

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

In the Matter of the Joint Application of)	
Brandco Investments, LLC and)	
Hillcrest Utility Operating Company, Inc., for)	File No. WO-2014-0340
Hillcrest to Acquire Certain Water and Sewer)	
Assets of Brandco and, in Connection Therewith,)	
Issue Indebtedness and Encumber Assets.)	

NONUNANIMOUS STIPULATION AND AGREEMENT

COME NOW Hillcrest Utility Operating Company, Inc. (“Hillcrest”); 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 May 13, 2014, Brandco Investments LLC (Brandco) and Hillcrest (collectively the “Applicants”), filed a *Joint Application and if Necessary Motion for Waiver* (Application) with the Commission, in two separate cases (WO-2014-0340 for water system assets and SO-2014-0341 for sewer system assets). These cases were later consolidated by a Commission order issued July 18, 2014.

Hillcrest and Brandco requested authorization for Brandco to sell and transfer assets to Hillcrest. Additionally, Hillcrest requested Commission Authority to allow it to collateralize the

system's assets for purposes of raising up to \$1,000,000 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 Brandco to sell and Hillcrest to acquire the assets of Brandco identified in the Joint Application herein and immediately grants Hillcrest a CCN to provide water and sewer service in Brandco's existing service area, to be exercised upon closing of assets;
2. Authorizing Hillcrest 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 Hillcrest to enter into, execute and deliver loan agreements with Fresh Start Ventures LLC to incur indebtedness;
4. Authorizing Hillcrest to create and make effective a first lien on all of the franchises, certificates of convenience and necessity, plant and system of Hillcrest, to secure its obligations under the loan;
5. Authorizing Hillcrest 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 Hillcrest from closing on assets or operating as a water and/or sewer utility unless it has operation, billing, and emergency answering arrangements (contracts) that can be in place and exercised immediately upon closing;

7. Requiring Hillcrest to notify the Commission of closing on the assets within five (5) days after such closing; and,

8. Authorizing Brandco to cease providing service immediately after closing of the assets, then after closing and notification of such cancel the CCN currently issued to Brandco for water and sewer service.

B. CONDITIONS

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

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

2. If closing does not take place within thirty (30) days following the effective date of the Commission's order, Hillcrest 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 Hillcrest determines that a sale will not occur;

3. If Hillcrest determines that a sale will not occur, Hillcrest is required to notify the Commission of such, after which time the Commission may cancel, or deem null and void, the CCN issued to Hillcrest;

4. Hillcrest is required to file tariff adoption notice sheets for Brandco's water and sewer tariffs within thirty (30) days after closing of assets, to adopt existing rules, rates and service charges;

5. Hillcrest is authorized to utilize depreciation rates that are currently approved for Brandco water and sewer assets;

6. Hillcrest 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. Hillcrest 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. Hillcrest 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 Brandco or Hillcrest, as the Applicants may be able to agree upon, shall pay the past due assessments in the amount of \$7,299.92, no later than thirty (30) days after closing on the assets;

10. The signatories agree that the account balances shown in Attachment A to the August 26, 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 shall be the account balances to be used by Hillcrest as of July 31, 2014;

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. Hillcrest ** _____
_____. ** 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. Hillcrest 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. Hillcrest 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 Hillcrest is in violation of any of the terms and/or covenants of the loan agreement, Hillcrest shall file a report with the Missouri Public Service Commission indicating Hillcrest's plan to cure such violation. If such violation is waived by the lender, then Hillcrest shall indicate why the lender waived this violation and how long the waiver shall be effective;

15. In the event of default on the Hillcrest 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 Hillcrest 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. Hillcrest 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 Hillcrest has not carried this burden, Hillcrest understands the Commission may order a hypothetical capital structure and cost of capital consistent with similarly situated small water and 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 Brandco utility system and the proposed tangible improvements to the system that can be booked to plant in service for purposes of ratemaking;

19. Hillcrest 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. Hillcrest 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. Hillcrest is required to maintain time sheets for all employees, including Josiah Cox, to document time spent on Hillcrest matters. Hillcrest shall also maintain mileage logs to document transportation associated with Hillcrest 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.; and,

22. Hillcrest is required to track outside contractor expense for Hillcrest and any other
 ** _____ ** affiliate, including ** _____.

____, ** in a manner that would allow identification of costs that were incurred for Hillcrest business only. Hillcrest will track contractor expenses such as mileage, equipment, labor, telephone, and other office expenses that are specific to Hillcrest only.

GENERAL PROVISIONS

1. This Stipulation is being entered into solely for the purpose of settling all issues in File No. WO-2014-0340. 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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/S/ by dlc _____

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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 October 10, 2014, to the following:

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