



Control Number: 42992



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House Bill (HB) 1600 and Senate Bill (SB) 567 83rd
Legislature, Regular Session, transferred the functions
relating to the economic regulation of water and sewer
utilities from the TCEQ to the PUC effective
September 1, 2014.

42992

WATER UTILITY SALE AND TRANSFER AGREEMENT
FOR
CHEYENNE HILLS WATER SUPPLY SYSTEM

This Water Utility Sale and Transfer Agreement ("Agreement") is entered into by and between Cheyenne Hills Glen Rose 618 Limited Partnership, acting by and through its General Partner, Triarch Investments, LLC, and Somervell County Water District on this 17th day of May, 2013.

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2014 SEP 11 AM 9:33
PUBLIC UTILITY COMMISSION
FILING CLERK

RECITALS

WHEREAS, Somervell County Water District (hereinafter referred to as "District") Texas Constitution Article XVI, Section 59 conservation and reclamation district created by an Act of the Texas Legislature and operating pursuant to Chapters 49 and 51 of the Texas Water Code in Somervell County, Texas; and

WHEREAS, Cheyenne Hills Glen Rose 618 Limited Partnership (hereinafter referred to as "Partnership") is Texas limited partnership and an investor owned retail water utility regulated by the Texas Commission on Environmental Quality (TCEQ) and is acting herein by and through its General Partner, Triarch Investments, LLC, a Texas Limited Liability Company; and

WHEREAS, Partnership holds water Certificate of Convenience and Necessity (CCN) No. 12895, authorizing the Partnership to provide retail water service to the Cheyenne Hills Subdivision in Somervell County and owns and operates a retail water supply and distribution

system, known as Cheyenne Hills Water Supply, serving said subdivision under Public Water System (PWS) Identification No. 2130035; and

WHEREAS, the Partnership and the District have reached agreement, subject to the procedures, approvals and confirmations of the Texas Commission on Environmental Quality (hereinafter referred to as "TCEQ") required under Texas Water Code Section 13.301, for the sale, transfer, assignment and disposition of Partnership's retail water certificate of convenience and necessity, water supply and distribution system facilities and related property and easements, as well as the obligations governing retail water utility service to the properties encompassed by retail water CCN No. 12895's certificated service area.

NOW, THEREFORE, for and in consideration of the premises set forth in the above Recitals, the mutual agreements, covenants, and conditions hereinafter provided, and other good and valuable considerations received, Partnership and District (collectively hereinafter referred to as "the Parties") contract and agree as follows:

I.

TRANSFER OF CERTIFICATE OF CONVENIENCE AND NECESSITY AND WATER SYSTEM

- 1.1 Subject to the approval of the TCEQ and the requirements of Texas Water Code Section 13.301 and the rules of the TCEQ adopted thereunder, Partnership agrees to the transfer of all of its rights and obligations under water CCN No. 12895 to the District, to convey its well site, subject to the reservation of mineral rights, for the Cheyenne Hills Water Supply system as described in Exhibit A, attached hereto, to the District, to convey all of

its water supply and distribution system facilities, equipment and easements comprising the Cheyenne Hills Water Supply system as described in TCEQ summary data sheet, Exhibit B, attached hereto, to the District and to convey all customer deposits, water system business records, equipment warranties, manuals, as built plans and schematics held by the Partnership as of the date of such transfer to the District for the benefit of the water system and its customers. All transfers and conveyances hereunder shall be free and clear of any and all debt, liabilities and encumbrances of any nature whatsoever.

- 1.2 District shall pay the agreed upon consideration amount of \$50,000.00 to Partnership at the time of closing of the water system sale and transfer provided for in this Agreement.
- 1.3 The District shall be responsible for the timing, preparation, drafting, filing and prosecution of a Sale, Transfer, Merger Application at the TCEQ under Texas Water Code Section 13.301 to effectuate the transfer of retail water service rights, facilities, properties and obligations to the lands within the service area boundaries of water CCN 12895 and all fees, costs and expenses associated therewith.
- 1.4 Partnership shall cooperate with the District and shall execute any and all such applications or other documents as may be necessary or convenient to the transfer of the water service area rights, property and facilities under CCN No. 12895 and PWS No. 2130035 to such District for the retail water utility service of the properties encompassed thereby.
- 1.5 Partnership makes no representation or warranties, and hereby expressly disclaims any such representations or warranties, concerning the age, condition, utility or functionality, suitability for a particular purpose, or adequacy of any of the water supply and distribution system facilities, equipment and supply lines.

II.

DEVELOPMENT REPRESENTATIONS

- 2.1 District agrees that it will undertake no new construction on the well site lot for five (5) years following the effective date of the transfer, excepting only necessary repairs and/or replacements.
- 2.2 District agrees that it will extend, at its own cost, the existing distribution line located on Doris Court within the existing Cheyenne Hills Subdivision as required to serve all tracts directly serviceable by such line.
- 2.3 Future development of tracts contiguous to the existing Cheyenne Hills Subdivision will be in accordance with the District's service policies.
- 2.4 District agrees to provide a "T" connection for the future development of tracts contiguous to the existing Cheyenne Hills Subdivision.

III.

MISCELLANEOUS

- 3.1 The statements contained in the preamble of this Agreement are true and correct and are adopted as operative provisions hereof.
- 3.2 The Parties acknowledge that each of them has been actively involved in negotiating this Agreement. Accordingly, the rule of construction that any ambiguities are to be resolved against the drafting Party will not apply to interpreting this Agreement. In the event of any dispute over the meaning or application of any provision of this Agreement, the

provision will be interpreted fairly and reasonably and neither more strongly for or against any Party, regardless of which Party originally drafted the provision.

- 3.3 This Agreement constitutes the entire agreement between the Parties and supersedes all prior agreements, whether oral or written, covering the subject matter of this Agreement. This Agreement shall not be modified or amended except in writing signed by the Parties. If any provision of this Agreement is determined by a court of competent jurisdiction to be unenforceable for any reason, then: (a) such unenforceable provision shall be deleted from this Agreement; (b) the unenforceable provision shall, to the extent possible, be rewritten to be enforceable and to give effect to the intent of the Parties; and (c) the remainder of this Agreement shall remain in full force and effect and shall be interpreted to give effect to the intent of the Parties.
- 3.4 This Agreement is entered into under and pursuant to, and is to be construed and enforceable in accordance with, the laws of the State of Texas, and all obligations of the Parties are performable in Somervell County, Texas. Venue for any action to enforce or construe this Agreement shall be Somervell County, Texas.
- 3.5 Any failure by a Party to insist upon strict performance by another Party of any material provision of this Agreement shall not be deemed a waiver thereof, and the Party shall have the right at any time thereafter to insist upon strict performance of any and all provisions of this Agreement. No provision of this Agreement may be waived except by writing signed by the Party waiving such provision. Any waiver shall be limited to the specific purposes for which it is given. No waiver by any Party of any term or condition of this Agreement shall be deemed or construed to be a waiver of any other term or condition or subsequent waiver of the same term or condition.

- 3.6 This Agreement only inures to the benefit of, and may only be enforced by, the Parties. No other person or entity shall have any right, title, or interest under this Agreement or otherwise be deemed to be a third-party beneficiary of this Agreement.
- 3.7 This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and constitute one and the same instrument.
- 3.8 Each Party shall, upon request of the other Party, execute and deliver such further documents and perform such further acts as may reasonably be requested to effectuate the terms of this Agreement and achieve the intent of the Parties.

EXECUTED and EFFECTIVE this 22nd day of May, 2013.

ATTEST:



**Lee Magee, Secretary
Somervell County Water District
Board of Directors**

SOMERVELL COUNTY WATER DISTRICT

By: 

**Hugh Smith, President
Somervell County Water District
Board of Directors**

**CHEYENNE HILLS GLEN ROSE 618, LP
A Texas Limited Partnership**

By: TRIARCH INVESTMENTS, LLC

A Texas Limited Liability
Company

General Partner

Attest: _____
LLC Secretary

By: Jeffery S. Ezzell
Jeffery S. Ezzell, Vice-President
Triarch Investments, LLC

Date of Execution: 5/21/13

CERTIFICATE OF RESOLUTION

TO

CONVEY COMPANY PROPERTY

1. At a meeting of the Members of Triarch Investments, LLC, a Texas limited liability company, duly called and held this date at which a quorum was present and acted throughout, the members unanimously adopted the following resolution, which has not been modified or rescinded:

RESOLVED, that Triarch Investments, LLC, on behalf of Cheyenne Hills Glen Rose 618 Limited Partnership for which Triarch Investments LLC is General Partner, execute and deliver to Somervell County Water District (Grantee), the foregoing attached Agreement for the conveyance of service rights and infrastructure facility and real property owned by said Cheyenne Hills Glen Rose 618 Limited Partnership to Somervell County Water District as set forth in said instrument.

Such conveyance to be made pursuant to the consideration set forth in said Agreement and that the president or vice president of Triarch Investments, LLC be and each of them is hereby authorized to execute and deliver such conveyance instrument and to affix the seal of the company thereto.

2. Neither the certificate of LLC creation nor the by-laws contain any special requirement as to the number of members or directors required to pass such resolution.

3. The certificate of LLC creation does not require any vote or consent of its shareholders or members to authorize the making of such conveyance.

In witness whereof, the undersigned has hereto affixed his hand and seal of the above mentioned LLC this 21st day of May, 2013.

THE STATE OF TEXAS }

County of Tarrant }

I, Jeffery S .Ezzell , Vice-President of Triarch Investments, LLC, a Texas Limited Liability Company, do hereby certify that the resolution copy of which is above set out was duly adopted and passed by the board of directors of said corporation at a meeting of said board of directors held at the office of the corporation on the 20th day of May, 2013.

In witness whereof we have hereunto signed our names and affixed the seal of the LLC on this 21st day of May, 2013.

Attest:

Jeffery S Ezzell

Jeffery S .Ezzell , Vice-President

[Seal]

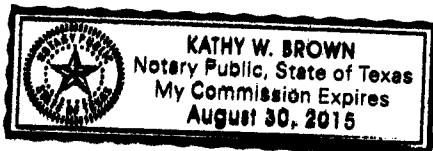
[NOTARY SEAL] §

STATE OF TEXAS §

COUNTY OF Somervell §
~~Farrant~~

This instrument was acknowledged before me on May 21, 2013 by Jeffery S .Ezzell , Vice-President of Triarch Investments, LLC, a Texas Limited Liability Company, on behalf of said company.

Kathy W. Brown



[NOTARY SEAL]

Print Name: Kathy W. Brown

Notary Public, State of Texas

My commission expires: 8/30/15

