, LLC.

13. Raccoon Creek is required to file with the Commission within ten (10) days of the issuance of any financing authorized pursuant to a Commission order in this proceeding, a report including the amount of indebtedness issued, date of issuance, interest rate (initial rate if variable), maturity date, redemption schedules or special terms, if any, use of proceeds, estimated expenses, and the final executed loan agreement;

14. Raccoon Creek is required to submit to the manager of Staff's Financial Analysis Unit and OPC all documentation required pursuant to the terms of the loan agreement, but specifically as it refers to Section 6.5. In the event that Raccoon Creek is in violation of any of the terms and/or covenants of the loan agreement, Raccoon Creek shall file a report with the Missouri Public Service Commission indicating Raccoon Creek's plan to cure such violation. If such

violation is waived by the lender, then Raccoon Creek shall indicate why the lender waived this violation and how long the waiver shall be effective;

15. In the event of default on the Raccoon Creek Utility Operating Company, Inc. loan, Fresh Start Ventures, LLC is required to file a written plan with the Commission on how it will ensure continued funding necessary to maintain safe and adequate service for the Raccoon Creek Utility Operating Company, Inc. system customers;

16. The Commission should not make any finding in the present proceeding that would preclude the Commission from considering the ratemaking treatment to be afforded any matters pertaining to the granting of the subject Certificate, including expenditures related to the certificated service area, in any later proceeding;

17. Raccoon Creek and any successors or assigns shall bear the burden of proof, in subsequent rate cases where such financing is at issue, to show that it sought the least cost option available to it as to the proposed financing and ownership structure. If the Commission determines that Raccoon Creek has not carried this burden, Raccoon Creek understands the Commission may order a hypothetical capital structure and cost of capital consistent with similarly situated small sewer companies in Missouri, or such other capital structure and/or cost of capital that the Commission may find to be appropriate;

18. The proceeds from the proposed financing shall be used only for the acquisition of the West 16th, WPC, and Village utility systems and the proposed tangible improvements to the systems that can be booked to plant in service for purposes of ratemaking;

19. Raccoon Creek is required to provide quarterly to the manager of Staff's Auditing Unit and OPC; all monthly financial reports (balance sheet, income statement, etc.) and a listing of the Company's plant in service by NARUC account;

20. Raccoon Creek is required to provide to the manager of Staff's Auditing Unit and OPC, quarterly reports detailing the amount of money expended for construction projects for that month;

21. Raccoon Creek is required to maintain time sheets for all employees, including Josiah Cox, to document time spent of Raccoon Creek matters. Raccoon Creek shall also maintain mileage logs to document transportation associated with Raccoon Creek business. Time sheets and logs should specifically identify time spent on individual system, the amount of time spent on construction projects and time spent on other activities such as non-regulated activities, including acquisition and/or merger activities, etc.;

22. Raccoon Creek is required to track outside contractor expense for Raccoon Creek and any other ** _____ ** affiliate, including ** _____ _____, ** in a manner that would allow identification of costs that were incurred for Raccoon Creek business only. Raccoon Creek will track contractor expenses such as mileage, equipment, labor, telephone, and other office expenses that are specific to Raccoon Creek only;

23. Raccoon Creek, the buyer, and the common owner of West 16th and WPC, the sellers, have reached an agreement dated October 9, 2014, regarding the purchase price of the two respective systems identified as the "ADDENDUM TO AGREEMENT FOR SALE OF SEWER SYSTEM" (Highly Confidential Appendix S1, attached to the Supplement to Joint Application filed with the Commission on October 14, 2014). The purchase price for both West 16th and WPC were based on Commission findings regarding the rate base valuation determined in Cases Nos. SC-2013-0332 (West 16th) and SR-2013-0053 (WPC). The Parties agree to use the rate base amounts as determined by Staff in its *Recommendation to Conditionally Approve the Transfer of Assets and Issuance of a Certificate of Convenience and Necessity* in SM-2015-0014, as the starting

point for the book values that Raccoon Creek will reflect on its books and records. The difference in the rate base valuations used by Raccoon Creek in purchasing the West 16th and WPC sewer systems and the rate base valuations in Staff's *Recommendation* result in acquisition premiums. The Parties agree that these acquisition premiums shall not be recovered in future rates in any Raccoon Creek rate case involving either of the two sewer systems now known as West 16th and WPC; and,

24. Raccoon Creek is required to make all reasonable efforts to acquire from the seller of each sewer system any and all records including but not limited to continuing property records for plant-in-service and accumulated depreciation, including plant additions, retirements, along with invoices and other supporting documents if any relating to plant investment. This also includes any and all records relating to contributions in aid of construction and customer advances to the extent they exist. In addition, Raccoon Creek should make all reasonable efforts to acquire any and all records relating to customer accounts and customer usage, if applicable, accounts receivable and all billing system records as they exist. Furthermore, Raccoon Creek should make all reasonable efforts to acquire any and all records and documents relating to all cost of service items such as but not limited to all invoices and supporting documentation for property tax records, maintenance costs, payroll costs, outside operator costs and tax information, as applicable. Among other things as they may exist, this paragraph specifically includes the "boxed handwritten records from the previous owner" referred to by Village Water and Sewer Company, Inc. representative Tony Lerda in responses to OPC data requests 1200-1211, provided on November 4, 2014.

GENERAL PROVISIONS

1. This Stipulation is being entered into solely for the purpose of settling all issues in File No. SM-2014-0014. Unless otherwise explicitly provided herein, none of the Parties to this Stipulation shall be deemed to have approved, accepted, agreed, consented or acquiesced to any

ratemaking or procedural principle, including, without limitation, any method of cost determination or cost allocation or revenue-related methodology, cost of capital methodology or capital structure, rate design principle or methodology, or depreciation principle or methodology, and except as explicitly provided herein, none of the Parties shall be prejudiced or bound in any manner by the terms of this Stipulation (whether this Stipulation is approved or not) in this or any other proceeding, other than a proceeding limited to enforce the terms of this Stipulation.

2. This Stipulation has resulted from extensive negotiations among the Parties and the terms hereof are interdependent. If the Commission does not approve this Stipulation unconditionally and without modification, then this Stipulation shall be void and no Signatory shall be bound by any of the agreements or provisions hereof, except as explicitly provided herein.

3. If the Commission does not approve this Stipulation without condition or modification, and notwithstanding the provision herein that it shall become void; neither this Stipulation nor any matters associated with its consideration by the Commission shall be considered or argued to be a waiver of the rights that any Signatory has for a decision in accordance with §536.080 RSMo 2000 or Article V, Section 18 of the Missouri Constitution, and the Parties shall retain all procedural and due process rights as fully as though this Stipulation had not been presented for approval, and any suggestions, memoranda, testimony, or exhibits that have been offered or received in support of this Stipulation shall become privileged as reflecting the substantive content of settlement discussions and shall be stricken from and not be considered as part of the administrative or evidentiary record before the Commission for any purpose whatsoever.

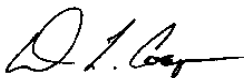
4. In the event the Commission approves the specific terms of this Stipulation without condition or modification, and as to the specified issues, the Parties waive their respective rights to call, examine, and cross-examine witnesses pursuant to § 536.070(2) RSMo 2000; present oral

argument and written briefs pursuant to §536.080.1 RSMo 2000; their respective rights to the reading of the transcript by the Commission pursuant to RSMo §536.080.2 RSMo 2000; their respective rights to seek rehearing, pursuant to §386.500 RSMo 2000; and their respective rights to judicial review pursuant to §386.510 RSMo 2000. These waivers apply only to a Commission order approving this Stipulation without condition or modification issued in this above-captioned proceeding and only to the issues that are resolved hereby. These waivers do not apply to any matters raised in any prior or subsequent Commission proceeding nor any matters not explicitly addressed by this Stipulation.

5. If requested by the Commission, the Staff may file suggestions or a memorandum in support of this Stipulation. Each of the Parties shall be served with a copy of any such suggestions or memorandum and shall be entitled to submit to the Commission, within five (5) days of receipt of Staff's suggestions or memorandum, responsive suggestions or a responsive memorandum, which shall also be served on all Signatories. The contents of any suggestions or memorandum provided by any Signatory are its own and are not acquiesced in or otherwise adopted by the other Signatories to this Stipulation, whether or not the Commission approves and adopts this Stipulation.

WHEREFORE, for the foregoing reasons, the undersigned Signatories respectfully request that the Commission issue its Order approving all of the specific terms and conditions of this Nonunanimous Stipulation and Agreement.

Respectfully submitted,



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STAFF OF THE MISSOURI
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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was sent by electronic mail on November 13, 2014, to the following:

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