

Westbourne Acres Water Association

PO Box 82, Burbank, WA 99323
509-947-1085

July 16, 2020

Mr. Mark L. Johnson, Executive Director and Secretary
Washington Utilities and Transportation Commission
P.O. Box 47250
1300 South Evergreen Park Drive S.W.
Olympia, WA 98504-7250

State Of WASH.
UTIL. AND TRANSP.
COMMISSION

08/03/20 15:49

Received
Records Management

From: Westbourne Acres Water Association

Subject: Westbourne Acres Water Association Petition for Deregulation

1. History: Jim Smith of Westbourne Acres Water Corporation has historically operated the water system as a “for profit” corporation. Eleven years ago, Jim Smith communicated a desire to sell the system. So, we formed the non-profit Association and waited.

Meanwhile, someone needed to be a “water operator.” I (Bruce Einspahr) volunteered my time and money to fulfill this position. Finally about three years ago, Jim decided he better train me to run the system. For the last two years I have been doing that. Since August 2019, I have been doing the billing for him as well.

The system has three wells which supply drinking water and irrigation water. Well #2 was inoperative. Well #1 supposedly was the emergency back up well. The last time we flushed that well in April, it was so bad that I have had to turn it totally off. It cannot be used at all! Well #3 was the only well we could rely on. It is capable of 90 gallons per minute, and there are times when our users require in excess of 140 gallons per minute. You can see why people complained about our water system and low water pressure! But now we have re-activated Well #2 which brings our capacity up to almost 190 gallons per minute, and the water pressure is consistent and steady.

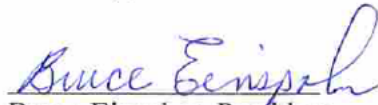
The Port of Walla Walla has begun providing water to Burbank properties, near the Snake River. We looked into arranging for a line to bring their water down to our property. Very expensive! But the Department of Health wants to see it happen, and in February they were arranging meetings to explore how it could happen. We have been prevented from meeting to discuss this with them because of the Covid restrictions. In the last three months our neighbors have gone from being fairly interested in getting their water, to a complete lack of interest because our water system now is far better. We have no interest in Port of Walla Walla water now. We know it would drastically increase our water rates to pay for two miles of main line to our area. We are not totally ruling it out in the future, but not interested now.

Westbourne Acres Water Association

PO Box 82, Burbank, WA 99323
509-947-1085

We believe our customers have supported the current company and have indicated a willingness to be returned to local control by the company.

Sincerely,


Bruce Einsphar, President



621 Woodland Square Loop S.E.
Lacey, Washington 98503
PO Box 47250
Olympia, WA 98504-7250
Phone 360-664-1300
Fax 360-586-1181
Web Site: www.utc.wa.gov

WATER INDUSTRY

APPLICATION FOR SALE AND TRANSFER OF ASSETS AND TARIFF ADOPTION

Per RCW 80.12 and WAC 480-143

APPLICANT INFORMATION

PREVIOUS COMPANY/OWNER NAME: Westbourne Acres Water Corporation

Work Phone: 509-547-2250

Cell Phone: 509-547-2250

Mailing Address: _

Physical address (if different):

Street/PO Box: _PO-Box-4108 2103 Rd.52

Street: _____

City, State Zip: Pasco, WA 99302-99301

City, State, Zip _____

Unified Business Identifier (UBI): 601-470-019

DOH ID Number: 95047-8

Email: momsgeo@yahoo.com

Regulated since: _____

No. of Customers Served: 35

No. of Systems: 1

CO-APPLICANT'S INFORMATION

NEW COMPANY/OWNER NAME: Westbourne Acres Water Association

Work Phone: _____

Cell Phone: 509-947-1085

Mailing Address: _____

Physical address: (if different):

Street/PO Box: PO Box 82

Street: _____

City, State Zip: Burbank, WA 99323

City, State, Zip: _____

Unified Business Identifier (UBI): 602 922 094

DOH ID Number: 950478

Email: beinspahr@charter.net

Regulated since: _____

No. of Customers Served: 35

No. of Systems: 1

EXHIBITS INCLUDED WITH THIS APPLICATION

(Check all that applies)

Exhibit 1	Signed Agreement on the Sale and Assets	<input checked="" type="checkbox"/>
Exhibit 2	Previous Company/Owner Name (Prior to Sale)	<input type="checkbox"/>
	Income Statement	<input type="checkbox"/>
	Balance Sheet	<input type="checkbox"/>
	Asset Listing (Account 101)	<input type="checkbox"/>
	Depreciation Schedule	<input type="checkbox"/>
	Summary of Outstanding Securities	<input type="checkbox"/>
Exhibit 3	New Company/Owner Name (After Sale)	<input type="checkbox"/>
	Income Statement	<input type="checkbox"/>
	Balance Sheet	<input type="checkbox"/>
	Asset Listing (Account 101)	<input type="checkbox"/>
	Depreciation Schedule	<input type="checkbox"/>
	Summary of Outstanding Securities	<input type="checkbox"/>
Exhibit 4	Adoption of Tariff Notice by New Company or addition of new water system to Service Area tariff page.	<input type="checkbox"/>
Exhibit 5	Customer Notice of Sale and Transfer of Water System(s)	<input type="checkbox"/>

METHOD OF FINANCE

The purchase price for assets under this agreement is \$ 45,000 payable in full at closing.

TRANSFER IS IN THE PUBLIC INTEREST

The benefits of this acquisition of company assets and sale of the water system(s) include:

- ✦ expanded financial resources,
- ✦ prior company no longer able to operate system.

The previous owners of Westbourne Acres Water Company no longer desire to own and operate their public water system. Customers were notified of the sale and transfer along with their most recent billings.

The proposed tariff adoption bears an effective date of July 1, 2020. This date is to coincide with company's billing periods and allows a mutually agreed closing date. For accounting purposes, the bookkeeping records should be considered transferred and effective on that date.

The current staff of Westbourne Acres Water Association has been temporarily retained to continue operations and maintenance of the water system under the leadership of Bruce Einspahr, water operator.

As a result of the sale and transfer of assets, the water rates and service charges will not change. Westbourne Acres Water Association will adopt the new tariff of Previous Water Company without change to any rates or charges contained therein as occasioned by this transfer.

CERTIFICATION

Applicants certify that the information in this application and exhibits are true and correct to the best of the signer's information and belief under penalty of perjury as set forth in RCW 9A.72.085.

PRAYER

Based on the foregoing, the Applicants request approval of their Application respectfully submitted this 17 day of July 2020.

Previous Company/Owner Name

Karon E Smith
President

July 17, 2020
Date

New Company/Owner Name

Bruce Einspahr
President

July 17, 2020
Date

ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (the "Agreement") is made and entered into as of the 17 day of July 2020, by and between WESTBOURNE ACRES WATER ASSOCIATION, a Washington non-profit corporation, ("Purchaser") and WESTBOURNE ACRES WATER CORPORATION, a Washington Corporation, ("Seller").

RECITALS

1. Seller is the owner of a business known as Westbourne Acres Water Corporation, a Washington profit corporation ("the Business"), and certain related personal property, equipment and intangibles (Seller's Assets").
2. Purchaser is desirous of acquiring Seller's Assets all on terms and conditions herein set forth.

AGREEMENT

1. **Sale of Assets.** On the terms and subject to the conditions set forth in this Agreement, Seller shall convey, transfer, set over and deliver to Purchaser, and shall put Purchaser in actual possession and control of Sellers Assets as more particularly described on **EXHIBIT "A"**.

2. **Terms of Purchase.**

2.1 **Purchase Price.** Purchaser shall pay to Seller the sum of Forty Five Thousand (\$45,000.00), for Seller's Assets, which sum shall be referred to herein as "Purchase Price".

2.2 **Payment.** The Purchase Price together with any adjustments, if any provided for herein shall be paid in cash at Closing.

3. **Contingencies.** The parties' obligations under this Agreement are contingent upon obtaining approval by the Washington State Utilities and Transportation Commission ("UTC"), the Washington State Department of Health ("DOH"), and the Washington State Department of Ecology ("Ecology"). The parties will use good faith efforts to obtain such approval and will execute such other and reasonable documents or agreements required by UTC, DOH, and Ecology consistent with the terms hereof.

4. **Representations and Warranties of Seller.** In connection with this transaction Seller makes the following representations and warranties. All such representations shall survive closing.

4.1 **Assets.** Seller has good title to all the Assets free and clear of any and all

liens, except as set forth herein.

4.2 Corporate Status. Seller is a corporation duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation.

4.3 Authorization, etc. Seller has the corporate power and authority to execute this agreement and all related or collateral agreements to which it will be a party, to perform fully its obligations thereunder, and to consummate the transactions contemplated thereby.

4.4 **“AS IS” PURCHASE. EXCEPT AS SPECIFICALLY SET FORTH HEREIN SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, EITHER EXPRESS OR IMPLIED, RELATING TO THE ASSETS OR BUSINESS SUBJECT OF THIS SALE, NOR DOES SELLER MAKE ANY REPRESENTATIONS AS TO THE ADEQUACY OF THE PREMISES WHERE THE BUSINESS IS CURRENTLY CONDUCTED.** This disclaimer includes, but is not limited to: (1) environmental matters relating to the premises on which the business is situated, including presence, if any, of any hazardous substances as defined by state or federal laws or regulations, (2) zoning considerations, (3) availability of utilities, (4) usages of adjoining properties, and matters of access to the business premises, it being understood and agreed that Purchaser has had full opportunity to make such investigations and inquiries as Purchaser deems appropriate to fully evaluate the suitability of this transaction.

5. Representations and Warranties of Purchaser. Purchaser represents and warrants to Seller that, as of the date of this agreement, and on the closing date:

5.1. Authority. Purchaser has all necessary power and authority to enter into this agreement, and if a corporate entity will provide to Seller at closing copies of resolutions authorizing this transaction executed by Purchaser's corporate officers at closing.

5.2. Opportunity for Inspection and Investigation. Purchaser has had, or will have prior to closing, ample opportunity to review and inspect the assets subject of this agreement and has made such investigations and inquiries as to Purchaser seem appropriate to fully evaluate the suitability of this transaction. Purchaser has not relied on, and does not rely upon, any representation of Seller except as specifically set forth herein.

6. Closing.

6.1. Date and Place. Closing shall occur at the office of Seller's attorney, or other mutually agreed location. This closing shall occur, and be effective, no later than ten (10) days following the date the parties obtain the necessary approvals set out in Section 3, above.

6.2. Closing Agent. This Agreement shall be closed in the offices of Seller's

attorney. (herein "Closing Agent"). All parties hereto agree to indemnify, defend and hold harmless Closing Agent from any and all liability incurred as a result of Closing Agent's undertaking.

6.3. Closing Costs. Purchaser shall reimburse one-half of Seller's fees in connection with the actual closing process which reimbursement shall not exceed \$500.00. Each party shall pay the fees and costs of their respective attorneys separate from the actual closing.

6.4. Transfer Taxes. Purchaser shall pay all sales, excise or use taxes imposed by the State of Washington and shall file all requisite sales tax or other tax returns related to or as a result of the transactions contemplated by this Agreement.

6.5. Possession. Purchaser shall be entitled to possession of Seller's Assets at closing.

7. Termination. If this agreement is terminated and/or abandoned due to a breach or default by either party under any provision of this agreement, then the other party shall have the right to specifically enforce this agreement, or to exercise other rights or remedies that may accrue to the non defaulting party under applicable law.

8. Miscellaneous.

8.1. Expenses. Unless otherwise provided herein, each party will pay its own costs and expenses, including legal and accounting expenses, relating to the transaction contemplated by this Agreement, irrespective of when incurred.

8.2. Business Taxes and Expenses. Seller shall pay, be responsible for, and reimburse Purchaser from any and all responsibility as a result of state, federal or local business taxes, expenses or obligations arising out of Seller's business for the period prior to closing including business and employment taxes.

8.3. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Washington. Venue in any action brought pursuant to this Agreement shall be in Benton County, Washington.

8.4. Assignment. This Agreement and the rights and obligations hereunder may not be assigned by either party without the prior written consent of the other party.

8.5. Best Efforts. Each party will use its best efforts and good faith to complete all conditions precedent to the Closing in a complete, accurate and timely manner.

8.6. Representation of Counsel. The parties acknowledge and agree that Walker, Heye Meehan & Eisinger, PLLC is representing the Seller in this transaction, and Purchaser has obtained independent counsel to assist them in this regard.

8.7. Attorney's Fees. In the event any party to this agreement is required to employ counsel to enforce the terms hereof, the prevailing party shall be entitled to recover its reasonable attorney's fees and costs.

IN WITNESS WHEREOF, this Agreement has been executed as of the date set forth above.

PURCHASER:

WESTBOURNE ACRES WATER ASSOCIATION

By: Bruce Einspahr
Print Name: Bruce Einspahr

SELLER:

WESTBOURNE ACRES
WATER CORPORATION

By: Karen E Smith
Print Name: Karen E. Smith

EXHIBIT A

SELLER'S ASSETS

Pumps, pipes, meters, chlorinators, pumphouse, related easements, pressure tank related to use and operation of Westbourne Acres Water Delivery System.; together with related water rights.