



Village of Biscayne Park

Commission Agenda Report

Village Commission Meeting Date: March 1, 2016

Subject: Proposed North Miami Water Agreement

Prepared By: Mayor David Coviello

Sponsored By: Commission

Background

At the February 2, 2016 commission meeting, Attorney Hearn provided a recap of what has transpired to date on the request to have an agreement with the City of North Miami in regards to water service to the Village.

Since the last Commission meeting I have met with Councilman Alix Desulme to discuss the importance of having an agreement between the two municipalities, the need for notification prior to repairs, as well as recent concerns regarding odor and discoloration.

Discuss next steps and language in the attached agreement.

Attachments

- Agreement drafted by Village Attorney John Hearn in 2013

**INTERLOCAL AGREEMENT BETWEEN THE VILLAGE OF BISCAYNE PARK
AND THE CITY OF NORTH MIAMI PROVIDING FOR THE DELIVERY OF POTABLE WATER
TO THE VILLAGE OF BISCAYNE PARK**

THIS AGREEMENT, made and entered into this ____ day of _____, 2013, by and between the VILLAGE OF BISCAYNE PARK, FLORIDA, a municipal corporation, hereinafter referred to as "VILLAGE", and the CITY OF NORTH MIAMI, FLORIDA, a municipal corporation, hereinafter referred to as "CITY".

WHEREAS, the CITY Water and Sewer Division of the Public Works Department has provided potable water to the VILLAGE for many years; and

WHEREAS, CITY is willing to continue to provide, in accordance with the provisions of this Agreement, potable water to the property described in Exhibit "A" attached hereto and made a part hereof, and thereafter operate such facilities so that the occupants of the improvements on the property will receive an adequate water supply system, including adequate water pressure for fire protection;

WHEREAS, VILLAGE and CITY have determined that it is mutually beneficial and in the interest of the parties to enter into this Agreement;

NOW, THEREFORE, for and in consideration of the premises, the mutual undertakings and agreements herein contained and assumed, VILLAGE and CITY hereby covenant and agree as follows:

Article 1. Background, Purpose and Intent.

1.1 The above recitals are true and correct and are incorporated herein as set forth in full hereunder as the underlying basis for the execution of this Agreement.

1.2 The purpose of this Agreement is to serve as the framework and outline the purpose regarding the delivery of potable water by the CITY to the VILLAGE to its residents and visitors of the VILLAGE.

1.3 The respective elected bodies of the VILLAGE and the CITY find the method of delivery of potable water set forth in this Agreement to be in the best interests of the public and can be best accomplished through the provisions set forth in this Agreement.

Article 2. Definitions. The following definitions and references are given for the purpose of interpreting the terms as used in this Agreement and apply unless the context indicates a different meaning:

2.1 "Property" – the land and/or improvements described in Exhibit "A" and any supplements to Exhibit "A" as may be agreed upon between the parties, initialed and dated.

2.2 "Lot or Tract" – each building site as platted for record as shown on the master plan and plat.

2.3 “Service” – the readiness and ability on the part of the CITY to furnish water service to each lot. Thus, the maintenance by CITY of adequate pressure to the point of delivery shall constitute the rendering of water service.

2.4 “Point of Delivery” – the point where the pipes or meters of the CITY are connected with the pipe of the consumer. Unless otherwise indicated, point of delivery shall be at a point on the consumer’s lot line.

2.5 “Connection Charge” – those charges for inter-connection of any consumer of CITY’s water services as may be determined from time to time by CITY, and as more particularly described in Exhibit “B”, attached hereto and incorporated herein.

2.6 “Guaranteed Revenues” – charges for availability of service as may be determined from time to time by CITY, and as more particularly set forth in Exhibit “B”.

2.7 “Consumer Installation” – all facilities on the customer’s side of the point of delivery.

2.8 “Contribution-in-aid-of-Construction” – the sum of money, and/or property, represented by the value of the water distribution system constructed by the VILLAGE, which VILLAGE covenants and agrees to contribute to CITY as a contribution-in-aid-of-construction, to induce CITY to provide water service to the property in accordance with the ordinances of the CITY passed and adopted and as may be amended from time to time.

Article 3. Agreement to Serve: CITY agrees to continue to provide water service to the property, as and when needed, but in accordance with the terms and provisions of this Agreement and rules, regulations and orders of any governmental authority having jurisdiction thereof.

Article 4. Method of Extension and Delivery of Service.

4.1 The CITY will continue to deliver potable water to the VILLAGE and its residents through the existing facilities.

4.2 The term facilities means and includes all water distribution and supply mains, lines and pipes and related facilities within the boundaries of the property and connected to CITY’s line.

4.3 The term “off-site” facilities means all water lines, mains, facilities or systems located outside the boundary lines of the Property.

4.4 By these presents, VILLAGE hereby transfers to CITY, title to all water distribution systems located within the VILLAGE, pursuant to the provisions of this Agreement. Such conveyance shall take effect without further action upon the acceptance by CITY of the said installation.

4.5 CITY agrees that the acceptance of all Utility Systems installed by the VILLAGE, as above provided, shall constitute the assumption of responsibility by CITY for the continuous operation and maintenance of such Utility Systems from that date forward through the term of this Agreement.

4.6 VILLAGE or any individual customers shall be required to pay applicable charges as set by CITY from time to time for water services, including water meters and meter installations. Meters shall be of sufficient size and capacity as shall be determined by CITY for all single family, residential, multi-family, mobile home, commercial or other installation requiring a metering device. A schedule of charges referred to herein is attached hereto as Exhibit "B".

Article 5. CITY's Exclusive Right to Utility Facilities. VILLAGE agrees that all water facilities used, useful or held for use (including fire service), shall at all times remain in the sole, complete and exclusive ownership of CITY, its successors and assigns, and any person or entity owning any part of the property or any residence, building or unit constructed or located thereon, shall not have any right, title, claim or interest in and to such facilities or any part of them, for any purpose, including the furnishing of water service to other persons or entities located within or beyond the limits of the property. VILLAGE may provide for the availability of such water services to the property which constitute "non-domestic" uses such as wells for irrigation purposes.

Article 6. Exclusive Right to Provide Service. VILLAGE, as a further and essential consideration of this Agreement, agrees that VILLAGE, or the successors and assigns of VILLAGE, shall not engage in the business or businesses of providing potable water services to the property during the period of time CITY, its successors and assigns, provide water services to the property, it being the intention of the parties hereto that under the foregoing provision and all other provisions of this Agreement, CITY shall have the sole and exclusive right and privilege to provide water services to the property and to the occupants of each residence, building or unit constructed thereon, except for the providing by VILLAGE, from its own sources and lines, of water for irrigation uses.

Article 7. Quality Standards.

7.1 CITY will conduct a minimum of quarterly testing, will meet or exceed all federal, state and local guidelines for potable water standards, and will provide the VILLAGE with quarterly reports concerning same.

7.2 Consistent with recognized standards, CITY will conduct tests concerning water pressure throughout the VILLAGE to ensure that there is adequate pressure for fire suppression. Upon request, the CITY will provide the VILLAGE with quarterly tests and monitoring concerning same.

Article 8. Rates. CITY agrees that the rates and services availability charges to be charged to VILLAGE and individual consumers of water service shall be those currently set forth by the CITY presently in effect as set forth in Exhibit "C" or as amended from time to time by CITY pursuant to ordinance or resolution adopted at public hearings. The VILLAGE users shall be charged the same rates as North Miami users for potable water.

Article 9. Impact Fees/Other Charges. CITY agrees that if the CITY considers adding an impact fee or other charge for water service or capital improvement that the VILLAGE be directly notified of such consideration. CITY further agrees that any additional fee charged to the VILLAGE and its residents will be the same as charged to CITY and its residents and will be directly related to the cost/improvements for potable water service only (i.e., not for sewer improvements).

Article 10. Force Majeure. In the event that performance of this Agreement by either party to this Agreement is prevented or interrupted in consequence of any cause beyond the control of either party, including but not limited to Act of God or the public enemy, war, national emergency, allocation or of other governmental restrictions upon the use or availability of labor or materials, rationing, civil insurrection, riot, radical or 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, failure or breakdown of pumping transmission or other facilities, governmental rules or acts or orders or restrictions or regulations of requirements, act or action of any government or public or governmental authority or commission or board or agency or agent or official officer, the enactment of any statute or ordinance or resolution or regulation or rule or ruling or order, in order or decree or judgment or restraining order or injunction of any court, said party shall not be liable for such non-performance.

Article 11. Binding Effect of Agreement. This Agreement shall be binding upon and shall inure to the benefit of VILLAGE, CITY and their respective assigns and successors, by merger, consolidation or otherwise.

Article 12. Term of Agreement; Termination.

12.1 This Agreement will become effective on October 1, 2013 and will continue until September 30, 2022.

12.2 Either party may terminate this Agreement at will (without cause) with twenty four (24) months written notice to the other.

12.3 Prior to termination, title to the water distribution lines in the VILLAGE will need to be transferred to the new water supplier as necessary. All other necessary obligations will also need to be addressed at that time. The parties agree to work in good faith concerning the termination of this Agreement.

12.4 The respective obligations of the parties set forth in this Agreement will not be assigned in whole or in part.

Article 13. Liability.

13.1 The VILLAGE and the CITY will each be individually and separately liable and responsible for the actions of its officers, agents and employees in the performance of their respective obligations under this Agreement.

13.2 Both the VILLAGE and the CITY assert their full authority to enter into this Agreement.

13.3 The VILLAGE and the CITY will each individually maintain throughout the term of this Agreement any and all applicable insurance coverage required by Florida law for governmental entities.

Article 14. Notice. Upon further written notice by either party to the other, all notices provided for herein shall be in writing and transmitted by messenger, certified mail, or return receipt requested, or telegram, and shall be mailed or delivered as follows:

CITY: City of North Miami
776 NE 125 Street
North Miami, Florida 33161

VILLAGE: Village of Biscayne Park
640 NE 114 Street
Biscayne Park, Florida 33161

Article 15. Laws of Florida. This Agreement shall be governed by the laws of the state of Florida and it shall become effective immediately upon execution by both parties hereto, subject to any approvals which must be obtained from governmental authority, if applicable, and subject to all conditions precedent for the rendering of service as set forth in this Agreement (including the obtaining of necessary easements).

Article 16. Costs and Attorneys' Fees. In the event either party to this Agreement is required to enforce this Agreement by court proceedings or otherwise, whether or not formal legal action is required, the prevailing party shall be entitled to recover from the other party all costs incurred, including reasonable attorneys' fees.

Article 17. Miscellaneous Provisions.

17.1 This Agreement merges and supersedes any and all previous agreements between the parties, oral or written.

17.2 Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural, and the masculine, feminine and neuter genders shall each include the others.

17.3 Exhibits mentioned herein have been signed or initialed by the duly authorized officers, agents or attorneys of the parties hereto and hereby incorporated herein by reference and made a part hereof as fully set forth herein.

17.4 This Agreement may be executed in several counterparts, each of which shall be deemed an original, and such counterparts shall constitute one and the same instrument.

17.5 No agreement shall be effective to add to, change, modify, waive or discharge this Agreement, in whole or in part, unless such agreement is in writing and signed by the parties hereto.

17.6 Whenever approvals of any nature are required by either party to this Agreement, it is agreed that same shall not be unreasonably withheld or delayed.

IN WITNESS WHEREOF, CITY and VILLAGE each have executed this Agreement by its duly authorized officers on the ____ day of _____, 2013.

VILLAGE OF BISCAYNE PARK, FLORIDA, a municipal corporation, organized and existing under the laws of the State of Florida

ATTEST:

By: _____
Noah Jacobs, Mayor

Maria Camara, Village Clerk

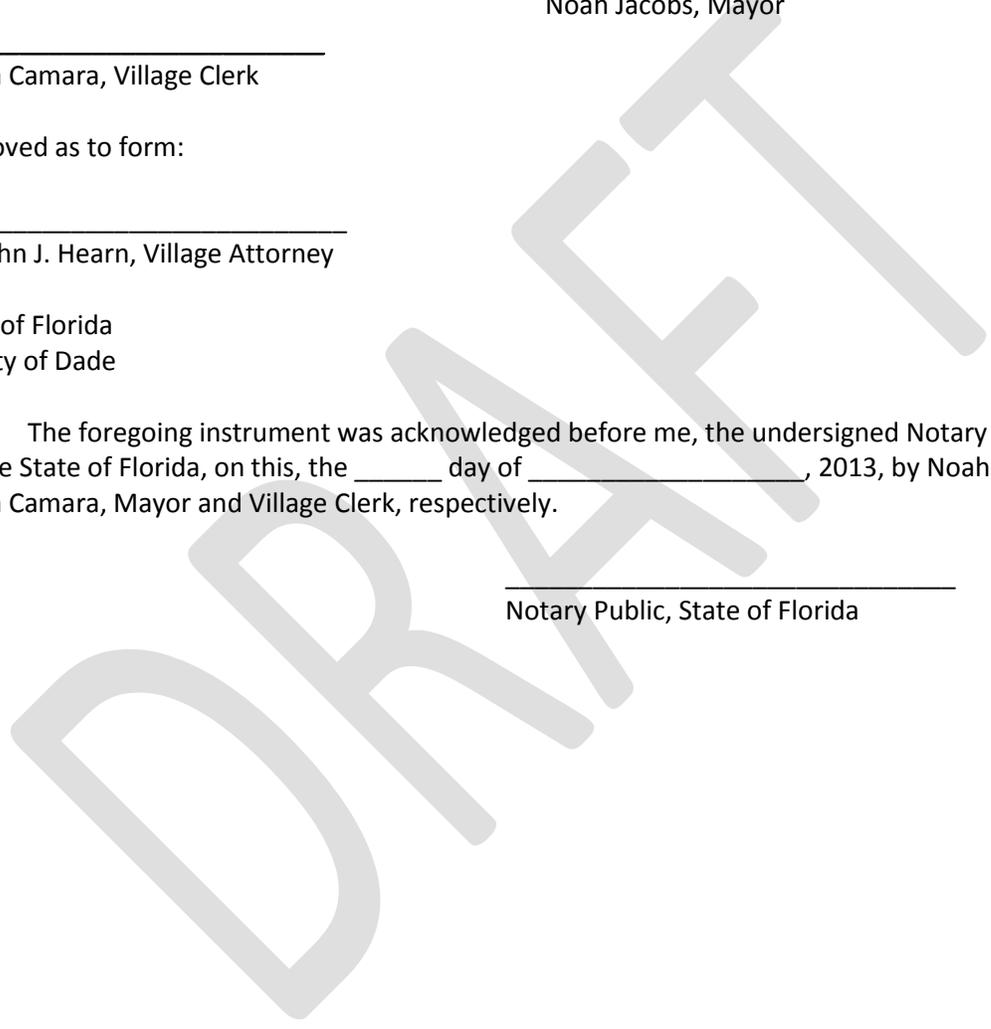
Approved as to form:

By: _____
John J. Hearn, Village Attorney

State of Florida
County of Dade

The foregoing instrument was acknowledged before me, the undersigned Notary Public in and for the State of Florida, on this, the ____ day of _____, 2013, by Noah Jacobs and Maria Camara, Mayor and Village Clerk, respectively.

Notary Public, State of Florida



CITY OF NORTH MIAMI, FLORIDA, a municipal corporation, organized and existing under the laws of the State of Florida

ATTEST:

By: _____
Andre D. Pierre, Mayor

Michael Etienne, City Clerk

Approved as to form:

By: _____
Regine Monestime, City Attorney

State of Florida
County of Dade

The foregoing instrument was acknowledged before me, the undersigned Notary Public in and for the State of Florida, on this, the _____ day of _____, 2013, by Andre D. Pierre and Michael Etienne, Mayor and Village Clerk, respectively.

Notary Public, State of Florida