

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29
30
31
32
33
34
35
36
37
38
39
40
41
42
43
44
45

CITY OF BONITA SPRINGS, FLORIDA

ORDINANCE NO. 21 - 13

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF BONITA SPRINGS, FLORIDA, APPROVING THE PETITION OF BONITA SPRINGS UTILITIES, INC., EXTENDING THE TERM OF THE FRANCHISE IN BONITA SPRINGS ORDINANCE NO. 02-14; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, Bonita Springs Utilities, Inc. (“BSU”) provides water and wastewater service within and outside the City of Bonita Springs pursuant to that certain Franchise Agreement By, Between And Among Bonita Springs Utilities, Inc., The City of Bonita Springs, Florida, and Lee County, Florida (“Franchise”);

WHEREAS, on October 27, 2021 BSU filed its Petition to Extend Franchise Term (“Petition”) with the City (on file with the City Clerk and incorporated herein) to extend by the term of the Franchise, which Petition was reviewed by the City Council at its regular meeting of December 1, 2021; and,

WHEREAS, a public hearing was held on December 15, 2021 in the City Council Chambers, Bonita Springs, Florida, at which time BSU presented evidence and testimony in support of its Petition, and all interested parties were permitted to address the Bonita Springs City Council and to make a statement of record, and the Council, after being fully advised in the premises, makes the following determinations:

NOW THEREFORE, BE IT ENACTED BY THE CITY COUNCIL OF THE CITY OF BONITA SPRINGS, FLORIDA, THAT:

Section 1. Recitals.

Each and all of the foregoing recitals are hereby incorporated into this Ordinance as if specifically set forth herein.

Section 2. Franchise Extended.

The City and BSU, in accordance with Section Four (c) of Bonita Springs Ordinance No. 02-14, as amended, hereby extend the Franchise Agreement for a new total term of thirty (30) years, which will start on May 4, 2022. The new five year anniversary of the franchise will run from Thursday, May 4, 2022 to Wednesday, May 4, 2027, for a total term of thirty (30) years, to Friday, May 4, 2052.

46
47
48
49
50
51
52
53
54
55
56
57
58
59
60
61
62
63
64
65
66
67
68
69
70
71
72
73
74
75
76
77
78
79
80
81
82
83
84
85

Section 3. Additional Authorizations.

The Mayor and staff are authorized to sign the Agreement Extending the petition, attached hereto.

Section 4. Effective Date.

This ordinance shall take effect immediately upon adoption.


PASSED on first reading this 1 day of December 2021.

PASSED AND ADOPTED BY THE CITY COUNCIL of the City of Bonita Springs, Florida this 15 day of Dec, 2021.

Attest:

By: _____
City Clerk

CITY OF BONITA SPRINGS, FLORIDA
By: 
Mayor

Reviewed for legal sufficiency:
By: 
City Attorney

Vote:
Carr Aye Gibson Aye
Purdon Aye Quaremba Aye
Forbes Aye Steinmeyer Aye
Corrie Aye

Date filed with City Clerk: 12/15/2021

**BONITA SPRINGS UTILITIES, INC.
NOTICE OF INTENT TO RENEW
FRANCHISE**

Bonita Springs Utilities, Inc., a not-for-profit Florida Corporation, by and through its undersigned attorneys, files this Notice of Intent to Renew Franchise and in support thereof states:

1. Pursuant to that certain Franchise Agreement by, between and among Bonita Springs Utilities, Inc. ("Company"), the City of Bonita Springs ("City"), and Lee County, Florida ("County") dated October 2, 2002 and enacted as City of Bonita Springs Ordinance No. 02-14 ("Franchise"), the City and County granted the Company a franchise as the exclusive provider of water and wastewater service within the City and certain unincorporated areas in Southwest Lee County.

2. Section Four of the Franchise states in relevant part:

(A) At the end of each fifth year anniversary hereof, this Franchise Agreement shall automatically be renewed for an additional five year term, (for a total term of thirty [30] years) under the same terms and conditions as set forth herein, provided that at least six (6) months prior to the extension of each such five year period Utility shall notify City and County of its intent to renew for an additional five year term.

3. The Franchise was extended on August 17, 2004, August 1, 2007, May 4, 2012, and again on May 4, 2017, pursuant to City Ordinance No. 16-21, in each case for a period of thirty years.

4. The next fifth anniversary of the Franchise is May 4, 2022, and this Notice is being filed at least six months prior to that anniversary pursuant to Section Four (A) to renew the Franchise for a full thirty year term.

5. It is common in the utility industry to finance long term utility assets for thirty years. A full thirty year franchise term facilitates the issuance of tax-exempt bonds for system capital improvements. If the franchise term is reduced, the bond repayment term is shorter, causing the payments to increase. Increased debt payments result in increased rates to cover such payments.

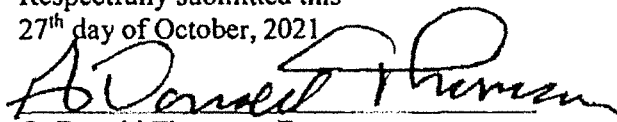
6. The Company is required to make annual financial disclosures with detailed information regarding the Company's finances and operations, including the term of the Franchise. The Franchise term may affect the Company's credit rating which, in turn, affects its cost of borrowing.

BSC-21-12-271

7. Franchise renewal will preserve the ability to finance special service charges over an affordable term for member-customers who are unable to pay in full for such projects. In the past, the Company has used a term of 25 years. However, if the term of the Franchise is less than 25 years, the Company will be limited to financing such charges over the remaining term of the Franchise.

WHEREFORE, the Company requests that the City Council and County Commission set public hearings and take such action as may be required by law to renew the Franchise, and execute the Agreement Extending Franchise attached hereto as Exhibit "A."

Respectfully submitted this
27th day of October, 2021

A handwritten signature in black ink, appearing to read "G. Donald Thomson". The signature is written in a cursive style and is positioned above the printed name.

G. Donald Thomson, Esq.

Henderson, Franklin, Starnes & Holt, P.A.

3451 Bonita Bay Boulevard, Suite 206

Bonita Springs, Florida 34134

(239) 344-1100

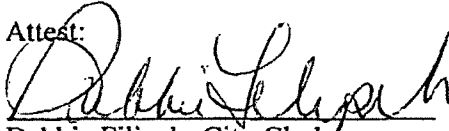
(239) 344-1514 (facsimile)

donald.thomson@henlaw.com

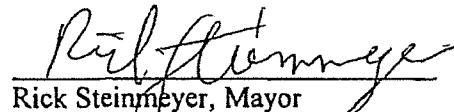
EXHIBIT A
Agreement Extending Franchise

By signing below, each of the parties to this Agreement acknowledge and agree that, pursuant to Section Four of the Franchise Agreement By, Between and Among Bonita Springs Utilities, Inc., the City of Bonita Springs, Florida, and Lee County, Florida, created pursuant to City of Bonita Springs Ordinance No. 02-14 and Lee County Resolution No. 02-12-11 ("Franchise"), the Franchise is hereby extended to a total term of thirty (30) years from May 4, 2022. In all other respects, the Franchise shall remain unchanged and in full force and effect. If the City or County does not adopt an ordinance or resolution approving the extension, this Agreement shall become null and void.


Attest:


Debbie Filipek, City Clerk

CITY OF BONITA SPRINGS, FLORIDA


Rick Steinmeyer, Mayor

APPROVED AS TO FORM:


Derek P. Rooney, City Attorney

Attest:

Deputy Clerk

LEE COUNTY, FLORIDA

Kevin Ruane, Chairman

APPROVED AS TO FORM:

Richard Wesch, County Attorney

Attest:

Paul Attwood, Secretary

BONITA SPRINGS UTILITIES, INC.

Brian Farrar, President