



DISTRIBUTION CENTER
10 JAN -6 PM 6:56

December 29, 2009

Florida Public Service Commission
c/o Ann Cole, Clerk of the Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

Dear Mrs. Cole:

Attached hereto is the executed Escrow Agreement to secure interim rates in Docket No. 090182-SU for Ni Florida - Hudson.

If you have further questions or concerns regarding this matter, please call me at 713.574.7772.

Sincerely,

Benny Wilkinson

Benny Wilkinson
VP Financial Due Diligence
Ni Florida, LLC

[CLK Note: original document forwarded to CLK/Cole.]

ATME/lean

DOCUMENT NUMBER CASE
00134 JAN-6 09
CLERK-COMMISSION CLERK

Enclosure

ESCROW AGREEMENT

This **ESCROW AGREEMENT** (this "Agreement") is made as of December 20, 2009, by and among NI FLORIDA, LLC, a Delaware limited liability company (the "Utility"), the Florida Public Service Commission (the "PSC"), and Memorial City Bank, as escrow agent (the "Escrow Agent").

RECITALS:

WHEREAS, by action of the PSC in Order No.: PSC-09-0751-PCO-SU, issued November 16, 2009, in Docket No. 090182-SU (the "Docket") at its Agenda Conference held October 27, 2009, the PSC granted the Utility's request for an increase in its interim monthly wastewater service rates, as amended by the PSC pursuant to the terms of the Docket (the "Increase").

WHEREAS, as a condition to the Increase, the Utility is required to provide cash security for the monthly wastewater service rates collected in the event a refund to the Utility's customers is required.

WHEREAS, the Escrow Agent has agreed to hold the cash security in an interest bearing escrow account until the PSC issues a final order regarding the Increase (the "Final Order").

AGREEMENT:

NOW, THEREFORE, in consideration of the agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Establishment of Escrow.

- (a) From the execution of this Agreement through the PSC's issuance of the Final Order (the "Escrow Period"), the Utility shall deposit \$28,759.00 on a monthly basis with the Escrow Agent within seven days of receipt (such amounts being deposited from time to time shall be collectively known as the "Escrow Account") as detailed on page 5 of Order No.: PSC-09-0751-PCO-SU. The Escrow Account, prior to accrual of any interest thereon or proceeds therefrom, satisfies the requirements of Section 367.082 of the Florida Statutes regarding revenue collected under interim rates.
- (b) The Escrow Agent hereby agrees to act as escrow agent and to hold, safeguard and disburse the Escrow Account, together with any earnings and income thereon (the total amount of such Escrow Account, less all Refunds (as defined below), held pursuant to this Agreement as of a particular time being referred to herein as the "Remaining Escrow Fund"), pursuant to the terms and conditions hereof.

2. Investment of Funds. Except as the Utility and the PSC may from time to time jointly instruct the Escrow Agent otherwise in writing, the Remaining Escrow Fund shall be deposited

and maintained in a money market deposit account with the Escrow Agent until disbursement of the entire Remaining Escrow Fund in accordance with Section 5, below.

3. Release of Escrow Amount for Customer Refunds. Prior to the issuance by the PSC of the Final Order, the Utility and the Commission Clerk of the Office of the Commission Clerk of the PSC (the "Clerk") may periodically provide the Escrow Agent with a joint written notice (the "Notice") regarding the disbursement to the Utility of all or a portion of the Remaining Escrow Fund as a refund to the Utility's customers in accordance with Section 367.082 of the Florida Statutes. The Notice shall (i) provide that the amount set forth therein is being withdrawn to refund revenues collected from the Utility's customers during the Escrow Period plus interest accrued thereon (the "Refund") and (ii) certify that the Refund is being undertaken in accordance with Rule 25-30.360 of the Florida Administrative Code.

4. Additional Obligations and Requirements

- (a) On the 20th day of each month, the Utility shall provide the PSC with a report indicating the monthly and total amounts collected subject to a Refund.
- (b) The Clerk and the Utility shall be signatories to the Remaining Escrow Fund. Signature cards executed by the Clerk and the Utility shall designate the appropriate authorized signature for each.
- (c) The Escrow Agent shall provide regular monthly statements to the Utility and shall mail a copy of such statements to the PSC.

5. Final Disbursement and Termination of Escrow. Upon issuance of an order by the PSC authorizing disbursement of the remaining fund and the certification to the Escrow Agent by the Utility as to the PSC's issuance of such an order, the Escrow Agent shall disburse the entirety of the Remaining Escrow Funds to the Utility and this Agreement shall terminate immediately. The Utility shall use such funds to pay all outstanding Refunds evidenced in the Final Order, and the Utility shall be entitled to retain the remainder of the Remaining Escrow Funds. Notwithstanding the termination of this Agreement or the resignation of the Escrow Agent, Section 6(b) and Section 6(e) hereof shall survive.

6. Duties of the Escrow Agent.

- (a) The Escrow Agent shall not be required to invest any funds held hereunder except as directed in this Agreement.
- (b) The Escrow Agent shall not be liable, except for its own gross negligence or willful misconduct and, except with respect to claims based upon such gross negligence or willful misconduct that are successfully asserted against the Escrow Agent, the other parties hereto shall jointly and severally indemnify and hold harmless the Escrow Agent (and any successor Escrow Agent) from and against any and all losses, liabilities, claims, actions, damages and expenses, including reasonable attorneys' fees and disbursements, arising out of and in connection with this Agreement. Without limiting the foregoing, the Escrow Agent shall in no event be liable in connection with its investment or reinvestment of any cash

held by it hereunder in good faith, in accordance with the terms hereof, including, without limitation, any liability for any delays (not resulting from its own gross negligence or willful misconduct) in the investment or reinvestment of the Remaining Escrow Fund, or any loss of interest incident to any such delays.

- (c) The Escrow Agent shall be entitled to conclusively rely upon any order, judgment, certification, demand, notice, instrument or other writing delivered to it in connection herewith without being required to determine the authenticity or the correctness of any fact stated therein or the propriety or validity of the service thereof. The Escrow Agent may act in conclusive reliance upon any instrument or signature believed by it to be genuine and may assume that the person purporting to give receipt or advice or make any statement or execute any document in connection with the provisions hereof has been duly authorized to do so. The Escrow Agent may conclusively presume that the undersigned representative of any party hereto that is an entity other than a natural person has full power and authority to instruct the Escrow Agent on behalf of that party unless written notice to the contrary is delivered to the Escrow Agent.
- (d) The Escrow Agent may act pursuant to the advice of counsel with respect to any matter relating to this Agreement and shall not be liable for any action taken or omitted by it in good faith in accordance with such advice.
- (e) The Escrow Agent does not have any interest in the Remaining Escrow Fund deposited hereunder but is serving as escrow holder only and only has possession thereof. Any payments of income from the Remaining Escrow Fund shall be subject to withholding regulations then in force with respect to United States taxes. The parties hereto will provide the Escrow Agent with appropriate Internal Revenue Service Forms W-9 for tax identification number certification or non-resident alien certifications. During the term of this Agreement, the Escrow Agent shall provide the Utility and the PSC such information and reports concerning the Remaining Escrow Fund as either of them may request. Promptly after the termination of this Agreement or the resignation of the Escrow Agent, the Escrow Agent shall make an accounting of the Remaining Escrow Fund to the Utility and the PSC. The fees and expenses of the Escrow Agent with respect to such reports and accountings shall be borne by the Utility as provided in Section 6(i).
- (f) The Escrow Agent makes no representation as to the validity, value, genuineness or the collectability of any security or other document or instrument held by or delivered to it.
- (g) The Escrow Agent shall not be called upon to advise any party as to the wisdom in selling or retaining or taking or refraining from any action with respect to any securities or other property deposited hereunder.
- (h) The Escrow Agent (and any successor Escrow Agent) may at any time resign as such by delivering the Remaining Escrow Fund to any successor Escrow Agent

jointly designated by the other parties hereto in writing, or to any court of competent jurisdiction, whereupon the Escrow Agent shall be discharged of and from any and all further obligations arising in connection with this Agreement. The resignation of the Escrow Agent will take effect on the earlier of (i) the appointment of a successor Escrow Agent mutually agreeable to the Utility and the PSC or (ii) the day that is 30 days after the date of delivery of its written notice of resignation to the other parties hereto. If at that time the Escrow Agent has not received a designation of a successor Escrow Agent, the Escrow Agent shall deposit the entire Remaining Escrow Fund with the Circuit Court of Pasco County, Florida.

- (i) The Utility shall pay the Escrow Agent compensation (as payment in full) for the services to be rendered by the Escrow Agent in accordance with Annex 1 to this Agreement.
- (j) In no event shall the Escrow Agent be responsible or liable for special, indirect or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Escrow Agent has been advised of the likelihood of such loss or damage regardless of the form of action.
- (k) The Utility agrees to indemnify each of the Escrow Agent or any or its agents, and to hold them harmless against, any and all loss, damage, claims, liability or expense, including taxes (other than taxes based upon, measured by or determined by the income of the Escrow Agent), arising out of or in connection with the acceptance or administration of the trust or trusts hereunder, including the costs and expenses of defending itself against any claim (whether asserted by the Utility or the PSC or any other person) or liability in connection with the exercise or performance of any of its powers or duties hereunder, or in connection with enforcing the provisions of this section, except to the extent that such loss, damage, claim, liability or expense is due to its own gross negligence or willful misconduct.
- (l) In no event shall the Escrow Agent be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; it being understood that the Escrow Agent shall use reasonable efforts consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

7. Limited Responsibility. This Agreement expressly sets forth all the duties of the Escrow Agent with respect to any and all matters pertinent hereto. No implied duties or obligations shall be read into this Agreement against the Escrow Agent. The Escrow Agent shall not be bound by the provisions of any agreement among the other parties hereto except this Agreement.

8. Ownership for Tax Purposes. The PSC and the Utility agree that, for purposes of federal and other taxes based on income, the Utility will be treated as the owner of the Remaining Escrow Fund and that the Utility will report all income, if any, that is earned on, or derived from, the Remaining Escrow Fund as its income in the taxable year or years in which such income is properly includable and pay any taxes attributable thereto.

9. Notices. All notices, consents, waivers and other communications under this Agreement must be in writing and will be deemed to have been duly given when (a) delivered by hand (with written confirmation of receipt), (b) sent by telecopier (with electronic confirmation of receipt) provided that a copy is mailed by registered or certified mail, return receipt requested, or (c) received by the addressee, if sent by a nationally recognized overnight delivery service, in each case to the appropriate addresses and telecopier numbers set forth below (or to such other addresses and telecopier numbers as a party may designate by notice to the other parties):

If to the Utility, to:

Ni Florida, LLC
10913 Metronome
Houston, Texas 77043
Attn: Michael J. Ashfield
Fax: (713) 647-0277

with a copy (which shall not constitute notice) to:

Gardere Wynne Sewell LLP
1000 Louisiana, Suite 3400
Houston, Texas 77002
Attn: Daniel Cohen
Fax: (713) 276-6860

If to the PSC, to:

Office of the Commission Clerk
Florida Public Service Commission
Capital Circle Office Center
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850
Fax: (850) 413-7118

If to the Escrow Agent, to:

Rosalie Groendes
Memorial City Bank
Senior Vice President, Cashier - Operations
820 Gessner Rd # 140
Houston, TX 77024-4489
Fax No.: (713) 647-0250

10. Governing Law. THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF FLORIDA WITHOUT GIVING EFFECT TO ANY CHOICE OR CONFLICT OF LAW PROVISION OR RULE THAT WOULD CAUSE THE APPLICATION OF THE LAWS OF ANY JURISDICTION OTHER THAN THE STATE OF FLORIDA. ANY DISPUTES HEREUNDER SHALL BE RESOLVED IN THE STATE AND FEDERAL COURTS LOCATED IN PASCO COUNTY, STATE OF FLORIDA, AND THE PARTIES HEREBY SUBMIT TO THE JURISDICTION OF SUCH STATE AND FEDERAL COURTS.

11. Multiple Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

12. Interpretation. The headings of Sections in this Agreement are provided for convenience only and will not affect its construction or interpretation.

13. No Waiver. The rights and remedies of the parties to this Agreement are cumulative and not alternative. Neither the failure nor any delay by any party in exercising any right, power or privilege under this Agreement or the documents referred to in this Agreement will operate as a waiver of such right, power or privilege, and no single or partial exercise of any such right, power, or privilege will preclude any other or further exercise of such right, power, or privilege or the exercise of any other right, power or privilege. To the maximum extent permitted by applicable law, (a) no claim or right arising out of this Agreement or the documents referred to in this Agreement can be discharged by one party, in whole or in part, by a waiver or renunciation of the claim or right unless in writing signed by the other party; (b) no waiver that may be given by a party will be applicable except in the specific instance for which it is given; and (c), except has provided herein, no notice to or demand on one party will be deemed to be a waiver of any obligation of such party or of the right of the party giving such notice or demand to take further action without notice or demand as provided in this Agreement or the documents referred to in this Agreement.

14. Statutory Provisions

(a) This Agreement is established pursuant to Order No.: PSC-09-0751-PCO-SU, issued November 16, 2009, in Docket No. 090182-SU, for the benefit of the Utility's customers.

(b) The Original Escrow Fund and the Remaining Escrow Fund are established by the direction of the PSC for the purposes set forth in Order No.: PSC-09-0751-PCO-SU. Pursuant to *Cosentino v. Elson*, 263 So. 2d 253 (Fla. 3rd DCA 1972), neither the Original Escrow Fund nor the Remaining Escrow Fund are subject to garnishment.

15. Entire Agreement. This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements and understandings, oral and written, between the parties

with respect to the subject matter hereof. This Agreement may not be amended except by a written agreement executed by the Utility, the PSC and the Escrow Agent.

[SIGNATURE PAGE FOLLOWS.]

IN WITNESS WHEREOF, the parties have executed and delivered this Agreement as of the date first written above.

THE UTILITY:

NI FLORIDA, LLC

By: Ed Wallace
Print Name: Ed Wallace
Title: President
Date: 12/23/09

FLORIDA PUBLIC SERVICE COMMISSION

By: Ann Cole
Print Name: ANN COLE
Title: Commission Clerk
Date: 12/21/09

ESCROW AGENT:

MEMORIAL CITY BANK

By: Rosalie Groendes
Print Name: ROSALIE GROENDES
Title: SR. V.P. CASHIER
Date: 12/23/09

Annex 1

Escrow Agent Fee Schedule

| | |
|--------------------|-----------------------------|
| Monthly Fee | \$25.00 per month |
| Wire transfer fees | \$15.00 per outgoing wire |
| Cashier's Checks | \$ 3.00 per check purchased |