

Larry R. Anderson, PE

ATTORNEY AT LAW
4115 WOODMONT PARK LANE
LOUISVILLE, KENTUCKY 40245
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RECEIVED

APR 21 2015

PUBLIC SERVICE
COMMISSION

April 14, 2015

Mr. Jeff Derouen
Executive Director
Kentucky Public Service Commission
211 Sower Blvd.
P. O. Box 615
Frankfort, KY 40602-0615

Subject: Status Report on Transfer of Wastewater Facilities
Case No. 2014-00425

Dear Mr. Derouen:

On February 13, 2015, the Kentucky Public Service Commission (PSC) entered an Order approving the transfer of the wastewater facilities, services and customers of the Estill County Water District No. 1 (Estill No. 1) to the City of Irvine through its Irvine Utility Commission (IMU). Paragraph No. 8 of this Order requires Estill No. 1 to provide a Status Report of its efforts to complete this transfer within 60 days. This Status Report is as follows:

1. Personal Property: Paragraph 1.a. of the Memorandum Settlement Agreement (Agreement) requires that Estill No. 1 transfer to IMU the personal property, equipment and vehicles described in Exhibit A. This Personal Property was transferred on April 2, 2015 as evidenced by the attached Bill of Sale. Please file this document in the general correspondence file of Estill No. 1.
2. Customer Lists: Paragraph 1.b. of the Agreement requires that Estill No. 1 transfer a list of all of its sewer customer to IMU. This list was provided to IMU on or before April 10, 2015 and IMU will invoice the customers in its name on the next billing.
3. Customer Records: Paragraph 1.c. of the Agreement requires Estill No. 1 to provide IMU with customer records as requested. IMU has not requested any of these records at this time.
4. Accounts Receivable: Paragraph 1.d. of the Agreement requires Estill No. 1 to transfer its accounts receivable to IMU. These records are being compiled and will be transferred in the near future.
5. Sewer Lines, Collection Systems, Pump Stations and Other Facilities: Paragraph 1.e. of the Agreement requires that Estill No. 1 transfer to IMU its sewer lines, collection

systems, pump stations and other facilities. This transfer was made through the Bill of Sale filed as described in Item No. 1 above.


6. Easements: Paragraph 1.f. of the Agreement requires that Estill No. 1 transfer all easements to IMU. This transfer was accomplished through the Deed of Easement executed on April 2, 2015 as attached. Please file this document in the general correspondence file of Estill No. 1.
7. Easement across Real Property of Estill No. 1: Paragraph 1.g. of the Agreement requires that Estill No. 1 provide an easement across its real property. This will be provided to, IMU in the near future.
8. USDA Loan: Paragraph 3 of the Agreement requires IMU to assume liability for the USDA Loan of \$307,000.00 as of October 20, 2014. In February of 2015, Estill No. 1 made a payment on this loan in the amount of \$20,675. By April 13, 2015 letter, USDA notified Estill No. 1 that IMU had paid the loan balance of \$298,224.65. By an April 8, 2015 email, USDA notified Estill No. 1 that this payment of the loan balance would relieve Estill No. 1 of any further liability under this loan. A copy of the April 8, 2015 email and a copy of the April 13, 2015 letter are attached for filing in the general correspondence file of Estill No. 1. Estill No. 1 has requested that IMU refund its February loan payment and settlement of this issue is being negotiated.
9. Decommission Plant: Paragraph 5 of the Agreement requires that Estill No. 1 decommission its plant. This plant has been decommissioned under a Closure Plan submitted to the DOW on October 27, 2014 and approved by the DOW.
10. Transfer of Wastewater Service: Paragraph 7 of the Agreement requires that IMU will provide wastewater service to the customers of Estill No. 1. On or about November 5, 2014, IMU began treating the wastewater for the former customers of Estill No. 1.
11. Agreed Order of Dismissal: Paragraph 13 of the Agreement requires that IMU and Estill No. 1 execute an Agreed Order of Dismissal of the litigation filed in Estill Circuit by IMU. Estill No. 1 has signed and sent this Agreed Order to IMU but IMU has not signed and sent the Agreed Order to the Estill Circuit Court.
12. Approval of State and Federal Agencies: Paragraph 14.a. of the Agreement provides that the Agreement is contingent on approval of federal and state agencies. The Kentucky Public Service Commission is the only agency that required its approval of this Agreement and that approval was obtained on February 13, 2015.
13. Relief from Fines and Penalties: Paragraph 14.b. of the Agreement provided that the Agreement is contingent on the written assurances that it would be relieved from responsibility for any fines, assessments or penalties for its prior activities. The attached March 24, 2015 letter from the Division of Enforcement and Office of General Counsel provides this relief if Estill No. 1 completes the Closure Plan by May 1, 2015. The Closure Plan has been substantially completed except for the fill material, reseeding and other various activities. It may be necessary to request an extension as the wet April has caused delays in many of these activities.
14. Refund of Grant Funds: Paragraph 14.14.c. of the Agreement provides that the Agreement is contingent on Estill No. 1 receiving satisfactory assurances that it would not have any liability to refund any grant funds related to the IMU wastewater facilities. The April 6, 2015 letter from the Office of Federal Grants addresses this issue in a

satisfactory manner. Please file this document in the general correspondence file of Estill No. 1.

In summary, Item Nos. 1,2,3,5,6,8,9,10, 12 and 14 above are complete and will not require any further mention in future reporting. Item Nos. 4, 7, 11 and 13 require additional work and will receive status updates in the future.

If you have any questions or need additional information, please let me know.

Sincerely,


Larry R. Anderson
Attorney for Estill No. 1

cc. Ms. Audrea Miller, Office Manager, Estill County Water District #1, 76 Cedar Grove Road, Irvine, KY 40336 w/atts. – Audie, please make a copy for the Board Members and Dwight.
Michael R. Eaves, Sword, Floyd & Moody, PLLC, 218 Main Street, Frankfort, Kentucky 40475 w/atts.

attachments

BILL OF SALE

KNOW ALL MEN BY THESE PRESENTS:

That ESTILL COUNTY WATER DISTRICT NO. 1, a water district established by Order of the Estill County Fiscal Court, ("District"), for and in consideration of the terms of a certain Memorandum Settlement Agreement by and between the District, the Estill County Fiscal Court, the City of Irvine, Kentucky ("CITY"), and the Irvine Municipal Utility Commission, the Sufficiency of which is hereby acknowledged, the DISTRICT does hereby grant, bargain, convey and deliver unto the CITY all the DISTRICT'S right, title and interest in and to the following:

1. Jet Washer;
2. Vacuum Truck;
3. All Equipment and parts used in operation of current wastewater treatment plant;
4. All Equipment used in the wastewater treatment facility, excluding vehicles and equipment used in operation and maintenance of water distribution system and facilities;
5. All sewer lines, both below and above ground, all pumps, manholes, and appurtenances of every kind and wherever located, owned by the DISTRICT and utilized by it in the operation of its sewage collection and treatment facility located in Estill County, Kentucky.
6. All the District's sewer customers, customer lists (a copy of which are this date delivered to the CITY, its accounts receivable related to its sewer customers (record of which are delivered this date to the CITY). Customer lists and account receivables will be delivered to IRVINE MUNICIPAL UTILITIES by April 15, 2015.

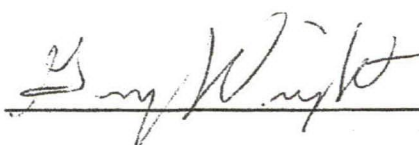
The DISTRICT herein warrants that it is the owner if the property; that the DISTRICT has good, lawful and merchantable title to same; that DISTRICT has full and lawful right and authority to transfer same; and that the aforesaid property is conveyed free and clear of any and all liens and encumbrances of any kind whatsoever, and DISTRICT warrants generally the title thereto.

Estill County Water District No. 1

Date:

4-2-15

By:



Greg Wright, Chairman

CASE NO. 2014-00425

DEED OF EASEMENT

THIS DEED OF EASEMENT made and entered into by and between ESTILL COUNTY WATER DISTRICT NO. 1, a water district created and existing under and by virtue of Chapter 74 of the Kentucky Revised Statutes, whose address is 76 Cedar Grove, Irvine, Estill County, Kentucky, hereinafter GRANTOR, and CITY OF IRVINE, KENTUCKY, a Kentucky municipal corporation, whose address is 101 Chestnut Street, Irvine, Estill County, Kentucky, hereinafter GRANTEE.

WITNESSETH THAT, WHEREAS, the Grantor has acquired easements for the purpose of laying, constructing, maintaining, repairing, reconstructing, replacement, resizing, operating, and use, of sewer mains, pipes, lines, manholes, pump stations, cleanouts, and related facilities, more particularly described in Exhibit A hereto; and

WHEREAS, Grantor has agreed, pursuant to the terms of a Memorandum Settlement Agreement between the parties hereto, dated September 15th, 2014 (the "Settlement Agreement"), to transfer its sewer operation, including its sewer equipment, lines, pipes, and related facilities to Grantee who shall thereafter provide such sewage service to Grantor's customers; and

WHEREAS, to carry out the terms of the Settlement Agreement, it is necessary that Grantor transfer such easements to Grantee.

Now therefore, for an in consideration of the terms of the Settlement Agreement, and of the parties obligations thereunder, the receipt and sufficiency of which is hereby acknowledged, Grantor hereby bargains, grants, transfers, assigns, and conveys unto said Grantee, its successors and assigns forever, all the Grantor's right, title and interest in and to the property, easements and rights-of-way more particularly described in Exhibit

CASE NO. 2014-00425

A hereto, subject only to such restrictions, limitations, and conditions as are contained in the documents described in Exhibit A hereto.

To have and to hold said easements, together with all appurtenances and privileges thereunto belonging unto the Grantee, in fee simple, its successors and assigns forever.

GRANTOR:

Estill County Water District No. 1

GRANTEE:

City of Irvine, Kentucky

By:

Greg Wright
Greg Wright, Chairman

By:

W.J. Noland
W.J. Noland, Mayor

STATE OF KENTUCKY
SCT
COUNTY OF ESTILL

Before me, a Notary Public in and for the county and state aforesaid, personally appeared Greg Wright, in his capacity as Chairman of the Estill County Water District No. 1, the GRANTOR, who signed and acknowledged the foregoing DEED OF EASEMENT as his free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and notarial seal on this the 2 day of April, 2015.

Robin Powell
Notary Public, Kentucky State at Large

My Commission Expires: 12/4/15

CASE NO. 2014-00425

STATE OF KENTUCKY
SCT
COUNTY OF ESTILL

Before me, a Notary Public in and for the county and state aforesaid, personally appeared W.J. Noland, in his capacity as Mayor of the City of Irvine, Kentucky, the GRANTEE, who signed and acknowledged the foregoing DEED OF EASEMENT as his free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and notarial seal on this the 2nd day of April, 2015.

Robin Powell
Notary Public, Kentucky State at Large

My Commission Expires: 12/4/18

SWORD, FLOYD & MOODY, PLLC

By: _____
Michael R. Eaves

ADDRESS: 218 West Main Street
P. O. Box 300
Richmond, Kentucky 40476-0300
Telephone: 606-623-3728

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CASE NO. 2014-00425



April 13, 2015

Irvine Municipal Utilities
Attn: Bee Williams
238 Broadway
Irvine, KY 40336

Dear Mr. Williams:

This is to notify you that we received the cashier's check in the amount of \$298,224.65 to pay off Loan No. 92-05 for Estill County Water District No. 1.

If you have any questions feel free to call.

Sincerely,

Nanessa Lewis

John Johnson
Area Director

for:

cc: Estill County Water District No. 1
Attn: Audrea Miller

Rural Development • Shelbyville Area Office
65 Brighton Blvd., Suite 3 • Shelbyville, KY 40065
Voice (502) 633-3294 Ext. 4 • Fax (855) 784-0871

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If you wish to file a Civil Rights program complaint of discrimination, complete the USDA Program Discrimination Complaint Form (PDF), found online at http://www.ascr.usda.gov/complaint_filing_cust.html, or at any USDA office, or call (866) 632-9992 to request the form. You may also write a letter containing all of the information requested in the form. Send your completed complaint form or letter to us by mail at U.S. Department of Agriculture, Director, Office of Adjudication, 1400 Independence Avenue, S.W., Washington, D.C. 20250-9410, by fax (202) 690-7442 or email at program.intake@usda.gov.

CASE NO. 2014-00425

Subject: RE: Loan to Estill County Water District # 1
From: Johnson, John - RD, Shelbyville, KY (john.johnson@ky.usda.gov)
To: dessiea1@att.net;
Date: Wednesday, April 8, 2015 2:32 PM

That is correct.

From: Larry Anderson [mailto:dessiea1@att.net]
Sent: Wednesday, April 08, 2015 9:16 AM
To: Johnson, John - RD, Shelbyville, KY
Subject: Re: Loan to Estill County Water District # 1

John,

So when the loan balance is paid in full, the District will not have any further liability on the loan' is this correct?

Larry

Sent from my iPhone

On Apr 8, 2015, at 8:08 AM, "Johnson, John - RD, Shelbyville, KY" <john.johnson@ky.usda.gov> wrote:

Larry,

RD will provide the District with payoff letter. The payoff is the outstanding loan balance.

John

John Johnson, Area Director
Rural Development

U.S. Department of Agriculture

65 Brighton Blvd., Ste. 31 Shelbyville, KY 40065

Phone: 502.633.3294, Ext. 4 | Fax: 502.633.0552

www.rurdev.usda.gov

USDA is an equal opportunity provider and employer.

"Committed to the future of rural communities"
"Estamos dedicados al futuro de las comunidades rurales"

From: Larry Anderson [mailto:desstia1@zianet.net]
Sent: Monday, March 30, 2015 4:29 PM
To: Johnson, John - RD, Shelbyville, KY
Subject: Loan to Estill County Water District # 1

This will confirm our telephone conversation today regarding satisfaction of Estill County's loan.

One condition to the District's Agreement with IMU states ". . . IMU shall assume, agree to pay, pay, and indemnify and hold the District harmless from the outstanding balance remaining due from the District to the USDA . . ." IMU has said they have secured a bank loan to pay this debt in full. What is the current loan balance and if IMU pays this amount in full, would that relieve the District of any further liability on their loan? If you would provide me a letter with this commitment, it would be very helpful.

Thanks,

Larry R. Anderson

Attorney for the Estill County Water District # 1

4115 Woodmont Park Lane

Louisville, Kentucky 40245

telephone (502) 500-3545

STEVEN L. BESHEAR
GOVERNOR



LEONARD K. PETERS
SECRETARY

ENERGY AND ENVIRONMENT CABINET
DEPARTMENT OF ENVIRONMENTAL PROTECTION
DIVISION OF ENFORCEMENT

Steven L. Beshear
Governor

Office of General Counsel
309 FAIR OAKS LANE
FRANKFORT, KENTUCKY 40601
C. MICHAEL HAINES
EXECUTIVE DIRECTOR
DIANE SCHULER FLEMING
DEPUTY EXECUTIVE DIRECTOR

Leonard K. Peters
Secretary

CERTIFIED MAIL No. 7014 1200 0002 0316 4121
Return Receipt Requested

2 Hudson Hollow Road
Frankfort, Kentucky 40601
Phone (502) 564-2356
Fax (502) 564-9212

Larry R. Anderson, PE
4115 Woodmont Park Lane
Louisville, KY 40245

Re: Case No. DOW 1011, DOW-33772
Activity No. ERF20100001
AI No. 1001
AI Name Estill Co WWTP
Estill County

Dear Mr. Anderson:

On February 6, 2014, the Energy and Environment Cabinet (Cabinet) filed a complaint against the Estill Co. Water District (Estill) for failure to comply with KRS Chapter 224 and the regulations promulgated pursuant thereto. In response to this complaint, a prehearing conference was held between the Cabinet and Estill on April 11, 2014. During the conference, Estill indicated they were in the process of decommissioning its wastewater treatment facility and hooking into the Irvine Municipal Utilities (IMU) wastewater system.

As of December 2014, Estill has been sending its wastewater to IMU for treatment. A closure plan was submitted to the Cabinet for review and acceptance on October 28, 2014. Per the terms of this closure plan, Estill will properly seal off and close its existing sand filter system at the treatment plant and remediate the site with vegetation. Based on this information, if Estill completes the following closure plan as specified by May 1, 2015, the Cabinet will waive all penalties and/or fines associated with Case No. DOW1011.

If you have any further questions regarding this information you may contact myself at (502) 564-2150 ext. 3286, email at Kari.Johnson@ky.gov; or Kathleen Saunier at (502) 564-2356, email at Kathleen.Saunier@ky.gov.

Respectfully,

Kari Johnson
Enforcement Specialist
Division of Enforcement

Kathleen Saunier
Office of General Counsel
Energy and Environment Cabinet



OFFICE OF THE GOVERNOR
DEPARTMENT FOR LOCAL GOVERNMENT

Steven L. Beshear
Governor

1024 Capital Center Drive, Suite 340
Frankfort, Kentucky 40601
Phone (502) 573-2382
Fax (502) 573-2939
Toll Free (800) 346-5606
www.dlg.ky.gov

Tony Wilder
Commissioner

April 6, 2015

The Honorable Wallace C. Taylor
Estill County Judge/Executive
130 Main Street, Room 101
Irvine, Kentucky 40336

The Honorable W. J. Noland
Mayor, City of Irvine
101 Chestnut Street
Irvine, Kentucky 40336

RE: Irvine/Estill County Wastewater System Improvements and Extensions Project
Community Development Block Grant (CDBG) 07-034

Dear Sirs:

A Memorandum Settlement Agreement was entered on September 15, 2014, by and among Estill County Water District No. 1 ("the District"), Estill County Fiscal Court ("the County"), the city of Irvine and Irvine Utility Commission. Provision 14.c of the Agreement requires the District and/or County receive such assurances as they deem necessary that no **grant funds** previously made available to them will be required to be repaid if this Agreement is carried out as described. The Department for Local Government (DLG) in 2008 approved a CDBG request jointly submitted by the city of Irvine and the County and made an award of a \$2 million grant. This letter is in response to a request by Mr. Larry Anderson, counsel for the District, in his effort to address Provision 14.c of the Agreement.

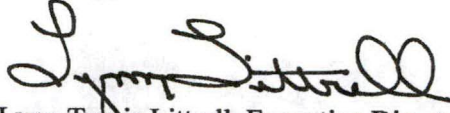
After several changes in the project and several extensions of time, DLG notified the grantees by letter of October 28, 2014 of the three (3) final documents required to close the grant. Those items were later submitted and on February 27, 2015 our standard closeout letter was sent approving successful completion of the grant. Consequently, DLG knows of no reason, at this time, that either of the grantees should be held liable for repayment of any CDBG grant funds disbursed. In fact, the February 27, 2015 letter states both grantees are now eligible to apply for more CDBG funding for other projects. Please be advised that the facilities financed by these grants must be maintained over time for the purpose they were intended. The application for funding which contains references to numerous federal laws and the signed grant agreement are both binding. Any violation of law or regulation that is discovered in the future could result in further discussion.

Case No. 2014-00425
Kentucky

The Honorable Wallace C. Taylor
The Honorable W. J. Noland
April 6, 2015
Page 2 of 2

A copy of the February 27, 2015 letter is enclosed. Please contact Marilyn Eaton-Thomas at 502/573-2382, ext. 233, should you have questions. Our continued best wishes for your city and county.

Sincerely,



Lynn Travis Littrell, Executive Director
Office of Federal Grants

Enclosures

c: David Duttlinger, BGADD
Larry Anderson, Counsel, Estill County Water District
Billy Williams, IMU
Mike Eaves, Counsel, IMU

Case No. 2014-00425