

257 731

Hinesburg, VT Town Clerk's Office
Received for record 3/2/18
at 8 o'clock 59 minutes A M
recorded in Book 257 Page 731-34
Attest: Cheryl S. Hubbard ^{ASST} Town Clerk

WATER SUPPLY DEVELOPMENT AGREEMENT

This Water Supply Development Agreement (the "Agreement") is by and between **BLACKROCK CONSTRUCTION, LLC**, a Vermont limited liability company with a place of business in South Burlington, Vermont ("BlackRock") and the **TOWN OF HINESBURG**, a Vermont municipality located in Chittenden County Vermont (the "Town") (each a "Party" and collectively, the "Parties").

Background

1. Haystack Crossing, LLC ("Haystack") is the owner of a vacant parcel of land in Hinesburg, Vermont consisting of all of Lot 4, containing 74.83 acres, more or less, as shown on a plat entitled: "Subdivision Plat, Bissonette Revocable Trust, Shelburne Falls Road, Hinesburg, Vt.," prepared by Trudell Consulting Engineers dated February 8, 2010, last revised November 16, 2016, and recorded in Map Slide 225B of the Town of Hinesburg Land Records (the "Property").

2. BlackRock is the contracted purchaser of the Property and is seeking permits to develop the Property as a planned community consisting of single-family lots, townhome units, multi-family apartment style buildings and commercial lots (the "Project"), which will be broken into phases.

3. The Town of Hinesburg Municipal Wastewater Allocation Ordinance adopted on May 2, 2016 (the "Wastewater Ordinance") regulates the usage of municipal wastewater in the Town of Hinesburg. The Wastewater Ordinance provides that "[w]astewater allocation shall not be granted within the wastewater service area without a corresponding municipal water allocation sufficient to enable appropriate and full utilization of any wastewater allocation[.]"

4. As of the date of this Agreement, the Town of Hinesburg water supply system does not have the capacity to provide domestic water to the Project.

5. BlackRock, at its sole cost and expense, has drilled a 6" casing "test" domestic water supply well on the Property (the "Water Supply Well"), which currently has a preliminary well drillers (raw) yield of 125 gallons per minute (gpm) at 480 feet of depth. Generally, state permitted yield is 50% (+/-) of raw yield.

6. The required well capacity for a standalone municipal water source is 160 gpm of state permitted yield, and the minimum requirement for the Town to accept a well as a partial water source is 80 gpm of state permitted yield.

7. The Parties now desire to set forth their mutual understandings and agreements with respect to BlackRock's proposed upgrades to the Water Supply Well, and the conditions under which the Town will accept the Water Supply Well as a municipal water supply.

NOW, THEREFORE,

In consideration of the foregoing and the mutual covenants and agreements herein contained, the Parties hereby agree to the following:

Section 1. **BlackRock Water Supply Upgrades.** BlackRock shall promptly perform the following upgrades to the Water Supply Well at its own cost and expense:

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- (a) Blackrock shall widen the existing 6" wide casing to an 8" wide casing; and
- (b) BlackRock shall continue drilling beyond the existing depth of 480 feet; provided, however, that BlackRock shall not be required to drill deeper than 700 feet or past a well drillers (raw) yield of 400 gpm.
- (c) Provided that BlackRock's upgrades to the Water Supply Well result in a well drillers (raw) yield greater than 160 gpm, BlackRock shall dedicate the Water Supply Well and all of its capacity to the Town for use as a municipal water supply.

Section 2. **Town Water Supply Upgrades.** Provided that BlackRock satisfies the conditions of Section 1, the Town shall be responsible for the following additional improvements to the Water Supply Well at its own cost and expense:

- (a) In conjunction with BlackRock's upgrades as described in Section 1, above, the Town will provide a 12" concrete casing to the depth of the bedrock in order to facilitate the required standard for an eventual municipal water supply;
- (b) The Town shall be responsible for all other improvements and testing required to bring the Water Supply Well on-line as a municipal water supply; and
- (c) The Town shall allocate 30% of the estimated state permitted yield from the dedicated Water Supply Well (with a cap of 36,000 gallons per day (gpd)) to BlackRock for the Project.

Section 3. **Offer of Dedication.** So long as the estimated well drillers (raw) yield is greater than 160 gpm, BlackRock shall prepare and execute an Irrevocable Offer of Dedication, Easement Deed and all other documents reasonably necessary to convey the Water Supply Well to the Town of Hinesburg, therefore becoming part of the municipal water supply system.

Section 4. **Water Supply Allocation.** In consideration of the dedication of the Water Supply Well, the Town acknowledges and agrees that its allocation of 30% of the estimated state permitted yield of the well or 36,000 gpd (whichever is less) satisfies the "water allocation" requirements of the Wastewater Ordinance to support BlackRock's future application to the Selectboard for a wastewater allocation for the Project. For the purposes of BlackRock's future application to the Selectboard for a wastewater allocation for the Project, the water allocation referred to above in this Section 4 and in Section 2(c), shall be based on the estimated state permitted yield (or 50% of well drillers (raw) yield). The parties understand and agree that once the Water Supply Well is on-line with the actual state permitted yield established, BlackRock's allocation will be adjusted from the initial estimate (described above) to 30% of the actual state permitted yield of the well or 36,000 gpd (whichever is less). Notwithstanding anything to the contrary herein, BlackRock shall continue to be responsible for all existing water allocation fees, holding fees, usage fees and connection fees as set forth in the Town's schedule of *Water Rates, Connection Fees, and Special Charges* effective July 7, 2016, as they may be hereafter amended, and those rates and fees shall not be affected by this Agreement.

Section 5. **Continued Cooperation.** In the event the flow from the dedicated Water Supply Well is less than 160 gpm of state permitted yield, the Town shall make good faith efforts to bring additional water supply sources online, subject to adequacy of yields, water quality testing, state water source permitting and financing. The specific timing of bringing any new water source online shall be determined by the Town in its sole discretion based upon the aforementioned factors, and the Town will keep BlackRock apprised throughout the process.

Section 6. **Further Assurances.** The Parties agree to execute, acknowledge, if necessary, and deliver such documents, certificates or other instruments and take such other actions as may be reasonably required from time to time to carry out the intents and purposes of this Agreement.

Section 7. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties relating to its subject matter, and supersedes all prior representations, understandings and agreements, written or oral, express or implied. The Agreement can be modified only by written agreement executed by authorized representatives of each party. This Agreement does not constitute or imply any alteration of Town Design Review Board approvals, nor shall it imply tacit approval of any development beyond the scope contained herein (well infrastructure). It is further acknowledged by the Parties that notwithstanding the issuance of any land use permits to BlackRock, no permit to construct may be issued for the Project until the new Water Supply Well is online and available to the public.

IN WITNESS WHEREOF, the parties do hereby execute this Agreement as of the 20th day of February, 2018.

IN PRESENCE OF:

BLACKROCK CONSTRUCTION, LLC



Witness

By: 

Duly Authorized Agent

STATE OF VERMONT
COUNTY OF CHITTENDEN, SS.

On this 20 day of February, 2018, personally appeared Adam Hugenrother, Duly Authorized Agent of **BLACKROCK CONSTRUCTION, LLC**, to me known to be the person who executed the foregoing instrument, and he acknowledged this instrument, by him signed, to be his free act and deed and the free act and deed of **BLACKROCK CONSTRUCTION, LLC**.

Before me, 

Notary Public

Notary commission issued in Chittenden County
My commission expires: 2/10/19

[Additional Signatures on Following Page]

IN PRESENCE OF:

TOWN OF HINESBURG

Cheryl Hubbard
Witness

By: Rena Marshall
Duly Authorized Agent

STATE OF VERMONT
COUNTY OF CHITTENDEN, SS.

On this 1 day of March, 2018^{al}, personally appeared _____,
Duly Authorized Agent of **TOWN OF HINESBURG**, to me known to be the person who executed the
foregoing instrument, and he/she acknowledged this instrument, by him/her signed, to be his/her free act
and deed and the free act and deed of **TOWN OF HINESBURG**.

Before me, Cheryl Hubbard
Notary Public

Notary commission issued in Chittenden County
My commission expires: 2/10/19

Haystack Crossing, LLC, as evidenced by the signature of its Duly Authorized Agent, joins in the execution
of this Water Supply Development Agreement for the purpose of agreeing and acknowledging to execute
any irrevocable offer of dedication, deed or other document or instrument necessary to convey the Water
Supply Well to the Town.

HAYSTACK CROSSING, LLC

[Signature]
Witness

By: Joseph F. Brionette
Duly Authorized Agent