

Evergreen Water Company

248 EVERGREEN TERRACE RD

St. Maries, Id. 83861

208-245-2448

RECEIVED

2012 MAY -7 AM 8:44

IDAHO PUBLIC
UTILITIES COMMISSION

5/4/2012

EVG-W-12-01

Idaho Public Utilities Commission


P O Box 83720

Boise, Id. 83720-0074

Attn: Joe Terry

Dear Mr. Terry,

Enclosed are copies of the transfer agreement, Quit claim deed and loan document from DEQ. If you need any more info to complete the closing of Evergreen Water's account please contact me.



Arlo Slack
Manager

IDAHO DEPARTMENT OF ENVIRONMENTAL QUALITY DRINKING WATER
LOAN OFFER AGREEMENT AMENDMENT

Amendment No. 1 to the Loan Offer Agreement (Agreement), Project Number DW1201 between the Idaho Department of Environmental Quality (DEQ) and Evergreen Terrace Water Association.

TO BE ATTACHED AND MADE PART OF the above referenced Agreement.

THE DEQ AND THE EVERGREEN TERRACE WATER ASSOCIATION AGREE TO AMEND THE AGREEMENT AS FOLLOWS:

1. Section II.C., Terms: Change to read: \$448,000 at 0.0% to be repaid in biannual installments over 30 years, with \$46,475 of principal forgiveness (for a total principal repayment of \$401,525.)
2. Section II.E., Estimated Project Budget (replace the existing schedule with the following):

	Original Project Costs	Amendment 1 Increase	Total Project Costs
a. Transmission & Distribution	\$57,300	\$8,821	\$66,121
b. Storage	\$65,400	\$10,068	\$75,468
c. Source Development	\$177,600	\$27,340	\$204,940
d. Engineering Fees	\$69,480	\$2,250	\$71,730
e. Planning	\$11,000	\$1,285	\$12,285
f. Debt Retirement	\$15,220	\$236	\$15,456
g. Legal	\$0	\$2,000	\$2,000
Total	\$396,000	\$52,000	\$448,000

Dated this 11 day of April 2012.


Curt A. Fransen

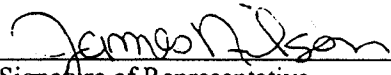
Director

Department of Environmental Quality

This Amendment shall become effective upon acceptance by the Evergreen Terrace Water Association and must be accepted, if at all, on or before 60 days from the date of this DEQ amended loan offer. If the Evergreen Terrace Water Association finds the Amendment acceptable, it shall sign the document and return it to DEQ.

ALL OTHER CONDITIONS AND TERMS IN THE ORIGINAL AGREEMENT REMAIN THE SAME.

Evergreen Terrace Water Association


Signature of Representative

4/25/12
Date

James Nilson President
Name and Title of Representative

WATER SYSTEM TRANSFER AGREEMENT

THIS AGREEMENT made this the 4th day of April, 2012, between **EVERGREEN WATER COMPANY, INC.**, an Idaho corporation, hereinafter referred to as "Evergreen Water", whose address for notice is 248 Evergreen Terrace Road, St. Maries, Idaho 83861 and **EVERGREEN TERRACE WATER ASSOCIATION, INC.**, an Idaho non-profit corporation, hereinafter referred to as the "Association", whose address for notice is 248 Evergreen Terrace Rd., St. Maries, Idaho 83861.

WITNESSETH:

WHEREAS, Evergreen Water is the owner and operator of a private water system and related real property (the "Real Property") located in St. Maries, Idaho, which was initially established to serve the Evergreen Terrace development but which has been expanded to provide service to consumers outside the development; and

WHEREAS, the aforementioned water system is in need of repairs and contamination remediation which require significant funds; and

WHEREAS, funds are generally made available through grants and governmental subsidies to aid the maintenance and remediation of cooperatively or member owned water systems; and

WHEREAS, the Association is a not for profit corporation owned and operated by the consumers who receive water from the system heretofore operated by Evergreen Water; and

WHEREAS, Evergreen Water desires to transfer the water system, together with all of its necessary components and rights as more particularly described below, to the Association and the Association desires to take delivery of and acquire said water system, as defined below, and to own, operate and maintain said system from and after the effective date of this transfer.

NOW, THEREFORE, in consideration of the mutual promises contained herein, it is agreed as follows:

1. *Transfer.* Evergreen Water agrees to transfer to the Association all its right, title and interest in and to the community water system originally constructed to serve the development commonly known as Evergreen Terrace in St. Maries, Idaho, as the same has been expanded, including any water rights, franchise rights, operating permits or registrations held by Evergreen Water together with all necessary easements, rights, equipment, documentation and installations appurtenant thereto, including but not by way of limitation, the water mains, the valves, the hydrants, the water storage facilities, the water meters, the service lines between the mains and the water meters and operation and maintenance manuals and all Real Property, all of which are collectively referred to herein as the "System". The System shall be transferred by bill of sale and the Real Property which makes up a part thereof, by quit-claim deed.

2. *Consideration for Transfer.* The Association shall pay over and remit to Evergreen Water such sums as necessary to reimburse Evergreen Water for all costs incurred in consummating and concluding the transfer contemplated by this agreement, together with the sum of \$ 1.00, payable as follows: Cash. Further, the Association hereby assumes any and all outstanding obligations to remediate any current defects or contaminations found upon any prior or future inspections of the System.

3. *Conditions to Transfer.* The transfer embodied by this Agreement shall be contingent upon Evergreen Water providing such notices as are required by applicable regulation to the Idaho Department of Environmental Quality and the Idaho Public Utilities Commission. Upon such notice, should any regulatory agency require approval of the transfer contemplated hereby for any reason, the Association shall cooperate by providing any and all information required for the transfer herein contemplated to gain such approval. Further, this transfer shall be contingent upon Evergreen Water being able to carve out and retain (and/or) transfer to an appropriate original owner (or heir thereof) any real property which is not essential to the operation of the balance of the System, which may be owned by it.

4. *Inspections.* The Association acknowledges that it has had an opportunity to inspect the System. The Association acknowledges that it has had an opportunity to test equipment and to test water quality and quantity. Evergreen Water shall allow the Association continuing access to conduct such further tests and inspections as may be necessary or required prior to the closing and transfer of title to the System. The parties acknowledge that the sole purpose of further testing after the Effective Date hereof is to allow the Association to be completely familiar with any condition and the use of the operating equipment or components of the System, so as to be fully prepared to assume its obligations upon the transfer of title to the System. The Association may not use the results of inspections or testing to renegotiate the terms of this Agreement.

5. *Repairs.* Evergreen Water shall maintain the System in its current, functioning state until the transfer of title to the System. Upon transfer of title to the System, the Association shall be responsible for all repairs, maintenance and remediation with respect to the System, whether presently known or hereafter discovered.

6. *Notice to Customers.* When the conditions contained in Paragraph 3 above, have been satisfied, Evergreen Water shall send a notice to all consumers receiving water from and through the System, as follows:

- (a) notifying them of the imminent transfer of the System to the Association and the expected effective date thereof; and
- (b) providing a telephone number and address to use in order to obtain further information.

7. *Billings.*

7.1 Final Customer Bills. Evergreen Water shall do a final reading of all water meters. Evergreen Water shall prepare and send a final water bill to each customer. Evergreen Water shall be entitled to collect all revenues generated from said final reading.

7.2 Past Billing Records. Evergreen Water shall be entitled to retain all past billing records. Evergreen Water shall provide the Association reasonable access to such historical billing data upon request.

8. *Closing.* The closing and transfer of title shall take place within thirty (30) days after the satisfaction of the conditions contained in Paragraph 3 above. The parties shall set a mutually convenient date, time and place for the closing upon satisfaction of the aforementioned conditions.

9. *Adjustments.* The parties shall make adjustments for real property and school taxes levied against any property which make up the System as of the date of closing and transfer of title.

10. *Representations by Evergreen Water.* Evergreen Water hereby represents and warrants the following, which representations shall survive the closing:

- (a) it shall provide its customer list, including names and addresses, to the Association on the date of closing and transfer of title, and that such customer list shall be true and accurate;
- (b) Evergreen Water has not and will not accept any prepayment of water bills for services to be provided following the closing and transfer of title;
- (c) Evergreen Water is a corporation in good standing with the Secretary of State of the State of Idaho;
- (d) Evergreen Water has paid all outstanding franchise, income and business and occupation taxes as of the date of closing and transfer of title;
- (e) Evergreen Water has given UCC bulk sales notices to all of its known creditors, if any;
- (f) Evergreen Water is not subject to sales tax in the State of Idaho;
- (g) Evergreen Water is duly authorized to operate its water system by the Idaho Department of Environmental Quality and the Idaho Public Utilities Commission;
- (h) the water rate charges by Evergreen Water have been duly approved by the Idaho Public Utilities Commission;

- (i) Evergreen Water has not charged any customer a rate in excess of the rate approved by the Idaho Public Utilities Commission;
- (j) there are no unresolved disputes with any customers over the amount of any water bill, the quality of service, the rate charged or any other matter;
- (k) all properties serviced by Evergreen Water have water meters installed and that, to the best of Evergreen Water's knowledge, all such meters are in good working order; and
- (l) Evergreen Water has the requisite, power and authority to transfer the System as herein contemplated.

11. *Representations by the Association.* The Association hereby represents and warrants the following, which representations shall survive the closing:

- (a) the Association is fully authorized to purchase the System from Evergreen Water pursuant to the terms of this Agreement;
- (b) the Association's board of directors has approved the purchase of the System herein contemplated in accordance with the requirements of its bylaws or other governing documents;
- (c) there is no litigation pending or threatened which would prevent the sale contemplated by this Agreement;
- (d) the Association expressly acknowledges that the System is subject to all the rules and regulations of the Idaho Public Utilities Commission;
- (e) the Association expressly acknowledges the regulatory authority of the Idaho Department of Environmental Quality over water quality and testing of the System; and
- (f) the Association acknowledges that after the transfer of title to the System, the System must be operated a qualified operator of a pressurized potable water system and all such expense and cost related to the retention, training or hiring such operator shall be the sole responsibility of the Association.

12. *No Representations.* Evergreen Water hereby makes no representation or warranty with respect to the following matters:

- (a) the state of any equipment, component or water lines, except that all equipment shall be in good working order on the date of the transfer of title;

- (b) as to the presence or absence of any contaminant or the environmental condition of the System or any of its components;
- (c) whether any customer or other person has tampered with any water meter;
- (d) the adequacy, suitability or with respect to any contamination of any wells or pieces of equipment; and
- (e) whether there are any adverse environmental conditions on any properties owned by Evergreen Water which are to be transferred to the Association hereunder.

13. *Entire Agreement.* This Agreement, together with the other written agreements and instruments executed concurrently herewith or pursuant to the terms and provisions hereof, contain the entire agreement between the parties concerning the matters herein set forth and supersedes all prior agreements between them respecting such matters.

14. *Counterparts.* This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. At the trial of an matter arising under this Agreement, only one counterpart need be produced.

15. *Headings.* Paragraph headings are for convenience and identification only and shall not be used to interpret or construe this Agreement.

16. *Waivers.* Except as herein expressly provided:

- 16.1 No waiver by either party of any breach of this Agreement, or of any warranty or representation hereunder, shall be deemed to be a waiver by the same party of any other breach of any kind or nature (whether preceding or succeeding the breach in question, and whether or not of the same or similar nature).
- 16.2 No acceptance by a party of any payment or performance after any such breach shall be deemed to be a waiver of any breach of this Agreement or of any representation or warranty hereunder, whether or not the party knows of the breach when it accepts such payment or performance.
- 16.3 No failure by any party to exercise any right it may have under this Agreement or under law upon another party's default, and no delay in the exercise of that right, shall prevent it from exercising the right whenever the other party continues to be in default. No such failure or delay shall operate as a waiver of any default or as a modification of the provisions of this Agreement.

17. *Gender and Number.* Whenever the singular or plural number, or the masculine or feminine or neuter gender, is used herein, it shall equally include the other(s).

18. *Notices.* Any notice which any person is required or may desire to give hereunder shall be in writing and may be personally delivered, transmitted by facsimile, other electronic means, or delivered by the United States Postal Service or private delivery service to the above addresses. Notice is deemed given when received.

19. *Governing Law.* This Agreement shall be construed and enforced in accordance with the laws of the State of Idaho.

20. *Binding Effect.* This Agreement shall be binding upon, and inure to the benefit of, both parties and their respective heirs, representatives, successors and assigns.

21. *Modifications.* This Agreement may be modified only by a written document signed by representatives of both parties. A purported oral modification shall not be effective for any purpose.

The parties have hereunto set their hands and seals the day and year first above noted.

SELLER:

EVERGREEN WATER COMPANY, INC.

By: Michelle Slack

Its: owner

PURCHASER:

EVERGREEN TERRACE WATER
ASSOCIATION, INC.

By: James Nelson

Its: As ETWA

Recording requested by:
Richard S. Christensen
Christensen & Doman, P.C.
907 Main Avenue
St. Maries, ID 83861

When recorded return to:
Richard S. Christensen
Christensen & Doman, P.C.
907 Main Avenue
St. Maries, ID 83861

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2012 APR 5 PM 2:39

BENEWAH COUNTY
MICHELE MCDANIEL, CLERK
Michelle L. Daniel
To Christensen & Doman
907 Main Ave
St. Maries ID 83861

QUITCLAIM DEED

GRANTOR, EVERGREEN WATER COMPANY, an Idaho corporation, of 248 Evergreen Terrace Road, St. Maries, County of Benewah, State of Idaho 83861, for good and valuable consideration, the receipt of which is hereby acknowledged, do hereby REMISE, RELEASE and forever QUITCLAIM unto, EVERGREEN TERRACE WATER ASSOCIATION, INC., an Idaho corporation, of 248 Evergreen Terrace Road, St. Maries, State of Idaho 83861, as GRANTEE, and to grantee's heirs and assigns forever, all of the following described real estate situated in County of Benewah, State of Idaho, to wit:

That portion of the South Half of Northeast Quarter and the North Half of Southeast Quarter of Section 25, Township 46 North, Range 2 West, Boise Meridian, Benewah County, Idaho, described as follows;

COMMENCING at a 1/2 inch iron pipe marking the Northwest corner of Lot 51 of The Plat of Evergreen Terrace recorded on April 7, 1972, records of Benewah County, Idaho;

Thence South 89° 28' 22" East along the North line of said Lot 51, a distance of 296.33 feet to a 5/8 inch rebar with cap, marked "Welch Comer PLS 12318", marking the Northeast corner of said Lot 51 and the **TRUE POINT OF BEGINNING**;

Thence North 00° 43' 38" East along the East line of Lot 50 of said Plat, a distance of 259.03 feet to a 5/8 inch rebar with cap, marked "Welch Comer PLS 12318", marking the Northeast corner of said Lot 50;

Thence South 52° 34' 17" East along the North line of a Record of Survey recorded under Instrument Number 173091, records of Benewah County, Idaho, a distance of 230.48 feet to a 5/8 inch rebar with cap, marked "Welch Comer PLS 12318";

Thence South 78° 43' 22" East along said North line, a distance of 110.10 feet to a 5/8 inch rebar with cap, marked "Welch Comer PLS 12318";

Thence South 63° 59' 06" East along said North line, a distance of 123.73 feet to a 3/4 inch iron pipe, marking the Northeast corner of said Record of Survey;

Thence South 23° 37' 05" West along East line of said Record of Survey, a distance of 376.21 feet to a drill steel;

Thence North 70° 01' 31" West a distance of 273.87 feet to a 5/8 inch rebar with cap, marked "Welch Comer PLS 12318", marking a point on the East line of said Lot 51;

Thence North 00° 43' 38" East along said East line, a distance of 208.02 feet to the **TRUE POINT OF BEGINNING**;

Containing 139,285 square feet or 3.198 acres more or less;

AND

That portion of the Northwest Quarter of Southeast Quarter of Section 25, Township 46 North, Range 2 West, Boise Meridian, Benewah County, Idaho, described as follows;

COMMENCING at a 1/2 inch Iron pipe marking the Northwest corner of Lot 51 of The Plat of Evergreen Terrace recorded on April 7, 1972, records of Benewah County, Idaho; Thence South 30° 50' 22" East along the West line of said Lot 51, a distance of 310.85 feet to a 5/8 inch rebar with cap, marked "Welch Comer PLS 12318"; Thence North 67° 18' 20" East leaving said West line, a distance of 145.60 feet to a 5/8 inch rebar with cap, marked

"Welch Comer PLS 12318", marking a point on the East line of said Lot 51 and the **TRUE POINT OF BEGINNING**;

Thence South 70° 01' 31" East a distance of 273.87 feet to a Drill Steel, marking a point on the East line of Record of Survey recorded under Instrument Number 173091, records of Benewah County, Idaho;

Thence South 49° 13' 24" West along said East line, a distance of 345.25 feet to a 1/2 inch Iron pipe marking the South corner of said Lot 51;


Thence North 00° 43' 38" East along said East line, a distance of 319.07 feet to the **TRUE POINT OF BEGINNING**;

Containing 41,249 square feet or 0.947 acres more or less.

TOGETHER with all tenements, hereditaments and appurtenances thereunto belonging.

IN WITNESS WHEREOF, Grantor has hereunto subscribed its name to this instrument this 4th day of April, 2012.

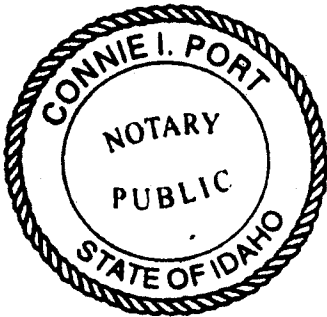
GRANTOR


EVERGREEN WATER COMPANY
By: Michelle Slack, Its President

STATE OF IDAHO)
 : ss.
 County of Benewah)

On this 4th day of April, 2012, before me, a notary public in and for said county and state, personally appeared MICHELLE SLACK, known or identified to me to be the president of the corporation that executed the QUITCLAIM DEED on behalf of said corporation, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Connie S. Port

Notary Public, State of Idaho

Residing at: St. Maries

My Commission Expires: 10-20-2016

EvergreenWater/transprop\qcd2-3Aa.wpd

Operating Agreement between Evergreen Water Company (EWC) and Evergreen Terrace Water Association (ETWA)

On 6/1/11 ETWA will begin operation and maintenance of the facilities owned by EWC.

This will include:

- All pump, reservoir, pipeline, meter repair and maintenance.**
- All supplies needed to keep water quality in compliance with DEQ standards.**
- All utility, lab, one call and other bills related to operating the system**
- Reading meters, sending bills, collecting monies owed and public notifications**
- All financial control and record keeping**
- Any other item or cost not mentioned that relates to operating the water system**

EWC will be responsible for real property taxes until property transfer.

EWC will transfer ownership when the survey of the well lot is completed, and transfer documents signed.

Michelle Slack
Owner EWC
6/1/11

Jim Nilson
Pres. ETWA
6/1/11