

BULK SEWER TREATMENT AGREEMENT

THIS AGREEMENT is made and entered into this 14th day of July, 2020, by and **between** ENVIRONMENTAL UTILITIES, LLC., a Florida corporation, Post Office Box 7, Placida FL 33946 (hereinafter EU) and CHARLOTTE COUNTY, a political subdivision of the State of Florida, 18500 Murdock Circle, Port Charlotte, FL (hereinafter COUNTY).

RECITALS

WHEREAS, EU desires to reserve and secure sewer service capacity and bulk sewer service from COUNTY to serve the current and projected needs of a portion of Cape Haze, Little Gasparilla Island, Don Pedro Island, and Knight Island; and

WHEREAS, in 2017, Charlotte County adopted a Sewer Master Plan that utilizes environmental scoring criteria to prioritize the level of importance, for specified areas, of converting septic tanks to sewer; and

WHEREAS, the environmental scoring criteria, which utilizes a scale of 1 to 5, includes scoring based on three factors: proximity to surface waters, age of septic tanks, and nitrogen loading; and

WHEREAS, based on the environmental scoring criteria, the areas of Cape Haze, Little Gasparilla Island, Don Pedro Island, and Knight Island scored in the highest impact level of 4.0 to 5.0; and

WHEREAS, areas with an average impact score from 4.0 to 5.0 are recommended for conversion from septic to sewer within a five-year period; and

WHEREAS, COUNTY owns and operates a sewer system in Charlotte County and the sewer treatment plant that would provide service for this area has sufficient capacity to provide wholesale bulk sewer treatment service to EU and the COUNTY is willing to provide such service to EU according to the terms and conditions as set forth in this Agreement.

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

SECTION ONE. DEFINITIONS

For purposes of this Agreement, the following words shall have the following meanings unless the context clearly requires otherwise:

“Abnormal Occurrence” means an event at a sewer plant or sewer pump station facility that has the potential to cause a violation of a utility permit and is reportable to regulatory agencies that oversee the utility operations. Abnormal occurrences include, but are not

limited to, sewage spills, overflow, equipment failures, line breaks, and abnormal lab results.

“Connection Point” means a flow meter where EU’s collection system is physically connected to the COUNTY’s sewer transmission system for the purpose of transmitting sewage to the COUNTY’s sewer treatment plant.

“ERC” means Equivalent Residential Connection equating to 190 gallons of sewer per day on an average daily flow basis. For purposes of this Agreement, each detached single family residential connection will be considered one ERC.

“Excessive Flow” means sewer flows that exceed the Reserved Capacity as calculated on a rolling, twelve-month annual basis.

“Force Majeure” means Acts of god, strikes, lockouts, or other industrial disturbances, acts of any public enemy, wars, blockades, riots, acts of armed forces, epidemics, delays by carriers, inability to obtain materials or rights-of-way on reasonable terms, acts or failures to act by public authorities not under the control of either party to this Agreement, or acts or failures to act by regulatory authorities.

“Reserved Capacity” means the amount of sewer treatment capacity in the COUNTY’s plant the COUNTY agrees to set aside for EU expressed in an annual average daily flow basis.

SECTION TWO. GENERAL CONDITIONS

- A. The Recitals set forth above are true and correct and incorporated as if fully set forth herein.
- B. COUNTY agrees to provide bulk sewer treatment for EU in accordance with the terms and conditions contained herein, the rules and regulations of the Florida Department of Environmental Protection (FDEP), and other governmental entities with regulatory jurisdiction over sewer treatment facilities. COUNTY acknowledges that before EU can carry out its obligations pursuant to this Agreement, it must obtain certification from the Florida Public Service Commission (FPSC) and easements through Don Pedro Park. COUNTY agrees that EU may include this Agreement in its application for FPSC certification and applications for loans and grants.
- C. The parties agree that neither assumes any financial responsibility for the operation and maintenance of the other’s sewer system.
- D. COUNTY shall notify EU as soon as practicable of an emergency event that will cause disruption of service. COUNTY shall provide as much advance warning as is reasonable under the circumstances.

SECTION THREE. BULK SEWER TREATMENT SERVICE

- A. EU may collect and transmit sewage to the Connection Point and COUNTY agrees to accept and treat the sewage from EU's collection system, up to the Reserved Capacity of 2200 ERC at 190 GPD (418,000 GPD).
- B. COUNTY shall not be liable for any damages, direct, indirect or consequential, resulting from its inability or failure to provide sewage treatment services on a temporary or emergency basis due to a Force Majeure event. COUNTY will use its best efforts to provide the treatment capacity required hereunder. If restrictions are imposed by governmental regulatory authorities, COUNTY reserves the right to temporarily reduce the capacity treated pursuant to this Agreement, but only for such time as the capacity cannot be accommodated as the result of the imposed governmental restrictions.
- C. In the event of an Abnormal Occurrence, EU agrees to provide proper notification to applicable governmental regulatory agencies, as required by Rule 62-620.610, Florida Administrative Code, and as contained in COUNTY's domestic wastewater facility permit.
- D. EU shall provide COUNTY with a quarterly report that contains the number of units and type that have been connected to EU's utility system during the previous quarter. The report shall be submitted within fifteen (15) days after the end of the quarter for which the report is being provided.

SECTION FOUR. OWNERSHIP, MAINTENANCE AND REPAIRS

- A. EU will design, permit, and construct its collection facilities in accordance with FDEP Standards and the Charlotte County Utilities Department Design Compliance Standards dated November 1, 2011 and all subsequent revisions/addendums together with the latest Charlotte County Utilities Department Approved Product List, at no cost to COUNTY, to receive and transmit sewage to the EU side of the Connection Point. EU agrees to construct its collection facilities to meet the design hydraulic conditions established by COUNTY. Future EU collection facilities will be sized to function properly under variation in flow, hydraulic conditions, and other factors which may reasonably be expected to occur over time in the EU service area. COUNTY may review and approve EU's connection to the COUNTY's transmission facilities at the Connection Point, which approval shall not be unreasonably withheld. Final plans and specifications shall be approved by the Charlotte County Utilities Department prior to FDEP permitting and construction. County reserves the right to complete intermittent observation of construction and testing activities to ensure compliance with the requirements. Any discrepancies shall be corrected by EU.
- B. EU shall construct, at its sole cost and expense, a transmission main from the location of the bulk meter to the connection point with COUNTY'S existing sewer

transmission main. The route for the transmission main shall be one of the two proposed routes contained in the "Preliminary Engineering Report for Sewer Interconnection to Mainland from Knight Island/Don Pedro/Gasparilla Island" prepared by Giffels-Webster Engineers, Inc. dated April 10, 2019. The transmission main shall be designed, permitted and constructed in accordance with Charlotte County Utilities Department Design Compliance Standards dated November 1, 2011 and all subsequent revisions/addendums together with the latest Charlotte County Utilities Department Approved Product List. The final plans and specifications shall be approved by the Charlotte County Utilities Department prior to FDEP permitting and construction. COUNTY reserves the right to complete intermittent observations of the construction and testing activities to ensure compliance with the requirements. Any discrepancies shall be corrected by EU. The transmission main shall be transferred to COUNTY upon final completion of all items required in the close-out document.

- C. COUNTY will, in accordance with applicable laws and regulations, own and maintain, at its own expense, that portion of the sewage transmission system from the Connection Point to COUNTY's water reclamation facility, including the sewer flow meter at the Connection Point. The Connection Point determines the limits of maintenance and ownership for both parties. The parties will maintain their facilities in accordance with the standards prescribed by applicable regulatory agencies and will maintain a level of performance, maintenance and repair that will not adversely affect customers of either party.
- D. The sewage flow meter at the Connection point will be tested by COUNTY and recalibrated, when necessary, at least annually in accordance with the American Water Works Association Standards for Meter Testing or other mutually agreeable standard. EU has the right to observe the annual test and recalibration of the sewage flow meter performed by COUNTY. COUNTY may retain the services of a third party to perform the sewage flow meter test to verify the calibration. COUNTY agrees to provide EU with copies of the annual test report. The parties reserve the right to conduct additional meter testing at their own expense. COUNTY shall notify EU, in writing, thirty (30) calendar days in advance of any meter testing and/or recalibration. If the meter registers an accuracy error greater than the American Water Works Association standards, then COUNTY shall refund to EU the amount billed in error for one-half the period since the last test. The one-half period will not exceed six (6) months, provided, however, that if it can be shown that the error was due to a cause, the date of which can be determined, the overcharge will be computed back to such date. Whenever the meter is found to register less than the standard described above, COUNTY may bill EU an additional amount that will be due for one-half the period since the last test. The one-half period may not exceed six months, provided, however, that if it can be shown that the error was due to some cause, the date of which can be determined, the undercharge will be computed back to such date.

- E. Facilities within EU's service area shall be repaired by EU if: (1) there are Excessive Flows due to a storm, a sudden surge of groundwater, infiltration and inflow, or other like conditions; or, (2) if any generally accepted testing or method of determining the condition of sewer lines indicates that a line is in need of repair or replacement. Lines or equipment may be repaired or replaced if they are not functioning in accordance with applicable design standards. COUNTY shall notify EU upon the occurrence of any Excessive Flows. If COUNTY determines repairs or replacements are needed, EU shall have ninety (90) days from written notification from COUNTY to evaluate the collection system and develop a plan of action acceptable to both parties to perform any necessary improvements or repairs to the collection system. These improvements shall be completed within a reasonable period of time. If, after notification, EU fails to perform the required evaluation and necessary improvements or repairs, and that failure contributes to an Abnormal Occurrence, EU may be held responsible for its proportional share of any resulting monetary fines or required improvements ordered by any regulatory agency which are directly related to the Abnormal Occurrence.

SECTION FIVE. BULK SEWER FEES AND CONNECTION CHARGES

- A. In consideration for the sewage treatment services provided by COUNTY, EU shall pay to COUNTY the COUNTY's current adopted bulk service rate for each thousand gallons of sewage treated by COUNTY. The rate is subject to change by COUNTY from time to time.
- B. COUNTY will invoice EU, on a monthly basis, for sewage treatment based upon the sewer flow meter readings taken at the Connection Point. EU will make payment within thirty (30) calendar days after receipt of an invoice from COUNTY.
- C. EU shall pay TAP fees for all existing and future customers based on meter size, as connections are made.
- D. COUNTY shall issue TAP fee credits to EU for the construction of the transmission main described in Section Four B. TAP fee credits shall be provided on a dollar for dollar basis only, based on the actual documented construction costs, as approved by COUNTY, and calculated at the rate in effect when the connections are made. If the amount of TAP fee credits is insufficient for the existing developed property that will be connected, EU shall pay the difference to COUNTY within 365 days of the date of FDEP's issuance of a "Permit to Operate".
- E. All future TAP fees will be paid by EU on a quarterly basis along with the quarterly report identified in Section Three D. of this Agreement at the then current TAP fee rate.
- F. Where the use of developed property is modified or where property is re-developed or expanded, COUNTY may require the payment of additional TAP fees.

SECTION SIX. DISCHARGE AND PERMITTED FLOWS

EU will reasonably cooperate with COUNTY to coordinate flows to the Connection Point and ultimately to COUNTY's sewer treatment plant to mitigate the potential for any Abnormal Occurrence within COUNTY's sewer system. EU will require present and future commercial customers of EU to install and maintain devices deemed necessary by the Charlotte County Health Department and consistent with COUNTY's industrial pre-treatment requirements to trap and remove certain identified wastes other than domestic sewage from the sewage generated by commercial customers.

SECTION SEVEN. TERM OF AGREEMENT

This Agreement shall be for an initial term of thirty (30) years, unless the parties mutually agree to an earlier termination date. Thereafter, this Agreement may be renewed for another thirty (30) year term upon mutual agreement of the parties.

SECTION EIGHT. NOTICES

All notices required or provided pursuant to this Agreement shall be in writing and either sent certified mail, return receipt requested, or hand delivered to:

Charlotte County Utilities Department:

Utilities Director
Charlotte County
25550 Harborview Rd., Unit 1
Port Charlotte, FL 33980

With a copy to:

Charlotte County Attorney
18500 Murdock Circle
Port Charlotte, FL 33948

ENVIRONMENTAL Utilities:

ENVIRONMENTAL UTILITIES, LLC.
PO Box 7
Placida, FL 33946

With a copy to:

Martin S. Friedman, Esquire
420 S. Orange Ave., Ste. 700
Orlando, FL 32801

SECTION NINE. MISCELLANEOUS PROVISIONS

- A. This Agreement shall be binding upon and inure to the benefit of the parties, their successors and assigns. This Agreement may not be assigned, delegated, or transferred by a party without the written consent of the other party, which consent shall not be unreasonably withheld.

- B. This Agreement shall be construed and enforced according to the laws of the State of Florida.
- C. This Agreement is solely for the benefit of the parties hereto and no right or cause of action will accrue upon or by reason hereunder to or for the benefit of any third parties who are not signatories to this Agreement.
- D. The failure of either party to enforce the provisions of this Agreement shall not be construed as a general waiver or relinquishment of the right to demand strict performance of this Agreement.
- E. This Agreement constitutes the entire Agreement between the parties and may not be amended, modified, or rescinded except in writing and signed by both Parties. If a provision of this Agreement is declared illegal, invalid, unenforceable, unconstitutional, or in violation of the bond covenants of the COUNTY by a Court of competent jurisdiction, the remaining provisions of this Agreement will remain in full force and effect.
- F. Neither party shall be liable or responsible to the other as a result of any injury to property or persons which is caused by a Force Majeure event.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date and year first written above.

Date: 6-4-2020

ENVIRONMENTAL UTILITIES, LLC.

WITNESSES:

Ryan M. Dunlap

Print Name: Ryan M. Dunlap

Joyce Luke

Print Name: Joyce Luke

By: [Signature]

Print Name: Jack Boyer

Title: Manager

BOARD OF COUNTY COMMISSIONERS
OF CHARLOTTE COUNTY

Date: _____

By: _____
William G. Truex, Chairman

ATTEST:
Roger D. Eaton, Clerk of the
Circuit Court and Ex-Officio
Clerk of the Board of County
Commissioners

By: _____
Deputy Clerk

APPROVED AS TO FORM
AND LEGAL SUFFICIENCY:

By:  _____
Janette S. Knowlton, County Attorney
LR2019-0360