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November 23, 2022

(Via Electronic Mail Only)

Carmen Diaz, Acting Secretary
Board of Public Utilities
44 South Clinton Ave.
P.O. Box 350
Trenton, NJ 08625-19111463

**Re: I/M/O THE PETITION OF BOROUGH OF FAIR LAWN SERVICES
AGREEMENT FOR THE MAINTENANCE AND REPAIR OF THE
BOROUGH OF FAIR LAWN'S WATER STORAGE TANKS
BPU DOCKET NO.: WO22100618**

Dear Acting Secretary Diaz:

Please accept the Division of Rate Counsel's ("Rate Counsel") comments in connection with the above-referenced matter. Thank you for your consideration and attention to this matter.

Petitioner Borough of Fair Lawn ("Borough") filed the instant Petition with the Board of Public Utilities ("Board") on October 3, 2022. The Borough seeks approval of its Services Agreement for the Maintenance and Repair of the Borough of Fair Lawn's Water Storage Tanks ("Agreement") with Utility Services Company, Inc. ("USC"), pursuant to N.J.S.A. 58:26-25.

N.J.S.A. 58:26-25 provides in part that:

In its review of a contract, the board shall apply the following criteria in determining whether to approve the contract: (1) The private firm entering into the contract has the financial capacity and technical and administrative experience to ensure continuity of service over the term of the contract and that the standards and requirements contained in the application documents concerning the financial, technical and administrative capacity of the private firm are necessary and sufficient to protect the public interest. (2) The terms of the contract are not unreasonable. Further, in determining whether the terms of the contract are not unreasonable, the Board shall review the fees and charges to be charged or assessed under the contract to determine that they are reasonable to the public entity, taking into consideration all of the obligations undertaken by the private

firm and all the benefits obtained by the public entity. In making this determination, the board shall not use the traditional rate based rate of return methodology. (3) The franchise customers of a public utility participating in a contract are protected from the risks of the proposed contract and that they are not subsidizing the contract. If a private firm is not a public utility, the board shall ensure that under the terms of the proposed contract the users of water outside of the jurisdiction or service area that will receive water supply services under the contract are also protected from the risks of the contract and that water users outside the jurisdiction or service area are not subsidizing the contract through increased charges, rates or fees for the supply of water. (4) The contract contains the provisions required by paragraphs (1), (2) and (6) of subsection e. of section 5 of P.L.1995, c.101 (C.58:26-23).

N.J.S.A. 58:26-25(c)(1) – (c)(4).

Rate Counsel has reviewed the Petition and discovery responses and believes that the Borough has satisfied all of the statutory criteria for approval of its Petition. The Borough states that USC has the financial capacity and technical and administrative experience to ensure continuity of service over the term of the contract. In support of this, the Borough points to the fact that USC provides similar services to many public entities, and that USC has provided similar services to the Borough in the past on a contract basis. RCR-1.

Furthermore, Rate Counsel believes that the Borough has satisfied the criteria of N.J.S.A. 58:26-25(c)(2). This criterion forbids the terms of the contract from being unreasonable. In making this determination, the Board must review the fees to be charged, taking into consideration all of the obligations undertaken by the private company, and all of the benefits obtained by the public entity. Rate Counsel does not believe that the fees to be paid by the Borough are unreasonable. The third statutory requirement is that ratepayers of the private firm are not subsidizing the contract through utility rates. This criterion is satisfied because the Borough does not serve users outside of its jurisdiction.

Finally, N.J.S.A. 58:26-25(c)(4) requires the contract to contain the provisions required by N.J.S.A. 58:26-23, paragraphs 1, 2, and 6. Those provisions require the contract to contain the charges, rates, fees or formulas to be used to determine the charges, rates, or fees to be charged by the public entity for the water supply services to be provided. N.J.S.A. 58:26-23(e)(1). Rate Counsel is satisfied with the information provided by the Borough, which states in the Agreement that the Borough will retain all responsibility for collecting rates and fees for customers' water service. Such information is located in Section 8.5 of the Agreement. The second piece of information that must be in the Agreement is the allocation of the risks of financing and constructing planned capital additions or upgrades to existing water supply facilities. In response to this criterion, the Borough states that it is responsible for financing any capital improvement undertaken by USC, and that this is located in Article VII of the Agreement. Rate Counsel is satisfied with this response provided by the Borough. Finally, the Agreement must explain the employment of current employees of the public entity whose positions or employment will be affected by the terms of the contract. In response to this

inquiry, the Borough stated that none of the Borough's public employees will be affected by the Agreement. Rate Counsel is satisfied with this response. RCR-4.

For all of these reasons, Rate Counsel has no objection to approval of the Petition by the Board.

Respectfully submitted,
BRIAN O. LIPMAN
Director

By: Christine M. Juarez
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CMJ/ms
C: Service List