

Eric Fryson

From: GildanP@gtlaw.com
Sent: Friday, January 13, 2012 9:52 AM
To: Filings@psc.state.fl.us; jwharton@rsbattorneys.com; Caroline Klancke; Ralph Jaeger; dacton@martin.fl.us; mdeterding@sfflaw.com
Cc: mcintyred@stlucieco.org; LDobbins@deanmead.com
Subject: Docket No. 090445-WS: Grove Land Utilities, LLC Application: Notice of Withdrawal of Objection by St. Lucie County, Florida
Attachments: 1239_001.pdf

a. The full name, address, telephone number, and e-mail address of the person responsible for the electronic filing:

Phillip C. Gildan
Greenberg Traurig, P.A.
777 So. Flagler Drive, Suite 300 East
West Palm Beach, FL 33401
(561) 650-7967
gildanp@gtlaw.com

b. The docket number and title if filed in an existing docket: 090445-WS: Application of Grove Land Utilities, LLC

c. The name of the party on whose behalf the document is filed: St. Lucie County, Florida.

d. The total number of pages in each attached document: 8 pages total; Motion 2 pages; Exhibit consists of 6 pages

e. A brief but complete description of each attached document: Notice of Withdrawal of Objection to Application For Original Certificates for Proposed Water and Wastewater System and Request for Initial Rates and Charges in Indian River, Okeechobee and St. Lucie Counties by Grove Lands Utilities, LLC.

If you are not an intended recipient of confidential and privileged information in this email, please delete it, notify us immediately at postmaster@gtlaw.com, and do not use or disseminate such information. Pursuant to IRS Circular 230, any tax advice in this email may not be used to avoid tax penalties or to promote, market or recommend any matter herein.

DOCUMENT NUMBER-DATE
00254 JAN 13 09
FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

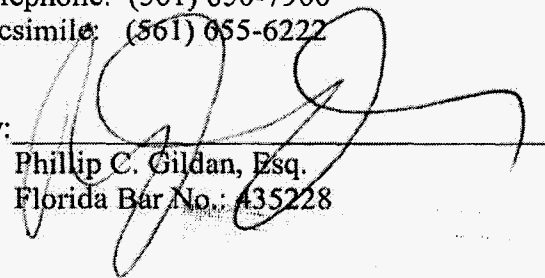
In re: Application for original certificates for proposed water and wastewater system and request for initial rates and changes in Indian River, Okeechobee and St. Lucie counties by Grove Land Utilities, LLC. | DOCKET NO. 090445-WS

ST. LUCIE COUNTY NOTICE OF WITHDRAWAL OF OBJECTION TO APPLICATION FOR ORIGINAL CERTIFICATES FOR PROPOSED WATER AND WASTEWATER SYSTEM AND REQUEST FOR INITIAL RATES AND CHANGES IN INDIAN RIVER, OKEECHOBEE AND ST. LUCIE COUNTIES BY GROVE LAND UTILITIES, LLC.

St. Lucie County, Florida, through its undersigned attorneys, withdraws its objection to the Application for original certificates for proposed water and wastewater system and request for initial rates and changes in Indian River, Okeechobee and St. Lucie counties by Grove Land Utilities, LLC, in Docket Number 090445-WS, conditioned upon approval by the Florida Public Service Commission of the Agreement Between Grove Land Utilities, LLC, Evans Properties, Inc., and St. Lucie County, Florida, dated December 6, 2011, a copy of which agreement is attached to this Notice.

This Notice does not affect St. Lucie County's objection to the Application by Bluefield Utilities, LLC in Docket No. 090459-WS, which remains in effect.

GREENBERG TRAURIG, P.A.
777 South Flagler Drive, Third Floor East
West Palm Beach, Florida 33401
Telephone: (561) 650-7900
Facsimile: (561) 655-6222

By: 
Phillip C. Gildan, Esq.
Florida Bar No.: 435228

DOCUMENT NUMBER - DATE

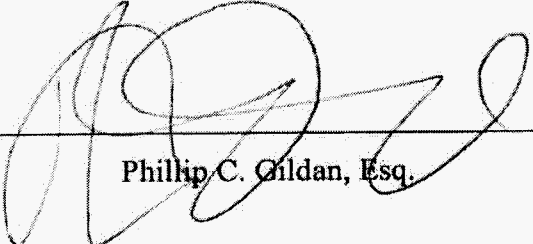
00254 JAN 13 2012

FPSC-COMMISSION CLERK

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of this Notice has been furnished to the following by U. S. mail this 13th day of January, 2012:

<p>John L. Wharton F. Marshall Deterding Rose Sundstrom & Bentley, LLP 2548 Blairstone Pines Drive Tallahassee, FL, 32301 johnw@rsbattorneys.com martyd@rsbattorneys.com</p>	<p>Ralph Jaeger and Caroline M. Klancke Office of the General Counsel Florida Public Service Commission 2540 Shumard Oak Blvd. Tallahassee, FL 32399-0850 rjaeger@psc.state.fl.us cklancke@psc.state.fl.us;</p>
<p>Daniel S. McIntyre, County Attorney 2300 Virginia Avenue Fort Pierce, FL 34982 mcintyred@stlucieco.org</p>	<p>Stephen Fry County Attorney Martin County 2401 SE Monterey Road Stuart, FL 34996 sfry@martin.fl.us</p>
<p>Michael Minton Dean, Mead, Minton & Zwemer 1903 South 25th Street, Suite 200 Fort Pierce, FL 34947 mminton@deanmead.com</p>	



Phillip C. Gildan, Esq.

**AGREEMENT BETWEEN
GROVE LAND UTILITIES, LLC
EVANS PROPERTIES, INC.
AND
ST. LUCIE COUNTY, FLORIDA**

THIS AGREEMENT is made and entered into this 6th day of December, 2011, by and between St. Lucie County, a political subdivision of the State of Florida (hereinafter referred to as the "County"), Grove Land Utilities, LLC, a Florida limited liability company (hereinafter referred to as "Grove Land"), Evans Utilities Company, Inc., a Florida corporation and Evans Properties, Inc., a Florida corporation (each a "Party" and collectively the "Parties").

RECITATIONS

WHEREAS, Grove Land is a subsidiary of Evans Utilities Company, Inc. ("Evans Utilities"), which is a subsidiary of Evans Properties, Inc.

WHEREAS, Evans Properties, Inc. ("Evans") is a family owned company that currently predominately grows citrus on its properties.

WHEREAS, following the lead of other progressive, diversified agricultural businesses in Florida, Evans has undertaken to form and certificate utilities for a number of its properties across the state.

WHEREAS, Evans is undertaking these steps in order to diversify its business activities and position itself to take advantage of potential opportunities to meet water and wastewater needs.

WHEREAS, such opportunities may include, but not be limited to (a) supplying water for bio-fuel production, which requires large quantities of water and close proximity to crop-lands, (b) bulk-water sales to municipalities or other large water users, (c) providing water and wastewater service for future development as approved by the Board of County Commissioners, to the extent such approval is required by the County Land Development Code or (d) fees for environmental services, such as water retention or cleansing facilities to meet coming water quality standards. Water retention and storage capacity could be provided under contract to one or more governmental entities or credits could be sold to agri-business or other users that are required to have retention and storage capacity.

WHEREAS, the granting of a certificate to provide water or wastewater service in a territory does not imply that the certificate is issued for any specific class of service, and it is common for the Florida Public Service Commission ("FPSC") to grant an original water certificate and approve rates for services which may be in demand at a future time.

WHEREAS, the benefits to Evans of having a certificated utility include, but will not be limited to, Evans' improved position to enter into contracts with bulk users, governmental entities, and other

utilities, Evans' ability to obtain more favorable financing for constructing infrastructure improvements, and Evans' ability to provide water and wastewater services for the Grove Land proposed certified properties as and when needed.

WHEREAS, on or about September 11, 2009, Grove Land filed an application before the Florida Public Service Commission ("FPSC") for the certification of a public utility with territory in St. Lucie County, Indian River County and Okeechobee County, PSC Docket No. 090445-WS (the "Grove Land Application").

WHEREAS, on or about October 15, 2009, the County filed an objection to the Grove Land Application with the FPSC, raising certain concerns as set forth therein.

WHEREAS, this Agreement is intended to address the County's concerns with respect to the Grove Land Application.

NOW, THEREFORE, for and in consideration of the mutual promises, covenants, representations, and warranties entered into between the Parties, and in consideration of the benefits to accrue to each, it is agreed as follows:

1. **Utility Boundaries:** As an inducement for the County to withdraw its objections, Grove Land agrees that within St. Lucie County, Grove Land shall not provide domestic utility service outside the boundaries of Grove Land's territory, as such territory is certificated by the FPSC (the "Utility Territory"). Grove Land's Utility Territory, as set forth in the Grove Land Application, is depicted in Exhibit "A", attached hereto and made a part hereof. Grove Land shall not apply to the FPSC for any expansion of its Utility Territory, nor shall Grove Land otherwise extend domestic potable water and/or wastewater utility service outside its Utility Territory, within the utility service territory of the St. Lucie County Water and Sewer District ("District"), without prior written approval from the County Commission sitting as the District governing board. This paragraph shall not prohibit Grove Land from, (a) providing surface water retention and/or cleansing services that would require Grove Land to take surface water from outside of Grove Land's Utility Territory, cleanse and/or retain it inside its Utility Territory and deliver it back outside of its Utility Territory, (b) selling water retention or cleansing services or credits to customers outside of Grove Land's Utility Territory, or (c) selling bulk potable or non-potable water to the City of Port St. Lucie or the Fort Pierce Utility Authority, or any other customers not located within the District's utility service area, even though the utility lines delivering such water may pass through the District's utility service area, provided the District does not waive any authority it has pursuant to Chapter 153, Part II, Florida Statutes. The parties hereto agree that the County may enforce the provisions of this paragraph by specific performance or injunctive relief and Grove Land waives any defense that the FPSC has jurisdiction to reject the contractual right provided in this section.

2. **County Review:** The County shall have the right to review and approve the engineering plans for any Water or Wastewater Plant to be constructed within the Utility Territory in St. Lucie County. For the purposes of this Agreement, a "Water or Wastewater Plant" shall be defined as a potable water plant or wastewater treatment plant, and related pipelines, lift stations, pumps and other potable water or wastewater facilities, serving residential development or non-agricultural commercial development. The County shall provide approval or comments on any such engineering plans submitted or

resubmitted to the County within forty-five (45) days of receipt of such plans. The County's comments, if any, shall set forth the changes required to such engineering plans in order for them to receive the County's approval. Approval of such engineering plans shall not be unreasonably withheld. As an example, which shall not be considered exclusive, requiring the design of such Water or Wastewater Plant to include either (a) significant overcapacity (above the capacity required by the Florida Department of Environmental Protection ("FDEP")) thereby resulting in materially increased costs to utility rate payers, or (b) design elements that the FPSC would deem "not used or useful", and therefore would prohibit Grove Land from charging rate payers for the cost of such design elements, shall be considered "unreasonable" for purposes of this Agreement. Any Water or Wastewater Plant constructed within the Utility Territory in St. Lucie County shall also be required to comply with the applicable requirements of the St. Lucie County Land Development Code relating to land use, zoning, site planning and construction permitting, provided however, that Grove Land does not waive any of its rights as a FPSC regulated utility.

3. **Preemption by Public Service Commission:** Utility facilities serving biofuel production, energy or alternative energy production or uses related to biofuel or energy production, or serving agriculture or agriculture related uses, or serving a surface water cleansing, retention or treatment facility, shall not be considered a Water or Wastewater Plant for the purposes of this Agreement. Grove Land shall be permitted to provide water and wastewater services to the foregoing uses, pursuant to applicable regulation by the FPSC and/or the FDEP, which shall preempt any regulation by St. Lucie County. Any Water or Wastewater Plant serving the foregoing uses constructed within the Utility Territory in St. Lucie County shall also be required to comply with the applicable requirements of the St. Lucie County Land Development Code relating to land use, zoning, site planning and construction permitting, provided however, that Grove Land does not waive any of its rights as a FPSC regulated utility .

4. **Withdrawal of County Objection:** Promptly upon the execution of this Agreement, the County agrees to file with the FPSC a withdrawal of its objections to the Grove Land Application, together with a copy of this Agreement to be included as a part and condition of the FPSC approval of the certificates requested by the Applications.

5. **FPSC Approval:** This Agreement shall be submitted to the FPSC for its recognition and for the issuance of a utility certificate for Grove Land. In the event that the Grove Land Application is withdrawn, or the issuance of a utility certificate for Grove Land is denied by the FPSC, then this Agreement shall be null and void and have no further force or effect.

6. **~~Bluefield Utilities Excluded:~~** This Agreement shall not be binding upon or with respect to Bluefield Utilities, LLC ("Bluefield") or with respect to any utility other than Grove Land, nor shall it require the County to withdraw its objections to Bluefield's application before the FPSC for the certification of a public utility in St. Lucie County and Martin County, PSC Docket No. 090459-WS.

7. **Notices:** The Parties designate the following persons to be contacted and to receive all notices regarding this Agreement:

If to St. Lucie County, such notice shall be addressed to St. Lucie County at:

St. Lucie County Administration Office
2300 Virginia Avenue
Fort Pierce, Florida 34952
Attention: County Administrator
With a copy to:

St. Lucie County Attorney's Office
2300 Virginia Avenue
Fort Pierce, Florida 34952
Attention: County Attorney

If to Grove Land, Evans, or Evans Utilities such notice shall be addressed to such party at:

Evans Properties, Inc.
660 Beachland Boulevard
Vero Beach, FL 32963
Attention: Ron Edwards

With a copy to:

Dean, Mead, Minton & Zwemer
1903 South 25th Street, Suite 200
Fort Pierce, FL 34947
Attention: Michael D. Minton

Any Notice or other document required or allowed to be given pursuant to this Agreement shall be in writing and shall be delivered personally, or by overnight courier, or sent by Certified Mail, Postage Prepaid, Return Receipt Requested. The use of electronic communication is not considered as providing proper notice pursuant to this Agreement.

8. **Assignment:** This Agreement shall be binding upon, and inure to the benefit of, the County's, Grove Land's, Evans's and Evans Utilities's successors and assigns, excluding Bluefield. However, if the District or the District's utility is conveyed to or merges with another municipality, utility authority, or other entity, the terms and restrictions set forth in Paragraphs 1 and 2 hereof shall have no further force or effect and shall not be assignable to any successor entity.

9. **Beneficiaries:** This Agreement is solely for the benefit of the County, the District, Grove Land, Evans, and Evans Utilities and no causes of action shall accrue upon or by reason hereof to or for the benefit of any other party, who or which is not a Party to this Agreement.

10. **Amendment:** This Agreement cannot be modified or amended except by a written instrument executed by all Parties and supported by valid consideration.

11. Applicable Law and Venue: This Agreement will be interpreted in accordance with the laws of the State of Florida. Except to the extent that such matters are specifically within the exclusive jurisdiction of the FPSC or other governmental authority, venue for any action related to, arising out of, or in any way connected to this Agreement shall be in the state and federal courts located in and for St. Lucie County, Florida and nowhere else, and the Parties agree to submit to the jurisdiction of such courts.

12. Entire Agreement and Effective Date: This Agreement constitutes the entire agreement and understanding between the Parties with regard to the content herein and has been entered into voluntarily and with independent advice and legal counsel and has been executed by authorized representatives of each Party on the date written above. This Agreement shall become effective (the "Effective Date") when the last party to this Agreement executes the Agreement. There are no representations, warranties or covenants of any nature, oral or written, which are not included herein.

13. Severability: If any provision or part of a provision of this Agreement shall be determined to be void or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall, to the extent possible to ensure that the Agreement satisfies the intent of the Parties, remain valid and enforceable by any Party.

14. Construction of Agreement: If any provision of this Agreement requires judicial interpretation, the Parties agree that they have each collectively participated in the negotiation and drafting of this Agreement and that there shall be no judicial or other presumption against either Party regarding the construction of this Agreement.

15. Time is of the Essence: Time is of the essence with respect to each provision of this Agreement.

16. Interpretation: Words used in this Agreement in the singular shall be held to include the plural and vice versa, and words of one gender shall be held to include other genders as the context requires. The terms hereof, herein, and herewith and words of similar import shall be construed to refer to this Agreement in its entirety and not to any particular provision unless otherwise stated.

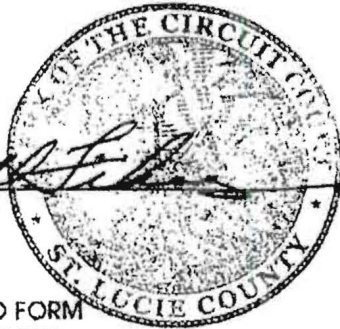
17. Counterparts: This Agreement may be executed in a number of identical counterparts. If so executed, each of such counterparts is to be deemed an original for all purposes and all such counterparts shall, collectively, constitute one agreement, but, in making proof of this Agreement, it shall not be necessary to produce or account for more of such counterparts than are required to show that each party hereto executed at least one such counterpart.

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the date set forth above.

ATTEST:

By: [Signature]
Deputy Clerk



ST. LUCIE COUNTY, a political subdivision of the State of Florida

BY: [Signature]
Chairman of the Board of County Commissioners

APPROVED AS TO FORM AND CORRECTNESS

COUNTY ATTORNEY

Approved as to form and legal sufficiency:

[Signature]
Daniel S. McIntyre, County Attorney

GROVE LAND UTILITIES, LLC, a Florida limited liability company

By: _____
Print Name: _____
Its: _____

EVANS PROPERTIES, INC., a Florida corporation

By: _____
Print Name: _____
Its: _____

EVANS UTILITIES, INC., a Florida Corporation

By: _____
Print Name: _____
Its: _____