

**ORIGINAL**

**STATE OF INDIANA**

**INDIANA UTILITY REGULATORY COMMISSION**

**IN THE MATTER OF THE TRANSFER OF )  
ALDRICH ENVIRONMENTAL, LLC'S )  
CERTIFICATE OF TERRITORIAL AUTHORITY )  
TO RENDER SEWAGE DISPOSAL SERVICE IN A )  
RURAL AREA OF MORGAN COUNTY, INDIANA, )  
TO ERNIE D. GUTTING AND GUTTING REAL )  
ESTATE, LLC, PURSUANT TO IND. CODE 8-1-2-89. )**

**CAUSE NO. 44387**

**APPROVED:**

**APR 29 2015**

**ORDER OF THE COMMISSION**

**Presiding Officers:**

**David E. Zeigler, Commissioner**

**Gregory R. Ellis, Administrative Law Judge**

On September 11, 2013, the Indiana Utility Regulatory Commission (“Commission”) initiated this investigation into the operation of Aldrich Environmental, LLC (“Aldrich”) and its provision of sewage service to determine whether Aldrich’s Certificate of Territorial Authority (“CTA”) should be revoked or transferred to another entity.

The Commission held a Preliminary Hearing and Prehearing Conference in this matter on October 8, 2013 at 1:30 p.m. in Room 224 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. Proofs of publication of the notices of the Prehearing Conference have been incorporated into the record and placed in the official files of the Commission. Aldrich, Gutting Real Estate, LLC (“Gutting”), and the Indiana Office of Utility Consumer Counselor (“OUCC”) were present and participated. No members of the general public appeared.

On February 14, 2014, Gutting prefiled the direct testimony and exhibits of Ernest D. Gutting, Owner and Manager of Gutting; the direct testimony and exhibits of Ross Holloway, Principal of Holloway Engineering & Surveying; and the direct testimony of Mark R. Galliher, Attorney with the firm of Alerding Castor Hewitt, LLC. Aldrich prefiled the direct testimony and exhibits of John P. Schmitz, the Manager and President of Aldrich, on February 14, 2014. On February 26, 2014, the OUCC prefiled the direct testimony of Scott A. Bell, Director of the Water/Wastewater Division, and the direct testimony of Harold L. Rees, Senior Utility Analyst for the Water/Wastewater Division. On March 5, 2014, Gutting filed the rebuttal testimony and exhibits of Ernest Gutting and Mark Galliher. Aldrich filed the rebuttal testimony of John Schmitz on March 5, 2014.

On March 6, 2014, Aldrich filed a Motion to Stay Proceeding (“Motion”) indicating that it had filed a civil action in Morgan County to establish ownership of the sewage utility plant and requesting that the Commission hold this Cause in abeyance pending the outcome of the Morgan County civil case. The Commission granted Aldrich’s Motion on March 11, 2014. On September 17, 2014, Aldrich and Gutting (collectively, the “Parties”) filed their Status Report indicating that

a settlement has been reached between Aldrich and Gutting whereby the assets of Aldrich will be transferred to and operated by Gutting upon Commission approval.

On September 26, 2014, the Parties filed their Joint Motion to Approve Settlement Agreement as to Ownership of Sewer Assets with the Agreed Settlement attached as Exhibit A (“Settlement Agreement”). The Parties request that the Commission approve the Settlement Agreement and authorize the transfer of Aldrich’s CTA to Gutting. In support of the Settlement Agreement, Gutting filed its testimony and exhibits on September 26, 2014. The OUCC filed testimony in support of the Settlement Agreement on November 18, 2014.

The Commission held a Technical Conference and an Attorneys’ Conference at 9:30 a.m. on November 25, 2014 in Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana, in order to discuss procedural matters and other issues pertaining to this Cause. On November 26, 2014 the Presiding Officers, by docket entry, established a new procedural schedule to accommodate the Settlement Agreement and amended the original investigation caption.

On December 11, 2014, Gutting submitted its motion seeking a determination that the Petitioner’s financial report (“Confidential Information”) be exempt from public disclosure under Ind. Code § 8-1-2-29 and Ind. Code ch. 5-14-3. Gutting filed the additional testimony and exhibits of Ernest Gutting as part of its case-in-chief on December 15, 2014. On December 22, 2014, the OUCC indicated that it would not be filing any additional testimony or exhibits. The Confidential Information was granted protection on a preliminary basis through a docket entry on December 23, 2014. Gutting submitted the Confidential Information on December 30, 2014.

The Commission held an Evidentiary Hearing in this Cause at 9:30 a.m. on January 21, 2015, in Room 224, PNC Center, 101 West Washington Street, Indianapolis, Indiana. Gutting, Aldrich, and the OUCC were present and participated. The testimony and exhibits of Gutting, Aldrich, and the OUCC were admitted into the record without objection. No members of the general public appeared or sought to testify at the Evidentiary Hearing.

Based upon the applicable law and the evidence presented, the Commission finds:

**1. Notice and Jurisdiction.** Notices of the hearings in this Cause were given and published by the Commission as required by law. Aldrich is a public utility as defined in Ind. Code § 8-1-2-1(a). Upon acquiring any and all of Aldrich’s rights, title and interest in the sewer assets and the CTA, Gutting will become a public utility as defined in Ind. Code § 8-1-2-1(a). Under Ind. Code § 8-1-2-89(j), the Commission has jurisdiction over the sale or transfer of a CTA to render sewage disposal services. Therefore, the Commission has jurisdiction over the Parties and the subject matter of this Cause.

**2. Background.** On September 28, 2005, the Commission issued an Order in Cause No. 42805 finding that a CTA to provide sewage service to the Oak Hills Subdivision (“Oak Hills”) in a rural area of Morgan County, Indiana should be issued to Aldrich. Oak Hills is approximately 78 acres and was platted to contain 76 residential lots. It was approved to be served by collecting septic tank effluent from individual residents then conveying the flow via gravity

and grinder pump to an inground absorption field. The systems were to be clustered with each cluster serving up to ten residences. Development did not occur as planned and to date there are two residences in the subdivision, both are connected to a single clustered wastewater system. Aldrich has been providing sewage disposal service in the area designated in the CTA since that time.

The Commission initiated the investigation into the operation of Aldrich when it came to the Commission's attention that on July 31, 2013, a Sheriff's Deed was recorded in Morgan County for Oak Hills that transferred ownership of Oak Hills to Gutting. Oak Hills includes four development sections. Aldrich's sewage utility assets are located on and within section one of Oak Hills and all four development sections are within Aldrich's CTA.

Aldrich and Gutting disputed whether and to what extent, if any, Gutting owns the sewer utility assets by virtue of the Sheriff's Deed. Aldrich, Gutting, and the OUCC filed testimony regarding the ownership issue. In its testimony, the OUCC suggested that Aldrich file a civil action in Morgan county Court to determine ownership and such an action was initiated. Prior to the determination of the Morgan Superior Court, Gutting reached a settlement with Aldrich as to the disputed ownership of sewer utility assets. Aldrich and Gutting executed the Settlement Agreement, which would establish Gutting as the lawful owner if approved by the Commission.

**3. The Parties' Characteristics.** Aldrich is a limited liability company, operating, owning or having owned plant and equipment which are used and useful in the provision of sewage collection and disposal service in Morgan County, Indiana. Aldrich holds a CTA that was granted in Cause No. 42805.

Gutting acquired title to the Oak Hills real estate and improvements as result of a Sheriff's land auction and by way of a Sheriff's Deed dated July 19, 2013, as modified by a Corrective Sheriff's Deed dated November 20, 2013. Gutting is a limited liability company and was formed for purposes of acquiring the sewer assets of Aldrich, which are used and useful in the provision of sewage disposal services.

**4. Relief Requested.** The Parties request the Commission approve the transfer of any and all of Aldrich's rights, title, and interest in the sewer assets, along with the CTA to Gutting pursuant to Ind. Code §§ 8-1-2-83 and 89 and per the terms of the Settlement Agreement. The Parties also seek approval of the rates that Gutting may charge, upon closing the acquisition, at the same amounts as those rates currently charged by Aldrich.

**5. Settlement Agreement.** The Settlement Agreement was offered and admitted into the evidentiary record as Attachment A to Gutting's Exhibit 1. A copy of the Settlement Agreement is attached hereto and incorporated by reference herein. The Parties indicate that the Settlement Agreement addresses the disputed ownership of the sewer utility assets and the Parties' agreed upon resolution.

**6. Gutting's Evidence.** As noted above, while this case originally began as a Commission Investigation into Aldrich, Gutting subsequently submitted evidence in support of its purchase of the sewer assets from Aldrich, the Settlement Agreement, and the transfer of the CTA.

The evidence includes testimony and exhibits from Mr. Gutting and the oral testimony of Michael J. Duke, real estate developer and President of Duke Homes, Inc.

a. **Ernest D. Gutting.** Mr. Gutting presented testimony and exhibits, including a copy of the Settlement Agreement between Aldrich and Gutting, generally describing the terms of Gutting's purchase of the Oak Hills real estate and the sewer assets. Mr. Gutting presented evidence that Gutting is the owner of the real estate and improvements at Oak Hills, including the Corrective Sheriff's Deed which was attached to Gutting's Exhibit No. 3. Mr. Gutting also offered into evidence the Confidential Information showing that Mr. Gutting's personal net worth is sufficient to supply necessary working capital to Gutting, when needed, in order to ensure the ongoing operation and maintenance of the sewer utility, as well as any costs and expenses in the event that current rate levels are insufficient. Mr. Gutting also testified that, other than in the initial dispute with Aldrich, no party has claimed or asserted any interest in the sewer assets following Gutting's acquisition of the Oak Hills real estate and improvements from the foreclosure and Sheriff's sale.

b. **Michael Duke.** Mr. Duke provided testimony at the Evidentiary Hearing that he is working with Gutting in the development of Oak Hills and that he has visually inspected the sewer assets. He further testified that given their size and scope, the maintenance and operation of the sewer assets would not be too difficult given sufficient financial resources. He concluded that one or more qualified third-party firms would be utilized for these purposes as needed.

7. **Aldrich's Evidence.** Aldrich filed the direct and rebuttal testimony of Mr. Schmitz in support of the sale of any and all of Aldrich's interest in the sewer assets, and the transfer of the CTA to Gutting.

a. **Schmitz's Direct Testimony.** Mr. Schmitz described the sewer assets and the Morgan County Planning Commission's approval thereof, as well as the ownership dispute which would be resolved by approval of the pending Settlement Agreement. Mr. Schmitz indicated that Aldrich owns its public utility assets in and on the Oak Hills real estate just as Bargersville Water Utility still owns the water lines, Johnson County REMC still owns the electric lines, and Vectren Energy Delivery of Indiana still owns the gas lines. He testified that the collection system and the cluster system are working properly. He also described his personal knowledge of and technical qualifications for maintaining and operating the sewer assets. Mr. Schmitz explained that the current rate schedule, which includes a connection fee of \$3,300 and is proposed to be adopted by Gutting, is adequate for the sewer assets as they exist and for their expansion to serve up to ten customers.

b. **Schmitz's Rebuttal Testimony.** Mr. Schmitz testified that the sewage utility system is working properly. He explained that the ownership dispute has led to uncertainty among Aldrich's customers and hampered Aldrich's ability to collect the connection fee, as well as the \$50 monthly rate, and noted that the action to resolve the ownership question was initiated in the Morgan County Superior Court 1.

8. **Aldrich and Gutting's Joint Stipulation.** At the January 21, 2015 Evidentiary

Hearing, the Parties stipulated that there is an existing agreement between Gutting and Schmitz, conditioned upon the transfer of the sewer assets and CTA to Gutting, whereby Schmitz shall provide technical and managerial advice to Gutting, from time to time, for the maintenance, repair, and operation of the sewer assets.

9. **OUCC's Direct Testimony and Exhibits.** The OUCC offered the testimony and exhibits of Mr. Bell and Mr. Reese into evidence.

a. **Scott A. Bell.** Mr. Bell noted that the Commission initiated its investigation of Aldrich upon becoming aware of the transfer of property to Gutting under the Sheriff's Deed. Mr. Bell explained that Gutting and Aldrich, at that time, disputed the ownership of the sewer assets, and recommended that such dispute be resolved through legal determination by a court or through an agreement between Gutting and Aldrich. He indicated that in the event Aldrich was to agree to effectively transfer its interest to Gutting, such a transfer would need to be approved by the Commission and subject to the determination that Gutting is qualified to receive a CTA. Mr. Bell outlined the legal requirements under Ind. Code § 8-1-2-89(e) for the issuance of a CTA and the requirements under 170 IAC 8.5-3 regarding applications for a CTA. He indicated that once ownership is determined, the prevailing entity should provide the Commission with evidence supporting its ability to provide safe, adequate and reliable service and that it has the technical, financial, and managerial capacity to provide sewer utility service.

In Mr. Bell's testimony that was filed in support of the Settlement Agreement, he indicated the Settlement Agreement called for Gutting to purchase and for Aldrich to quitclaim any and all rights, title, and interest in the sewer assets to Gutting. He stated that Gutting has demonstrated the lawful power and authority to obtain a CTA. He noted that Mr. Gutting provided a personal guarantee in the form described in 170 IAC 8.5-3-3(b) and that after review of the financial statement and the personal guarantee, Gutting has the financial ability to install, commence, and maintain the proposed service in the CTA area and to render utility services to its customers. He further stated the utility's two existing customers demonstrate that the public convenience and necessity require the rendering of the CTA. Mr. Bell recommended that Gutting be allowed to charge the same rates previously approved for Aldrich. The rates include a \$50 monthly rate and a \$3,300 connection fee, which includes a \$3,000 system development charge. He recommended that the system development charge be recorded as a contribution-in-aid-of-construction for accounting purposes. He suggested that Gutting be required to file a rate case upon providing utility service to more than ten customers. In conclusion, he recommended that the Commission approve the Settlement Agreement as well as the transfer of the CTA from Aldrich to Gutting.

b. **Harold L. Rees.** Mr. Rees described the utility plant that Aldrich has used to provide wastewater service to Oak Hills. He indicated the utility's treatment system was called a multi-home wastewater cluster system when it was constructed in an area that is generally separate from the housing area of Oak Hills. The collection system consists of underground gravity lines and system mains that connect to a lift station. The system has underground septic tanks served by above-ground aeration equipment which is connected to an earthen finger system in the septic field.

As part of his review and analysis, Mr. Rees stated that he visited the Morgan County

Health Department and discussed the Oak Hills system with Gary Davis, an Environmental Health Specialist, who indicated the cluster system should be working but that the current load on the system is still small compared to the eventual load. He also met with George and Linda Owens who live in the only occupied house in Oak Hills. The Owens indicated they had not had a sewage line blockage or any other problem with the utility service.

**10. Discussion and Findings.** Settlements presented to the Commission are not ordinary contracts between private parties. *United States Gypsum, Inc. v. Indiana Gas Co.*, 735 N.E.2d 790, 803 (Ind. 2000). When the Commission approves a settlement, that settlement “loses its status as a strictly private contract and takes on a public interest gloss.” *Id.* (quoting *Citizens Action Coalition v. PSI Energy*, 664 N.E.2d 401, 406 (Ind. Ct. App. 1996)). Thus, the Commission “may not accept a settlement merely because the private parties are satisfied; rather [the Commission] must consider whether the public interest will be served by accepting the settlement.” *Citizens Action Coalition*, 664 N.E.2d at 406.

Furthermore, any Commission decision, ruling, or order, including the approval of a settlement, must be supported by specific findings of fact and sufficient evidence. *United States Gypsum*, 735 N.E. 2d at 795 (citing *Citizens Action Coalition v. Public Service Co.*, 582 N. E. 2d 330, 331 (Ind. 1991)). The Commission’s own procedural rules require that settlements be supported by probative evidence. 170 IAC 1-1.1-17(d). Therefore, before the Commission can approve the Settlement Agreement, we must determine whether the evidence in this Cause sufficiently supports the conclusions that the Settlement Agreement is reasonable, just and consistent with the purpose of Ind. Code ch. 8-1-2, and that such agreement serves the public interest.

In this Cause, ownership of Oak Hills changed due to the Sheriff’s land auction. A dispute arose as to the ownership of the utility assets that serve the existing residents of Oak Hills. The Settlement Agreement resolves the issues of ownership, which will allow the utility’s customers to continue to receive service. The terms of the Settlement Agreement are supported by the evidence and represent a reasonable resolution of the issues presented to the Commission. Accordingly, we conclude that the Settlement Agreement is reasonable, just and consistent with the purpose of Ind. Code ch. 8-1-2 and serves the public interest. We find that the Settlement Agreement should be approved as presented, and will incorporate the attached Settlement Agreement as part of this Order. Pursuant to the terms of the Settlement Agreement, the Parties agree that the Settlement Agreement should not be used as precedent in any other proceeding or for any other purpose, except to the extent necessary to implement or enforce its terms. However, with regard to future citation of the Settlement Agreement, we find that our approval of it should be construed in a manner consistent with our finding in *Richmond Power & Light*, Cause No. 40434, (IURC March 19, 1997).

We note that Ind. Code § 8-1-2-89(j) provides that upon approval by the Commission, any CTA may be sold, assigned, leased, or transferred by the holder to any sewage disposal company to which a CTA might be lawfully issued. In considering the transfer of Aldrich’s CTA to Gutting, we look to Ind. Code § 8-1-2-89(e). Ind. Code § 8-1-2-89(e) requires that in order for an applicant to obtain a CTA it must prove that: it has the lawful power and authority to apply for said certificate and to operate said proposed service; it has the financial ability to install,

commence, and maintain said proposed service; and the public convenience and necessity require the rendering of the proposed service. According to the evidence of record as discussed above, the Commission finds that Gutting has the lawful power and authority to apply for said certificate and to operate said proposed service. In addition, Gutting has the requisite financial ability to properly own and operate the Oak Hill sewage assets and to render public utility service. The public convenience and necessity require the rendering of the proposed service by Gutting to the existing two customers and the expected requirements of the anticipated additional residents. Therefore, we find the Parties' requested relief should be granted. The transfer of Aldrich's CTA and any and all of Aldrich's right, title, and interest in the sewer assets and utility system at Oak Hills to Gutting should be approved. We also find that Gutting's request to continue to charge the existing rates for sewage disposal service, as approved for Aldrich and discussed above, should be approved. In addition, we find that Gutting shall file a petition seeking approval of its rates and charges upon providing sewer utility service to more than ten customers.

**11. Confidential Information.** Gutting also seeks a determination that Confidential Information involved in this proceeding be exempt from public disclosure under Ind. Code § 8-1-2-29 and Ind. Code ch. 5-14-3. The request was supported by the affidavit of Mr. Gutting. By the Commission's December 23, 2014 docket entry, the Presiding Officers granted Gutting's request, finding the Confidential Information to be preliminarily confidential after which such information was submitted under seal. After reviewing the Confidential Information, we find all such information qualifies as confidential trade secret information pursuant to Ind. Code § 5-14-3-4 and Ind. Code § 24-2-3-2. This information has independent economic value from not being generally known or readily ascertainable by proper means. Gutting takes reasonable steps to maintain the secrecy of the information and disclosure of such information would cause harm to Gutting. Therefore, we affirm the preliminary ruling and find this information should be exempted from the public access requirements contained in Ind. Code ch. 5-14-3 and Ind. Code § 8-1-2-29, and held confidential and protected from public disclosure by this Commission.

**IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:**

1. The Settlement Agreement is approved.
2. The transfer of Aldrich's franchise, works, and system, including without limitation the sewer assets, to Gutting is approved. Gutting shall file a notification of closing with the Commission within 30 days thereof and shall serve all parties of record.
3. The CTA that was granted in Cause No. 42805 to render sewage disposal service is transferred from Aldrich to Gutting.
4. Gutting shall comply with all Commission annual reporting and other requirements.
5. Upon closing, Gutting is authorized to charge the same rates that were approved for Aldrich including a monthly rate of \$50, a nonrecurring charge of \$300 per connection, and a \$3,000 system development charge that shall be booked as a contribution-in-aid-of-construction. Gutting shall file with the Commission a schedule of rates and charges, revised to reflect the name

change of the utility.

6. In the event that Gutting begins to provide sewer utility services to more than ten customers, it shall file a petition seeking approval of its rates and charges with the Commission.

7. The Confidential Information contains trade secret information as defined in Ind. Code § 24-2-3-2 and therefore is exempted from the public access requirements contained in Ind. Code ch. 5-14-3 and Ind. Code § 8-1-2-29.

8. This Order shall be effective on and after the date of its approval.

**STEPHAN, MAYS-MEDLEY, HUSTON, WEBER, AND ZIEGNER CONCUR:**

**APPROVED:**

**APR 29 2015**

**I hereby certify that the above is a true  
and correct copy of the Order as approved.**



**Brenda A. Howe  
Secretary to the Commission**

## AGREED SETTLEMENT

This Agreed Settlement ("Agreement") is entered into on this 17<sup>th</sup> day of August, 2014, by and between Aldrich Environmental, LLC, an Indiana limited liability company ("Aldrich") and Gutting Real Estate, LLC, an Indiana limited liability company ("Gutting") and its affiliate, Gutting Environmental, LLC an Indiana limited liability company ("Gutting Environmental"), (collectively, the "Parties").

### RECITALS:

WHEREAS, Aldrich is or was the owner of a sanitary sewage collection and treatment system ("Oak Hills Sewage Utility") in Oak Hills Subdivision in Morgan County, Indiana ("Oak Hills") and holds a Certificate of Territorial Authority ("CTA") issued by the Indiana Utility Regulatory Commission ("IURC") in Cause No. 42805, an IDEM Construction Permit ("IDEM Permit") and an NPDES Permit No. IN006231 ("NPDES Permit") for a water discharge sewage treatment plant, existing sewage collection and treatment facilities and other rights, privileges, easements and appurtenances related to the Oak Hills Sewage Utility ("Assets");

WHEREAS, Gutting owns Oak Hills by Sheriff's Deed and plans to develop lots in Oak Hills;

WHEREAS, Gutting and Aldrich dispute the ownership of the Oak Hills Sewage Utility assets;

WHEREAS, Gutting desires to purchase and Aldrich desires to sell by quit claim any and all of Aldrich's rights, title and interest, whatever they may be in the Assets;

WHEREAS, Gutting desires to obtain a Certificate of Authority ("CTA") from the IURC to operate the Oak Hills Sewage Utility, or otherwise have the current Aldrich CTA cancelled;

WHEREAS, Aldrich desires to transfer and assign, and Gutting desires to assume, any and all of Aldrich's rights, title and interest in each of the IDEM Permit and the NPDES Permit, to the extent assignable; and

WHEREAS, Aldrich and Gutting are parties to that certain investigation initiated by the IURC in Cause Number 44387 ("Cause Number 44387"), and Aldrich has filed suit in that certain Cause Number 55D01-1403-MI-421 in the Morgan Superior Court I and Gutting has counter claimed ("Morgan Suit").

NOW, THEREFORE, in consideration of the execution of this Agreement, the foregoing premises, the mutual promises and covenants contained herein, and other good and valuable consideration, the adequacy and sufficiency of which are hereby acknowledged by the respective parties hereto, the parties agree as follows:

## AGREEMENT:

1. **Purchase Price.** Subject to the terms and conditions herein, Gutting shall pay the amount of Forty Five Thousand Dollars (\$45,000) ("Purchase Price") for any and all of Aldrich's interests in the Assets, as follows:

- a. At the execution of this Agreement Gutting will pay, in the form of a non-refundable, valid, negotiable cashier's check payable to Fed Loan Services in the amount of Twenty Five Thousand Dollars (\$25,000) ("Initial Payment"); and Gutting shall deliver to third party Mike Duke ("Escrow Agent"), in the form of a valid negotiable cashier's check, payable to "Fed Loan Services," in the amount of Twenty Thousand Dollars (\$20,000) ("Final Payment"); and
- b. Within 5 business days of an IURC order transferring the Assets to Gutting or cancelling Aldrich's CTA, the Escrow Agent shall deliver the Final Payment to Aldrich's lawyer Robert Glennon.

2. **IURC Proceedings.** Gutting and Aldrich hereby agree that, immediately following the execution and delivery of this Agreement Gutting shall prepare with Aldrich's input and approval a joint motion in Cause No. 44387 and other necessary documents notifying the IURC of this Agreement and seeking its approval of the transfer of the Aldrich's CTA and all the Assets to Gutting; or transfer of Aldrich's assets and issuance to Gutting of a new CTA; or alternatively cancelation of Aldrich's CTA thereby allowing Gutting to develop Oak Hills on septic systems. Gutting and Aldrich hereby agree to cooperate in all of the undertakings set forth herein or reasonably necessary to surrender Aldrich's CTA and/or cause the IURC to transfer it to Gutting Environmental (or issue a new Certificate of Authority to Gutting Environmental) in either case in order to qualify Gutting Environmental to lawfully operate the Oak Hills Sewage Utility as a public utility. If for whatever reason the IURC does not approve the transfer of the Assets to Gutting Environmental, then Aldrich will support before the IURC the transfer of the Assets to another entity that is acceptable to Gutting, and will continue to do so until the Assets are finally transferred to an entity acceptable to Gutting and to the IURC or the Aldrich CTA is cancelled.

3. **Purchase of Assets.** At the time of the Final Payment Aldrich shall execute and deliver any and all documents and instruments reasonably necessary to quitclaim, assign, transfer and convey, as is where is with no warranties of any kind expressed or implied, any and all of Aldrich's rights, title and interest in the Assets to Gutting Environmental or its designated affiliate, including without limitation, a quitclaim deed for any utility easements and rights of way ("Quitclaim Deed") and bill of sale ("Bill of Sale"). Aldrich further agrees that, at Closing, Aldrich will deliver any and all manufacturer warranties for installed utility plant and equipment, information, plans and other documents relating to the design and equipment which make up the sanitary sewage collection and treatment system. Aldrich hereby represents that, to the best of its actual knowledge as of this date, no third party has claimed or has reason to claim any

right, title or interest in any of the Assets, and that such Assets are free and clear of all liens and encumbrances. Gutting, at Gutting's sole cost and expense, shall prepare all such documents and instruments for Aldrich's review, input and approval.

4. **Morgan Suit.** Gutting and Aldrich hereby agree to execute, at Closing following delivery of the Final Payment pursuant to Section 1 above, a joint motion to cause the Morgan Suit to be dismissed with prejudice.

5. **IDEM Permit.** At the time of the Initial Payment, Aldrich will supply Gutting with true and accurate copies of any and all information in Aldrich's possession relating to the IDEM Permit and NPDES Permit, and shall execute and deliver an assignment of the foregoing, to Gutting Environmental, LLC. Aldrich hereby agrees and covenants to cooperate with Gutting Environmental, LLC in any and all things reasonably necessary to cause the IDEM Permit and the NPDES Permit to be assigned and transferred to Gutting Environmental, LLC, but only to the extent assignable and transferrable. Gutting, at Gutting's sole cost and expense, shall prepare any and all such documents and instruments for Aldrich's review, input and approval to obtain transfer of the IDEM Permits.

6. **Closing.** The closing of the transaction contemplated herein ("Closing") shall occur within five (5) business days following the issuance of an IURC order contemplated in Section 2 above approving this Agreement by Gutting and Aldrich, as follows:

- a. At Closing, Gutting shall deliver the Final Payment as provided in Section 1, hereinabove.
- b. At Closing, Aldrich shall execute and deliver, or cause to be delivered, to the Escrow Agent, each of the following previously reviewed, revised and agreed upon final versions of the documents, instruments and agreements, each in a form reasonably satisfactory to Gutting and Aldrich:
  - i. The Quitclaim Deed (along with Sales Disclosure Form) and Bill of Sale in accordance with Section 3 herein;
  - ii. Documents regarding assignment of the IDEM Permit and NPDES Permit in accordance with Section 5 herein, to the extent such permits are assignable;
  - iii. A joint motion of dismissal of the Morgan Suit in accordance with Section 4 herein;
  - iv. A Collateral Matters Agreement from Aldrich's principal; and
  - v. Any and all factory manufacturer warranties for installed utility plant and equipment if assignable, information, plans and other documents relating to the design and equipment which make up the sanitary sewage collection and treatment system

collectively, the "Aldrich Deliveries".

7. **Current Charges.** Until the IURC approves of the asset transfer to Gutting or Gutting's appointee, Aldrich shall be fully and solely entitled to the monthly sewage service customer payments, connection fee payments (including such payment for Lot # 49) and any other IURC approved customer payments. In the event that Gutting or Gutting Environmental, LLC receives any of the foregoing payments for the period ending upon the IURC's approval of this Agreement then Gutting shall promptly remit such payment to Aldrich.

8. **No Admissions.** The parties hereto acknowledge and agree that all undertakings and promises contained in this Agreement have been agreed to solely for the purpose of effectuating the Agreement and shall not be deemed to constitute an admission or concession by any party for any purpose.

9. **Confidentiality.** The terms of this Agreement shall remain confidential and shall not be disclosed by any party except as required to satisfy obligations under this Agreement or to comply with any federal, state or local law. Aldrich agrees not to interfere with Gutting's development of the Oak Hills and adjacent real estate, with Gutting Environmental, LLC's provision of sewage utility services, or with the ability of any lot owner of such real estate to seek, install or operate an individual septic system upon his lot(s). Each individual executing this Agreement further agrees not to criticize in writing or speak badly of the other, Gutting, Gutting Environmental, LLC, Oak Hills, Aldrich Environmental, LLC, Oak Hills Sewage Utility, the Parties' businesses, their affiliates or the conduct of the principals thereof.

10. **Mutual Releases.** In consideration of the payment of the Purchase Price and this Agreement to quit claim and transfer the Assets, and transfer the CTA, the Parties agree to mutually release and forever discharge each other; their heirs, successors, assigns, agents and representatives, of any and all known or unknown claims, damages, suits and losses now existing, and covenant not to sue each other, except however the Parties shall remain fully able to take such actions as may be necessary to enforce the terms of this Agreement.

11. **Miscellaneous.**

A. The recitals set forth in the Agreement are true and correct and incorporated in and fully made a part of the Agreement.

B. Time is of the essence with respect to the Agreement.

C. The Agreement is and shall be binding upon and inure to the benefit of the parties and their respective successors, assigns, heirs and representatives.

D. The Parties read, understand and intend to be bound by the Agreement and all terms and conditions contained therein.

E. Each of the Parties has been represented by counsel and cooperated in the drafting and preparation of this Agreement. The construction of the Agreement shall not be construed in favor of any of the parties.

F. The validity, construction, interpretation, effect and enforceability of the

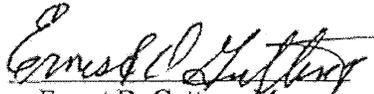
Agreement shall be governed by the laws of the State of Indiana without regard to any conflicts of law principles.

G. Each of the Parties certifies that they are authorized to sign and bind their respective limited liability company to the terms of this Agreement.

H. Wherever this Agreement grants a party a right of approval or consent, such approval or consent shall not be unreasonably be withheld, conditioned or delayed.

IN WITNESS WHEREOF, the Agreement is executed as of the date and year first indicated above.

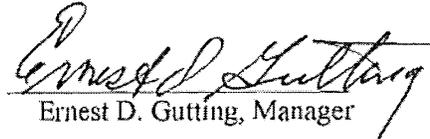
GUTTING REAL ESTATE, LLC

By:   
Ernest D. Gutting, Manager

ALDRICH ENVIRONMENTAL, LLC

By:   
John P. Schmitz, Managing Member

GUTTING ENVIRONMENTAL, LLC

By:   
Ernest D. Gutting, Manager