



Wills | Trusts | Probate | Real Estate | Guardianship | Elder Law | Business Law

March 16, 2017

VIA E-FILING

Carlotta S. Stauffer, Commission Clerk
Office of Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399

RE: Docket No. 160065-WU; Application for an increase in water rates in Charlotte County
by Bocilla Utilities, Inc.
Our File No. 47016.04

Dear Ms. Stauffer:

It has recently come to the attention of Bocilla Utilities, Inc., (“BUI”) that in its response to Staff’s Fourth Data Request dated February 13, 2017, No. 3, that complete copies of the requested Agreements were not provided. Therefore, to correct that oversight, full copies are enclosed.

Should you or Staff have any questions regarding this filing, please do not hesitate to give me a call.

Very truly yours,

/s/ Martin S. Friedman

MARTIN S. FRIEDMAN
For the Firm

MSF/
Enclosure

cc: Craig Noden(via email)
Ray Flischel (via email)
Margo Leathers, Esquire (via email)
Patty Christensen, Esquire (via email)

AGREEMENT

THIS AGREEMENT made and entered into this 30th day of JUNE, 2014 by and between BOCILLA UTILITIES, INC., a Florida corporation ("BUI"), whose address is 7025-A Placida Road, Englewood, Florida 34224 and KNIGHT ISLAND UTILITIES, INC., a Florida not for profit corporation ("KIU"), whose address is 7092 Placida Road, Cape Haze, Florida 33946.

RECITALS:

A. BUI owns and operates a water treatment and distribution system ("BUI System") serving customers on Don Pedro Island and Palm Island.

B. KIU owns and operates a water treatment and distribution system ("KIU System") serving customers at the Palm Island Resort.

C. BUI and KIU have completed the construction of three (3), six (6) inch HDPE pipes which were directionally bored under the Intracoastal Waterway connecting Palm Island with the mainland at the west end of Panama Blvd. ("Subaqueous Project"). The Subaqueous Project was funded equally by BUI and KIU and has sufficient capacity to serve the customers of BUI and KIU at build-out.

D. BUI has entered into a Bulk Water Agreement with the Englewood Water District ("EWD") to obtain a sufficient quantity of water to serve its customers, and KIU intends to enter into a Bulk Water Agreement with EWD to obtain a sufficient quantity of water to serve its customers.

E. BUI is currently designing, permitting and financing a water transmission main and booster station which will connect the EWD water system on the north side of Buck Creek to the BUI water system on the West end of Panama Blvd.

F. Once this transmission main is connected to the Subaqueous Project both BUI and KIU will have the opportunity to decommission their respective water treatment facilities located on the islands.

G. BUI and KIU desire to memorialize their agreements regarding the ownership of the Subaqueous Project and the provision of potable water service to KIU.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the parties agree as follows:

1. RECITALS. The foregoing recitals are true and correct and incorporated herein.
2. SUBAQUEOUS PROJECT. In consideration of the mutual covenants set forth herein, and without payment by either party to the other, BUI shall assume sole ownership of two (2) of the six (6) inch HDPE pipes (north and center), and KIU shall assume sole ownership of one (1) of the six (6) inch HDPE pipes (south). The parties shall execute such further documents as are necessary to effectuate these ownership interests.
3. SERVICES.
 - 3.1. BUI shall allow water purchased by KIU from EWD to flow through its distribution system ("Services"), subject to the terms and conditions hereof.
 - 3.2. In case by reason of force majeure either party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement, then except as otherwise

expressly provided in this Agreement, if such party shall give notice and full particulars of such force majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied on, the obligations of the party giving such notice, as far as they are affected by such force majeure, shall be suspended during the continuance of the inability then claimed which shall include a reasonable time for the removal of the effect thereof, but for no longer period and such party shall endeavor to remove or overcome such inability with all reasonable dispatch.

3.3. The term "Force Majeure", as employed herein, shall mean acts of God, strikes, lockouts or other industrial disturbances, act of the public enemy, order of any kind of the Government of the United States or of the State or any civil or military authority, insurrections, riots, epidemics, landslides, lightning, earthquakes, fires, hurricanes, storms, floods, washouts, droughts, arrest, restraining of government and people, civil disturbances, explosions, partial or entire failure of utilities, shortages of labor, material, supplies or transportation, or any other similar or different cause not reasonably within the control of the party claiming such inability. It is understood and agreed that the settlement of existing or impending strikes, lockouts, or other industrial disturbances shall be entirely within the discretion of the party having the difficulty and that the above requirements that any force majeure shall be reasonably beyond the control of the party and shall be remedied with all reasonable dispatch shall be deemed to be fulfilled even though such existing or impending strikes, lockouts, and other industrial disturbances may not be settled but could have been settled by acceding to the demands of the opposing person or persons.

4. FEES AND CHARGES.

4.1. As consideration for BUI providing Services to KIU, KIU shall pay as follows:

4.1.1. An amount for each thousand gallons of potable water delivered to KIU at the Water Connection Point (as hereinafter defined), as registered on the meter shall be paid directly to EWD at the then current rates charged by EWD, pursuant to KIU's agreement with EWD. BUI will read the Meter monthly and provide a statement of the number of gallons used and current EWD rate to KIU. KIU shall pay EWD within ten (10) days of invoice from BUI. Should BUI not receive payment within ten days and BUI pays such amount to EWD on its behalf, such amount shall bear interest at the maximum rate permitted by law..

4.1.2. \$2.52 per thousand gallons of water used by KIU as registered on the Meter at the Water Connection Point shall be paid to BUI, with a minimum annual payment based on 21,000,000 gallons. However, the 21,000,000 annual minimum shall become effective upon either sixty (60) days from the execution by both parties or when Jim Elder has notified KIU in writing that EWD is able to fully provide all water required by KIU, whichever occurs ~~sooner~~ ^{later}. KIU may read the meter to confirm usage from time to time. Beginning one year from the date of this Agreement this amount is subject to increase annually based upon the price index established annually by the Florida Public Service Commission pursuant to Section 367.081(4)(a), Florida Statutes, but not to exceed two percent (2%) per year.

4.2. BUI will invoice KIU monthly for the charges provided for in paragraph 4.1.2 based upon meter readings for water as of the last business day of each month. Each invoice will show the prior month's reading, the current month's reading, the total number of gallons of potable water supplied to KIU, the applicable gallonage rate, and the amount owed and unpaid to BUI. KIU shall pay the amount due as shown on the invoice within twenty (20) days of mailing of the invoice from BUI. Any failure to pay on or before the due date shall be considered delinquent and subject KIU to late payment fees, possible termination of service and any other rights and remedies BUI may have under applicable law. Any invoice not paid within twenty days shall bear interest at the maximum rate permitted by law.

4.3. In the event KIU disputes the accuracy of any meter reading, it must notify BUI in writing within thirty (30) days of receipt of the invoice and demonstrate through appropriate calibration testing that the meter was either not properly calibrated, improperly read, or was not otherwise functioning properly. All meter readings not disputed within thirty (30) days of receipt of the invoice by KIU are final and not subject to dispute. All disputes regarding meter readings shall be resolved in accordance with Section 6 of this Agreement.

4.4. As a material inducement for KIU to enter into this Agreement, BUI acknowledges and agrees to pay all amounts due and payable by BUI to EWD pursuant to that Bulk Water Agreement dated June 6, 2013 by and between EWD and BUI. If KIU receives notification from EWD that BUI has failed to comply with its monetary obligations under the Bulk Water Agreement, then KIU shall have the right to enforce that Bulk Water Agreement entered into by and between BUI, KIU and EWD and to pay all amounts necessary and required by EWD to maintain the flow of water to KIU under this Agreement. In the event KIU must exercise its rights under the First Amendment, BUI will have waived its right to terminate service pursuant to Section 4.2 of this Agreement. In addition, KIU's obligation to pay those amounts to BUI pursuant to Section 4.1.2 of this Agreement shall be waived from the date of the period for which KIU exercised its rights under the First Amendment until such date as KIU is reimbursed for any such amounts paid, plus interest at the maximum rate permitted by law. KIU's obligation and the First Amendment shall terminate upon payment by BUI of the foregoing sums, unless and until a subsequent time when the conditions pursuant to this Section 4.4 may arise again at which time KIU may exercise its rights under the First Amendment without prejudice.

5. POINTS OF CONNECTION: OWNERSHIP AND MAINTENANCE.

5.1. Water shall be measured where BUI's distribution system is physically connected with KIU's water system at the connection point shown on Exhibit "A" ("Water Connection Point"), which is the location of the existing meter. This location will be surveyed and appropriate documentation of the right to locate the meter at location executed.

5.2. BUI shall design, install, own and maintain the Meter and back-flow preventer at the Water Connection Point. KIU shall reimburse BUI for the cost of materials and installation within thirty (30) days of receipt of the invoice from BUI.

6. METERING.

6.1. No later than January 31st of each year, BUI shall inspect, test and calibrate the Meter, at the water connection point. BUI will provide the results of the certified calibration to KIU in writing. The metering equipment shall record total flow with an error tolerance not to exceed \pm three percent ($\pm 3\%$) of the full scale reading, suitable for billing purposes. If BUI's Meter is found to be in error exceeding \pm three percent ($\pm 3\%$) of true accuracy, BUI shall re-calibrate the Meter in accordance with the manufacturers recommended standards at its expense and a credit or charge will be applied, as the case may be, for the previous 2 monthly billings based on the % of accuracy greater than the three percent (3%) of acceptable accuracy.

6.2. KIU shall have the right to check the accuracy of the Meter at any time by notifying BUI in writing and requesting that BUI conduct an inspection of the Meter. BUI shall arrange for an inspection and provide at least three (3) business days' advance written notice to KIU of the date of such inspection. The inspection shall be conducted in the presence of a KUI representative. BUI shall provide a report of the inspection findings to KIU within thirty (30) days of the completion of such inspection. If BUI's Meter is found to be recording flows within \pm three percent ($\pm 3\%$), KIU shall bear the cost of such inspection and shall reimburse BUI for the inspection costs within thirty (30) days of receipt of invoice for those costs. The term "inspected"

used in this Paragraph shall mean an inspection by personnel certified by the manufacturer of the Meter to test and calibrate the accuracy of the Meter.

7. WATER QUALITY AND PRESSURE.

7.1. BUI shall deliver to KIU at the Water Connection Point potable water which is equal to the quality of water provided by EWD.

7.2. BUI shall maintain a water pressure of not less than 55 pounds per square inch on the BUI side of the meter at the Water Connection Point. Should KIU require a higher pressure due to their system operation then KIU will be responsible to generate this higher pressure.

7.3. BUI shall have no responsibility for the quality, quantity or pressure of the water after the water passes through the Meter at the Water Connection Point provided BUI complies with the provisions of Section 7.1 and 7.2 above, unless the quality, quantity, or pressure problem is caused by BUI.

7.4. Knight Island Utilities, Inc. shall provide to BUI at no cost, an exclusive easement for an area of approximately 270 square feet on parcel #41202838200 for BUI to install a booster station, except for those easements previously granted for drainage.

8. NO ACQUIRED RIGHTS. It is expressly understood by BUI and KIU that each party owns its own water facilities and appurtenances and each is a separate and independent system from the other. Neither party shall, by reason or any provision of this Agreement, or the use of facilities thereunder, or otherwise, acquire any vested or adverse right or future right, in law or equity, in the facilities and appurtenances owned by the other party.

9. DEFAULTS. In addition to all other legal remedies available to a party to this Agreement, if a party shall fail to comply with the provisions of this Agreement other than for the payment of money to which a five (5) business day written termination notice applies, the other party has the option to seek an order of specific performance and/or a claim for damages against the defaulting party, subject to the provisions of Section 13.9 hereof.

10. ASSIGNMENT.

10.1. Prior to either party offering to assign its rights under this Agreement to any third party, the party desiring to assign its rights under this Agreement, shall first offer to do so to the other party to this Agreement. The offer must include the precise terms of the proposed assignment offering and must be in writing and sent certified mail, return receipt requested, or by overnight delivery service. The party who receives such an offer shall have thirty (30) days to review the offer and respond in writing as to whether said party accepts, rejects or provides a counter proposal to the offer. If the offer is accepted, the closing of the transaction shall occur no later than thirty (30) days of acceptance of the offer. If the offer is rejected, the initial offering party shall be permitted to proceed under Section 10.2 hereof. If a counter offer is provided, the parties agree to negotiate in good faith regarding the proposed assignment of rights of this Agreement. Upon the acceptance of any counter offer or subsequent counter offers, the closing of the transaction shall occur within thirty (30) days after the date of acceptance of the last counter offer.

10.2. Either party may assign its rights under this Agreement to any other party upon giving at least thirty (30) days' prior written notice of the assignment, provided that the proposed assignee shall provide the non-assigning party with: (i) a statement, signed on behalf of the assignee, that such assignee agrees to abide by the terms of this Agreement; (ii) evidence of such assignee's corporate authority to enter into this Agreement; (iii) a copy of the assignee's most

current financial statements, in accordance with generally accepted accounting principles consistently applied, showing that such assignee has a minimum net worth to allow assignee to perform its obligations under this Agreement; and (iv) a copy of the contract or agreement identifying all material terms of the proposed assignment. Any such assignment shall be in writing and shall be executed with the same formalities as this Agreement. In the event the terms of the proposed assignment are less favorable than the terms originally proposed out of the initial offer or subsequent counter offer by the proposed assigning party, then the non-assigning party shall have the right to accept the more favorable terms of the proposed assignment within twenty (20) days of the date of receipt of the information. The date of closing shall occur as indicated in Section 10.1 hereof.

10.3. This Agreement shall be binding upon and shall inure to the benefit of the parties and their respective successors and assigns, whether by merger, consolidation, conveyance or otherwise.

11. HOLD HARMLESS.

11.1. BUI shall indemnify, defend, save, and hold harmless KIU from all claims, demands, liabilities, and suits of any nature whatsoever arising out of, or due to, the breach of this Agreement by BUI, its agents, employees and customers, or due to any act, occurrence, omission, or negligence of BUI, its agents, employees and customers in connection with the provision of the Services.

11.2. KIU shall indemnify, defend, save, and hold harmless BUI from all claims, demands, liabilities, and suits of any nature whatsoever arising out of, or due to, the breach of this Agreement by KIU, its agents and employees, or due to any act, occurrence, omission, or negligence of KIU, its agents and employees in connection with the provision of the Services.

12. NOTICES. All notices, requests, and other communications which are required or permitted pursuant to this Agreement shall be in writing and shall be deemed to have been duly given or delivered personally when sent by facsimile, overnight delivery, or when mailed, registered or certified, first-class postage pre-paid as set forth below:

If to BUI, to:

Bocilla Utilities, Inc.
7025-A Placida Road
Englewood, FL 34224
Attn: Craig Noden

If to KIU, to:

Knight Island Utilities, Inc.
7092 Placida Road
Cape Haze, Florida 33946
Attn: Dean Beckstead

13. MISCELLANEOUS PROVISIONS.

13.1. This Agreement shall not be altered, amended, changed, waived or otherwise modified in any respect or particular, and no consent or approval required pursuant to this Agreement shall be effective, unless the same shall be in writing and signed by both parties.

13.2. All prior statements, understandings, commitments, representations and agreements between the parties, oral or written, are superseded by and merged in this Agreement, which alone, fully and completely, expresses the agreement between the parties in connection with this transaction, and which is entered into after full investigation, neither party relying upon any statement, understanding, representation or agreement made by the other not embodied in this Agreement.

13.3. No failure or delay of either party in the exercise of any right or remedy given to such party hereunder, or the waiver by any party of any condition hereunder for its benefit (unless the time specified herein for exercise of such right or remedy has expired) shall constitute a waiver of any other right or further right or remedy, nor shall any single or partial exercise of any right or remedy preclude other or further exercise thereof or of any other right or remedy. No waiver by either party of any breach hereunder or failure or refusal by the other party to comply with its obligations shall be deemed a waiver of any other or subsequent breach, failure or refusal to so comply. This Agreement shall be given fair and reasonable construction in accordance with the intentions of the parties hereto, and without regard to the aid of canons requiring construction against the party drafting this Agreement.

13.4. This Agreement may be executed in one or more counterparts, each of which so executed and delivered shall be deemed an original, but all of which taken together shall constitute but one and the same agreement.

13.5. Captioned headings of this Agreement are for convenience only and are not intended to be a part of this Agreement and shall not be construed to modify, explain or alter any of the terms, covenants or conditions herein contained.

13.6. This Agreement shall be interpreted and enforced in accordance with the laws of the State of Florida without reference to the principles of conflict of law. Proper venue for any action or proceeding to construe or enforce the provisions of this Agreement shall be in the circuit court in and for Charlotte County, Florida.

13.7. Each of the parties to this Agreement agrees that at any time after the execution hereof, they will, on request of the other party, execute and deliver other documents and further assurances as may reasonably be required by such other party in order to carry out the intent of this Agreement.

13.8. If any provision of this Agreement shall be deemed unenforceable or invalid by a court of competent jurisdiction, the same shall not affect the remaining provisions of this Agreement, to the end that the provisions of this Agreement are intended to be and shall be separable.

13.9. The parties hereby acknowledge and agree to cooperate and to work together to resolve any dispute between them including, but not limited to, mandatory mediation to resolve such disagreement prior to either party initiating litigation which shall be conducted within ninety (90) days of the date of the notice by the requesting party to the other party. If, after mediation of a disagreement or dispute, such disagreement or dispute remains unresolved, then the party may request resolution by court of competent jurisdiction. In the event of such litigation, the non-prevailing party shall pay the costs of the prevailing party, including its reasonable attorney's and paralegal fees incurred in connection therewith, through and including all other legal expenses and the cost of any appeals in appellate courts related thereto. Wherever in this Agreement it is stated that one party shall be responsible for the attorney's fees and expenses of the other party, the same shall automatically be deemed to include fees and expenses in connection with all appeals and appellate proceedings related or incidental thereto. Notwithstanding the foregoing, BUI is required to continue providing water (if BUI is providing water to its customers) to KIU during

pendency of any disputes between the parties. If BUI fails to do so, KIU shall be entitled to obtain a temporary and permanent injunction against BUI and recover its reasonable attorney's fees and costs in connection with same.

13.10. This Agreement shall not be deemed to confer the favor of any third parties or any rights whatsoever as third-party beneficiaries. The parties hereto intend by the provisions hereof to confer no such benefits or status.

13.11. The obligations of the parties under this Agreement shall be contingent upon KIU executing an agreement with EWD for the purchase of water.

14. TERM.

14.1. This Agreement shall become effective pursuant to Section 4.1.2 above and shall continue for an initial term of thirty (30) years.

14.2. The term of this Agreement shall be automatically extended for additional successive thirty (30) year periods unless terminated as provided herein.

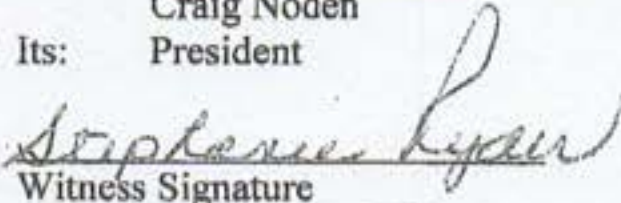
IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their proper officers duly authorized so to do and have affixed their corporate seals the day and year first above written.

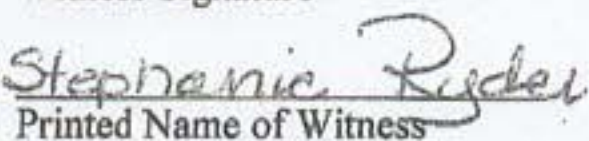
Bocilla Utilities, Inc.

By: 

Craig Noden

Its: President


Witness Signature

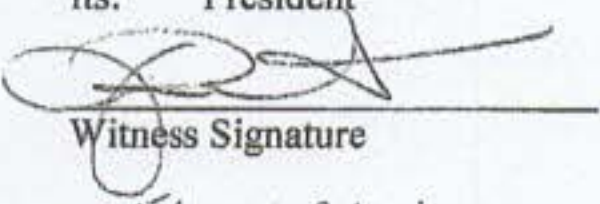

Printed Name of Witness

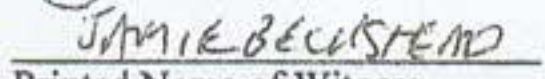
Knight Island Utilities, Inc.

By: 

Dean Beckstead

Its: President


Witness Signature


Printed Name of Witness

FIRST ADDENDUM TO BULK WATER AGREEMENT

THIS FIRST ADDENDUM made and entered into this 5 day of June, 2014 by and among ENGLEWOOD WATER DISTRICT, an independent special district of the State of Florida, ("EWD") whose address is 201 Selma Ave., Englewood, FL 34223, BOCILLA UTILITIES, INC., a Florida corporation ("BUI"), whose address is 7025-A Placida Road, Englewood, Florida 34224 and KNIGHT ISLAND UTILITIES, INC., a Florida not for profit corporation ("KIU"), whose address is 7092 Placida Road, Cape Haze, Florida 33946.

WITNESSETH:

A. EWD and BUI entered into a Bulk Water Agreement dated June 6, 2013 whereby EWD supplies BUI with bulk water to the EWD installed meter ("Meter") installed pursuant to the Bulk Water Agreement ("Agreement").

B. KIU owns and operates a water treatment and distribution system ("KIU System") serving customers at the Palm Island Resort, and desires to obtain bulk water service from EWD and to decommission its water treatment plant.

C. BUI and KIU have, or will enter into an agreement to transport the bulk water from the Meter to the KIU System

D. EWD is agreeable to provide KIU with bulk water to the Meter.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, it is mutually agreed by and among the parties as follows:

1. The foregoing recitals are true and correct and incorporated herein.
2. EWD will provide KIU with bulk water service to the Meter, and other than as set forth in the Agreement, shall assume no responsibility for the water on the outflow side of the Meter.
3. EWD shall bill KIU for bulk water service within the invoice to BUI based on the total amount of water through the Meter. It shall be the responsibility of BUI and KIU to allocate the responsibility for payments of the amount due. KIU and BUI may pay invoices with separate checks delivered to EWD at the same time.
4. KIU shall be subject to the same rights, responsibilities and obligations as BUI pursuant to the Agreement.
5. Should BUI be in default by not paying a EWD monthly invoice, then EWD shall provide written notice to KIU of such default, and KIU shall have ten (10) days thereafter to pay any monthly invoice, plus interest.
6. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when hand delivered or mailed by registered or certified, postage pre-paid to KIU at the following address (notices to EWD and BUI shall be given at the addresses in the Agreement):


TO KIU:
Knight Island Utilities, Inc.
ATTN: Dean Beckstead
7092 Placida Road
Cape Haze, Florida 33946

WITH A COPY TO:
Goldman, Tiseo & Sturges, P.A.
ATTN: Ernest W. Sturges, Jr.
701 JC Center Court, Suite 3
Port Charlotte, Florida 33954

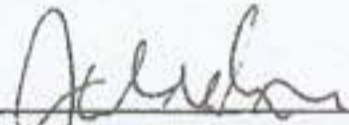
7. Except as specifically modified herein, the terms of the Agreement are reaffirmed.

IN WITNESS WHEREOF, the parties hereto have caused this Addendum to be duly executed and entered into on the day and year first above written.

BOCILLA UTILITIES, INC.

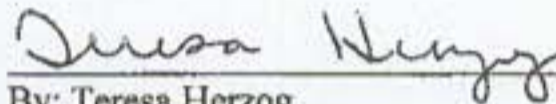


By: Craig Noden
Its: President



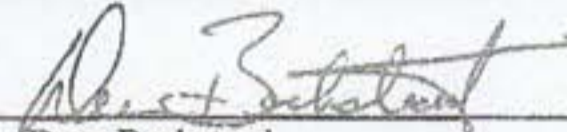
Witness Signature
Print Name: Julia Merry

ATTEST:

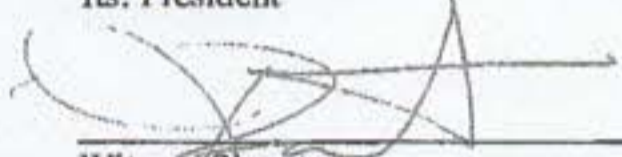


By: Teresa Herzog
Secretary to the Board

KNIGHT ISLAND UTILITIES, INC.

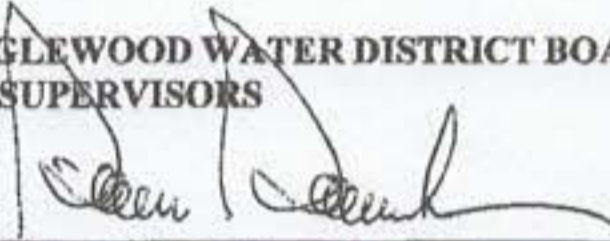


By: Dean Beckstead
Its: President



Witness Signature
Print Name: Jamie Beckstead

ENGLEWOOD WATER DISTRICT BOARD OF SUPERVISORS



By: Steve Samuels, Chair
Board of Supervisors

BULK WATER AGREEMENT

THIS AGREEMENT, made and entered into this 6th day of June, 2013, by and between the Englewood Water District, having its principal place of business at 201 Selma Avenue, Englewood, Sarasota County, Florida 34223 ("DISTRICT") and Locilla Utilities, Inc., having its principal place of business at 7025 A Placida Road, Englewood, Florida, 34224 ("UTILITY");

WITNESSETH:

WHEREAS, DISTRICT is an independent special district of the State of Florida with the authority to provide Water service within and without its boundaries; pursuant to Chapter 2004-439 Laws of Florida; and

WHEREAS, UTILITY is a Florida corporation with full power and authority to enter into this Agreement, to carry out the transactions contemplated hereunder, and to carry out its obligations hereunder; and

WHEREAS, DISTRICT currently has a 5.36 MGD Water Distribution Facility with available capacity; and

WHEREAS, UTILITY desires bulk water delivery from DISTRICT'S Water Distribution Facility as a bulk Water customer at the established bulk Water rate.

NOW, THEREFORE, in consideration of the mutual covenants and conditions contained herein, it is mutually agreed by and between the parties hereto as follows:

1. UTILITY shall continue to operate as a water utility, providing water to its customers. DISTRICT is providing Bulk Water to the meter for UTILITY to distribute to UTILITY'S customers.

2. UTILITY shall be responsible for design, permitting (including any required modification of DISTRICT'S operating permit), and construction of any Water system(s), (exclusive of providing a bulk Water meter) that may be necessary in order to connect to and operate DISTRICT'S Water system in accordance with this Agreement.

3. UTILITY shall be responsible to conduct all investigations and testing as may be required in order for UTILITY to connect to DISTRICT'S Water system. UTILITY shall be responsible for acquiring all easements and rights of way necessary in order to connect UTILITY'S Water system to DISTRICT'S Water system at the designated Point of Connection. The Point of Connection of UTILITY'S Water system to DISTRICT'S Water system shall be designated by DISTRICT in its sole discretion.

4. UTILITY shall construct all Water systems pursuant to the terms of this Agreement and DISTRICT'S standards on DISTRICT'S side of the meter. UTILITY shall submit all drawings and specifications to DISTRICT for approval prior to submittal to the Department of Environmental Protection.

5. Any portion of the transmission systems constructed by UTILITY pursuant to this Agreement within the geographic boundary of the DISTRICT shall be conveyed with associated easements to DISTRICT after Department of Environment Protection certification of completion and prior to any service being provided by DISTRICT per terms of this Agreement. DISTRICT, at its own expense, shall install an appropriate metering device at a location determined by DISTRICT for the purpose of determining the amount of Water distributed monthly to UTILITY.

6. Upon UTILITY connecting its Water system to DISTRICT's Water system, DISTRICT shall use reasonable diligence to provide continuously bulk Water delivery to UTILITY. DISTRICT shall not be liable to UTILITY for any interruption of service. Water delivered by DISTRICT, through the meter, shall meet or exceed all regulatory requirements. UTILITY shall be responsible for all water issues, including quality and quantity, for water beyond the meter.

7. The current DISTRICT Government/Bulk Wholesale Water rate is \$2.98 per 1,000 of metered Water flow. There is no monthly base charge for availability. The Water rate for all bulk customers is subject to change from time to time, consistent with DISTRICT Customer Rules and Regulations, upon 90 days notice.

8. UTILITY shall pay DISTRICT'S monthly invoice for all Water passing through the meter within thirty (30) days after receipt of the invoice. In the event that payment is not made within thirty (30) days after receipt of the invoice, UTILITY agrees to pay interest at a rate of one and one half percent (1.5%) per month on the outstanding balance until paid in full.

9. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. The parties expressly consent to the jurisdiction of and agree to suit in any court of general jurisdiction in the State of Florida, whether state, local or federal, and further agree that venue shall lie in Charlotte County, Florida.

10. A breach of this Agreement shall mean a material failure to comply with any of the provisions of this Agreement. If any party breaches any obligation herein, then, upon receipt of written notice by the non-breaching party, the breaching party shall proceed diligently and in good faith to take all reasonable actions to cure such breach and shall continue to take all such actions until such breach is cured. If either party breaches this Agreement, the injured party may seek damages or specific performance to the extent allowed by law; however, neither party waives its rights, privileges, or immunities. Notwithstanding the foregoing, DISTRICT shall not be deemed to be in breach of this Agreement for any interruption in service.

11. All notices, certificates, or other communications hereunder shall be sufficiently given and shall be deemed given when hand delivered or mailed by registered or certified mail, postage prepaid, to the parties at the following addresses:

TO DISTRICT:
Englewood Water District
ATTN: Michael Ray, Administrator
201 Selma Avenue
Englewood, FL 34223

WITH A COPY TO:
Robert Berntsson, Esq.
18401 Murdock Circle, Suite C
Port Charlotte, FL 33948

TO UTILITY:
Bocilla Utilities, Inc.
ATTN: R. Craig Noden
7025 - A Placida Road
Englewood, Florida 34224

WITH A COPY TO:
Martin S. Friedman
Sundstrum, Friedman & Fumero, LLP
766 North Sun Drive - Suite 4030
Lake Mary, Florida 32746

12. The parties may, by notice in writing given to the other, designate any future or different addresses to which the subsequent notices, certificates, or other communications shall be sent. Any such notice shall be deemed given on the date such notice is delivered by hand or by facsimile transmission or five (5) days after the date mailed.

13. No amendment, appendix, supplement, modification or waiver of this Agreement shall be binding unless executed in writing by all parties hereto.

14. In the event that the performance of this Contract is prevented or interrupted in consequence of any cause beyond the control of DISTRICT, including but not limited to, Acts of God or of a public enemy, war, national emergency, allocation of or other governmental restrictions upon the use or availability of labor or materials, rationing, civil insurrection, riot, civil rights disorder or demonstration, strike, embargo, flood, tidal wave, fire, explosion, bomb detonation, nuclear fallout, windstorm, hurricane, earthquake, or other casualty or disaster or catastrophe, unforeseeable failure or breakdown of pumping, transmission or other facilities, and all governmental rules or acts or orders or restrictions or regulation or requirements, acts or action of any government or public or governmental authority or commission or board or agency or agent or official or officer, the enactment of any statute or ordinance or resolution or regulation by governmental entities having jurisdiction, over the operation of DISTRICT or otherwise having valid legal jurisdiction, excluding any acts or rules or regulations adopted by DISTRICT, or rule or ruling or order, order or decree or judgement or restraining order or injunction of any court, said party shall not be liable for such non-performance.

15. It is agreed by and between the parties hereto that all words, terms, and conditions herein contained are to be read in concert, each with the other, and that a provision contained under one heading may be considered to be equally applicable under another heading in the interpretation of this Agreement.

16. This Agreement is solely for the benefit of the parties hereto and no other causes of action upon, or hereof, is to or for the benefit of any third party, who or which is not a formal party hereto.

17. The Englewood Water District Customer Rules and Regulations ("Rules"), which are subject to revision from time to time, are incorporated into this Agreement by reference. This Agreement will control should there be any conflict between this Agreement and the Rules. However, any amendments to the Rules shall automatically be incorporated herein. Notwithstanding the foregoing, the DISTRICT'S Water Adjustment Rules, currently contained within section 13.5 of the RULES, do not apply to UTILITY or this Agreement.

18. UTILITY agrees to indemnify and hold DISTRICT harmless from and against any and all liabilities, claims, damages, costs, and expenses (including reasonable attorney fees) to which DISTRICT may become subject by reason of or arising out of this Agreement. Nothing herein shall constitute a waiver of sovereign immunity pursuant to state law.

19. This Agreement shall be binding upon and shall inure to the benefit of the successors or assigns of the parties hereto.

20. This Agreement is the entire agreement between the parties pertaining to the subject matter hereof, and supersedes all prior and contemporaneous agreements, understanding, negotiations, and discussions of the agreements, understanding, negotiations, and discussions of the parties, whether oral or written, and there are not warranties, representations or other agreements between the parties in connection with the subject matter hereof, except as specifically set forth herein.

IN WITNESS WHEREOF, DISTRICT and UTILITY have caused this Agreement to be duly executed and entered into on the day and year first above written.

(SEAL)

ENGLEWOOD WATER DISTRICT
BOARD OF SUPERVISORS

ATTEST:

By: Teresa Herzog
Teresa Herzog
Secretary to the Board

By: Taylor Meals
Taylor Meals, Chair
Board of Supervisors

ATTEST:

By: Julie Murray
Print: Julie Murray

BOCILLA UTILITIES, INC

By: R. Craig Noden
Print: R. Craig Noden
Its: President