

SETTLEMENT AGREEMENT AND MUTUAL RELEASE

The Town of Highland, Indiana (“Highland”), Town of Dyer, Indiana (“Dyer”), Town of Griffith, Indiana (“Griffith”), City of Whiting, Indiana (“Whiting”), and Town of Munster, Indiana (“Munster”) (collectively, the “Customer Communities”) together with the Civil City of Hammond, Indiana (“Hammond”), the Board of Directors, Hammond Water Works Department (“HWWD”) (collectively, the “Hammond Parties”) (Customer Communities and the Hammond Parties together, the “Parties”) enter into this Settlement Agreement and Mutual Release (“Settlement Agreement”) to reflect the terms to which the Parties agree to resolve certain controversies between them:

Recitals

1. The Customer Communities are Indiana municipalities.
2. On or about July 31, 2006, Highland and HWWD entered into a purchase agreement whereby HWWD agreed to provide to Highland an adequate supply of potable water, and Highland agreed to purchase same from HWWD (“the “Highland 2006 Agreement”).
3. On or about September 7, 2010, Whiting and HWWD entered into a purchase agreement whereby HWWD agreed to provide to Whiting an adequate supply of potable water, and Whiting agreed to purchase same from HWWD (the “Whiting 2010 Agreement”).
4. On or about January 29, 2007, Munster and HWWD entered into a purchase agreement whereby HWWD agreed to provide to Munster an adequate supply of potable water, and Munster agreed to purchase same from HWWD (the “Munster 2007 Agreement”).
5. On or about March 22, 2000, Griffith and the HWWD entered into a purchase agreement whereby HWWD agreed to provide to Griffith an adequate supply of potable water, and Griffith agreed to purchase same from HWWD (the “Griffith 2000 Agreement”). While the term of the Griffith Agreement had expired, HWWD continued to provide Griffith potable water on a month-to-month basis under the contract terms.

6. On or about April 13, 1992, Dyer and HWWD entered into a purchase agreement whereby Dyer would purchase potable water from HWWD which would be supplied by HWWD to Highland and then from Highland to Dyer (the “Dyer 1992 Agreement”). While the term of the Dyer 1992 Agreement had expired, HWWD and Highland continued to provide Dyer potable water on a month-to-month basis under the contract terms.

7. Collectively, the Highland 2006 Agreement, Whiting 2010 Agreement, Munster 2007 Agreement, Griffith 2000 Agreement, and Dyer 1992 Agreement are referred to as the “Customer Communities’ Prior Agreements.”

8. On November 16, 2020, the Hammond Common Council held a public hearing to discuss amending water rates for customers, including the Customer Communities. Representatives of each of the Customer Communities appeared and provided their objections to the proposed ordinance amending rates.

9. The Hammond Common Council adopted Ordinance No. 9486 (“Ordinance 9486”) over the objections of the Customer Communities.

10. Following the hearing and adoption of Ordinance 9486, the Customer Communities filed a statutory objection to the amended rates under Ind. Code § 8-1.5-3-8.2 with the City of Hammond Clerk on November 20, 2020 (the “Statutory Objection”), alleging that the rates were discriminatory, unreasonable, and unjust in violation of Ind. Code § 8-1.5-3-8.

11. The Customer Communities also filed an action for declaratory judgment and damages under the caption *Town of Highland, Indiana et al. v City of Hammond, Indiana, et al*, Cause No. 45D02-2011-PL-000802 (Lake County Superior Ct.), on November 20, 2020 (the “Complaint”), alleging that the Hammond Parties were not authorized to raise rates under the Customer Communities’ Prior Agreements by Ordinance and that such action constituted a breach of those contracts.

12. The Statutory Objection was filed into Cause No. 45D02-2011-PL-000802, and certain proceedings were held on the Statutory Objection under that Cause No. 45D02-2011-PL-000802.

13. As to the Complaint, the Hammond Parties answered and moved for judgment on the pleadings.

14. The Customer Communities subsequently responded to the Hammond Parties' Motion for Judgment on the Pleadings and filed a Cross Motion for Judgment on the Pleadings.

15. The claims in the Complaint and Statutory Objection ("Customer Communities' Claims") are not yet resolved. The Hammond Parties individually and collectively deny the Customer Communities' Claims.

16. The Customer Communities and the Hammond Parties have subsequently been engaged in good faith settlement discussions regarding possible resolution of the Customer Communities' Claims.

17. The Customer Communities and the Hammond Parties hereby agree to resolve all claims between them that were or could have been asserted in the Statutory Objection or the Complaint or any other proceedings concerning, related to, or arising out of the amended rates enacted by Ordinance 9486, including all matters raised under Cause No. 45D02-2011-PL-000802, on the terms set forth below.

Agreement

18. The Parties agree that the Customer Communities' Prior Agreements are extinguished and no longer have any force or effect, effective December 31, 2020.

19. Each of the Customer Communities and Hammond Water Works Department shall enter into a new Water Purchase Agreement, effective retroactively to January 1, 2021, in the form attached to this Settlement Agreement as Exhibits A-E (the "2021 Water Purchase

Agreements”), which will supersede the Customer Communities’ Prior Agreements. The executed terms and conditions of the 2021 Water Purchase Agreements provide additional consideration for this Settlement Agreement.

20. The rates to be paid by the Customer Communities, terms of contract, renewal options, exclusivity provisions, and other material terms, are memorialized in the terms of the 2021 Water Purchase Agreements, which are incorporated herein, and attached as Exhibits A through E. The Parties acknowledge that the rates set forth in the 2021 Water Purchase Agreements are being presented to the Hammond Common Council in the form of an ordinance related to wholesale water rates.

21. The Parties agree to cooperate in good faith with respect to the payment for water sold in 2021 at a lower rate than prescribed by the 2021 Water Purchase Agreements, prior to the execution of this Settlement Agreement, and for any invoices reflecting the difference to be paid promptly. Specifically, Late Charges described in Section 601(a) of the 2021 Water Purchase Agreements shall not apply to any “catch up” invoice(s) issued by the HWWD for charges from January 1, 2021 through the execution of this Agreement. For such invoices, the parties agree that the Customer Communities shall not be responsible for any Late Charges unless such invoices are not paid in full by November 30, 2021.

22. The Customer Communities shall not challenge, now or in the future, in any way, the Hammond Parties’ wholesale sale of water to any city, town, municipality, political subdivision, commission, consortium, or any other similar entity in Illinois. This includes any challenge through litigation, efforts to develop legislation that seeks or is intended to make unlawful, regulate, or tax such interstate sales, and any tortious interference with any of the Hammond Parties’ business relationships with customers or prospective customers in Illinois related to the wholesale sale of water.

23. Within two business days of the execution of this Settlement Agreement and the contracts set forth in Exhibits A through E, the Parties shall jointly move to dismiss with prejudice the Complaint and Statutory Objection on the form attached to this Settlement Agreement as Exhibit F.

24. Highland, on its own behalf and on behalf of its officials, residents, agents, representatives, assigns, insurers, and attorneys (collectively, “Highland Releasers”), hereby absolutely and unconditionally release, acquit and forever discharge the Hammond Parties and their officials, residents, agents, representatives, members, officers, directors, trustees, employees, successors, assigns, insurers, and attorneys (collectively, “Hammond Releasees”), from any and all claims, actions, demands, causes of action and liabilities of any kind whatsoever (upon any legal or equitable theory, whether contractual, common law, statutory, federal, state, local or otherwise, including, but not limited to, any claim for fees or costs of any kind) whether known or unknown, fixed or contingent, liquidated or unliquidated, direct or indirect, suspected or unsuspected, arising out of, bearing upon, or otherwise relating to the Highland 2006 Agreement, Ordinance 9486, the Complaint, and the Statutory Objection.

25. Whiting, on its own behalf and on behalf of its officials, residents, agents, representatives, assigns, insurers, and attorneys (collectively, “Whiting Releasers”), hereby absolutely and unconditionally release, acquit and forever discharge the Hammond Parties and their officials, residents, agents, representatives, members, officers, directors, trustees, employees, successors, assigns, insurers, and attorneys (collectively, “Whiting Releasees”), from any and all claims, actions, demands, causes of action and liabilities of any kind whatsoever (upon any legal or equitable theory, whether contractual, common law, statutory, federal, state, local or otherwise, including, but not limited to, any claim for fees or costs of any kind) whether known or unknown, fixed or contingent, liquidated or unliquidated, direct or indirect, suspected

or unsuspected, arising out of, bearing upon, or otherwise relating to the Whiting 2010 Agreement, Ordinance 9486, the Complaint, and the Statutory Objection.

26. Griffith, on its own behalf and on behalf of its officials, residents, agents, representatives, assigns, insurers, and attorneys (collectively, “Griffith Releasors”), hereby absolutely and unconditionally release, acquit and forever discharge the Hammond Parties and their officials, residents, agents, representatives, members, officers, directors, trustees, employees, successors, assigns, insurers, and attorneys (collectively, “Hammond Releasees”), from any and all claims, actions, demands, causes of action and liabilities of any kind whatsoever (upon any legal or equitable theory, whether contractual, common law, statutory, federal, state, local or otherwise, including, but not limited to, any claim for fees or costs of any kind) whether known or unknown, fixed or contingent, liquidated or unliquidated, direct or indirect, suspected or unsuspected, arising out of, bearing upon, or otherwise relating to the Griffith 2000 Agreement, Ordinance 9486, the Complaint, and the Statutory Objection.

27. Munster, on its own behalf and on behalf of its officials, residents, agents, representatives, assigns, insurers, and attorneys (collectively, “Munster Releasors”), hereby absolutely and unconditionally release, acquit and forever discharge the Hammond Parties and their officials, residents, agents, representatives, members, officers, directors, trustees, employees, successors, assigns, insurers, and attorneys (collectively, “Munster Releasees”), from any and all claims, actions, demands, causes of action and liabilities of any kind whatsoever (upon any legal or equitable theory, whether contractual, common law, statutory, federal, state, local or otherwise, including, but not limited to, any claim for fees or costs of any kind) whether known or unknown, fixed or contingent, liquidated or unliquidated, direct or indirect, suspected or unsuspected, arising out of, bearing upon, or otherwise relating to the Munster 2007 Purchase Agreement, Ordinance 9486, the Complaint, and the Statutory Objection.

28. Dyer, on its own behalf and on behalf of its officials, residents, agents, representatives, assigns, insurers, and attorneys (collectively, “Dyer Releasers”), hereby absolutely and unconditionally release, acquit and forever discharge the Hammond Parties and their officials, residents, agents, representatives, members, officers, directors, trustees, employees, successors, assigns, insurers, and attorneys (collectively, “Hammond Releasees”), from any and all claims, actions, demands, causes of action and liabilities of any kind whatsoever (upon any legal or equitable theory, whether contractual, common law, statutory, federal, state, local or otherwise, including, but not limited to, any claim for fees or costs of any kind) whether known or unknown, fixed or contingent, liquidated or unliquidated, direct or indirect, suspected or unsuspected, arising out of, bearing upon, or otherwise relating to the Dyer 1992 Agreement, Ordinance 9486, the Complaint, and the Statutory Objection.

29. The Hammond Parties, on their own behalf, and on behalf of their officials, residents, agents, representatives, members, officers, directors, trustees, employees, successors, assigns, insurers, and attorneys (collectively, “Hammond Releasers”), hereby absolutely and unconditionally release, acquit and forever discharge the Customer Communities and all of their officials, residents, agents, representatives, assigns, insurers, and attorneys (collectively, “Customer Communities Releasees”), from any and all claims, actions, demands, causes of action and liabilities of any kind whatsoever (upon any legal or equitable theory, whether contractual, common law, statutory, federal, state, local or otherwise, including, but not limited to, any claim for fees or costs of any kind) whether known or unknown, fixed or contingent, liquidated or unliquidated, direct or indirect, suspected or unsuspected, arising out of, bearing upon, or otherwise relating to the Customer Communities Prior Agreements, Ordinance 9486, the Complaint, and the Statutory Objection.

30. Incorporating the terms of the 2021 Water Purchase Agreements, this Settlement Agreement contains the entire agreement between the Customer Communities and the Hammond Parties regarding settlement of the Customer Communities' Claims. This Settlement Agreement may only be modified by a written instrument executed by the Customer Communities and the Hammond Parties.

31. The Parties understand and agree that this Settlement Agreement is made and executed solely for the purpose of settlement and does not in any way constitute, and shall not be construed to constitute, an admission of liability of any sort by any of the Parties.

32. Each Party to this Settlement Agreement shall bear its own attorney fees and litigation costs. Each Party represents that it has entered into this Settlement Agreement upon its own free will in accordance with its own judgment and after the opportunity to consult with counsel. Each Party represents that its counsel has reviewed and approved this Settlement Agreement.

33. This Settlement Agreement may be executed in counterparts, each of which shall be considered a complete original once all Parties have executed and exchanged a copy of this Settlement Agreement.

34. Each person signing this Settlement Agreement on behalf of a party represents and warrants to the other Parties that he is duly and fully authorized to enter into and execute this Agreement and that all of its terms are binding commitments on behalf of himself and the party for which he purports to act.

35. This Settlement Agreement shall be interpreted according to the laws of the State of Indiana exclusive of its choice of law rules. The Parties also agree that if a dispute arises over the terms of the Settlement Agreement, including a breach thereof by any Party, jurisdiction and venue will lie in state court in Lake County, Indiana.

36. The Parties agree that this Settlement Agreement has been negotiated at arm's length, that no party shall be deemed to be the drafter of this Settlement Agreement, and that all terms of this Settlement Agreement are stated herein and are not dependent upon any other terms.

37. If any term or provision of this Settlement Agreement shall be deemed to be prohibited, invalid, or unenforceable in any jurisdiction, such a provision shall be ineffective only to the extent of such prohibition or unenforceability and without invalidating the remaining provisions hereof or affecting the validity or enforceability of such provisions and all such remaining terms and provisions shall remain in full force and effect.

Executed by each of the Parties to this Settlement Agreement on the date shown immediately below the signature of that Party.

THE TOWN OF HIGHLAND, INDIANA

By: _____
Its Duly Authorized Representative

Dated: _____

THE CITY OF WHITING, INDIANA

By: _____
Its Duly Authorized Representative

Dated: _____

THE TOWN OF MUNSTER, INDIANA

By: _____
Its Duly Authorized Representative

Dated: _____

THE TOWN OF GRIFFITH, INDIANA

By: _____
Its Duly Authorized Representative

Dated: _____

THE TOWN OF DYER, INDIANA

By: _____
Its Duly Authorized Representative

Dated: _____

THE CIVIL CITY OF HAMMOND, INDIANA

By: _____
Its Duly Authorized Representative

Dated: _____

THE BOARD OF TRUSTEES, HAMMOND WATER
WORKS DEPARTMENT

By: _____
Its Duly Authorized Representative

Dated: _____

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