

Shawna Senko

From: Bronwyn Ferrell <bferrell@sfflaw.com>
Sent: Wednesday, September 25, 2013 11:39 AM
To: Filings@psc.state.fl.us
Cc: John Wharton
Subject: Docket No. 130230-SU
Attachments: Response to Staff's First Data Request.pdf

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

John L. Wharton
Sundstrom, Friedman & Fumero, LLP
2548 Blairstone Pines Drive
Tallahassee, FL 32301
(850) 877-6555
jwharton@sfflaw.com

b. The docket number and title if filed in an existing docket: 130230-SU

Application for Amendment of Territory Certificate No. 300-S in Lee County by Forest Utilities, Inc.

c. The name of the party on whose behalf the document is filed:

Forest Utilities, Inc.

d. The total number of pages in each attached document: 34 pages

e. A brief but complete description of each attached document:

Cover Letter to Ann Cole (1 page)
Supplement to Settlement Agreement (7 pages)
Exhibit A (2 pages)
Exhibit B (2 pages)
Exhibit C (6 pages)
Exhibit D (1 page)
Exhibit (15 pages)

BRONWYN R. FERRELL
Legal Assistant

SUNDSTROM,
FRIEDMAN & FUMERO, LLP
Attorneys | Counselors



SUNDSTROM, FRIEDMAN & FUMERO, LLP
Attorneys at Law
2548 Blairstone Pines Drive
Tallahassee, Florida 32301
T: 850.877.6555
F: 850.656.4029
brevell@sfflaw.com
www.sfflaw.com

Tallahassee • Lake Mary • Boca Raton

Notice: This email message, and any attachments hereto, contains confidential information that is legally privileged. If you are not the intended recipient, you must not review, transmit, convert to hard copy, copy, use or disseminate this email or any attachments to it. If you have received this email in error, please notify us immediately by return mail or by telephone at (888) 877-6555 and delete the original and all copies of this transmission, including any attachments. Thank you.



September 25, 2013

RESPONSE TO STAFF'S FIRST DATA REQUEST

Ms. Ann Cole, Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Docket No. 130230-SU; Application for Amendment of Territory Certificate No. 300-S
in Lee County by Forest Utilities, Inc.
Our File No. 25052.09

Dear Ms. Cole,

Attached please find the Supplement to Settlement Agreement between Jamaica Bay West Associates Limited Partnership and Forest Utilities, Inc. This document is responsive to both data requests contained in the September 23, 2013 letter of Suzanne Brownless.

If you have any questions or concerns regarding the above, please do not hesitate to contact me at your earliest convenience.

Sincerely,

JOHN L. WHARTON
For The Firm

JLW/brf

Enclosure

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL CIRCUIT
IN AND FOR LEE COUNTY, FLORIDA CIVIL DIVISION

JAMAICA BAY WEST ASSOCIATES,
LIMITED PARTNERSHIP, a Florida Limited
Partnership,

Plaintiff,

Case No. 09-CA-005087

vs.

SOURCE, INC., and FOREST UTILITIES, INC.

Defendants.

SUPPLEMENT TO SETTLEMENT AGREEMENT

This Supplement to Settlement Agreement ("Settlement Agreement") is entered into on this 11th day of July 2013, by and between Plaintiff, Jamaica Bay West Associates Limited Partnership and Defendant, Forest Utilities, Inc., who may both be referred to singularly as "Party" or jointly as the "Parties." For good and valuable consideration, the receipt of which is hereby acknowledged, the Parties do hereby agree to fully settle and compromise the above-styled cause of action upon the following terms indicated below:

1. DEFINITIONS.

1.1 "JBW" shall mean Plaintiff, Jamaica Bay West Associates Limited Partnership.

1.2 "Forest" shall mean Defendant, Forest Utilities, Inc.

1.3 "JBW's System" shall mean that on-site wastewater collection and transmission system located within the Jamaica Bay Mobile Home Community more particularly described in Exhibit "A".

1.4 "Forest's System" shall mean that wastewater collection and transmission system owned and operated by Forest Utilities, Inc.

1.5 The "Litigation" shall mean the case of *Jamaica Bay West Associates Limited Partnership vs. Source, Inc. and Forest Utilities, Inc., Civil Action Case No. 09-CA-005087* pending in the circuit court of the 20th Judicial Circuit in and for Lee County.

1.6 The "Bulk Service Agreement" shall mean that Bulk Service Agreement entered into on the 27th of September, 2005, between JBW and Forest.

1.7 The "Point of Connection" shall mean the point where Forest's System is connected with JBW's System, as depicted in the record drawings filed along with the DEP permit application for the JBW forcemain extension.

2. **FOREST'S OBLIGATIONS.** Forest shall accept, assume, and undertake the following obligations:

2.1 Forest shall retain a Florida registered professional engineer to prepare a plan for the construction of improvements, upgrades, and operational protocols to increase the flow capacity of wastewater flows from JBW to Forest so that the Point of Connection is capable of meeting the following criteria of the DEP permit application attached hereto as Exhibit "B": at the Point of Connection, flow capacities being average daily flow of 269,200 gallons per day, peak hourly flows of 39,034 gallons per hour all based on 100 gallons per day per capita flow at 1.9 persons per unit for 1417 units with a peaking factor of 3.5 equating to peak flows of 650 gallons per minute (hereafter, the "Flow Requirements"). Forest's system shall be capable of handling 100% of the wastewater flows from JBW, including any inflow and infiltration occurring in JBW's System and the customer service lines (typically measuring 3"-4" in diameter). Forest shall bear responsibility for any and all costs of designing, permitting, and constructing all of the necessary improvements, whether they be on the Forest or JBW side of the Point of Connection. Forest shall be responsible for obtaining all permits necessary to accomplish the Flow Requirements, and shall comply with all the rules and regulations of the Florida Department of Environmental Protection ("DEP"), Lee County Utilities, and any other governmental agency having jurisdiction over the design, permitting and construction of the improvements to meet the Flow Requirements; otherwise, Forest shall have absolute and sole discretion in the choice of improvements, upgrades, and operational protocols utilized to comply with this Paragraph 2.1. If Forest intends to construct any improvements upon JBW's property, Forest shall first provide its plans to JBW for review and approval, which shall not be unreasonably withheld.

2.2 The Flow Requirements work shall be completed and the Flow Requirements shall be satisfied no later than eighteen (18) months from the date of this Settlement Agreement, to wit: on or before January 10, 2015 (hereafter, the "Deadline"). Satisfaction of the Flow Requirements shall occur upon verification of Pigeon-Roberts & Associates ("Pigeon-Roberts") as set forth in Paragraph 3 herein.

2.3 Forest has no objection to JBW removing any and all portions of its wastewater treatment facility currently located on JBW's property, and agrees that no part of the improvements and upgrades contemplated to satisfy the Flow Requirements shall include the use of equalization or surge tanks on property owned by JBW.

2.4 In the event Forest or its contractors perform improvements, maintenance, or other work upon the property of JBW, Forest agrees to keep in force at Forest's own expense during the period of construction general liability insurance and workers' compensation insurance in the amount of at least \$1,000,000.00 and shall deliver proof of same to JBW by way of a certificate of insurance or other similar document at least ten (10) days before starting any such work. Forest agrees to ensure that any of its contractors or sub-contractors performing

improvements or other work upon JBW's property shall likewise obtain and provide proof of general liability insurance and workers' compensation insurance in the amount of at least \$1,000,000.00.

3. **VERIFICATION OF FLOW REQUIREMENTS.** Within ten (10) days from the date that Forest's selected engineer of record delivers a verification letter that construction has been completed to the point of conducting performance testing to meet the Flow Requirements and from issuance of all permits and approvals as required by governmental authorities or agencies with jurisdiction, the independent engineering firm of Pigeon-Roberts shall verify whether the Flow Requirements have been met, utilizing reasonable, customary and sound engineering standards prevailing at the time of verification including the then-applicable Lee County Utilities Code. Upon conclusion of its testing and analysis, Pigeon-Roberts shall provide to the Parties a written report evaluating whether the Flow Requirements have been met. To the extent that Pigeon-Roberts verifies that the Flow Requirements have not been met, Forest may repeat the foregoing process set forth in this Paragraph 3.1 prior to the Deadline. The time required for verification by Pigeon-Roberts as set forth herein is included within and does not extend the Deadline stated in Paragraph 2.2 above.. If Pigeon-Roberts is no longer in business or is otherwise unable to perform the verification discussed above, the Parties shall mutually agree upon an independent engineering firm to perform said verification. It is understood by the Parties that in order for Pigeon-Roberts to verify that the Flow Requirements have been met, JBW temporarily will divert its wastewater flows to Forest to test the Flow Requirements and will thereafter divert its wastewater flows back to Lee County Utilities until verification by Pigeon-Roberts is completed. JBW agrees to pay Pigeon-Roberts for its services in verifying the Flow Requirements as described herein; provided, however, that if Forest elects to repeat the process as set forth above, Forest shall pay Pigeon-Roberts for its services for the second and any subsequent verification of the Flow Requirements. JBW and Forest agree to pay Pigeon-Roberts upon such terms as Pigeon-Roberts may require.

4. **PAYMENTS TO FOREST.** As compensation for lost revenues and the fees and costs incurred in the Litigation, JBW agrees to pay the following sums to Forest:

4.1 One Hundred Eighteen Thousand Four Hundred Eighty-Two Dollars and Eleven Cents (\$118,482.11) within fifteen (15) days of the date of the execution of this Settlement Agreement.

4.2 Two Hundred Fifty Thousand Dollars (\$250,000.00) within fifteen (15) days of commencement of the work contemplated by Forest to meet the Flow Requirements, as evidenced by the first invoice from Forest's contractor retained to perform the Flow Requirements work. Forest shall notify JBW in writing of Forest's intent to commence said work and the date upon which work will commence at least fifteen (15) days before the commencement of the work. Payment shall be due within fifteen (15) days of the commencement date stated in the notice.

4.3 Seven Hundred Fifty Thousand Dollars (\$750,000.00) upon the later of receipt of Pigeon-Roberts's written report verifying that the Flow Requirements have been met or conveyance of JBW's System to Forest pursuant to Paragraph 5.1 below.

5. CONNECTION TO FOREST AND CONVEYANCE OF SYSTEM. JBW shall connect its wastewater collection and transmission system to Forest as follows:

5.1 Within thirty (30) days after verification by Pigeon-Roberts that the Flow Requirements have been met and following DEP approval to place the wastewater collection/transmission system into service, JBW shall convey, and Forest agrees to acquire, JBW's System and JBW shall commence sending its flows to Forest. In the event the Flow Requirements are not met prior to the Deadline, JBW shall have the option, in its sole and absolute discretion, to convey JBW's System to Forest and to commence sending its flows to Forest despite the Flow Requirements not being met. In either event, to effectuate said conveyance, JBW shall deliver to Forest a Utility Facilities Bill of Sale and Utility Easement, conveying title free and clear and for the continued maintenance and operation of JBW's System, substantially in the forms set forth as Composite Exhibit "C" hereto, subject to approval of JBW's mortgagee, as well as any other necessary documents.

5.2 Upon conveyance of JBW's System to Forest, Forest shall be responsible for paying the electric utilities for all lift stations. JBW shall also make a good faith effort to prevent the intentional introduction of fresh water into JBW's System after conveyance to Forest.

5.3 Until such time as JBW reconnects JBW's System to Forest's System, JBW shall continue to deliver their flows to Lee County Utilities, and Forest shall do nothing to interfere with JBW's ability to deliver their flows to Lee County Utilities, or oppose any extensions of the emergency temporary agreement for wastewater services currently in place between JBW and Lee County Utilities.

6. BULK SERVICE AGREEMENT.

6.1 The Bulk Service Agreement between the Parties dated September 27, 2005, shall remain in full force and effect except as otherwise provided herein. Notwithstanding the foregoing, upon conveyance of JBW's System to Forest, the Bulk Service Agreement shall be terminated and of no further force or effect.

6.2 Provided, however, that in the event Forest does not meet the Flow Requirements, either Party shall have the right, at its sole discretion, to cancel and rescind the Bulk Service Agreement, and shall thereafter be free from any obligation and responsibility thereunder.

6.3 In the event the Bulk Service Agreement is cancelled per the provisions of Paragraph 6.2 of this Settlement Agreement, then in such event JBW is free to seek a permanent connection with Lee County Utilities for the provision of wastewater services, and Forest agrees not to oppose or interfere with such connection.

7. MUTUAL COOPERATION. The Parties hereto agree to cooperate with one another in the performance of this Settlement Agreement, and not to oppose, directly or indirectly, the other Party's request to any governmental agency in order to effectuate the provisions of this Settlement Agreement. Specifically, JBW agrees not to oppose Forest's

request that the Florida Public Service Commission ("PSC") authorize Forest's implementation of rates for service to the Jamaica Bay Mobile Home Community as set forth in Forest's Sewer Tariff, Sheet Number 16.0, General and Multi-Family Service (Master Metered) Rate Schedule GS attached as Exhibit "D" hereto, or any other request by Forest to take over the JBW transmission and collection system as part of Forest's certificated territory. Forest agrees not to oppose requests by JBW for extensions of its emergency temporary wastewater agreements with Lee County. During the term of this Settlement Agreement, JBW shall execute all temporary grants of easement which may be necessary or convenient for Forest to comply with the terms of this Settlement Agreement.

8. **AGREED UPON RATE.** JBW and Forest agree that, commencing on the first day of the month immediately following the conveyance of JBW's System to Forest as contemplated by paragraph 5.1 herein, service to JBW shall be rendered pursuant to and consistent with the provisions of the Forest's Sewer Tariff and billed pursuant to Sheet No. 16.0, General and Multi-Family Service (Master Metered) Rate Schedule GS attached hereto as Exhibit "D", or revisions thereto as may be approved by the PSC. JBW will be billed for such service on a monthly basis, in the form of a single bill for the entirety of service rendered based upon water meter reads consistent with Forest's Sewer Tariff, and will pay each invoice in the ordinary course of business. Thereafter, Forest will render service to JBW consistent with the rules, regulations, and requirements of the PSC and shall provide wastewater service to JBW capable of handling all of JBW's wastewater flows in a manner which safeguards the public health, safety, and welfare. In no event shall the rate Forest charges JBW exceed the rate charged by Lee County Utilities at its prevailing multi-family metered rate.

9. **DISMISSAL OF LAWSUIT WITH PREJUDICE.** Within fifteen (15) days of the execution of this Settlement Agreement, each Party shall dismiss, with prejudice, each and every claim or cause of action pending in the Litigation, or which could have been raised in the Litigation between the Parties.

10. **EXPENSES.** Except as provided in Paragraph 4 of this Settlement Agreement, each Party shall bear its own costs and expenses, as well as attorney's fees incurred in connection with the resolution of the Litigation, and the execution of this Settlement Agreement.

11. **NOTICES.** Notices hereunder shall be given to the Parties set forth below and shall be made by hand delivery, facsimile, overnight delivery, or by regular mail. If given by regular mail, the notice shall be deemed to have been given within a required time if deposited in the U.S. Mail, postage prepaid, within the time limit. For the purpose of calculating time limits which run from the giving of a particular notice, the time shall be calculated from actual receipt of the notice. Notices shall be addressed as follows:

If to JBW:

Jamaica Bay West Associates
Limited Partnership
c/o Roger Zlotoff
280 Daines Street, Suite 300
Birmingham, MI 48009
248-594-6812

With a required copy to:

Clayton W. Crevasse, Esquire
ROETZEL & ANDRESS
2320 First Street, Suite 1000
Fort Myers, Florida 33901-3419
239-337-3850

If to Forest:

Forest Utilities, Inc.
c/o Wade Moser
6000 Forest Boulevard
Fort Myers, Florida 33908-4318
239-481-0111

With a required copy to:

John L. Wharton, Esquire
SUNDSTROM, FRIEDMAN & FUMERO, LLP
2548 Blairstone Pines Drive
Tallahassee, Florida 32301
850-877-6555

12. **WAIVER AND SEVERABILITY.** If any provision or part of a provision of this Settlement Agreement shall be determined to be void or unenforceable by a court of competent jurisdiction, the remainder of this Settlement Agreement shall, to the extent possible to ensure that the Settlement Agreement satisfies the intent of the Parties, remain valid and enforceable by any Party.

13. **ENTIRE SETTLEMENT AGREEMENT AND EFFECTIVE DATE.** This Settlement Agreement is intended to supplement and be consistent with the Parties' settlement agreement acknowledged and sworn to by the Parties and attached hereto as Exhibit "E". This Settlement Agreement constitutes the entire Settlement 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 Settlement Agreement shall become effective (the "Effective Date") when the last Party to this Settlement Agreement executes the Settlement Agreement. There are no representations, warranties or covenants of any nature, oral or written, which are not included herein.

14. **AMENDMENT.** This Settlement Agreement cannot be modified or amended except by a written instrument executed by both Parties and supported by valid consideration.

15. **FURTHER ASSURANCES.** The Parties hereto agree to execute any and all further instruments and documents, including the granting of easements and like instruments, and to take all such action as may be reasonably required by either Party to effectuate the terms and provisions of this Settlement Agreement and the transactions contemplated herein.

16. **TIME.** Time is of the essence with respect to all matters contained herein.

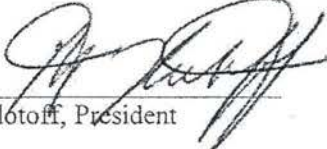
17. **FORCE MAJEURE.** Neither Party shall be liable to the other for damages as a result of its inability to satisfy its obligations under this Settlement Agreement when such

inability is attributable to federal, state, or local laws, rules or regulatory restrictions, or acts of God, provided that this provision shall not apply to Forest's obligation to proceed with permitting and approval to place the wastewater collection/transmission system into service

18. INTERPRETATION. This Settlement Agreement has been negotiated fully between the Parties, and both Parties have participated fully in the preparation of this Settlement Agreement and have received the advice of counsel. In the case of a dispute concerning the interpretation of any provision of this Settlement Agreement, both Parties shall be deemed to have drafted, chosen and selected the language, and any doubtful language will not be interpreted or construed against any Party.


19. SUCCESSORS AND ASSIGNS. This Settlement Agreement shall be binding upon and inure to the benefit of each of the Parties hereto and their respective successors and assigns.

JAMAICA BAY WEST
ASSOCIATES LIMITED PARTNERSHIP



Roger Zlotoff, President

FOREST UTILITIES, INC.



David Swor, President

Exhibit "A"

Developer currently owns and operates the system servicing the Jamaica Bay Manufactured Home Community, located at 15235 South Tamiami Trail, Fort Myers, Florida 33901 (the "Community"). The Community is comprised of 1417 manufactured homes/homesites, as well as two clubhouses, two swimming pools and two fitness centers, all receiving wastewater service.

The JBW's System shall include all of JBW's wastewater collection and transmission system, including without limitation, onsite sewer lines, services, service laterals (typically measuring 6" in diameter), meters, pumps, mains, lift stations, all trade fixtures, leasehold improvements, licenses, generators, controls, tanks, distribution, collection or transmission pipes or facilities, valves, service connections, and all other physical facilities, appurtenances and property installations used in the operation of the JBW's System, and third party warranties that relate to completed or in progress construction.

JBW's System excludes the customer service lines connecting each individual mobile home to JBW's System (typically measuring 3"-4" in diameter), and the existing wastewater treatment plant on JBW's property.

The boundaries of the Community are located within Lee County, Florida and more fully described in Exhibit 1 attached hereto.



EXHIBIT 1

The Jamaica Bay Manufactured Home Community located at 15235 South Tamiami Trail, Fort Myers, Florida 33908 (the "Community"), is comprised of 1417 manufactured homes/homesites, as well as two clubhouses, two swimming pools and two fitness centers, all receiving wastewater service. The boundaries of the Community are located within Lee County, Florida and more fully described in Exhibit A attached hereto.

Exhibit "B"

DEP Permit

PART II - PROJECT DOCUMENTATION

(1) Collection/Transmission System Permittee

Name Mike Nopywoda Title Construction Manager
 Company Name Jamaica Bay West Associates, Ltd.
 Address 15235 South Tamiami Trail
 City Fort Myers State Fla. Zip 33908
 Telephone (407)257-5680 Fax (407)363-3522 Email mike@uniprop.com

(2) General Project Information

Project Name Jamaica Bay Force Main Extension to Forest Utilities
 Location: County Lee City Fort Myers Section 36 Township 45S Range 24E
 Project Description and Purpose (including pipe length, range of pipe diameter, total number of manholes, and total number of pump stations) Construction of 4350+- lin. ft. of 8" and 350+- of 4" PVC or HDPE force main from the existing Jamaica Bay WWTF site to a connection point with the Forest Utilities Wastewater Collection system. This force main is to be constructed as a dry line, until Forest Utilities constructs the required facilities for connecting.
 Estimated date for: Start of construction June 2006 Completion of construction September 2006
 Connections to existing system or treatment plant No additional connections are included as a part of this permit.

(3) Project Capacity

A = Type of Unit	B = Number of Units	C = Population Per Unit	D = Total Population (Columns B x C)	E = Per Capita Flow	F = Total Average Daily Flow (Columns D x E)	G = Peak hour flow
Single-Family Home						
Mobile Home	1417	1.9	2692	100	269,200	39,034
Apartment						
Commercial, Institutional, or Industrial Facility*						
Total			2692		269,200	39,034

* Description of commercial, institutional, and industrial facilities and explanation of method used to estimate per capita flow for these facilities: Per capita flow based on actual historical flows received at the existing Jamaica Bay WWTF. Peak hour was calculated using the "Recommended Standards for Wastewater Facilities", Figure 1, Ratio of Peak Hourly Flow to Design Average Flow. (Note): The above numbers reflect flows following the connection to the Forest Utilities system. Since a dry line is proposed, project flows will be zero until connection is completed.

(4) Pump Station Data (attached additional sheets as necessary)

Location	Type	Estimated Flow to the Station (GPD)			Operating Conditions (GPM @ FT (TDH))
		Maximum	Average	Minimum	

(5) Collection/Transmission System Design Information

A. This information must be completed for all projects by the applicant's professional engineer, and if applicable, those professional engineers in other disciplines who assisted with the design of the project.

If this project has been designed to comply with the standards and criteria listed below, the engineer shall initial in ink before the standards or criteria. If any of the standards or criteria do not apply to this project or if this project has not been designed to comply with the standards or criteria, mark "X" before the appropriate standard or criteria and provide an explanation, including any applicable rule references, in (5)B. below.

Note, if the project has not been designed in accordance with the standards and criteria set forth in Rules 62-604.400(1) and (2), F.A.C., an application for an individual permit shall be submitted. However, if Rules 62-604.400(1) and (2), F.A.C., specifically allow for another alternative that will result in an equivalent level of reliability and public health protection, the project can be constructed using the general permit.



Composite Exhibit "C"

Forest a Utility Facilities Bill of Sale and Utility Easement

Prepared by and Return to:
Kimberly Davis Bocelli, Esq.
Roetzel & Andress
2320 First Street, Suite 1000
Fort Myers, FL 33901

UTILITY FACILITIES BILL OF SALE

THIS INDENTURE AND BILL OF SALE, made this _____ day of _____, 201____, between GRANTOR, JAMAICA BAY WEST ASSOCIATES LIMITED PARTNERSHIP, a Florida limited partnership, whose address is Daines Street, Suite 300, Birmingham, MI 48009, and GRANTEE, FOREST UTILITIES, INC., a Florida Profit Corporation, whose address is 6000 Forest Blvd., Fort Myers, FL 33908.

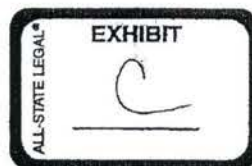
(Whenever used herein, the terms "Grantor" and "Grantee" include all the parties to this instrument and the heirs, legal representatives, and assigns of individuals, and the successors and assigns of corporations, trusts and trustees.)

WITNESSETH, that the Grantor, for and in consideration of the sum of Ten and 00/100 Dollars (\$10.00), and other good and valuable consideration, to Grantor in hand paid by Grantee, the receipt whereof is hereby acknowledged hereby delivers, grants, bargains, sells and transfers to the said Grantee and Grantee's heirs and assigns forever, all sewer utility facilities including all onsite sewer lines, services, service laterals (typically measuring 6" in diameter), meters, pumps, mains, lift stations, all trade fixtures, leasehold improvements, licenses, generators, controls, tanks, distribution, collection or transmission pipes or facilities, valves, service connections, and all other physical facilities, appurtenances and property installations used in the operation of JBW's System as that term is defined in the Supplement to Settlement Agreement dated July 11, 2013, and third party warranties that relate to completed or in progress construction (collectively, "Utility Facilities"), together with appurtenant easement rights for the operation, installation and maintenance of said Utility Facilities, situate, lying and being within the following described land:

See Exhibit "A" attached hereto and made a part hereof;

The Grantor does hereby covenant to the Grantee that Grantor is the lawful owner of the Utility Facilities; that they are free from all encumbrances; that Grantor has lawful authority to convey such Utility Facilities; and that Grantor does fully warrant the title to said Utility Facilities, and will defend the same against lawful claims of all persons whomsoever. For the purposes of this conveyance, the Utility Facilities conveyed herein shall not be deemed to convey any of the lands described herein.

7393770_1



In Witness Whereof, the Grantor has caused these presents to be executed the day and year first above written.

Signed, sealed and delivered in the presence of:

JAMAICA BAY WEST ASSOCIATES LIMITED PARTNERSHIP, a Florida limited partnership

WITNESSES:

Print Name: _____

By: _____
Roger Zlotoff, as President
Address: Daines Street, Suite 300, Birmingham, MI 48009

Print Name: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20__ by Roger Zlotoff, as President of JAMAICA BAY WEST ASSOCIATES LIMITED PARTNERSHIP, a Florida limited partnership, and who is personally known to me or who has produced _____ as identification.

(Affix Seal)

Notary Public
Printed Name: _____
My Commission Expires _____

Prepared by and return to:
Kimberly Davis Bocelli, Esq.
Roetzel & Andress
2320 First Street, Suite 1000
Fort Myers, FL 33901

Property Appraiser's Strap No. :

GRANT OF UTILITY EASEMENT

It is hereby agreed that JAMAICA BAY WEST ASSOCIATES LIMITED PARTNERSHIP, a Florida limited partnership, hereinafter referred to as the "Grantor", in consideration of Ten and 00/100 Dollars (\$10.00) and other good and valuable considerations, the receipt and sufficiency of which is hereby acknowledged, does hereby grant, sell, transfer, convey and deliver unto FOREST UTILITIES, INC., a Florida profit corporation, whose address is 6000 Forest Blvd., Fort Myers, FL 33908, hereinafter referred to as the "Grantee", and to its successors and assigns, a perpetual, non-exclusive easement and right-of-way upon, over, across and below the surface of the following described lands (the "Premises") of the Grantor, situated in Lee County, Florida, more particularly described as follows:

See Exhibit "A" attached hereto and made a part hereof;

for the purposes of construction, operation, maintenance, improving or replacing of one or more sewer and/or utility transmission or distribution lines, and all normal appurtenances thereto, including the necessary rights of ingress and egress for the purposes of providing sewer and/or utility services, provided that such rights of ingress and egress shall be exercised in a reasonable manner in accordance with the standard practices in the industry and in a manner which minimizes intrusion upon and use of the Premises for Grantor's purposes, together with the right and privilege to inspect, alter, remove or relocate such lines, facilities and appurtenances thereto within the easement herein granted, with all rights and privileges necessary or convenient for the full use and enjoyment thereof for the above-stated purposes.

The Grantor reserves the right and privilege to use the Premises for other purposes, except as could interfere with the Grantee's use, occupation or enjoyment thereof. Grantor shall not use the Premises or make improvements to the Premises that could interfere with Grantee's right to use the Premises. Improvements deemed to interfere shall include, without limitation, any buildings, walls, enclosures, pools, fountains, footers, underground structures, trenches, pits, columns, piers, anchor bolts, pilings, crossarms, foundations, slabs, underground tanks or basins. Grantor shall provide advance written notice to and shall obtain written consent from Grantee for any improvements to the Premises that may interfere with Grantee's right to use the Premises, including but not limited to landscaping. Notwithstanding Grantee's consent, Grantor hereby releases and holds Grantee harmless from any and all costs of repairs, restoration or replacement to Grantor's facilities, property or improvements that are disturbed by Grantee due to interference with Grantee's use hereunder.

Grantee shall not unreasonably interfere at any time with the rights of Grantor, its successors and assigns, or any other party requiring access to any of the property over which said easement is granted.

This Grant of Utility Easement shall run with the Premises, and shall be binding upon the successors and assigns of Grantor, and all purchasers of the Premises, and persons or entities acquiring right, title or interest in the Premises, by, through or under Grantor.

Executed this _____ day of _____, 20 _____.

Signed, sealed and delivered in the presence of:

JAMAICA BAY WEST ASSOCIATES LIMITED PARTNERSHIP, a Florida limited partnership

WITNESSES:

Print Name: _____

By: _____
Roger Zlotoff, as President

Print Name: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20____ by Roger Zlotoff, as President of JAMAICA BAY WEST ASSOCIATES LIMITED PARTNERSHIP, a Florida limited partnership, and who is personally known to me or who has produced _____ as identification.

(Affix Seal)

Notary Public
Printed Name: _____
My Commission Expires: _____

Exhibit "D"

Forest's Sewer Tariff, Sheet Number 16.0, General and Multi-Family Service (Master Metered)
Rate Schedule GS

FOREST UTILITIES, INC.
WASTEWATER TARIFF

TWENTY FIRST REVISED SHEET NO. 16.0
CANCELS TWENTIETH REVISED SHEET NO. 16.0

GENERAL AND MULTI-FAMILY SERVICE (Master Metered)
RATE SCHEDULE GS

AVAILABILITY - Available throughout the area served by the company.

APPLICABILITY - To any customer for which no other schedule applies.

LIMITATIONS - Subject to all of the Rules and Regulations of this tariff and General Rules and Regulations of the Commission.

RATE Monthly

<u>Meter Size</u>	<u>Base Facility Charge</u>
5/8" x 3/4"	\$ 15.36
3/4"	23.07
1"	38.44
1 1/2"	76.88
2"	123.00
3" Compound	245.75
3" Turbine	268.78
4" Compound	383.98
4" Turbine	460.77
6" Compound	767.96
6" Turbine	959.95
8" Compound	1,228.73
8" Turbine	1,382.32
10" Compound	1,766.30
10" Turbine	2,227.07

Gallage Charge
per 1,000 Gallons \$ 4.23

TERMS OF PAYMENT - Bills are due and payable when rendered and become delinquent if not paid within twenty (20) days. After five (5) working days written notice is mailed to the customer, separate and apart from any other bill, service may then be discontinued.

EFFECTIVE DATE: August 13, 2011

David W. Swor
ISSUING OFFICER

TYPE OF FILING: 2011 Index

President
TITLE

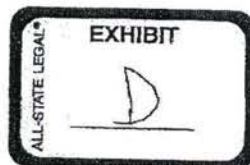


Exhibit "E"

Transcript of Settlement Agreement dated July 9, 2013

IN THE CIRCUIT COURT OF THE TWENTIETH JUDICIAL
CIRCUIT IN AND FOR LEE COUNTY, FLORIDA

JAMAICA BAY WEST
ASSOCIATES, LIMITED
PARTNERSHIP, a Florida
limited partnership,

CASE NO. 09-CA-005087

Plaintiff,

vs.

SOURCE, INC., and FOREST
UTILITIES, INC.,

Defendants.

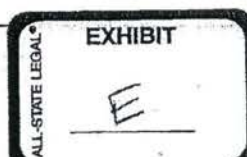
TRANSCRIPT OF PROCEEDINGS

(Settlement Agreement)

Before the Honorable Keith Kyle, Circuit Judge, at
the hearing of the above-styled action in the Lee County
Justice Center, Fort Myers, Florida on July 9, 2013.

VON AHN ASSOCIATES, INC.
Registered Professional Reporters
2271 McGregor Boulevard, Second Floor
Fort Myers, Florida 33901
Phone: (239) 332-7443 FAX: 239332-4066

Fort Myers • Naples • South Fort Myers • Punta Gorda



APPEARANCES:

For the Plaintiff:

ROETZEL & ANDRESS, LPA
2320 First Street, Suite 1000
Fort Myers, Florida 33901

By: Clayton W. Crevasse, Esquire
Kim Davis Bocelli, Esquire

For Defendant Forest Utilities:

ROSE, SUNDSTROM & BENTLEY
2548 Blairstone Pines Drive
Tallahassee, Florida 32301

By: John L. Wharton, Esquire
Kyle L. Kemper, Esquire

- - - - -

1 MR. CREVASSE: Okay. We're going on the
2 record to announce a settlement in the Jamaica Bay
3 versus Forest lawsuit.

4 The terms of the agreement are that Forest
5 Utilities shall permit, design through its
6 engineer, and complete upgrades, improvements and
7 other work to the entire wastewater system
8 connecting Jamaica Bay to the Forest in order to
9 bring that system up to meeting the specifications
10 of the original DEP permit in this matter, which
11 had a project capacity of 1417 units, population of
12 1.9 persons per unit, a total population of 2692
13 individuals per capita flow of 100 gallons per day,
14 total average daily flows of 269,200 gallons per
15 day and a peak hourly flow of 39,034 gallons per
16 day for 650 gallons per minute.

17 MR. WHARTON: Let's go off the record for a
18 second.

19 (Discussion off record.)

20 MR. CREVASSE: Go back on.

21 The intention of this agreement is to bring
22 the Jamaica Bay system and the Forest system at the
23 point of connection to be able to accept the
24 specifications that we just read into the record
25 from the DEP permit.

1 MR. MOSER: Yeah.

2 MR. CREVASSE: All right. Forest shall be
3 responsible for obtaining all the regulatory
4 approvals and permits for that work and for paying
5 for it.

6 The responsibility of Jamaica Bay is to issue
7 a payment of \$118,482.11 within 15 days of the date
8 of the agreement between the parties.

9 Jamaica Bay shall pay an additional sum of
10 \$250,000 upon commencement of construction of the
11 project we just discussed on the record.

12 Jamaica Bay shall pay a final payment of
13 \$750,000 to Forest Utilities upon completion of the
14 work specified earlier in this agreement and upon
15 verification by the engineering firm,
16 Pigeon-Roberts and Associates, that the system will
17 field test to meet the specifications just read
18 into the record from the DEP permit.

19 Upon completion of those items, then Jamaica
20 Bay shall connect to the Forest Utilities within
21 seven days.

22 Forest Utilities and Jamaica Bay shall enter
23 into or extend an option agreement which allows the
24 Forest Utilities to take over the collection and
25 conveyance system currently located on Jamaica

1 Bay's property, and this shall be completed after
2 the 18-month period for completion of the other
3 work is accomplished. In other words, we're going
4 to enter into an option agreement that will be
5 closed upon after completion of the work.

6 MR. WHARTON: Which may be within the
7 18 months.

8 MR. CREVASSE: Which may be --

9 MR. WHARTON: But yes.

10 MR. CREVASSE: -- no later than 18 months.

11 MR. WHARTON: Once the condition precedent of
12 meeting the permit conditions is put into place, we
13 will proceed to a closing. We'll exercise the
14 option to proceed to a closing.

15 MR. CREVASSE: All right.

16 The parties agree not to oppose any efforts by
17 either party to either obtain PSE approvals, to
18 obtain DEP permits for the work that's being
19 performed or to oppose any continued connection by
20 Jamaica Bay with Lee County Utilities.

21 MR. WHARTON: Let's go off the record for a
22 second.

23 (Discussion off record.)

24 MR. WHARTON: Jamaica Bay agrees not to oppose
25 Forest's request with the Florida Public Service

1 Commission to reclassify Jamaica Bay under the
2 multi-family rate in Forest's tariff.

3 MR. CREVASSE: Provided that the parties agree
4 that the rate charged to Jamaica Bay will be no
5 greater than -- or will be less than or no greater
6 than the current rate charged by Lee County
7 Utilities.

8 MR. WHARTON: For retail, for similar retail
9 customers.

10 MR. CREVASSE: Hold on. She can't get eight
11 people talking at once.

12 What is it you're trying to say?

13 MR. WHARTON: For Lee County's multi-family
14 rate.

15 MR. CREVASSE: Okay. The rate we referenced
16 was Lee County's multi-family rate.

17 MS. BOCELLI: Is it the current rate or the
18 prevailing rate, but it's not today's rate, but
19 it's the rate at any time?

20 MR. CREVASSE: At the prevailing rate.

21 MR. WHARTON: Yeah.

22 MR. CREVASSE: If the work contemplated by
23 this settlement agreement, that is the improvements
24 and upgrades to the wastewater transmission system
25 in order to meet the conditions in the DEP permit,

1 is not completed within 18 months or we do not
2 receive verification from Pigeon-Roberts and
3 Associates, the engineering firm, that the upgrades
4 and improvements meet the conditions of the DEP
5 permit in field tests, and this is not accomplished
6 within 18 months from the date of the agreement,
7 then the Bulk Service Agreement between the parties
8 that's currently in existence is canceled and
9 rescinded and each party is free from any further
10 obligations under that agreement.

11 MR. ZLOTOFF: Or the option --

12 MR. CREVASSE: Or the option agreement that
13 was previously entered into.

14 MR. WHARTON: Go off the record for a second.
15 (Discussion off record.)

16 MR. CREVASSE: The engineering firm of
17 Pigeon-Roberts shall provide both parties a written
18 report verifying what its field tests show with
19 respect to compliance with the applicable DEP
20 standard within 18 months of the date of this
21 agreement verifying that it meets all the
22 specifications in the permit.

23 Then I guess the last provision is that the
24 parties stipulate and agree to dismiss all claims
25 raised by each other in this lawsuit with prejudice

1 with each party bearing its own attorney's fees and
2 costs.

3 (Discussion off record.)

4 MR. CREVASSE: Forest Utilities agrees not to
5 oppose any continued temporary emergency extensions
6 of wastewater service by Jamaica Bay with Lee
7 County Utilities.

8 (Discussion off record.)

9 MR. CREVASSE: And one final provision, that
10 in the event the work is not completed and
11 certified by the engineer within 18 months as
12 provided for in this agreement, that Jamaica Bay
13 will apply to Lee County for a permanent connection
14 for wastewater service to Lee County and Forest
15 will not oppose that.

16 MR. ZLOTOFF: And can we -- I think you said
17 it, but --

18 MR. CREVASSE: Let's go off the record.

19 (Discussion off record.)

20 MR. CREVASSE: All right. So the last
21 provision is that Jamaica Bay will continue to send
22 its wastewater flows to Lee County and will not
23 reconnect to the Forest Utilities until such time
24 as all the upgrades and improvements to the system
25 are completed within the 18-month time period and

1 certified by Pigeon-Roberts and Associates as
2 having met the permit.

3 (Discussion off record.)

4 MR. CREVASSE: One last provision, if the
5 engineering firm of Pigeon-Roberts and Associates
6 is out of business or unavailable for whatever
7 reason, the parties will meet promptly to agree to
8 another independent engineer to certify and field
9 test the work.

10 MR. WHARTON: Yes.

11 MR. CREVASSE: Anything else?

12 (Discussion off record.)

13 MR. CREVASSE: Both parties agree to cooperate
14 in good faith with each other in the filing and
15 processing of any applications that are needed in
16 order to effectuate the agreement.

17 (Discussion off record.)

18 (Judge Kyle arrived at 11:29 a.m.)

19 THE COURT: We'll go ahead and go back on
20 record.

21 I understand you all did reach a resolution?

22 MR. CREVASSE: That's correct, Your Honor.

23 MR. WHARTON: Yes, sir.

24 MR. CREVASSE: Surprisingly so, but, yes, we
25 did.

1 THE COURT: I'm surprised as well and I'm glad
2 you've made efficient use of your time, and I, as I
3 indicated, try to do that in every case because it
4 is preferable for you all to try to reach a
5 decision that you both can live with as opposed to
6 having someone impose their will or their findings
7 on you, so I congratulate both of you gentlemen on
8 behalf of your respective entities in working
9 something out.

10 Having said that, I'm not going to ask that
11 you elicit all the terms and conditions, but I
12 would like to ask both of you gentlemen to raise
13 your right hands so I can just confirm that you did
14 hear all the terms and conditions and that, in
15 fact, is your agreement. All right.

16 Do you solemnly swear or affirm the testimony
17 you're about to give today is the truth, the whole
18 truth and nothing but the truth?

19 MR. MOSER: I do.

20 MR. ZLOTOFF: Yes.

21 THE COURT: All right. And, sir, would you
22 state your name again for the record, please?

23 MR. ZLOTOFF: Roger Zlotoff.

24 THE COURT: And, sir, your name, please?

25 MR. MOSER: Wade Moser.

1 THE COURT: Mr. Crevasse, did you want to ask
2 your client some questions concerning having heard
3 all the terms and conditions?

4 MR. CREVASSE: Yes, Your Honor.

5 Mr. Zlotoff, were you present when we read
6 into the record the terms and conditions of the
7 settlement agreement between Jamaica Bay and Forest
8 Utilities?

9 MR. ZLOTOFF: Yes.

10 MR. CREVASSE: Did you understand all of those
11 terms and conditions after we had discussed them
12 this morning?

13 MR. ZLOTOFF: I did, yes.

14 MR. CREVASSE: And do you agree to all those
15 terms and conditions as a settlement of this
16 lawsuit in this case?

17 MR. ZLOTOFF: Yes.

18 MR. CREVASSE: And do you understand that this
19 lawsuit is going to be ultimately dismissed and all
20 claims herein released pursuant to the terms of
21 that settlement?

22 MR. ZLOTOFF: Yes, I understand.

23 THE COURT: And you have full settlement
24 authority, and apparent, an agency authority on
25 behalf of Jamaica Bay?

1 MR. ZLOTOFF: I do, Your Honor.

2 THE COURT: What relationship do you have
3 relative to them? Are you their president or CEO?

4 MR. ZLOTOFF: Yes.

5 THE COURT: Okay.

6 MR. WHARTON: Mr. Moser, do you possess the
7 authority to enter into the settlement which we've
8 been discussing here this morning?

9 MR. MOSER: Yes, I do.

10 MR. WHARTON: All right. And have you heard
11 the terms and conditions of the settlement that
12 Mr. Crevasse has caused to be read into the record?

13 MR. MOSER: Yes, I have.

14 MR. WHARTON: And is that consistent with the
15 agreement that the parties reached earlier?

16 MR. MOSER: Yes, it is.

17 MR. WHARTON: Do you agree with those terms
18 and conditions on behalf of Forest?

19 MR. MOSER: I do.

20 MR. WHARTON: Do you understand that the
21 implementation of this settlement and its reduction
22 to a settlement agreement this afternoon will
23 result in a dismissal of Forest's claims and
24 dismissal of this lawsuit?

25 MR. MOSER: Yes, I do.

1 MR. CREVASSE: I would just like to add one
2 thing. I'd like to identify for the record also
3 that David Swor, the president of Forest Utilities,
4 is present in the courtroom and was here when this
5 settlement agreement was announced and is familiar
6 with its terms.

7 THE COURT: Very well.

8 Anything further, gentlemen?

9 All right. Based upon the discussion of
10 record and the sworn testimony that was just
11 elicited, I'll go ahead and approve the settlement
12 agreement subject to the terms and conditions that
13 you recited on the record, and we'll go ahead and
14 stand in recess.

15 All right. Thank you. Have a great day.

16 MR. CREVASSE: Thank you, Your Honor.

17 MR. WHARTON: Thank you, Your Honor.

18 MR. CREVASSE: Thank you for your time.

19 THE COURT: My time is yours. You're quite
20 welcome.

21 (Settlement concluded at 11:33 a.m.)
22
23
24
25

STATE OF FLORIDA)

COUNTY OF LEE)

I, Jackie D. Burrell, Registered Professional Reporter, and Notary Public in and for the State of Florida at Large, do hereby certify that the proceedings were had in the cause styled in the caption hereto on Page 1 hereof; that I was authorized to and did attend said proceedings and report the proceedings had therein fully and accurately in shorthand, and that the foregoing typewritten pages number 1 through 13, inclusive, constitute a transcript of my shorthand report of the proceedings taken at said time.

IN WITNESS WHEREOF, I have hereunto set my hand this July 9, 2013.

(This transcript has been digitally signed.)

Jackie D. Burrell

Jackie D. Burrell, RPR
Notary Public - State of Florida
My Commission Expires 1/8/2013
Commission Number DD 369850