

## **RESOLUTION 2020-24**

**A RESOLUTION OF THE CITY OF LAKE WALES, FLORIDA, APPROVING ACQUISITION OF THE WATER UTILITY SYSTEM OWNED AND OPERATED BY PARK WATER COMPANY, INC. LOCATED IN POLK COUNTY; FINDING THAT SUCH ACQUISITION IS IN THE PUBLIC INTEREST AND SERVES A PUBLIC PURPOSE IN ACCORDANCE WITH SECTION 180.301, FLORIDA STATUTES; APPROVING THE FORM OF UTILITY SYSTEM ASSET PURCHASE AGREEMENT; PROVIDING DIRECTION AND AUTHORITY TO FINALIZE, EXECUTE AND DELIVER THE ASSET PURCHASE AGREEMENT, OTHER TRANSACTION DOCUMENTS CONTEMPLATED THEREBY AND CLOSING DOCUMENTS TO ACQUIRE THE WATER UTILITY SYSTEM; AUTHORIZING CITY STAFF TO TAKE SUCH FURTHER ACTIONS AS MAY BE NECESSARY OR CONVENIENT FOR PURCHASING AND FINANCING THE SYSTEM; PROVIDING FOR APPLICABILITY AND AN EFFECTIVE DATE.**

**BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF LAKE WALES, FLORIDA, AS FOLLOWS:**

**SECTION 1. AUTHORITY.** This Resolution of the City of Lake Wales, Florida (the "City") is adopted pursuant to Chapter 166, Florida Statutes, Chapter 180, Florida Statutes, and in particular Section 180.301 thereof, and other applicable provisions of law.

**SECTION 2. INCORPORATION BY REFERENCE.** The City Commission (the "Commission") has considered extensive information and documentation related to the City's acquisition of the water utility system facilities and assets owned and operated by Park Water Company, Inc. (the "Seller"), including but not limited to the Water Facilities Survey for Park Water Company dated November 19, 2019 prepared by Chastain-Skillman, Inc., the report entitled "Valuation of Park Water Company" dated February, 2020 prepared by PFM Consulting Group LLC, the most recent annual report filed by Seller with the Florida Public Service Commission, and related information presented by City staff which collectively include a description of the water utility facilities and assets currently owned by the Seller, the most recent income and expense statement, the most recent available balance sheet, a description of the water utility system's physical condition, a statement on the reasonableness of the price, a statement on customer impacts, a statement on additional investments required by the City, if any, and the City's ability and willingness to make any such investments, a description of alternatives to acquisition by the City, and a statement on the ability of the City to operate the acquired system facilities and assets (such information and documentation collectively referred to hereafter as the "Report"). The Report supports the Commission's determination hereunder that the acquisition by the City of the potable water utility system owned by the Seller is in the public interest.

**SECTION 3. FINDINGS.** It is hereby ascertained, determined and declared that:

(A) Chapter 180, Florida Statutes, grants the City the power to acquire, own, operate, and maintain water utility facilities in the City and certain unincorporated areas of Polk County, Florida.

(B) The Seller is an investor-owned utility company which owns and operates a water utility system in an unincorporated area of Polk County, Florida, near the central utility facilities of the City. Representatives of the City and the Seller have been negotiating an Asset Purchase Agreement whereby the City will acquire such utility system and related assets of the Seller under the terms and conditions specified in an Agreement for Purchase and Sale of Water Utility System Assets (the "Asset Purchase Agreement"). The

purchased assets (to be described in the Asset Purchase Agreement) are those facilities and assets which comprise the water utility system owned and operated by the Seller in Polk County (the "Park Water System").

(C) The Park Water System is located within, and serves customers located within, an area within which the City is authorized to provide water service pursuant to Chapter 180, Florida Statutes, and the City has and will have all requisite authority to provide water service to such area as a result of the transactions contemplated hereby.

(D) The Commission is required to hold a public hearing on the acquisition of the Park Water System to consider whether such acquisition is in the public interest. The public hearing was duly advertised in the *News Chief*, a daily newspaper published at Lakeland in Polk County, Florida on July 14 and July 17, 2020, and the public hearing was held on July 21, 2020. As a result of the public health emergency that currently exists due to the COVID-19 virus, and upon the authority granted by executive orders issued by Governor Ron DeSantis, including Executive Order 20-69, the City Commission provided the public with means to participate in the public hearing virtually. All interested persons had an opportunity to participate and to file written comments.

(E) The City's ownership and control of the Park Water System will provide an opportunity for the City to:

(1) address and provide water service to the service area of the Park Water System; better provide and plan for water treatment and distribution facilities necessary to accommodate existing development and anticipated future growth in a manner concurrent with the demand for such facilities in the area, and better meet future requirements of state and federal mandates, and the demands of existing and new development;

(2) further develop a regional approach within the area served and the areas nearby also now served by the City, relative to the comprehensive treatment and distribution of potable water;

(3) seek economies of scale relative to operations, maintenance, customer service and management;

(4) provide current and future users, both within the area currently served by the City and the customers now served by the Park Water System, with cost efficient services and management;

(5) better address the relocation of lines, and the operation and maintenance of the water facilities serving the area now served by the Park Water System, all in a more consistent, proactive and responsible manner and incorporate such system users into the City's overall systems;

(6) stabilize rates over the long term, reduce inefficient service expansion or extension of service capabilities, and avoid the expense of proliferation or rehabilitation of smaller supply, distribution and, in some cases, treatment facilities and sites;

(7) permit the City to coordinate the installation, expansion and extension of facilities in a more comprehensive manner;

(8) accomplish a greater public use and increased public benefit which results from the City's ownership, operation and control of the utility facilities and service area comprising the Park Water System; and

(9) enable the City to more effectively and efficiently plan and fulfill its comprehensive planning requirements as provided by law and increase the prospect over time that high quality, cost efficient water utility services are available to affected landowners and utility customers located in the City as well as unincorporated area adjacent thereto.

**SECTION 4. DETERMINATION OF PUBLIC PURPOSE AND BENEFIT.** Based upon its legislative findings incorporated in Section 3, the acquisition of the Park Water System by the City is in the public interest. The City has the experience and the financial ability to acquire, integrate, and manage the Park Water System and provide high quality and cost-effective customer service. The Commission expressly determines that the acquisition of the Park Water System by the City, pursuant to the terms of the Asset Purchase Agreement, and the provision of water services through facilities owned and operated by the City constitutes a public purpose and is in the best interests of the health, safety, and welfare of the customers of the City generally, the customers of the Park Water System, and customers served with water by the City in the immediate vicinity of the Park Water System.

**SECTION 5. PUBLIC INTEREST DETERMINATION OF PURCHASE.** In making the public interest determination concerning the transactions contemplated by the City relating to the acquisition of the Park Water System, the City Commission has considered the Report including the summaries and excerpts thereof set forth in Exhibit A regarding the following matters articulated in Section 180.301, Florida Statutes:

(A) the most recently available income and expense statement(s) from the annual report of the Seller (the "Annual Report") filed with the Florida Public Service Commission ("PSC") in its capacity as the regulatory authority with jurisdiction over investor-owned water utility systems located within Polk County, Florida;

(B) the most recently available balance sheet(s) from the Annual Report;

(C) a statement of the existing rate base from the Annual Report;

(D) the general physical condition of the Park Water System;

(E) the reasonableness of the purchase price;

(F) the impacts of the contemplated transition on utility customers served by the Park Water System and by those now served by the City generally and in the same vicinity as the Park Water System;

(G) any additional investment required and the ability and willingness of the City to make that investment;

(H) the alternatives to the City's purchase of the Park Water System and the potential impacts on utility customers of the Park Water System and by those now served by the City in the same vicinity if the Park Water System is not acquired by the City; and

(I) the ability of the City to provide and maintain high-quality and cost-effective utility service upon acquisition of the Park Water System and undertaking to serve the areas involved.

**SECTION 6. APPROVAL OF ACQUISITION AND ASSET PURCHASE AGREEMENT; RELATED ACTIONS.**

(A) The City's acquisition of the Park Water System is hereby approved. The form, terms and provisions of the Asset Purchase Agreement by and between the Seller and the City, substantially in the form attached hereto as Exhibit B, is hereby approved.

(B) The Mayor is hereby authorized and directed to finalize, execute and deliver the Asset Purchase Agreement on behalf of the City, with such changes (except as to price, which may not be changed) as the City Manager and Utilities Director, with approval of the City Attorney as to form, may approve, such approval to be conclusively evidenced by the execution thereof by the Mayor. The Mayor and such other officers of the City are further authorized and directed to negotiate, execute, deliver and accept all other documents contemplated by the Asset Purchase Agreement and all closing documents necessary for the City's acquisition of the Park Water System, and to take such further actions as may be necessary or convenient for such acquisition.

(C) The City intends to finance acquisition of the Park Water System through a loan and/or other external funding sources such as those offered by the Florida Department of Environmental Protection State Revolving Fund ("SRF") program. City staff is hereby authorized and directed to take such actions related to the purchase and financing of the Park Water System as may be necessary or convenient to close thereupon. Such actions may include, but are not limited to, submitting an application for funding to the SRF program (provided that the City Commission shall approve by subsequent resolution the execution of any loan agreement or other documentation required to close upon such financing), recommending for future City Commission approval any changes or modifications to the current boundaries of the City's utility service area as may be necessary or desirable to effectuate the regional approach to the City's provision of utility services contemplated herein, and submitting or assisting the Seller in submitting any notifications or documentation to the PSC which may be required by Section 367.071, Rule 25-30.038, Florida Administrative Code, or otherwise regarding transfer of the Park Water System to the City. Any actions taken by the City or City staff to date in furtherance of such objectives are hereby ratified and confirmed.

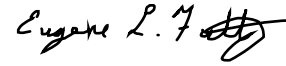
(D) This Resolution expressly contemplates that the City will acquire, finance, operate and/or maintain the Park Water System in a manner consistent with the Asset Purchase Agreement, Chapter 180, Florida Statutes, Chapter 21 of the City Code of Ordinances and other applicable law.

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**SECTION 7. APPLICABILITY AND EFFECTIVE DATE.** This Resolution shall be liberally construed to affect the purposes hereof and shall take effect immediately upon its adoption.

**APPROVED** this 21st day of July, 2020.

CITY OF LAKE WALES



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Eugene L. Fultz, Mayor

ATTEST:

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Jennifer Nanek, City Clerk

## EXHIBIT A

### CONSIDERATIONS ASSOCIATED WITH PURCHASE OF PARK WATER UTILITY SYSTEM

The City of Lake Wales (the "City") owns and operates a water and wastewater utility system and is considering acquisition of the water utility system owned by Park Water Company, Inc. (the "Park Water System"). As a privately owned utility, the Park Water System has been regulated by the Florida Public Service Commission (the "PSC") in accordance with Chapter 367, Florida Statutes, and has filed annual reports with the PSC detailing its income and expense statements, balance sheet, rate base and related information.

Section 180.301, Florida Statutes, provides that before the City can purchase the Park Water System, the City Commission must hold a public hearing on the purchase and make a determination that the purchase is in the public interest. In determining if the purchase is in the public interest, the City Commission is required to consider the information and factors described in section 180.301 including but not limited to the most recent financial information reported by the Park Water Company to the PSC and the City's ability to provide high quality and cost-effective utility service to current customers of the Park Water System.

The information presented below addresses the considerations required by section 180.301 and summarizes relevant provisions of the most recent annual report filed by the Park Water Company with the PSC for the year ended December 31, 2019 (the "Annual Report"), the Water Facilities Survey for Park Water Company dated November 19, 2019 prepared by Chastain-Skillman, Inc. (the "Water Facilities Survey"), and the report entitled "Valuation of Park Water Company" dated February, 2020 prepared by PFM Consulting Group LLC (the "Valuation Report").

**(1) The most recent available income and expense statement for the utility.**

The most recent income and expense statement certified by Park Water Company, Inc. to the PSC is shown in the table below which is excerpted from the Annual Report.

**COMPARATIVE OPERATING STATEMENT**

ACCT. NO. (a)	ACCOUNT NAME (b)	REF. PAGE (c)	PREVIOUS YEAR (d)	CURRENT YEAR * (e)
	UTILITY OPERATING INCOME			
400	Operating Revenues	F-3(b)	\$ 544,001	\$ 494,024
469, 530	Less: Guaranteed Revenue and AFPI	F-3(b)		
	Net Operating Revenues		\$ 544,001	\$ 494,024
401	Operating Expenses	F-3(b)	\$ 304,929	\$ 272,906
403	Depreciation Expense:	F-3(b)	\$ 109,369	\$ 114,858
	Less: Amortization of CIAC	F-22	(18,164)	(18,737)
	Net Depreciation Expense		\$ 91,205	\$ 96,121
406	Amortization of Utility Plant Acquisition Adjustme	F-3(b)		
407	Amortization Expense (Other than CIAC)	F-3(b)		
408	Taxes Other Than Income	W/S-3	77,513	50,967
409	Current Income Taxes	W/S-3		
410.1	Deferred Federal Income Taxes	W/S-3		
410.11	Deferred State Income Taxes	W/S-3		
411.1	Provision for Deferred Income Taxes - Credit	W/S-3		
412.1	Investment Tax Credits Deferred to Future Periods	W/S-3		
412.11	Investment Tax Credits Restored to Operating Inco	W/S-3		
	Utility Operating Expenses		\$ 473,647	\$ 419,994
	Net Utility Operating Income		\$ 70,354	\$ 74,030
469, 530	Add Back: Guaranteed Revenue and AFPI	F-3(b)		
413	Income From Utility Plant Leased to Others			
414	Gains (losses) From Disposition of Utility Property		0	0
420	Allowance for Funds Used During Construction			
	Total Utility Operating Income [Enter here and on Page F-3(c)]		\$ 70,354	\$ 74,030

**(2) The most recent available balance sheet for the utility, listing assets and liabilities and clearly showing the amount of contributions-in-aid-of-construction and the accumulated depreciation thereon.**

The most recent Balance Sheet certified by Park Water Company, Inc. to the PSC is shown in the tables below which are excerpted from the Annual Report.

**COMPARATIVE BALANCE SHEET  
ASSETS AND OTHER DEBITS**

ACCT. NO. (a)	ACCOUNT NAME (b)	REF. PAGE (c)	PREVIOUS YEAR (d)	CURRENT YEAR (e)
<b>UTILITY PLANT</b>				
101-106	Utility Plant	F-7	\$ 3,186,334	\$ 3,256,959
108-110	Less: Accumulated Depreciation and Amortization	F-8	(1,326,996)	(1,441,854)
Net Plant			\$ 1,859,338	\$ 1,815,105
114-115	Utility Plant Acquisition adjustment (Net)	F-7	0	0
116 *	Other Utility Plant Adjustments			
Total Net Utility Plant			\$ 1,859,338	\$ 1,815,105
<b>OTHER PROPERTY AND INVESTMENTS</b>				
121	Nonutility Property	F-9	\$ 0	\$ 0
122	Less: Accumulated Depreciation and Amortization			
Net Nonutility Property			\$ 0	\$ 0
123	Investment in Associated Companies	F-10	0	0
124	Utility Investments	F-10	0	0
125	Other Investments	F-10	0	0
126-127	Special Funds	F-10	0	0
Total Other Property & Investments			\$ 0	\$ 0
<b>CURRENT AND ACCRUED ASSETS</b>				
131	Cash		\$ 4,956	\$ 36,443
132	Special Deposits	F-9	0	0
133	Other Special Deposits	F-9	0	0
134	Working Funds		0	0
135	Temporary Cash Investments			
141-144	Accounts and Notes Receivable, Less Accumulated Provision for Uncollectible Accounts	F-11	36,300	18,156
145	Accounts Receivable from Associated Companies	F-12	0	0
146	Notes Receivable from Associated Companies	F-12	0	0
151-153	Material and Supplies			
161	Stores Expense			
162	Prepayments			
171	Accrued Interest and Dividends Receivable			
172 *	Rents Receivable			
173 *	Accrued Utility Revenues			
174	Miscellaneous Current and Accrued Assets	F-12	2,465	2,465
Total Current and Accrued Assets			\$ 43,721	\$ 57,064

\* Not Applicable for Class B Utilities



**COMPARATIVE BALANCE SHEET  
ASSETS AND OTHER DEBITS**

ACCT. NO. (a)	ACCOUNT NAME (b)	REF. PAGE (c)	PREVIOUS YEAR (d)	CURRENT YEAR (e)
	DEFERRED DEBITS			
181	Unamortized Debt Discount & Expense	F-13	\$ _____	\$ _____ 0
182	Extraordinary Property Losses	F-13	_____	_____ 0
183	Preliminary Survey & Investigation Charges		_____	_____
184	Clearing Accounts		_____	_____
185 *	Temporary Facilities		_____	_____
186	Miscellaneous Deferred Debits	F-14	_____ 20,300	_____ 20,300
187 *	Research & Development Expenditures		_____	_____
190	Accumulated Deferred Income Taxes		_____	_____
Total Deferred Debits			\$ _____ 20,300	\$ _____ 20,300
TOTAL ASSETS AND OTHER DEBITS			\$ _____ 1,923,359	\$ _____ 1,892,469

\* Not Applicable for Class B Utilities

**COMPARATIVE BALANCE SHEET  
EQUITY CAPITAL AND LIABILITIES**

ACCT. NO. (a)	ACCOUNT NAME (b)	REF. PAGE (c)	PREVIOUS YEAR (d)	CURRENT YEAR (e)
<b>EQUITY CAPITAL</b>				
201	Common Stock Issued	F-15	\$ _____	\$ _____
204	Preferred Stock Issued	F-15	_____	_____
202,205 *	Capital Stock Subscribed		29,500	29,500
203,206 *	Capital Stock Liability for Conversion		_____	_____
207 *	Premium on Capital Stock		_____	_____
209 *	Reduction in Par or Stated Value of Capital Stock		_____	_____
210 *	Gain on Resale or Cancellation of Reacquired Capital Stock		_____	_____
211	Other Paid - In Capital		_____	_____
212	Discount On Capital Stock		_____	_____
213	Capital Stock Expense		_____	_____
214-215	Retained Earnings	F-16	(669,723)	(657,354)
216	Reacquired Capital Stock		_____	_____
218	Proprietary Capital (Proprietorship and Partnership Only)		_____	_____
Total Equity Capital			\$ (640,223)	\$ (627,854)
<b>LONG TERM DEBT</b>				
221	Bonds	F-15	_____	_____
222 *	Reacquired Bonds		_____	_____
223	Advances from Associated Companies	F-17	_____	_____
224	Other Long Term Debt	F-17	1,949,554	1,910,830
Total Long Term Debt			\$ 1,949,554	\$ 1,910,830
<b>CURRENT AND ACCRUED LIABILITIES</b>				
231	Accounts Payable		0	0
232	Notes Payable	F-18	63,535	58,784
233	Accounts Payable to Associated Companies	F-18	0	0
234	Notes Payable to Associated Companies	F-18	0	0
235	Customer Deposits		44,851	47,295
236	Accrued Taxes	W/S-3	19,458	18,938
237	Accrued Interest	F-19	_____	_____
238	Accrued Dividends		_____	_____
239	Matured Long Term Debt		_____	_____
240	Matured Interest		_____	_____
241	Miscellaneous Current & Accrued Liabilities	F-20	140,506	147,096
Total Current & Accrued Liabilities			\$ 268,350	\$ 272,113

\* Not Applicable for Class B Utilities

**COMPARATIVE BALANCE SHEET  
EQUITY CAPITAL AND LIABILITIES**

ACCT. NO. (a)	ACCOUNT NAME (b)	REF. PAGE (c)	PREVIOUS YEAR (d)	CURRENT YEAR (e)
<b>DEFERRED CREDITS</b>				
251	Unamortized Premium On Debt	F-13	\$ 0	\$ 0
252	Advances For Construction	F-20	0	0
253	Other Deferred Credits	F-21	0	0
255	Accumulated Deferred Investment Tax Credits			
Total Deferred Credits			\$ 0	\$ 0
<b>OPERATING RESERVES</b>				
261	Property Insurance Reserve		\$	\$
262	Injuries & Damages Reserve			
263	Pensions and Benefits Reserve			
265	Miscellaneous Operating Reserves		7,800	7,800
Total Operating Reserves			\$ 7,800	\$ 7,800
<b>CONTRIBUTIONS IN AID OF CONSTRUCTION</b>				
271	Contributions in Aid of Construction	F-22	\$ 666,552	\$ 676,990
272	Accumulated Amortization of Contributions in Aid of Construction	F-22	(328,673)	(347,410)
Total Net CIAC			\$ 337,879	\$ 329,580
<b>ACCUMULATED DEFERRED INCOME TAXES</b>				
281	Accumulated Deferred Income Taxes - Accelerated Depreciation		\$	\$
282	Accumulated Deferred Income Taxes - Liberalized Depreciation			
283	Accumulated Deferred Income Taxes - Other			
Total Accumulated Deferred Income Tax			\$ 0	\$ 0
<b>TOTAL EQUITY CAPITAL AND LIABILITIES</b>			\$ 1,923,359	\$ 1,892,469

**(3) A statement of the existing rate base of the utility for regulatory purposes.**

The most recent Year End Rate Base certified by Park Water Company, Inc. to the PSC is shown in the table below which is excerpted from the Annual Report.

**SCHEDULE OF YEAR END RATE BASE**

ACCT. NO. (a)	ACCOUNT NAME (b)	REF. PAGE (c)	WATER UTILITY (d)	WASTEWATER UTILITY (e)
101	Utility Plant In Service	F-7	\$ 3,256,959	\$ 0
	Less:			
	Nonused and Useful Plant (1)			
108	Accumulated Depreciation	F-8	1,421,554	0
110	Accumulated Amortization	F-8	20,300	0
271	Contributions in Aid of Construction	F-22	676,990	0
252	Advances for Construction	F-20		
Subtotal			\$ 1,138,115	\$ 0
272	Add:			
	Accumulated Amortization of			
	Contributions in Aid of Construction	F-22	347,410	0
Subtotal			\$ 1,485,525	\$ 0
114	Plus or Minus:			
	Acquisition Adjustments (2)	F-7	0	0
115	Accumulated Amortization of			
	Acquisition Adjustments (2)	F-7	0	0
	Working Capital Allowance (3)		0	0
	Other (Specify):			
RATE BASE			\$ 1,485,525	\$ 0
NET UTILITY OPERATING INCOME			\$ 74,030	\$ 0
ACHIEVED RATE OF RETURN (Operating Income / Rate Base)			4.98%	0.00%

**NOTES :**

- (1) Estimate based on the methodology used in the last rate proceeding.
- (2) Include only those Acquisition Adjustments that have been approved by the Commission.
- (3) Calculation consistent with last rate proceeding.  
In absence of a rate proceeding, Class A utilities will use the Balance Sheet Method and Class B Utilities will use the One-eighth Operating and Maintenance Expense Method.

**(4) The physical condition of the utility facilities being purchased.**

The Water Facilities Survey prepared by Chastain-Skillman, Inc. details the overall condition and status of the water utility system and its capital components.

According to the Water Facilities Survey, “overall the system is in fair to good condition with much infrastructure being improved in the last 10 to 20 years.” Items of concern include the undetermined condition of the well casings as well the condition of the elevated tank. Per the December 2017 inspection by Liquid Engineering Company, the interior condition of the tank rated Fair while the exterior condition rated Good.

The Water Facilities Survey indicated that the Park Water Company should plan on budgeting for major rehabilitation/repair or replacement of the tank within two to three years. This recommendation suggests the need for replacement or significant repair of the elevated tank would be necessary in 2020/2021. The Estimate for the replacement costs associated with the elevated tank and other capital components is \$500,000.

The City may not need the elevated tank in order to provide service to existing customers of the Park Water System, in which case the tank could be decommissioned and any repair expense would be avoided.

**(5) Reasonableness of the purchase price terms and conditions.**

The Valuation Report estimated the net present value of the Park Water System at \$5,810,000, based on the income approach to asset valuation. The report suggests potential deductions in the purchase price which may be considered to account for capitalized interest, debt service reserves and other financing-related expenses, as well as a \$500,000 deduction for a new elevated water storage tank which, as outlined in the prior section, may be an expense the City can avoid if the tank is unnecessary to continue providing water utility service to Park Water Company's existing customer base.

City staff and consultants negotiated the terms and conditions for the purchase, including purchase price, all of which are set forth in the Asset Purchase Agreement. Such terms and conditions are common for transactions involving purchase of privately-owned utility systems by local government entities. The negotiated purchase price for the Park Water System is \$5,000,000 which is considerably below the original asking price of the seller and is reasonable given the opinion of par value determined by PFM, recognizing that the City will most likely avoid the expense of a new elevated tank which is not necessary in order for the City to serve current customers of the system. Acquisition of the system by the City will also result in valuable intangible benefits such as facilitating future expansion of the City's central utility system to serve other areas in addition to the Park Water Company service area. The purchase price and the terms and conditions for the purchase set forth in the Asset Purchase Agreement negotiated by City staff and consultants are therefore reasonable.

**(6) Impacts of the purchase on utility customers, both positive and negative.**

Positive Impacts of City Purchase:

- The City's purchase of the Park Water System will provide centralized, governmentally owned water service to the service area of the Park Water System; better provide and plan for water treatment and distribution facilities necessary to accommodate existing development and anticipated future growth in a manner concurrent with the demand for such facilities in the area, and better meet future requirements of state and federal mandates, and the demands of existing and new development;
- Further develop a regional approach within the area served and the areas nearby also now served by the City, relative to the comprehensive treatment and distribution of potable water, benefitting current customers of the Park Water System and existing City utility customers;
- Seek economies of scale relative to operations, maintenance, customer service and management;

- Provide current and future users, both within the area currently served by the City and the customers now served by the Park Water System, with cost efficient services and management;
- Better address the relocation of lines, and the operation and maintenance of the water facilities serving the area now served by the Park Water System, all in a more consistent, proactive and responsible manner and incorporate such system users into the City's overall systems;
- Provide for uniformity of rates over the long term; governmentally administering rates-setting process responsive to direct and readily available customer and public input in the process, reduce inefficient service expansion or extension of service capabilities, and avoid the expense of proliferation or rehabilitation of smaller supply, distribution and, in some cases, treatment facilities and sites;
- Permit the City to coordinate the installation, expansion and extension of facilities in a more comprehensive manner, resulting in higher quality of service and cost-effectiveness;
- Accomplish a greater public use and increased public benefit which results from the City's ownership, operation and control of the utility facilities and service area comprising the Park Water System.

Negative Impacts of City Purchase:

- After acquisition of the Park Water System, the City may revise the rate schedule currently in effect for Park Water System customers to ensure a uniform schedule of rates for all City utility services and customer classes. In that case Park Water System customers will be subject to the City's then-current rate schedule which may result in an increase in monthly rates for such customers. The rates charged for utility service shall be just and equitable, as required by section 180.13, Florida Statutes, consistent with the rates charged by the City for similarly situated customers, and may reflect any surcharge imposed by the City for utility service provided outside City limits as authorized by section 180.191, Florida Statutes.

**(7) Additional investment required.**

The Water Facilities Survey provides that the Park Water System is in good condition and no major improvements will be necessary in the near future other than potential repairs or refurbishment of the elevated water tank within 2-3 years, which, as described in previous sections, may not be necessary for the City to provide water service. It may be necessary to install new water meters to facilitate connection of Park Water customers to the City's utility system. The Water Facilities Survey does not indicate any other substantial additional investment upon acquisition of the Park Water System

**(8) Alternatives to the purchase.**

*City Does Not Purchase Park Water System:* The water utility system will continue to be owned and operated by private investor Park Water Company and regulated by the PSC. Customers of the system will not receive the benefits of centralized utility service outlined in section (6) above. The quality and reliability of water service will remain generally the same and the City will not have the opportunity to better provide and plan for water treatment and distribution facilities necessary to accommodate existing development and anticipated future growth in a manner concurrent with the demand for such facilities in the area, and better meet future requirements of state and federal mandates, and the demands of existing and new development.

*Sale to Another Investor-Owned Utility (IOU):* Park Water Company could sell the water system to a private party which would continue to operate the system as an investor-owned utility. That alternative would eliminate the advantage of central service otherwise made available to current customers of the Park Water System by the City's acquisition of the system. In that case, oversight for operation and rate-setting would continue to vest with the PSC.

**(9) Ability of the City to provide and maintain high quality and cost-effective utility service.**

The City currently owns and operates a public utility system and has the staff and resources necessary to ensure high-quality and cost effective service to customers of the Park Water System. The City provides high quality service by, among other things, employing full time professionals to operate its utility system including:

- Engineering Professionals
- Utility Management Professionals
- Utility Billing and Customer Service
- Accounting Professionals

The primary objectives and advantages for the acquisition are to provide high quality water service through central delivery, achieve advantages for the Park Water System customer base and all City utility customers associated with regionalized utility service, access to favorable financing terms available to local governments and Federal and State sources of funding which may include grants or principal forgiveness on loans incurred to purchase or improve the system, and to operate as a governmentally owned utility. As such, the cost of services is as cost-effective as possible. The City is committed to providing high quality services to all its utility customers which will include current customers of the Park Water System.

**(10) Moneys paid to others.**

There are no finders fees, realtor fees, or other such fees paid or due regarding this potential transaction.

EXHIBIT B

FORM OF ASSET PURCHASE AGREEMENT



**AGREEMENT FOR PURCHASE AND SALE**

**OF**

**WATER UTILITY SYSTEM ASSETS**

**by and between**

**PARK WATER COMPANY, INC.**

**Seller**

**and**

**CITY OF LAKE WALES, FLORIDA**

**Buyer**

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## **AGREEMENT FOR PURCHASE AND SALE OF WATER UTILITY SYSTEM ASSETS**

**THIS AGREEMENT FOR PURCHASE AND SALE OF WATER UTILITY SYSTEM ASSETS** ("Agreement") is made and effective as of the \_\_ day of [July], 2020 ("Effective Date"), by and between Park Water Company, Inc., a corporation organized and existing under the laws of the State of Florida, and the successor to Crooked Lake Park Water ("Seller"), and the City of Lake Wales, Florida, a municipal corporation of the State of Florida ("City" or "Buyer"). The shareholders of Seller, \_\_\_\_\_ and \_\_\_\_\_, as the sole equity holders and owners of Seller ("Shareholders"), join this Agreement for the purpose of making certain express representations and warranties set forth herein.

**WHEREAS**, Seller has been granted a certificate and authorization by the Florida Public Service Commission ("FPSC") to provide potable water services in a defined area within Polk County, Florida more specifically identified in Seller's tariff currently on file with the FPSC and described in **Appendix B-2** ("Water Service Area"); and

**WHEREAS**, Seller is engaged in the business of owning, managing and operating a water supply, treatment, storage, conveyance and distribution system ("Water System") for the sale and delivery of potable water to customers in the Water Service Area (the "Business"); and

**WHEREAS**, the City has the power and authority to provide water service and desires to purchase, receive and acquire substantially all of the Water System assets and ancillary assets, properties, rights, authorizations, permits, certificates, licenses, and interests used in the Business, and Seller desires to sell, transfer, convey and assign to the City all right, title and interest in and to such Water System assets and the Business which the City desires to acquire; and

**WHEREAS**, the parties acknowledge and agree that, in addition to other conditions precedent to the obligations of Seller to sell and deliver the Water System assets to be acquired by the City and the City to purchase and accept such Water System assets, the City must close on and receive the proceeds from certain grant(s), loans and/or financing transactions on terms acceptable to Buyer in its sole discretion in order to be able to fund the purchase price and acquire the Water System assets; and

**WHEREAS**, pursuant to Section 180.301, Florida Statutes, the City held a public hearing on July 21, 2020, concerning the proposed purchase and sale of the Water System assets, and made a determination that such purchase and sale is in the public interest; and

**WHEREAS**, the City, in determining whether such purchase and sale of the Water System assets is in the public interest, considered factors including but not limited to those set forth in Section 180.301, Florida Statutes; and

**WHEREAS**, the Shareholders, as the sole equity holders and owners of Seller, will derive substantial benefit from the purchase and sale of the Water System assets and consummation of the transactions contemplated by this Agreement; and

**WHEREAS**, Seller agrees to sell the Water System assets described herein to the City free and clear of all liens, claims, security interests, financing statements and encumbrances except agreed upon permitted encumbrances for the consideration and on the terms and subject to the conditions set forth in this Agreement.

**NOW, THEREFORE**, in consideration of the foregoing recitals and the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and the City hereby agree as follows:

**1. RECITALS AND DEFINED TERMS.**

(a) The foregoing recitals are true and correct and are incorporated herein.

(b) Defined Terms. Capitalized terms used herein shall have the following meanings:

"Affiliate" of a specified person or entity means any other person or entity that directly, or indirectly through one or more intermediaries, controls, is controlled by or is under common control with the person or entity specified. For purposes of this Agreement, the Shareholders and other person owning an interest in Seller, if any, shall be considered an "Affiliate" of Seller.

"Agreement" is defined in the first paragraph, and includes all appendices, schedules, exhibits and attachments hereto.

"Assumed Liabilities" is defined in Section 3(a).

"Business" is defined in the recitals.

"Buyer" is defined in the first paragraph.

"City" is defined in the first paragraph.

"Closing" means the closing of the transactions contemplated by this Agreement at which the Purchased Assets are sold, transferred, conveyed, assigned and delivered to and accepted and acquired by the City, the Purchase Price is paid by the City to Seller and all of the documents executed by Seller and the City at the escrow Closing are released from escrow and any other certificates, resolutions, affidavits, instruments and documents contemplated by this Agreement and as reasonably necessary are delivered to the parties.

"Closing Date" is defined in Section 11(a).

"Commission" means the City Commission of the City of Lake Wales, Florida.

"Connection Charges" means plant capacity, transmission line capacity, or other unit connection fees paid for connection to and/or availability of utility capacity.

"Contracts" is defined in Section 2(d)(ix).

"Developer Agreement" means any of the agreement designated as developer agreements in **Appendix E**.

"Effective Date" is defined in the first paragraph.

"Environmental Law" means any statute, law, code, regulation, ordinance, injunction, direction, guidance, rules, judgment, order, or other decree of any federal, state, regional or local governmental authority pertaining to the protection of human health safety and the environment, including but not limited to the Florida Air and Water Pollution Control Act (Chapter 403, Florida Statutes), the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA")(42 U.S.C. § 9601 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), the Clean Water Act (33 U.S.C. § 1251 et seq.), the Toxic Substances Control Act

(15 U.S.C. § 2601 et seq.), and the Safe Drinking Water Act (42 U.S.C. § 300f et seq.) and the regulations, rules and directives promulgated pursuant thereto.

"Excluded Assets" means those assets, properties, rights, interests and benefits which are not purchased, accepted, assumed or acquired by the City hereunder, which includes but is not limited to those assets, properties, rights and interests, both tangible and intangible, real and personal, of Seller identified as "Excluded Assets" in **Appendix M**, which shall not be sold, conveyed, assigned, or transferred by Seller to the City or purchased, accepted, assumed or acquired by the City pursuant to this Agreement.

"Excluded Liabilities" means those obligations and liabilities of Seller which are retained by Seller and not assumed by Buyer hereunder, which includes those obligations and liabilities of Seller which are not expressly, specifically assigned to or assumed by the City hereunder, which excluded obligations and liabilities of Seller include but are not limited to the following: (i) any obligation or liability of Seller arising out of or resulting from the ownership, control, operation and maintenance of the Water System or Purchased Assets or the conduct of the Business prior to the Closing; (ii) any liability of Seller arising under or related to this Agreement or any other agreement, contract, instrument or certificate relating to this Agreement; (iii) any claims, demands, actions, obligations and liabilities relating to any Excluded Assets; (iv) any obligations and liabilities arising out of or relating to any agreements, contracts, leases, licenses, purchase orders and other instruments to which Seller is a party or by which it is bound that are not expressly, specifically assigned to and assumed by the City hereunder; (v) claims, demands, actions, obligations and liabilities arising out of, relating to or resulting from a negligent act or omission, willful misconduct, violation of law and/or breach of obligations by Seller and/or its officers, directors, employees, Affiliates, agents, representatives and contractors or the Shareholders; (vi) any indebtedness, liabilities or obligations of Seller arising out of or relating to financial, tax, service, contractual, warranty, indemnity or other obligations of Seller or the Shareholders, except as may be expressly and specifically described in this Agreement; (vii) any tax, assessment, exposure, fine, penalty, sanction, liability, contribution or act of any kind whatsoever imposed or required by any third party, including a governmental body or taxing agency, whether known or unknown, contingent, liquidated or not liquidated, or arising or accruing under contract, law, tort, ordinance, law, regulation or otherwise, which is not expressly, specifically assumed by the City hereunder as an Assumed Liability; and (viii) any obligation or liability for accrued or current salaries, compensation or benefits of any kind related to Seller's construction, operation, maintenance or repair of the Water System and Purchased Assets and conduct of the Business prior to the Closing.

"FPSC" is defined in the recitals.

"Hazardous Substances" means any substance or material regulated by any federal, state, regional or local governmental authority under any Environmental Law as a hazardous substance, hazardous waste, pollutant, contaminant, toxic waste, toxic substance or similar substance, including petroleum and petroleum products, by-products or breakdown products.

"Law" means any statute, law, code, regulation, ordinance, injunction, directive, guidance, rule, judgment, order, decree, or policy (to the extent mandatory) or any similar form of decision or determination by, or any interpretation or administration of, any of the foregoing by any governmental authority having jurisdiction over (i) any party to this Agreement, (ii) the Purchased

Assets, (ii) the Business, (iv) the ownership, management, operation and maintenance of the Water System, or (v) supply, distribution, delivery and sale of potable water].

"Liens" is defined in Section 5(e).

"Permits" is defined in Section 2(d)(iv).

"Permitted Encumbrances" is defined in Section 7(e).

"Purchased Assets" is defined in Section 2(d).

"Purchase Price" is defined in Section 2(b).

"Real Property" is defined in Section 2(d)(i).

"Release" means any release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, or dispersal into the environment of Hazardous Substances (i) by Seller or by any Affiliate, operator, contractor, service provider, vendor, supplier or customer of Seller; (ii) caused by or resulting from any action, failure to act or omission by Seller or any Affiliate, operator, contractor, service provider, vendor, supplier or customer of Seller; (iii) at or from any property owned, leased, licensed, occupied, used or operated by Seller.

"Seller" is defined in the first paragraph.

"Seller Closing Indebtedness" means Seller's indebtedness as of immediately prior to Closing the payment and satisfaction of which is secured by a mortgage, deed of trust, Lien, financing statement, security interest or other encumbrance on all or any of the Purchased Assets, which is described in **Appendix L**.

"Seller Transaction Expenses" means (i) all of the unpaid fees and expenses owed and unpaid as of the Closing by Seller or any Affiliate to its attorneys, accountants, financial advisors, consultants, professionals, and other advisors in connection with the transactions contemplated by this Agreement, and (ii) other payment owed by Seller at Closing.

"Shareholders" is defined in the first paragraph.

"Tax" means any income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, property, environmental, windfall profit, customs, vehicle, airplane, boat, vessel or other title or registration, capital stock, franchise, employees' income withholding, foreign or domestic withholding, social security, unemployment, disability, real property, personal property, sales, use, transfer, value added, alternative, add-on minimum and other tax, fee, assessment, levy, tariff, charge, imposition or duty of any kind whatsoever and any interest, penalty, addition or additional amount thereof imposed, assessed or collected by or under the authority of any governmental body or payable under any tax-sharing agreement or any other contract.

"Water Service Area" is defined in the recitals.

"Water System" is defined in the recitals.

(c) Construction and Interpretation. Words that indicate a singular number shall include the plural in each case and vice versa; words that import a person shall include natural persons as well as legal entities, firms and corporations; the terms "herein," "hereunder," "hereby," "hereof," and similar terms, shall refer to this Agreement as an integrated whole; the term "heretofore" or similar words shall mean before the Effective Date; and the term "hereafter" or

similar words shall mean on or after the Effective Date; and words that reference only one gender shall include all genders. All references in this Agreement to Appendices, Schedules, Sections, and clauses refer to the corresponding Appendices, Schedules, Sections, and clauses of this Agreement, unless expressly provided otherwise. The word "including" (in its various forms) means "including, without limitation." References to any person include the successors and permitted assigns of that person. References to any applicable Law refer to such Law as amended, modified, supplemented, or replaced from time to time. Unless the context otherwise requires, all references to days means calendar days. Unless otherwise specifically indicated, any reference herein to "dollar(s)" or "\$" means U.S. dollars.

(d) Representation by Counsel. Each party acknowledges that it has been represented by counsel and other advisors and consultants of its choice throughout all negotiations that have preceded the execution of this Agreement and that it has executed this Agreement and transaction documents with the advice of such counsel. Each party and its counsel cooperated in the drafting and preparation of this Agreement and the documents referred to herein, and any and all drafts relating thereto exchanged between the parties shall be deemed the work product of the parties and may not be construed against or in favor of any party by reason of its preparation. Accordingly, any rule of Law or any legal decision that would require interpretation of any ambiguities in this Agreement against any party that drafted it is of no application and is hereby expressly waived.

## **2. COVENANT TO PURCHASE AND SELL; DESCRIPTION OF PURCHASED ASSETS.**

(a) Purchase and Sale. At the Closing, Seller shall sell, grant, transfer, convey, assign and deliver to the City, and the City shall purchase, accept, acquire and receive from Seller, the Purchased Assets free and clear of all Liens except Permitted Encumbrances upon the terms and subject to the conditions set forth in this Agreement.

(b) Purchase Price. In consideration for the sale, grant, transfer, conveyance, assignment and delivery to the City of the Purchased Assets, the City shall assume the Assumed Liabilities and, in accordance with this Section 2, pay (the aggregate amount of such payment, collectively, the "Purchase Price") to Seller, at the Closing, the amount of Five Million Dollars and no/cents (\$5,000,000.00) minus the sum of (A) the Seller Closing Indebtedness (which shall be paid by Escrow Agent to the payees of such Seller Closing Indebtedness), (B) the Seller Transaction Expenses (which shall be paid by the Escrow Agent to the payees owed such expenses by Seller), and (C) the pro-rations and adjustments set forth in this Agreement. The Purchase Price shall be due and payable by the City to Seller in immediately available funds at Closing, by wire transfer, pursuant to wire instructions to be provided in writing by Seller to the City and the Escrow Agent no less than five (5) business days prior to Closing, which instructions shall also certify and confirm the amount of the Seller Closing Indebtedness and the Seller Transaction Expenses and wire instructions for payment of such amounts from proceeds of the Purchase Price.

(c) Asset Warranty. Except as otherwise represented, covenanted and warranted by Seller and Shareholders herein and in other agreements, instruments, certificates and documents executed in connection with the transactions contemplated by this Agreement, including certificates or affidavits executed by each Shareholder regarding the operation, state of repair and condition of the Purchased Assets which comprise the Water System assets, the City will purchase the Purchased Assets "As-Is" "Where-Is" subject to "All Disclosed Faults." Such certificates or

affidavits shall be delivered to the City within thirty (30) days of the effective date and shall either (i) disclose all facts, events, circumstances, conditions, occurrences or faults known to the Shareholders adversely affecting the physical condition, capacity, performance, function, reliability, and/or level of service of the Water System or any of the Purchased Assets, or (ii) affirmatively state that no such facts, events, circumstances, conditions, occurrences or faults are known to the Shareholders.

(d) Assets Purchased. "Purchased Assets" shall mean all of Seller's right, title, and interest as of the Closing in, to, and under all of the assets, properties, rights, authorizations, permits, certificates, licenses and interests of every kind and nature, whether real, personal or mixed, tangible or intangible, wherever located, and whether now existing or hereafter acquired, which are used or held for use primarily in connection with, or otherwise relating to, the Water System assets and the Business, other than the Excluded Assets, as follows:

(i) the real property owned by Seller or in which Seller has a leasehold interest and the buildings, facilities, installations, structures, and improvements located thereon that are identified in **Appendix A** ("Real Property");

(ii) all easements, licenses, prescriptive rights, rights-of-way, and rights to use public and private roads, highways, streets, canals, and other areas identified in **Appendix B-1** and operate, maintain, repair, replace and use the Water System assets and conduct the Business in the Water Service Area identified in **Appendix B-2** (which appendix includes a legal description of the Water Service Area and a map showing all buildings, facilities, installations, structures, improvements and major components of the Water System);

(iii) all water supply, treatment, storage, distribution, and conveyance systems, facilities and processes used in or held for use primarily in connection with the ownership, management, operation and maintenance of the Water System and conduct of the Business, including pumps, generators, motors, wells, tanks, transmission mains, distribution mains, supply pipes, interconnection facilities, fittings, valves, meters, meter boxes, instruments, controls, sensors, service connections and all other such facilities, equipment and property installations as identified in **Appendix C**;

(iv) all permits (including but not limited to water use permits issued by the Southwest Florida Water Management District), licenses, authorizations, certificates, entitlements, privileges, consents, approvals, franchises, concessions, grants, ordinances, and all rights to construct, operate, maintain, repair, replace, extend, expand, alter and connect to all or any portion of the Water System and conduct the Business ("Permits"); together with all rights, interests, benefits and privileges granted to Seller under the Permits as identified in **Appendix D**. **Appendix D** also identifies any of the foregoing which are Excluded Assets or are not transferable or for which third party consents or approvals are necessary for assignment and transfer by Seller to the City;

(v) spare and replacement parts, special tools and items of inventory owned by Seller on the Closing Date which are fit for use and used or useful in connection with the operation and maintenance of the Water System and conduct of the Business which shall be maintained at levels consistent with good industry practice between the Effective Date and the Closing Date, and which are listed in **Appendix G**;



(vi) all supplier lists, customer records, customer complaints and inquiry files, customer metering and billing hardware and software, maps, surveys, engineering documents, reports, operation, maintenance, repair and warranty records, plans, manuals, training materials, warranties, guarantees, performance assurances and related or similar information, data and documentation relating to the Water System and the Business in the possession, custody or control of Seller or any Affiliate, including any ownership interests, licenses and use rights of Seller with respect thereto, and any rights of Seller to obtain original versions or copies of such items from contractors, suppliers, vendors or other third parties;

(vii) all record drawings and as-built drawings for all buildings, improvements, treatment facilities, storage tanks, generators, pumps, motors, meters, and equipment of the Water System, including rights of Seller to obtain copies of such items from third parties;

(viii) all rights, benefits, entitlements and interests of Seller under any Developer Agreements or other agreements relating to or associated with any expansion, extension or enlargement of the Water System or customer base as identified in **Appendix E** to this Agreement;]

(ix) all rights, licenses, benefits, interests and privileges of Seller under the contracts, agreements, memorandum of understanding, letters of intent, purchase orders, lease agreements, warranties, guarantees, and indemnities relating to the management, operation, maintenance and repair of the Water System and conduct of the Business ("Contracts") which are expressly identified in **Appendix F** as being assumed by the City. **Appendix F** also lists as excluded contracts or leases which are Excluded Assets or are not transferable or for which third party consents or approvals are necessary for assignment by Seller and assumption thereof by the City;

(x) all causes of action and defenses of Seller against third parties (including with respect to indemnification and contribution) to the extent related to any Assumed Liabilities;

(xi) all prepaid expenses, credits, advance payments, claims, refunds, rights of recovery, rights of set-off, deposits, charges, sums, and fees made, held or possessed by Seller to the extent related to any of the Purchased Assets or the Assumed Liabilities;

(xii) all of Seller's rights under warranties, indemnities, performance assurances and all similar rights against third parties to the extent related to any of the Purchased Assets or the Assumed Liabilities;

(xiii) all insurance benefits, including rights and proceeds, arising from or relating to any of the Purchased Assets or the Assumed Liabilities;

(xiv) all intellectual property owned, licensed or available for use by Seller for operation and maintenance of the Water System and conduct of the Business; and

(xv) all goodwill and the going concern value of the Business.

(e) "Excluded Assets". Purchased Assets do not include the "Excluded Assets," as follows:

(i) Cash, bank accounts, equity and debt securities of any nature, and deposits maintained by Seller with any governmental authority;

(ii) Escrow and other provisions made by Seller for payment of federal and state Taxes, and other obligations to governmental authorities, including regulatory assessment fees, which shall be Seller's obligation and responsibility to pay in their entirety through the Closing Date;

(iii) The equipment, materials and supplies owned by Seller and used to operate, maintain and repair the Water System which are identified as excluded assets in **Appendix H**;

(iv) The name and Florida corporation known as **Park Water Company, Inc.** and related domain names, logos and signage owned or used by Seller;

(v) Contracts, agreements, leases, licenses, loans, guarantees and other arrangements or commitments of Seller which the City does not expressly assume (as identified in **Appendix F**), including those between Seller and Affiliates or officers, directors, employees, agents, representatives, or related persons and entities, employment agreements, consulting agreements, management agreements, contracts that cannot be assigned, Permits that cannot be assigned; and policies of insurance of Seller relating to the period after Closing.

### **3. LIABILITIES.**

(a) Assumed Liabilities. On the Closing Date, the City shall assume and agree to discharge only the following obligations and liabilities of Seller (the "Assumed Liabilities"):

(i) Liabilities to the customers of the Water System incurred after the Closing Date for which the operative event, occurrence, act, omission or failure to act giving rise to the liability occurred exclusively after the Closing Date;

(ii) Liabilities of the City under this Agreement, or under any other agreement or instrument executed by the City and Seller in connection with this Agreement;

(iii) Liabilities of the City to third parties with regard to the operation and maintenance of the Purchased Assets and conduct of the Business incurred after the Closing Date based solely on the City's acts, omissions or failures to act after the Closing Date;

(iv) Liabilities arising from the ownership, operation and maintenance of the Purchased Assets by the City after the Closing Date.

(b) Excluded Liabilities. On the Closing Date Seller shall retain and remain liable for (and the City does not assume or accept), the Excluded Liabilities.

(c) Conduct of Business. As a material inducement to Seller to execute this Agreement, perform its obligations, covenants and duties and consummate the transactions, at the Closing, subject to Seller performing any transition services or activities contemplated by this Agreement, covenants to Seller to commence water service to the Water Service Area in the course of the City's water utility business, and the City shall use reasonable efforts to extend service in a manner consistent with the Developer Agreements assigned pursuant to this Agreement and attached hereto as **Appendix E**.

**4. DUE DILIGENCE.** As of the Effective Date, the City has performed due diligence with respect to the potential feasibility, viability, benefit and risk of the acquisition of the Purchased

Assets and assumption of Assumed Liabilities. The City reserves the right to conduct additional due diligence inspections with regard to the operation, state of repair and condition of the Water System and the Purchased Assets during the period ending sixty (60) days after the Effective Date. At the end of such sixty (60) day period, the City may terminate this Agreement in its reasonable discretion by delivering notice of its termination to Seller; otherwise, the City shall be deemed to have waived the right to terminate this Agreement on the basis of facts regarding the condition of the Water System assets that would have otherwise been discovered by the conduct of due diligence using a reasonable level of care and diligence. Such notice shall be delivered by U.S. Mail to the Seller at the addresses indicated in Section 13 hereof, and shall be considered delivered as of the postmark date. In addition to such right the City shall have the right during the period thirty (30) days from the Scheduled Closing Date to complete its due diligence and inspect the Water System and Purchased Assets to verify the extent to which Seller has performed, observed and satisfied the covenants herein relating to the operation, maintenance, repair and condition of the Water System assets and the Business. Upon a termination of this Agreement by the City under this Section 4, Seller and the City shall have no liability and no further obligation to the other party under this Agreement.

**5. REPRESENTATIONS AND WARRANTIES OF SELLER.** As a material inducement to the City to execute this Agreement and perform its obligations and consummate the transactions contemplated hereunder, Seller represents and warrants to the City (and the Shareholders join the representations and warranties (a), (b), (d), (g), (h), (k), (m), (n) and (q)) as follows:

(a) Seller Status. Seller is a duly organized, validly existing corporation, and is active and in good standing under the laws of the State of Florida. Seller has all requisite right, power and authority and has taken all requisite corporate and other action necessary to (i) execute and deliver this Agreement and the other transaction documents; (ii) perform, pay and observe all of the terms, covenants and conditions of this Agreement and the other transaction documents; (iii) obtain all consents, approvals, exceptions, waivers, and authorizations necessary for the execution, delivery and performance of this Agreement and the other transaction documents and consummation of the transactions contemplated by this Agreement and such other documents; and (iv) consummate the transactions contemplated by this Agreement and the other transaction documents.

(b) Board and Shareholder Approval. The Board of Directors of Seller and the Shareholders of Seller, in accordance with (i) the articles of incorporation, bylaws, other organizational and governance documents of Seller, (ii) agreements among Seller and/or Shareholders, and (iii) applicable Laws, have determined that consummation of the transactions contemplated by this Agreement is in the best interest of the Shareholders and Seller, and duly approved Seller entering into, executing, delivering, and performing this Agreement and consummating the transactions contemplated by this Agreement and the other transaction documents.

(c) Valid Obligations. This Agreement constitutes, and all agreements, instruments, certificates, deeds and other documents to be executed by Seller with respect to this Agreement and the consummation of the transactions contemplated by this Agreement and the other documents will constitute, when executed and delivered, lawful, valid and binding obligations of Seller, enforceable in accordance with their terms.

(d) No Violation. The execution, delivery and performance of this Agreement and the consummation of the transactions contemplated by this Agreement and the other documents will not breach or violate any provision of Law, the rules and regulations of the FPSC or order or decree of any court or government agency applicable to Seller, the Water System, the Business or Purchased Assets, the articles of incorporation, by-laws or other organizational or governance documents of Seller, or any certificate, indenture, loan agreement, mortgage, pledge, security agreement, financing statement or other instrument to which Seller is a party, or by which it or its properties is bound.

(e) Real Property Owner. Seller is the sole legal and beneficial owner of the Real Property and has good, marketable and insurable title to the Real Property. All Real Property has been accurately and completely identified in **Appendix A**. The Real Property is subject to no mortgage, deed of trust, option, right of first offer, right of refusal, sale agreement, deed of trust, pledge, lien, charge, covenant, security interest, financing statement, encumbrance, or restriction ("Liens"), except Permitted Encumbrances and those that will be satisfied or released by the Closing as listed on **Appendix A**. At Closing, Seller shall deliver to the City title to the Real Property free and clear of all Liens whatsoever, other than Permitted Encumbrances.

(f) Control. Seller has access to and exclusive occupancy, possession, management, control, use and ownership of all Real Property, the Water System and the Purchased Assets. All parts of the Water System are located within the Real Property identified in **Appendix A** and the property interests identified in **Appendix B-1**. Seller's occupancy, possession, operation and use of the Real Property is not in breach, non-compliance with or violation of any applicable Laws, including as relate to wellhead protection, zoning, land use or other applicable requirements, nor are there any encroachments of any kind related to the Real Property, except as are specifically, expressly identified in **Appendix K**.

(g) Share Ownership. The books of account, minute books and other records of Seller relating to ownership, pledge and transfer of shares of stock or other equity interests in Seller (or their equivalents), all of which have been made available to the City, are true, complete and correct in all material respects and have been maintained in accordance with applicable Laws and good business practices. The Shareholders are the only shareholders of Seller, and no other person or entity owns any shares of stock of Seller and equity or otherwise ownership interest in Seller or has any right or interest therein or thereto or any right, whether by option, right of first refusal, right of first offer, warrant, exchange or subscription agreement or otherwise, to acquire any stock, equity, assets, interest in or property of Seller, or any right, power or control with respect to management, policy and direction of Seller, its operations or the Business.

(h) Asset Ownership. Seller is the sole legal and beneficial owner of the Purchased Assets. Seller has good and marketable title to all Purchased Assets free and clear of all Liens except Permitted Encumbrances. Seller has no knowledge of the existence of any option, right of first refusal, right of first offer, warrant, agreement, instrument, claim, demand, action, fact or circumstance which will prevent or impede Seller from selling, assigning, transferring, conveying and delivering all of the Purchased Assets to the City at Closing free and clear of any Lien except the Permitted Encumbrances related to Real Property.

(i) Contracts. Seller has delivered to the City complete copies of the contracts, agreements, options, purchase orders and other instruments and documents identified in **Appendix F** and the finance documents relating to the Seller Closing Indebtedness which is described in

**Appendix L**, which are all of the agreements (written or oral) to which the Seller is a party or by which Seller or the Water System assets are bound, and Seller is not in breach, default or non-compliance with the terms, conditions, covenants, representations and warranties of any such agreements, instruments or documents.

(j) Environmental Law Compliance.

(i) Seller, the Water System, the Business and the Purchased Assets are in compliance with all applicable Environmental Laws and Seller has no obligation or liability thereunder, and no basis exists for Seller to believe that any such obligation or liability exists or may come into existence, except as specifically disclosed in **Appendix I**.

(ii) Seller has obtained, maintained and observed and complied with the terms of all Permits, consents, licenses and authorizations required, or has submitted application renewals for such Permits in a timely manner, including under applicable Environmental Laws, necessary for the operation, maintenance and repair of the Water System, conduct of Business and the distribution or sale of potable water and the delivery of utility services to customers by and from the Water System.

(iii) The Water System and the Purchased Assets are in compliance with all Laws, Permits, licenses and other authorizations relating to (A) the ownership, operation, maintenance and repair of the Water System, (B) the nature, level and quality of services, and (C) the distribution and sale of potable water and the delivery of utility services to customers of the Water System.

(iv) Seller has received no oral or written notice within the last five (5) years of any violations, non-compliances or potential or alleged violations of applicable Laws, Permits or authorizations (including any applicable Environmental Law) relating to the Water System and the Business except as identified in **Appendix I**.

(v) There is no Hazardous Substance located on, at or under the Real Property or migrating onto or from the Real Property in violation of any Environmental Law;

(vi) No Real Property is the subject of federal, state, or local enforcement actions or investigations that may lead to fines, penalties, orders, decrees and/or claims against Seller for clean-up costs, remedial work, damages to natural resources, or for personal injury claims or property damages or damages to natural resources.

(vii) No written or verbal notification of an actual, imminent or a threatened Release of a Hazardous Substance has been made or filed by or on behalf of Seller, an Affiliate or by any third party with respect to the Water System or any of Purchased Assets.

(viii) No Hazardous Substance has been Released by Seller in violation of Environmental Law at, on, or under any Water System property.

(k) Lawsuits. Except as provided in **Appendix J**, there are no current actions, suits, investigations, audits, or dispute resolution or regulatory proceedings, at law or in equity, pending or, to Seller's and Shareholder's knowledge, threatened against the Seller, any Shareholder, or any Affiliate, officer or director of Seller before any court, administrative, regulatory or governmental agency or instrumentality, which affect or the adverse outcome of which would affect the ownership, possession, management, administration, control, use, operation, repair and maintenance of the Water System and the right, power, authority, capability and ability of Seller

(i) to deliver potable water distribution and sale services in the Water Service Area; (ii) sell, transfer, assign, convey and deliver any of the Purchased Assets to the City or enter into, execute and deliver this Agreement and other agreement, instrument, certificate or document relating to the transactions contemplated by this Agreement; and (iii) perform, pay and observe the obligations terms, covenants and conditions of this Agreement and the other transaction documents. Seller represents and warrants that it has and shall have a continuing duty to disclose up to and including the Closing Date the existence and nature of all pending judicial, regulatory, administrative suits, actions, audits, investigations, proceedings and orders which in any way relate to the Water System or any Purchased Assets.

(l) Taxes Paid. Seller has timely withheld and paid all Taxes required to have been withheld and paid in connection with any amounts paid or owing to any employee, independent contractor, shareholder, Affiliate, or other third party, and all forms, returns, declarations and responses required with respect thereto have been properly completed and timely filed. Seller does not have any liability for Taxes of another person by contract or otherwise.

(m) Employees. Seller is in compliance with all Laws regarding employment of persons hired, employed or engaged by Seller to provide labor, work or services in connection with the administration, management and operation of the Water System and conduct of the Business. Seller acknowledges and agrees that the City does not accept or assume any obligation, duty, liability or responsibility arising out of, related to or associated with employment of or contracting with any such persons prior to, at or after Closing, and that Seller shall retain through and after Closing all obligations, duties, liabilities and responsibilities with regard to past and current employees of Seller and that any claim, demand, action, obligation or liability arising therefrom or related thereto shall be Excluded Liabilities.

(n) Evaluation of Transaction. As of the Effective Date, Seller and the Shareholders have each conducted its/his/her own independent assessment and evaluation of the transactions contemplated by this Agreement and the potential risks and uncertainties associated with such transactions, and each acknowledges and agrees that: (i) in making the decision to recommend, approve and/or enter into this Agreement and to consummate the transactions contemplated by this Agreement, it/he/she has relied upon and will rely upon attorneys, accountants, advisors and professionals retained by it/him/her and its/his/her own assessment and evaluation, and the express representations and warranties of the City set forth herein; and (ii) neither the City, its officers, officials, employees, representations, agents nor any other person has made any other representation or warranty, express or implied with regard to the City, this Agreement, other transaction documents or the transactions contemplated by this Agreement except as expressly, specifically set forth herein.

(o) Third Party Consents. Seller has no knowledge of any fact or circumstance which will prevent Seller from securing prior to the Closing all required Lien releases, authorizations, consents, waivers, releases and approvals from third parties necessary to consummate the transactions contemplated by this Agreement in accordance with the terms hereof or that are necessary or useful for the ownership, operation and use of the Water System and the Purchased Assets and conduct of the Business by the City.

(p) Condition of Assets. All of the Purchased Assets constituting physical assets have been maintained in accordance with the rules, regulations, requirements and standards of the Florida Department of Environmental Protection and the Florida Department of Health and are in

good operating condition and repair, ordinary wear and tear excepted. Seller, Shareholders and Affiliates have no knowledge of facts, events, circumstances, conditions, occurrences or faults adversely affecting the physical condition, capacity, performance, function, reliability, and/or level of service of the Water System or any of the Purchased Assets which have not been expressly disclosed in writing by Seller to the City in connection with Buyer's due diligence activities.

(q) Solvency. Seller is solvent and has sufficient assets and capital to carry on its business as it is now conducted and to perform its obligations hereunder. No petition or notice has been presented, no order has been presented or made and no resolution has been passed for the bankruptcy, liquidation, reorganization, winding-up or dissolution of Seller. No receiver, trustee, custodian or similar fiduciary or custodian has been appointed over the whole or any part of the Water System or the Purchased Assets or the income of Seller.

(r) Intellectual Property. The operation of the Water System and Purchased Assets and the conduct of the Business does not infringe, misappropriate, or dilute any intellectual property rights of any third party, and there is no claim, demand, action or proceeding pending or threatened in which it is asserted that Seller has infringed, misappropriated, or diluted any intellectual property rights of any third party.

(s) No Brokers. Seller does not have any contract, arrangement or understanding with any broker or other intermediary with respect to the transactions contemplated by this Agreement, and no broker or sales commissions or finder's fees are due or payable as a result of the execution or performance of this Agreement or consummation of the transaction contemplated hereby.

(t) Accurate Representations. No representation or warranty made by the Seller in this Agreement or in any other agreement, deed, instrument, certificate, or document executed or delivered in connection with the transactions contemplated by this Agreement contains or will contain any untrue or incorrect statement of material facts or omits to state any material fact required to make the statements herein or therein not misleading.

**6. REPRESENTATIONS AND WARRANTIES OF THE CITY.** As a material inducement to Seller to execute this Agreement and to perform its obligations hereunder, the City represents and warrants to Seller as follows:

(a) The City is a validly existing political subdivision under the laws of the State of Florida and has all requisite power and authority to (i) enter into this Agreement, and (ii) carry out and perform the terms and conditions of this Agreement.

(b) The execution, delivery and performance of this Agreement by the City will not violate any provision of Law, order of any court or governmental authority applicable to the City, nor any indenture, agreement, or other instrument to which the City is a party, or by which it is bound.

(c) The City has held and made, or will use reasonable efforts to hold and make, all necessary public hearings, findings and resolutions required to authorize the City's acquisition and purchase of the Purchased Assets and the execution and performance of this Agreement by the City in a manner and at the times duly required by applicable Laws and all other appropriate governmental actions required to be taken by the City will have been duly taken prior to the Closing.

(d) The City has fulfilled and complied with or will prior to the Closing used reasonable efforts to fulfill and comply with the applicable provisions of Section 180.301, Florida Statutes, relative to the purchase of the Water System and Purchased Assets by a governmental agency.

(e) The execution, delivery and performance of this Agreement and the consummation by the City of the transactions contemplated by this Agreement have been duly authorized by all necessary action on the part of the City. Assuming the due authorization, execution and delivery by Seller, this Agreement constitutes a valid and legally binding obligation of the City, enforceable against the City in accordance with its terms, except to the extent that the enforceability thereof may be limited by sovereign immunity, any applicable bankruptcy, insolvency, reorganization or other similar laws affecting creditors' rights generally, or by the exercise of judicial discretion of a court of competent jurisdiction in accordance with general principles of equity.

## **7. TITLE INSURANCE AND PERMITTED ENCUMBRANCES.**

(a) Within forty-five (45) days after the Effective Date, the City shall obtain a current title insurance commitment in favor of the City issued by a title company licensed to do business in the State of Florida selected by the City, covering the Real Property (and all or a portion of the **Appendix B-1** easements as may be designated by the City), and encompassing legal and physical access from a dedicated public road, street, or highway, which access is insurable under the title policy, which shall be in an amount equal to the Purchase Price. The cost of the title insurance commitment and title insurance policy shall be borne by the City. The title insurance commitment shall commit the insurer to issue a loan policy and an owner's title insurance policy to the City covering the Real Property (and all or a portion of the **Appendix B-1** easements as may be designated by the City), substantially in accordance with the ALTA Standard Owner's Form B, reflecting title to the Real Property to be marketable and insurable, except for the Permitted Encumbrances, the standard printed exceptions usually contained in an owner's title insurance policy, and the standard exclusions from coverage; provided, however, that the title insurance company shall delete the standard exceptions customarily deleted for such items as the standard survey exception (based on a current survey for all or portions of the Real Property), and materialman's liens and mechanics liens, if there are no such liens at the time of Closing. Seller, Affiliates and the Shareholders shall execute at, or prior to Closing, in favor of the City and the title insurance company, all forms, certificates, estoppels, or affidavits required by the title insurance company including the appropriate mechanic's lien affidavit and "Gap" affidavit, sufficient to allow the title insurance company to delete all standard exceptions addressed by such affidavits.

(b) The City shall provide written notice to Seller no more than forty-five (45) days after receipt of the title insurance commitment of any alleged defect in Seller's title to the Real Property. Such notice shall include all exceptions, Liens, easements, covenants, restrictions or other defects in Seller's title to the Real Property, which render or may render Seller's title to the Real Property (i) unmarketable in accordance with standards adopted by The Florida Bar, (ii) uninsurable, or (iii) inadequate for water utility purposes and uses of the Real Property by the City. Seller shall have thirty (30) days after receipt of the City's notice to eliminate the objections to title set forth in the City's notice. If Seller fails to deliver title as herein provided, then the City may:

(i) Accept whatever title Seller is able to convey with no abatement of the Purchase Price; or



(ii) Reject title and terminate this Agreement with no further liability of either party to the other.

(c) The City may not object to title by reason of the existence of the Seller Closing Indebtedness described in **Appendix L** or any mortgage, encumbrance, covenant, restriction or other Lien or other matter that (i) may be satisfied with a payment of money and for which Seller gives written notice to the City that Seller elects to do so by paying same at or prior to the Closing Date and provides assurances to the satisfaction of the City of the ability of Seller to pay or cause payment thereof; (ii) any mechanic's lien or other Lien that can be released of record, bonded or transferred of record to substitute security so as to relieve the Real Property from the burden thereof and Seller advises the City that Seller elects to do so at or prior to Closing and provides assurances to the satisfaction of the City of the ability of Seller to pay or cause payment thereof; or (iii) the title insurance company issuing the title insurance commitments affirmatively insures over.

(d) Seller shall provide to the City a copy of any detailed survey of the Real Property (as well as any parcel upon which a well is located) , that Seller has in its possession with in thirty (30) days after the Effective Date. The City shall have the right, but not the obligation, to request a new survey on the Real Property or well site. Costs incurred by the City to procure a new survey shall be borne by the City.

(e) As used herein, "Permitted Encumbrances" include the following:

(i) All present and future building restrictions, zoning regulations, ordinances, resolutions, regulations and orders of any governmental authority having jurisdiction over the Real Property and the use thereof.

(ii) Easements and restrictions of record which do not impair, impede, restrict or diminish the access to or use of the Real Property or the Water Service Area, the conduct of the Business or the operation of the Water System for all intended purposes and intended levels of service.

(iii) Any drainage canal, mineral, road, or other reservation of record in favor of the State of Florida or any of its agencies or governmental or quasi-governmental entities, none of which, however, shall impair, impede, restrict or diminish the use of the Real Property or the operation of the Water System for all intended purposes and levels of service.

(iv) Any Lien, including any right to lien, for services, labor or material, mortgage or other similar obligation, that will be satisfied or discharged by Seller at or prior to Closing.

**8. CONDITIONS PRECEDENT TO CLOSING.** The obligations of each party to close the transactions contemplated by this Agreement are subject to the conditions that, at or before the Closing Date:

(a) Conditions precedent for the City and Seller:

(i) Neither party is prohibited by judgment, writ, order, injunction, decree or other Law from consummating all or any part of the transactions contemplated by this Agreement.

(ii) There is not pending or threatened on the Closing Date any lawsuit, action or proceeding that could (A) prohibit the purchase, transfer, conveyance, assignment, acquisition or sale of any of the Purchased Assets or consummation of all or any part of the transactions contemplated by this Agreement, (B) prohibit the City or Seller from closing the transaction or the City from financing and paying the Purchase Price, or (C) limit, inhibit or restrict in any manner the City's conduct of the Business or access to, use, title, control, enjoyment or possession of any of the Real Property, the Water System or any other Purchased Assets.

(iii) Each of the parties has performed, satisfied and fulfilled all of the obligations, covenants and commitments and executed and/or made delivery of all commitments, policies, instruments, certificates, affidavits, estoppels, opinions, deliverables and documents required to be performed, made, provided or delivered by it under this Agreement or any other transaction document, and the Shareholders have executed and delivered to the City all certificates and affidavits necessary in connection with the transactions contemplated by this Agreement.

(iv) There has been no material adverse change in the capacity, physical condition, functionality, location, performance or operation of the Water System or Water Service Area, Water System assets or the other Purchased Assets. For purposes of this Agreement, a "material adverse change" shall mean a transfer, alteration, repair, replacement, disposition, loss or damage to the Purchased Assets that materially reduces: (A) the value, functionality, reliability, performance or operation of the Purchased Assets in the aggregate for the delivery of water service to customers; or (B) the ability to operate the Water System in the Water Service Area as operated by Seller prior to the Closing Date and/or as intended to be operated by the City.

(v) All warranties and representations of the other party are true in all material respects as of the Closing Date, except to the extent they specifically refer to another date.

(b) Conditions precedent to the City's obligation to close:

(i) The City shall have conducted due diligence with respect to the Water System and the Purchased Assets and the findings and results thereof shall be satisfactory to the City in its absolute and sole discretion.

(ii) The City shall have arranged, obtained and closed on financing of the purchase of the Purchased Assets on terms and conditions acceptable to the City in its absolute and sole discretion.

**9. PRE-CLOSING CONDUCT; COVENANTS.** Prior to the Closing Date, Seller covenants to the City as follows:

(a) During the period between the Effective Date and the Closing Date, Seller shall:

(i) not (and shall not permit or cause any of its Affiliates, Shareholders, officers, directors, employees, agents, representatives, contractors, consultants or advisors to) solicit, initiate, encourage, entertain, make or accept offers with respect to the sale of all or any part of the Water System or the Purchased Assets or shares of stock or other ownership or control interests in Seller;

(ii) Operate, maintain, repair and replace the Water System and Purchased Assets, conduct the Business, maintain books, records and accounts, and provide services to customers in a normal and ordinary manner in accordance with applicable Laws, Permits, governmental authorizations, industry standards and contractual obligations to ensure that the condition, capacity and performance of the Water System and Purchased Assets remain in all material respects unchanged, normal wear and tear and usage excepted;

(iii) Confer with the City prior to purchasing, leasing, disposing or encumbering of any Water System assets, property, rights or interests or implementing operational decisions (A) of a material nature which are not in the ordinary course of business or (B) which may constitute a waiver or relinquishment of any rights, benefits, remedies or privileges or assumption an obligation or liability by the City following the Closing, and refrain from implementing any such decision without the prior written consent of the City;

(iv) Promptly notify the City of any oral or written notification or communication received by Seller, any Shareholder or any Affiliate or related person of Seller, from any person, entity, or governmental agency of any existing or potential Environmental Law violation relating to the Water System, any of the Purchased Assets or Seller;

(v) Provide the City and its designees with reasonable access to the business premises, Real Property, the Water System, Purchased Assets, Seller's customer and operations books and records, maintenance and repair logs and records, employees, contractors, vendors, consultants, major customers, managers, officers, and agents on reasonable advance notice (one business day) and during business hours;

(vi) Promptly notify the City of any event, activity, condition, circumstance, fact or occurrence that causes any representation or warranty of Seller to be inaccurate, incomplete or untrue or has, or may have, a material adverse effect upon the capacity, condition, operation or performance of the Water System or any of the Purchased Assets or conduct of the Business, the compliance of the Purchased Assets and the Water System with applicable Laws, or the transactions contemplated by this Agreement;

(vii) Not enter into or suspend, terminate or materially modify any contract, oral or written, relating to the Water System or Purchased Assets without the prior written consent of the City after review of the proposed contract or modification delivered to the City by Seller;

(viii) Without the prior written consent of the City, not enter into any new Developer Agreements or modify any existing developer agreements. Copies of any proposed new or modified developer agreements shall be promptly delivered to the City and shall not be signed by Seller without prior written consent from the City; and

(ix) Seller shall maintain adequate insurance coverage for the cost of any replacement of or repairs to the Water System and the Purchased Assets or interruption of the conduct of the Business that may arise out, result from or be required as a result of casualty damage or event of force majeure. The risk of loss with regard to the Water System and the Purchased Assets prior to the Closing shall remain with the Seller and shall only pass to the City on the Closing.

(b) The City reserves the right to obtain within thirty (30) days after the Effective Date a Phase I Environmental Site Assessment ("ESA") (and a subsequent Phase II ESA if the City determines that one is necessary based on the Phase I survey results) of each parcel comprising the Real Property. Seller shall provide access to the Water System and books, records and documents reasonably requested by the City in connection with the conduct of the ESA by the engineering firm undertaking the ESA no more than twenty (20) days after such request. The City shall pay for the ESA. If such ESA discloses the presence of any Hazardous Substance, the City shall notify Seller within ten (10) business days of receipt of such ESA, and subject to the right of the City to rescind, cancel and/or terminate this Agreement, Seller shall perform such cleanup and remediation as is necessary hereunder provided that the cost thereof does not exceed \$50,000 or require more than twenty (20) days to complete and the cleaning and remediation is performed to the satisfaction of the City. Upon Seller's inability, refusal or failure to perform cleanup and remediation, the City may elect to either (i) terminate this Agreement, in which event neither party shall have any further obligation or liability to the other; or (ii) proceed to Closing with an equitable reduction of the Purchase Price.

(c) Seller acknowledges that the City is relying on the representations, warranties, obligations, and covenants of Seller, the accuracy of the Seller's books, records, accounts and contracts, and upon the City's own due diligence investigation in entering into this Agreement. Seller shall promptly provide access to all properties and facilities and personnel (including personnel of contractors, vendors, service providers and consultants) and all documents, data and information reasonably requested by the City. In addition to its other rights, the City shall have the right to terminate this Agreement for any actual or potential defects, deficiencies, adverse conditions, or problems or inaccurate disclosures by Seller discovered by the City which are not remedied by Seller to the City's reasonable satisfaction prior to Closing. The City shall provide Seller with written notice of such termination within thirty (30) days after any such disclosing by Buyer. No access, entry, inspection, review or other activity of the City in the conduct of due diligence shall relieve, release, alter, discharge or diminish the representations, warranties, obligations and covenants of Seller or the Shareholders or the City's reliance thereon.

## **10. TERMINATION OF AGREEMENT.**

(a) In addition to other circumstances as described herein, this Agreement may be terminated (i) by mutual written agreement of the parties, (ii) by either party if the transactions contemplated hereby have not closed by March 2, 2021 for reasons other than the breach of such party in the performance of its obligations, covenants and commitments hereunder, or (iii) as provided in Sections 10(b) and (c).

(b) The City may terminate this Agreement, in its sole discretion, upon the occurrence of any of the following:

(i) The failure in any material respect prior to Closing, of any conditions precedent to Closing, set forth in Section 8.

(ii) Any material breach of this Agreement by Seller, including, but not limited to, a material breach of any representation, warranty or certification by Seller, any Affiliate or any Shareholder, if Seller has not cured such breach to the City's satisfaction by the earlier of ten (10) days after notice from the City or the Closing Date unless the date for cure has been expressly extended by the City in writing.

(c) Seller may terminate this Agreement, in its sole discretion, upon the occurrence of any of the following:

(i) The failure, in any material respect prior to Closing, of any of the conditions precedent to Closing set forth in Section 8.

(ii) Any material breach of this Agreement by the City, including, but not limited to, a material breach of any representation or warranty, if the City has not cured such breach within sixty (60) days after notice from Seller or such longer period of time reasonable under the circumstances, provided, however, such breach must in any event be cured prior to the Closing Date unless the date for cure has been extended by Seller.

(d) Within thirty (30) days after the occurrence event, condition or circumstance for which this Agreement may be terminated, the party seeking to terminate this Agreement shall provide written notice of its termination of this Agreement to the other party, otherwise it will be deemed to have waived such right to terminate this Agreement therefor.

(e) Upon the termination of this Agreement, the following shall occur:

(i) This Agreement shall be void and have no effect, except that nothing shall relieve a party from liability for any breach or default of this Agreement or any accrued obligation or liability hereunder.

(ii) If, for any reason other than the failure of Seller to make title to the real property to be conveyed hereunder marketable after diligent effort, Seller fails, neglects or refuses to perform this Agreement, the City's rights and remedies therefor shall include, but not be limited to, seeking specific performance without thereby waiving any action for damages or other remedy arising out of or resulting from Seller's breach, default or nonperformance.

(iii) To the extent permitted by Florida law, each party shall return all documents of the other party, including copies, in its possession to the other party, as the case may be, subject to retention of a copy of such documents for reporting, archival, regulatory, tax, accounting, public record, dispute resolution, compliance or other reasonable purpose.

(iv) Except as otherwise expressly, specifically provided in this Agreement, each party shall be responsible for payment of its own attorney's fees and other professional and advisor fees and other costs, expenses and charges of any nature whatsoever incurred prior to the termination of this Agreement.

## **11. CLOSING DATE AND CLOSING.**

(a) This transaction shall close on or before November 2, 2020, at City Hall, Lake Wales, Florida. This deadline may be extended at the option of either party for up to two (2) additional ninety (90) day periods to accommodate any required regulatory or other required consents or approvals or for the City to secure and close financing on terms acceptable to it in its absolute sole discretion; provided that notice of such party of its exercise of such option is given before the then-current deadlines. As used in this Agreement, the term "Closing Date" shall mean 12:00 a.m. the date that this transaction is closed.

(b) At Closing:

(i) The City shall pay the Purchase Price (from which the Seller Closing Indebtedness and Seller Transaction Expenses shall be paid), subject to any adjustment as provided herein.

(ii) Seller shall convey title to all of the Real Property to the City by Special Warranty Deed free of all Liens or encumbrances whatsoever (including any Liens securing the Seller Closing Indebtedness) other than Permitted Encumbrances. Title to the remaining Purchased Assets shall be conveyed, transferred and assigned by Seller to the City by bill of sale, deed or other title document, and assignment and assumption instruments, free and clear of all Liens or encumbrances, whatsoever. Seller shall further provide to the City at and after Closing such releases, consents, approvals and waivers and instruments of transfer, conveyance, assignment and delivery executed by the Seller and/or the Shareholders, as applicable, as shall be, in the reasonable opinion of the City, necessary or appropriate to transfer the Purchased Assets in accordance with this Agreement and, when necessary or desirable, in recordable form.

(iii) Seller shall assign to the City its right, title and interest in those easements, licenses, and other rights and interests identified in **Appendix B-1**.

(iv) Seller and the City shall enter into separate Assignment and Assumption Agreements with respect to the contracts and agreements which the City expressly elects and agrees to assume from the Contracts identified in **Appendix F**.

(v) Real property and personal property Taxes on the Purchased Assets and any other applicable Taxes, shall be prorated as of the Closing Date, and Seller shall be required to pay its pro rata share at Closing. All other Taxes, assessments and regulatory assessment fees accrued or owed by Seller as of the date of Closing with respect to the Water System and Purchased Assets shall remain the obligation of Seller. All other Taxes and assessments imposed or attempted to be imposed from and after the date of Closing with respect to the Purchased Assets, if any, shall be the obligation of the City to the extent not subject to an immunity or exemption in favor of the City.

(vi) Documentary stamps, recording fees, if any, to record the deeds and any other fees, assessments or charges and related instruments necessary to deliver title to Purchased Assets to the City shall be paid by the Seller.

(vii) Connection Charges received by Seller prior to Closing shall be retained by Seller if a structure has been built, a physical connection to the Water System has been made, and utility service initiated prior to Closing. Connection Charges paid to Seller prior to Closing for which no such connection has been made shall be paid over to the City at Closing. Connection Charges paid after Closing shall be retained by the City including if paid to or received by Seller, an Affiliate or Shareholder. A schedule of Connection Charges paid to Seller in the form of **Appendix E** shall be updated by Seller as of the Closing Date and provided to the City.

(viii) In addition to payment of the Purchase Price, Seller shall receive payment for ninety percent (90%) of its accounts receivable (less than sixty (60) days old) for monthly water service, net of any credit balances as of the Closing Date. Seller shall furnish to the City, not less than thirty (30) days prior to Closing (with updates for any new customers), an updated listing of its accounts by customer and individual amounts due

receivable for bills rendered in the ordinary course of business. Additionally, an estimate of the gross revenue for water service rendered but not yet billed as of the Closing Date, prepared on the basis of a methodology consistent with good industry practice and agreed by the parties, shall be provided by Seller to the City no less than five (5) business days prior to Closing. Upon approval and acceptance by the City, seventy-five percent (75%) of such unbilled revenue shall be a credit (payment) to Seller on the Closing statement. The City shall be entitled to all fees, charges, rents, rates and revenues collected on or after the Closing.

(ix) All transfers required or necessary to carry out the intent and purpose of this Agreement shall take place, unless waived or extended by mutual consent.

(x) Except as expressly set forth herein and as relates to Seller Transaction Expenses which are to be paid by the Escrow Agent at Closing, each of the parties shall pay the fees of its own engineers, accountants, attorneys, financing parties, and professional advisers or consultants in connection with the negotiation, preparation, execution and performance of this Agreement and any documents, and any activities associated with the Closing.

(xi) All bills, invoices and requests for payment of any kind for labor, services, licenses, use rights, materials and supplies of any kind rendered, furnished or provided in connection with the construction, operation, maintenance, repair, replacement and expansion or alteration of the Water System prior to Closing, up to and including the Closing Date, shall be paid by Seller on or prior to Closing.

(xii) The City shall assume the liability for the Water System customer deposits upon receipt from Seller, and at Closing Seller shall, by electronic transfer or other process agreed by the parties, transfer to the City all customer deposits and accrued interest thereon, together with the list of names, addresses, account numbers and account balances of all customers for whom such deposits have been collected and corresponding amounts of such deposits and accrued interest for each customer through Closing.

(xiii) Seller shall retain all Excluded Assets and Excluded Liabilities, including obligations and liabilities of Seller to third parties arising out of or relating to events, occurrences, conditions and circumstances prior to Closing.

(xiv) Each party shall deliver to the other party a certificate certifying that:

(A) The party is not prohibited or restrained by judgment, order, writ, decree or Law from consummating and closing any of the transactions contemplated by this Agreement.

(B) There is not pending or threatened on the Closing Date any lawsuit, action, investigation, audit or proceeding that materially prevents or hinders the ability of such party to consummate and close the transactions contemplated hereby.

(C) All warranties and representations of such party contained in this Agreement are true and correct in all material respects as of the Closing Date.

(xv) Seller shall deliver to the City, in a form acceptable to the City, an opinion of Seller's counsel addressed to the City to the effect that:

(A) Seller is validly organized, existing and its status is active under the laws of the State of Florida and Seller has the right, power and authority to enter into this Agreement and perform its obligations, duties and covenants hereunder.

(B) This Agreement has been duly and validly executed and approved by Seller and is a valid and binding agreement of Seller and enforceable against Seller.

(C) The execution, delivery and performance of this Agreement and consummation of the transactions contemplated herein will not violate Seller's organization and governance documents, any agreement of or binding on, or any regulation, rule, order, decree or other Law applicable to Seller, the Business, the Water System, its property or its Affiliates or Shareholders.

(xvi) The parties shall execute the transition documents, including those forms which are Appendices to this Agreement.

(c) Seller, its Affiliates and the Shareholders jointly and severally agree to pay in full and discharge all of the Excluded Liabilities at or immediately after the Closing, in accordance with their stated terms, as applicable, and in a manner that does not have an adverse impact or effect on the City, operation of the Purchased Assets, the Water System or the City's utility system, or any relationships of the City with customers, bondholders, contractors, governmental authorities or other persons.

(d) The City, as a governmental body and by law, is entitled to PSC approval of the sale of the Purchased Assets to the City as a matter of right. Seller shall prepare all documents necessary to notify PSC of the execution of this Agreement and the Closing and shall file such documents promptly upon execution of this Agreement and the Closing, as applicable. Seller shall use all reasonable efforts to obtain PSC approval of the sale, and agrees to pay all fees and costs incurred incident to any dealings with the PSC. The parties acknowledge and agree that the City is not subject to any jurisdiction by the PSC; however, the City will, in its sole discretion, reasonably cooperate with Seller in connection with Seller's proceedings with the PSC associated with the sale of the Purchased Assets.

## **12. POST CLOSING COOPERATION.**

(a) Further Assurance. Each of Seller and the City, after the Closing Date, upon reasonable written request of and at no cost to the other party, shall execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, all such further acts, deeds, agreements, instruments, powers of attorney, documents and assurances as may be required in order to implement and perform any of the obligations, covenants and agreements of the parties under and consummate the transactions contemplated by this Agreement, and to enable the City to own, operate, repair and maintain the Purchased Assets and Water System and provide water service in the Water Service Area in accordance with all applicable Laws, Permits, regulations, and governmental authorizations and good utility practices.

(b) Tax Payment. Each of Seller and the City shall provide the other, at the other's cost and expense (including attorney's fees), with such assistance as reasonably may be requested in writing in connection with the preparation of any tax return, audit or other examination by any taxing authority or any regulatory, judicial or administrative proceedings relating to liability for Taxes relating to the transactions contemplated by this Agreement, including reasonable access



during regular business hours to any and all necessary documentation and/or records. The party requesting assistance hereunder shall reimburse the other party for reasonable costs and expenses and attorney's fees incurred in providing such assistance.

(c) Transition Service. Seller agrees to provide reasonable assistance to the City to transition the administration (including customer services and accounting functions) and operation of the Water System and Purchased Assets for a period of one hundred twenty (120) days after the Closing Date. The City shall reimburse Seller for reasonable actual out of pocket costs or expenses, without markup, incurred by Seller in performance of any such services provided by it at the written request of the City under this Section 12(c) which are pre-approved by the City in writing.

(d) Customer Billing. Seller shall cooperate and coordinate with the City to ensure an orderly transition of all of Seller's water utility customers with respect to billing and customer service activities, including working with the City prior to Closing on a compatible format for transfer of customer data. The parties agree that the City will be entitled to all customer billings and payments by customers of such billings with respect to Water System services for the period on or after the Closing Date, and Seller will be entitled to all such billings with respect to Water System services prior to the Closing Date except as otherwise set forth in Section 11(b)(viii). After the Closing, any payments received by the City or Seller with respect to utility services shall belong to the City or Seller as provided above. If such payment or the documentation relating thereto does not indicate whether such payment is for the period prior to or after Closing, the City and Seller shall jointly determine whether the payment belongs to the City or Seller. If either the City or Seller receives a payment which under the terms of this Agreement which properly belongs to the other, the party in receipt of such payment shall hold such payment in trust for the other party and shall turn the payment over to the other party upon receipt thereof without any right of setoff. Prior to and after Closing, the parties shall meet and confer upon written request by a party for purposes of coordinating the collection of payments by the City and Seller for billings with respect to water utility services.

(e) Survival of Representations. The respective representations and warranties of the parties contained in this Agreement or any document delivered pursuant to this Agreement shall survive the consummation of the transactions contemplated hereby and continue for a period of eighteen (18) months from the Closing Date, and thereafter shall terminate, except Seller's representations set forth in Section 5(a-c), which shall survive indefinitely.

(f) Claim Waiver. At Closing, Seller and its Affiliates, shareholders, officers, directors, and shareholders automatically forever waive any claim or right to compensation or damages of any kind against the City and its past, present and future officials, officers, employees, representatives, agents, advisors and contractors and successors and assigns which relates to any encroachment, damage or encumbrance of any nature, type or kind that existed on the Closing Date and affected property of Seller or any affiliated entity or related person located contiguous to the Real Property as may result at any time in the future from the operation of the Purchased Assets or the Water System.

(g) Source of the City Payments. The City shall not be obligated or required to pay any obligation or liability arising out of or related to this Agreement from any funds except as relates to the Purchase Price from the proceeds of any loans or other financing thereof and after the Closing Date from the net revenues realized by the City after the Closing from its ownership and operation of the Purchased Assets. The parties further agree that this Agreement and any

obligations of the City arising in connection herewith, whether for payment of the Purchase Price, or for any claim of liability, remedy for breach or otherwise, shall not constitute a Lien, charge, security interest or other encumbrance on the Water System, Water System revenues, the Purchased Assets or any other property owned, leased, possessed, occupied, used or operated by the City.

### **13. MISCELLANEOUS PROVISIONS.**

(a) Entire Agreement. This Agreement, the Appendices and the other documents referenced herein, collectively embody the entire agreement of the parties with respect to the subject matter hereof, and there are no other agreements or understandings, oral or written, with reference to this Agreement that are not merged into and superseded by this Agreement. This Agreement may be executed in one or more counterparts, each of which shall be considered an original and all of which shall be one and the same instrument.

(b) Amendment. This Agreement may only be amended or modified in writing by authorized representatives of the parties. No waiver of any of the provisions of this Agreement will be effective unless made in writing by the party to be bound thereby, and no waiver shall be deemed or shall constitute a waiver of any other provision of this Agreement, unless otherwise expressly provided.

(c) Severability. If any provision of this Agreement is determined to be illegal or otherwise invalid, the remainder of this Agreement shall be construed to be in full force and effect and this Agreement shall be modified by replacement of such term or provision with such lawful term(s) or provision(s) which most closely accomplish the parties' purpose hereunder.

(d) Headings. The headings and captions used herein are for convenience only, and they shall be disregarded in the construction or interpretation of this Agreement.

(e) Assignment. Except as expressly provided for herein, this Agreement and the obligations, rights and interests of the parties hereunder may not be assigned without the prior written consent of the other party.

(f) FPSC Filing. Within fifteen (15) days after the Closing, Seller shall prepare and the City and Seller will jointly submit a notice of transfer of the system to the FPSC in a petition for termination of the permits or authorization of Seller or other required document. Seller shall file reports required to satisfy its outstanding gross receipts tax, regulatory assessment fees, and all other obligations and governmental assessments, Taxes and fees through the date of Closing. All of Seller's costs and expenses relative to the termination of Seller's relationship with the FPSC as relates to the Water System, including regulatory assessment fees, shall be paid by Seller. Copies of the Order(s) of the Commission acknowledging sale of the Water System and Purchased Assets to the City shall be promptly provided to the City upon Seller's receipt thereof.

(g) Notice. Any notice, request, demand, claim, approval, consent or waiver or other document required or allowed to be given pursuant to this Agreement by either party to the other shall be in writing and shall be delivered personally, or by recognized overnight courier, or by electronic correspondence or facsimile transmission with written confirmation by personal delivery or overnight courier.

If to Seller, such notice shall be delivered at:

Park Water Company, Inc.  
5019 Lake in the Woods Blvd.  
Lakeland, FL 33813 Attention: President

with a copy to:

Jay McClendon, P.A.  
219 East Central Ave.  
Lake Wales, FL 33853

If to the City, such notice shall be delivered at:

**To the City:**

City of Lake Wales  
ATTN: City Manager  
201 W Central Avenue  
Lake Wales, FL 33853

with required copies to:

City Attorney  
Albert C. Galloway, Jr., P.A.  
116 East Stuart Avenue  
Lake Wales, Florida 33853

Notices shall be effective upon receipt or failure or refusal by the addressee to accept delivery, and electronic correspondence or facsimile transmission shall be deemed received on the date sent if received by 4:00 p.m. EDT on a business day. If received after 4:00 p.m. EDT, such transmission shall be deemed received on the next business day.

(h) Third Party Beneficiaries. This Agreement is solely for the benefit of the parties hereto and their successors and permitted assigns, and except as expressly set forth herein, no claim, demand, right, remedy, defense or causes of action shall accrue upon or by reason hereof to or for the benefit of any third party (other than indemnitees and successors and permitted assigns as set forth herein), who is not a party hereto.

(i) Governing Law. This Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the State of Florida. The parties expressly consent to the jurisdiction of and agree that exclusive venue for any claim, dispute, controversy, disagreement or litigation arising under, relating to or in connection with this Agreement or any of the transactions contemplated by this Agreement shall be in the Circuit Court of the Tenth (10<sup>th</sup>) Judicial Circuit of the State of Florida in and for Polk County, Florida. The parties hereby waive to the maximum extent permissible under law trial by jury in respect of any such claim, dispute, controversy, disagreement or litigation.

(j) Knowledge. For purposes of this Agreement, an individual is deemed to have "knowledge" of a particular fact or other matter if such individual has actual awareness of such fact or matter, or a prudent individual could be expected to discover or otherwise become aware thereof in the ordinary course of performing his/her duties and functions and/or conducting business.

(k) Recourse. Notwithstanding anything to the contrary contained herein or in any other instrument or document executed by or on behalf of the City or Seller in connection with this Agreement, except with regard to the Shareholders of Seller, no stipulation, covenant, agreement or obligation contained herein or therein shall be deemed or construed to be a stipulation, covenant, agreement, or obligation of any present or future member, officer, employee, contractor or agent of the City or Seller, in any such person's individual capacity, and no such person, shall be liable personally for any breach of or for any failure to perform or comply with any such stipulations, covenants, agreements or obligations. All references to the City in this paragraph shall be deemed to include the City and City Commission, and past, present and future commission members, managers, officers, employees, attorneys, representatives, contractors and agents of the City. The provisions of this Section 13(k) shall survive the termination of this Agreement.

**[Remainder of page blank – signature page(s) follow]**

**IN WITNESS WHEREOF**, the City and Seller have caused this Agreement to be duly executed and entered into on the date first above written.

**SELLER:**

ATTEST:

**PARK WATER COMPANY, INC.**

\_\_\_\_\_  
Secretary

Name: \_\_\_\_\_

Its: \_\_\_\_\_

(SEAL)

Name: \_\_\_\_\_

Its: Shareholder

Name: \_\_\_\_\_

Its: Shareholder

**BUYER:**

ATTEST:

**CITY OF LAKE WALES, FLORIDA**

\_\_\_\_\_  
Clerk

Name: \_\_\_\_\_

Its: \_\_\_\_\_

(SEAL)

STATE OF FLORIDA  
COUNTY OF POLK

The foregoing instrument was acknowledged before me this \_\_\_\_ day [\_\_\_\_], 2020, by \_\_\_\_\_, as President of PARK WATER COMPANY, INC., a Florida corporation, on behalf of the company. He/She is personally known to me or presented \_\_\_\_\_ as identification.

---

Notary Public  
My Commission Expires:

STATE OF FLORIDA  
COUNTY OF POLK

The foregoing instrument was acknowledged before me this \_\_\_\_ day of [\_\_\_\_], 2020 by \_\_\_\_\_, as \_\_\_\_\_ of the City of Lake Wales, Florida, on behalf of the City of Lake Wales. He/She is personally known to me or presented \_\_\_\_\_ as identification.

\_\_\_\_\_  
Notary Public  
My Commission Expires:

**APPENDIX "A"**

**REAL PROPERTY**

**Parcel Identification Number**

**Property Description Polk County**



9866

REC 492 PAGE 513

WARRANTY DEED

THIS INDENTURE Made this 12th day of April, A.D. 1961,  
between NORTH LAKE SHORE DEVELOPMENT CORP., a corporation organized and existing under the laws of the State of Florida, with its principal office in Lake Wales, Florida, party of the first part, and CROOKED LAKE PARK WATER COMPANY, a corporation organized and existing under the laws of the State of Florida, whose principal place of business is Lake Wales, Polk County, Florida, party of the second part:

208  
WITNESSETH: That the said party of the first part, for and in consideration of the sum of Ten (\$10.00) Dollars and other valuable considerations to it in hand paid by the said party of the second part, the receipt whereof is hereby acknowledged, has granted, bargained and sold to the said party of the second part, its successors and assigns forever, the following described land situate, lying and being in the County of Polk, State of Florida, to wit:

Commencing at the Northeast corner of the SE $\frac{1}{4}$  of the NW $\frac{1}{4}$  of the NE $\frac{1}{4}$  of Section 35, Township 30 South, Range 27 East and run West 942.02 feet to the point of beginning, thence West 366.74 feet to the Easterly right of way line of State Road No. 25, thence South 22°-01' West along said right of way line 45 feet, thence South 46°-45' East 364.76 feet; thence North 22°-01' East 314.59 feet to the point of beginning.

And the said party of the first part does hereby fully warrant the title to said land and will defend the same against the lawful claims of all persons whomsoever, except that this conveyance is subject to all taxes for the year 1961.

208  
IN WITNESS WHEREOF the said party of the first part has caused these presents to be signed in its name by its President, and its corporate seal to be affixed, attested by its Secretary the day and year above written.

Signed, sealed and delivered in the presence of:

Robert H. M. Muller  
Harold A. Smith

NORTH LAKE SHORE DEVELOPMENT CORP.

By William E. Smith  
PresidentAttest: William E. Smith  
Secretary

REC 492 MAY 514

STATE OF PENNSYLVANIA  
COUNTY OF NORTHAMPTON

I HEREBY CERTIFY That on this 12th day of April, A.D. 1961, before me personally appeared WILLIAM E. ELIASON and MILTON B. RISKIN, President and Secretary respectively of NORTH LAKE SHORE DEVELOPMENT CORP., a Florida corporation, to me well known and known to me to be the persons described in and who executed the foregoing conveyance, and acknowledged the execution thereof to be their free act and deed as such officers, for the uses and purposes therein mentioned; and that they affixed thereto the official seal of said corporation, and the said instrument is the act and deed of said corporation.

WITNESS my hand and official seal at Easton, Pennsylvania the day and year aforesaid.



*Walter C. Smith*  
Notary Public State and County  
aforesaid

My Commission Expires:

WALTER C. SMITH, NOTARY PUBLIC  
EASTON, NORTHAMPTON CO., PA.  
MY COMMISSION EXPIRES APRIL 4, 1964

FILED, RECORDED AND  
RECORD VERIFIED  
D.H. SLOAN, JR., CLK. CLK.

BY *RJ*

FILED FOR RECORD

1961 MAY 19 AM 9 54

D. H. SLOAN, JR.  
CLK. OT. OT. POLK CO.  
FLORIDA

POLK  
COUNTY



9866

**Parcel Details: 27-30-35-  
000000-013030**

 TAX EST  PRT CALC  PRC  HTML PRC  TRIM  HTML TRIM  TAX BILL

**Owners**

CROOKED LAKE PARK WATER COMPANY 100%

**Mailing Address**

Address 1 **25 1ST AVE N**  
Address 2  
Address 3 **LAKE WALES FL 33859-8761**

**Site Address**

Address 1 **25 N 1ST AVE**  
Address 2  
City **LAKE WALES**  
State **FL**  
Zip Code **33853**

**Parcel Information**

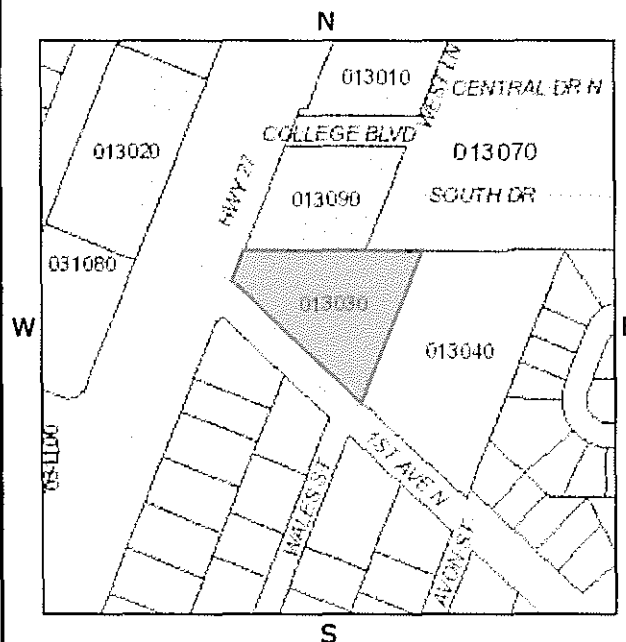
Neighborhood **6666.45**  
Show Recent Sales in this Neighborhood  
Subdivision **NOT IN SUBDIVISION**  
Property (DOR) **Utilities (Gas, Electric, Phone)**  
Use Code **(Code: 9190)**  
Acreage **1.57**  
Taxing District **UNINCORP/SWFWMD (Code: 90000)**  
Community  
Redevelopment **NOT IN CRA**  
Area

**Property Desc**

**DISCLAIMER:** This property description is a condensed version of the original legal description recorded in the public records. It does not include the section, township, range, or the county where the property is located. It is a description of the ownership boundaries only and does not include easements or other interests of record. The property description should not be used when conveying property. The Property Appraiser assumes no responsibility for the consequences of inappropriate uses or interpretations of the property description. No warranties, expressed or implied, are provided for the data herein, its use, or its interpretation.

BEG AT NE COR OF SE1/4 OF NW1/4 OF NE1/4 W  
942.02 FT TO POB RUN W 366.74FT TO ELY R/W OF  
HWY 27 W22-01W 45 FT S46-45E 364.76 FT N22-  
01E 314.59 FT TO POB

**Area Map**



**Mapping Worksheets (plats) for 273035**

Mapping Worksheet HTML  
(opens in new tab)      Mapping Worksheet Printable PDF

**Note:** Tangible Personal Property is defined as everything other than real estate that has value by itself. Please click the + plus sign to show the list of TPP accounts linked to this parcel.

### TPP Account(s)

☒ List of Accounts

## Sales History

**Important Notice:** If you wish to obtain a copy of a deed for this parcel, click on the blue OR Book/Page number. Doing so will cause you to leave the Property Appraiser's website and access the Polk County Clerk of the Circuit Court's Official Records Search. Once the document opens, click the printer icon to print the document. If you have any issues opening the document once you have met all the listed system requirements, please contact the Clerk's office at (863)534-4000 and ask to speak to an IT staff member. If the Book/Page number does not have a blue link to Official Records, the deed may not be available through the online records of the Clerk of the Circuit Court. In order to obtain a copy of the deed you will need to contact the Clerk of the Circuit Court Indexing Department at 863-534-4516. If the Type Inst is an "R", the document is not available through the Clerk of the Circuit Court's Official Records Search. Please contact the Property Appraiser to order "R" type Instruments.

OR Book/Page	Date	Type Inst	Vacant/ Improved	Grantee	Sales Price
00492/00513	04/1961	W	E	CROOKED LAKE PARK WATER COMPANY	\$100

## Exemptions

**Note:** The drop down menus below provide information on the amount of exemption applied to each taxing district. The HX—first \$25,000 homestead exemption may be allocated to one or more owners. The HB —second \$25,000 amended homestead exemption reflects the name of the first owner only.

Code	Bld. #	Description	% Ownership	Renew Cd	Year Name	Note	Value
<p>If you have a Senior Exemption(Additional Homestead Exemption for Persons 65 and Older): For the 2020 tax year, the allowable total household adjusted gross income received during 2019 could not exceed \$30,721. If your total household adjusted gross income exceeded this limit, YOU MUST NOTIFY THIS OFFICE. Receiving no notification from the qualified senior will be considered a sworn statement, under penalty of perjury, that the income does not exceed the limit. Improperly claiming any exemption could result in a lien against your property. If you would like to receive a notice of renewal electronically, please send us an email at <a href="mailto:paoffice@polk-county.net">paoffice@polk-county.net</a> with your name, property address, and confirmation of your request.</p>							

## Buildings

### BUILDING 1 (1501 - OFFICE BUILDING)

#### Building Characteristics

**Total Under Roof:** 936 sqft  
**Living Area (as originally constructed):** 936 sqft  
**Actual Year Built:** 1984  
**Effective Year:** 1997  
**Wall Structure:** WOOD FRAME (M& S CRNT MULTIPLIER)

**Building BAS Note:** The base area (living area or square foot living area) of a building is the originally designed building footprint / plan of the cooled and heated area of the building. In most cases, a base area will remain constant throughout the life of the building. A base area can be converted to a subarea (Example: A portion of the base is "cut-out" and used as a garage or porch); It is not, however, standard appraisal practice to convert a subarea to a base area unless there was an error when initially entering the data.

Element	Units	Information
HEAT CODE		NA
EXTERIOR WALL		NONE
LIVING UNITS	1	
WALL HEIGHT	8	

#### 25 N 1ST AVE



## Building Subareas

**Building Sub Area Note:** A sub area is an individual component of a building that may or may not be cooled/heated. The percent in a subarea description is the percent of the base rate applied to the value of the sub area. (Example: UGR UNFINISHED GARAGE 50% indicates this sub area is valued at 50% of the base area rate); If a sub area changes over time, the contributory value may also change.

Code	Description	Heated	Total
BAS	BASE AREA	Y	936
<b>Total Under Roof</b>			<b>936 ft<sup>2</sup></b>
<b>Total Living Area</b>			<b>936 ft<sup>2</sup></b>

## Extra Features (Current)

LN	Code	Description	BLD	Length	Width	Units	Year Built
1	SHD4	SHED ENTER A VALUE	0	0	0	1	1987
2	GAR	GARAGE DETACHED	0	20	20	400	2000
3	GAR	GARAGE DETACHED	0	14	12	168	1987
4	GAR	GARAGE DETACHED	0	20	24	480	1960
5	CPT2	CARPORT 2000	0	20	20	1	1987
6	UTL1	UTILITY 1500	0	24	13	1	1987
7	UTL4	UTILITY 500	0	14	10	1	1987
8	FEN1	FENCE AVERAGE QUALITY	0	0	0	1,092	1987
9	MAC	ASPHALT	0	0	0	6,675	1987
10	CON	CONCRETE	0	0	0	50	1987

## PERMITS

The Polk County Property Appraiser's Office does not issue or maintain permits. Please contact the appropriate permit issuing agency to obtain information. This property is located in the **UNINCORP/SWFWMD** taxing district. The beginning of the description indicates permit agency (UNINCORP is an abbreviation for Unincorporated **POLK COUNTY**).

## Land Lines

LN	Land Dscr	Ag/GreenBelt	Land Unit Type	Front	Depth	Units
1	* Commercial/Industrial	N	S	0	0	68,364.00
* For Zoning/Future Land Use contact Polk County or the Municipality the parcel is located in.						

**NOTICE: All information ABOVE this notice is current (as of Monday, July 13, 2020 at 2:18:39 AM). All information BELOW this notice is from the 2019 Tax Roll, except where otherwise noted.**

## Value Summary (2019)

Desc	Value
Land Value	\$100,495
Building Value	\$40,091
Misc. Items Value	\$48,048
Land Classified Value	\$0
Just Market Value	\$188,634
*Cap Differential and Portability	\$35,409
Agriculture Classification	\$0

Assessed Value	\$153,225
Exempt Value (County)	\$0
Taxable Value (County)	\$153,225

\*This property contains a Non Homestead Cap with a differential of \$35,409.

### Values by District (2019)

District Description	Final Tax Rate	Assessed Value	Final Assessed Taxes	Exemption	Final Tax Savings	Taxable Value	Final Taxes
BOARD OF COUNTY COMMISSIONERS	7.156500	\$153,225	\$1,096.55	\$0	\$0.00	\$153,225	\$1,096.55
POLK COUNTY PARKS MSTU	0.561900	\$153,225	\$86.10	\$0	\$0.00	\$153,225	\$86.10
POLK COUNTY LIBRARY MSTU	0.210900	\$153,225	\$32.32	\$0	\$0.00	\$153,225	\$32.32
POLK COUNTY STORMWATER MSTU	0.100000	\$153,225	\$15.32	\$0	\$0.00	\$153,225	\$15.32
POLK COUNTY SCHOOL BOARD - STATE	3.838000	\$188,634	\$723.98	\$0	\$0.00	\$188,634	\$723.98
POLK COUNTY SCHOOL BOARD - LOCAL	2.248000	\$188,634	\$424.05	\$0	\$0.00	\$188,634	\$424.05
SOUTHWEST FLA WATER MGMT DIST	0.280100	\$153,225	\$42.92	\$0	\$0.00	\$153,225	\$42.92
		<b>Assessed Taxes:</b>	<b>\$2,421.24</b>	<b>Tax Savings:</b>	<b>\$0.00</b>	<b>Total Taxes:</b>	<b>\$2,421.24</b>

### Non-Ad Valorem Assessments (2019)

LN	Code	Desc	Units	Rate	Assessment
1	FI000	POLK COUNTY FIRE SERVICES	1.00	353.00	\$353.00
2	FI000	POLK COUNTY FIRE SERVICES	1.00	11.00	\$11.00
3	FI000	POLK COUNTY FIRE SERVICES	1.00	11.00	\$11.00
4	FI000	POLK COUNTY FIRE SERVICES	1.00	11.00	\$11.00
5	FI000	POLK COUNTY FIRE SERVICES	1.00	11.00	\$11.00
<b>Total Assessments</b>					<b>\$397.00</b>

### Taxes

Desc	Last Year	2019 Final
Taxing District	UNINCORP/SWFWMD (Code: 90000)	UNINCORP/SWFWMD (Code: 90000)
Millage Rate	14.5758	14.3954
Ad Valorem Assessments	\$2,030.34	\$2,421.24
Non-Ad Valorem Assessments	\$371.00	\$397.00
<b>Total Taxes</b>	<b>\$2,401.34</b>	<b>\$2,818.24</b>

**Your final tax bill may contain Non-Ad Valorem assessments which may not be reflected on this page, such as assessments for roads, drainage, garbage, fire, lighting, water, sewer, or other governmental services and facilities which may be levied by your county, city or any other special district. Visit the Polk County Tax Collector's site for Tax Bill information related to this account. Use the Property Tax Estimator to estimate taxes for this account.**

## Prior Year Final Values

The Final Tax Roll is the 1st certification of the tax rolls by the Value Adjustment Board, per Florida Statute 193.122(2), F.S. This is the date all taxable property and tax rolls are certified for collection to the Tax Collector. Corrections made after this date are not reflected in the Final Tax Roll Values.

### 2018

Land Value	\$51,273.00
Building Value	\$39,601.00
Misc. Items Value	\$48,421.00
Just Value (Market)	\$139,295.00
SOH Deferred Val	\$0.00
Assessed Value	\$139,295.00
Exempt Value (County)	\$0.00
Taxable Value (County)	\$139,295.00

### 2017

Land Value	\$51,273.00
Building Value	\$37,713.00
Misc. Items Value	\$39,291.00
Just Value (Market)	\$128,277.00
SOH Deferred Val	\$816.00
Assessed Value	\$127,461.00
Exempt Value (County)	\$0.00
Taxable Value (County)	\$127,461.00

### 2016

Land Value	\$47,855.00
Building Value	\$34,807.00
Misc. Items Value	\$33,212.00
Just Value (Market)	\$115,874.00
SOH Deferred Val	\$0.00
Assessed Value	\$115,874.00
Exempt Value (County)	\$0.00
Taxable Value (County)	\$115,874.00

### 2015

Land Value	\$47,855.00
Building Value	\$30,984.00
Misc. Items Value	\$33,212.00
Just Value (Market)	\$112,051.00
SOH Deferred Val	\$0.00
Assessed Value	\$112,051.00
Exempt Value (County)	\$0.00
Taxable Value (County)	\$112,051.00

### DISCLAIMER:

The Polk County Property Appraiser makes every effort to produce and publish the most current and accurate information possible. The PCPA assumes no responsibility for errors in the information and does not guarantee that the data are free from errors or inaccuracies. Similarly the PCPA assumes no responsibility for the consequences of inappropriate uses or interpretations of the data. No warranties, expressed or implied, are provided for the data herein, its use, or its interpretation. Utilization of the search facility indicates understanding and acceptance of this statement by the user.





ACCOUNT NUMBER

353027-000000-013030

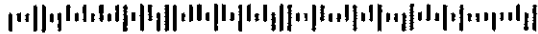
Pay, Search or Print Receipt at Polktaxes.com

NOTICE OF AD VALOREM TAXES AND NON-AD VALOREM ASSESSMENTS

R B1235  
CROOKED LAKE PARK WATER  
COMPANY  
25 1ST AVE N  
LAKE WALES FL 33859-8761

189481

25 N 1ST AVE  
BEG AT NE COR OF SE1/4 OF NW1/4  
OF NE1/4 W 942.02 FT TO POB RUN  
W 366.74 FT TO ELY R/W OF HWY 27  
W22-01W 45 FT S46-45E 364.76 FT  
See Tax Roll for extra legal.



17

PLEASE PAY IN US FUNDS ON A US BANK TO JOE G TEDDER, TAX COLLECTOR - PO BOX 1189, 430 EAST MAIN ST - BARTOW, FL 33831-1189 - (883) 534-4700

## AD VALOREM TAXES

TAXING AUTHORITY	MILLAGE RATE	ASSESSED VALUE	EXEMPTION	TAXABLE VALUE	TAXES LEVIED
C100 POLK COUNTY					
GENERAL REVENUE FUND	5.6815	153,225		153,225	870.54
TRANSPORTATION/ROADS	1.1000	153,225		153,225	168.55
EMERGENCY MEDICAL	0.2500	153,225		153,225	38.31
NE GOVT CENTER	0.1250	153,225		153,225	19.15
CPCP POLK COUNTY PARKS MSTU	0.5619	153,225		153,225	86.10
CPCL POLK COUNTY LIBRARY	0.2109	153,225		153,225	32.32
CPCS POLK COUNTY STORMWATER	0.1000	153,225		153,225	15.32
S200 POLK COUNTY SCHOOL BOARD					
GENERAL FUND	4.5860	188,634		188,634	865.08
LOCAL CAPITAL IMP	1.5000	188,634		188,634	282.95
WSW SOUTHWEST FLORIDA WATER MGMT	0.2801	153,225		153,225	42.92
900000 TOTAL MILLAGE	14.3954		AD VALOREM TAXES		2,421.24

## NON-AD VALOREM ASSESSMENTS

LEVYING AUTHORITY	RATE	AMOUNT
F100 POLK COUNTY FIRE SERVICES DIST	5 Units @ 79.40	397.00
NON-AD VALOREM ASSESSMENTS		397.00

COMBINED TAXES AND ASSESSMENTS 2,818.24

## PAY ONLY ONE AMOUNT

See reverse side for important information

If Paid By Please Pay	Nov 30 2019 2,705.51	Dec 31 2019 2,733.69	Jan 31 2020 2,761.88	Feb 29 2020 2,790.06	Mar 31 2020 2,818.24
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FOR YOUR RECORDS

**APPENDIX "B-1"**  
**EASEMENTS AND LICENSES**

## Appendix B-1

No documentation can be found at this time regarding easements.

Licenses:

Polk County Local Business Tax - Customer 11668, Professional Licences 583W

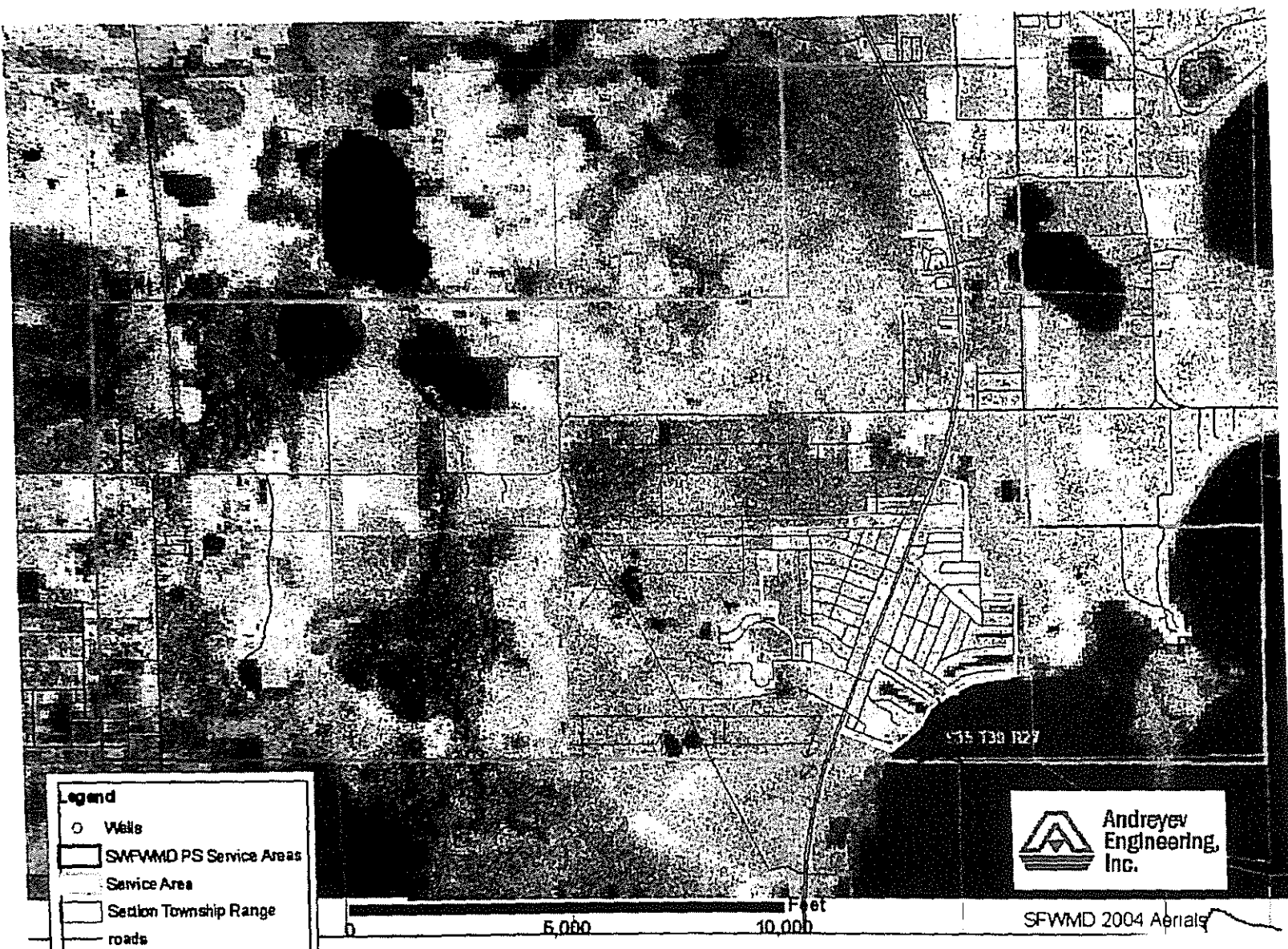
Florida Department of Health in Polk County - PWC Number 6530408

DEP Class C Drinking Water Treatment Plant Operator License #0012223

**APPENDIX "B-2"**  
**WATER SERVICE AREA**

DESCRIPTION OF TERRITORY SERVED

SECTIONS 23, 26, 27, 28, 29, 32, 33, 34, 35, AND 36  
OF TOWNSHIP 30 SOUTH, RANGE 27 EAST, ALL  
LOCATED IN POLK COUNTY, FLORIDA.



**Legend**

- Wells
- ▭ SFWMD PS Service Areas
- ▭ Service Area
- ▭ Section Township Range
- roads



SFWMD 2004 Aerials

## **APPENDIX "C"**

### **WATER SYSTEM FACILITIES AND INSTALLATIONS**

Acquired by City

Excluded

## Appendix C

See the attached report which describes the treatment plant. All treatment plant and storage tanks are located at 25 1st Ave. N., Lake Wales, FL 33859



**Mission:**

To protect, promote & improve the health of all people in Florida through integrated state, county & community efforts.

**Rick Scott**

Governor

**Celeste Philip, MD, MPH**  
State Surgeon General**Vision:** To be the Healthiest State in the Nation

August 17, 2018

**PARK WATER COMPANY**  
PWS: Id. No. 6530408**PARK WATER COMPANY INC.**  
25 FIRST AVENUE NORTH  
LAKE WALES, FL 33859

Dear Mr. Staiano:

A sanitary survey of your system conducted on August 13, 2018 indicates that the system is substantially in compliance with the public drinking water requirements listed in *Chapter 62 Florida Administrative Code*.

If you have any questions, please contact me at (863) 578-2036.

Sincerely,

A handwritten signature in black ink, appearing to read "Matthew A. Nickerson".

Matthew A. Nickerson  
Environmental Specialist II

Cc: parkwaterco@aol.com

**Florida Department of Health  
in Polk County**

ENVIRONMENTAL HEALTH  
2090 East Clower Street • Bartow, FL 33830-6741  
PHONE: (863) 519-8330 • FAX: (863) 534-0245  
<http://polk.floridahealth.gov/>

**[www.FloridaHealth.gov](http://www.FloridaHealth.gov)**

TWITTER: HealthyFLA  
FACEBOOK: FLDepartmentofHealth  
YOUTUBE: fldoh  
FLICKR: HealthyFla  
PINTEREST: HealthyFla

*Florida Health: the first accredited public health system in the U.S.*

Review Date 8/17/18

System Name: Park Water CompanyPWS ID# 6530408  
Survey Date 08/13/2018**MONITORING COMPLIANCE DATA**  
**{Last Twelve Months}**

COMPLIANCE GROUP	MONITORING	REPORTING	EXCEEDANCE	MCL
Chemical	compliant	compliant	none	none
Bacteriological	compliant	compliant	none	none

Items checked with an (x) are explained below.

**COMMENTS**none**PERMITS/APPROVALS/ACCEPTANCES**

Project Name	Approval Number	Approval Date	Connections Approved	Microfilm #
Bryan's Auto Collision Repair (line extension)	133318-014	05/08/2007	1	scanned
Warner Southern Collage Dormitory Site Development	5306-0408-A15	04/28/2006	7	scanned
Line Extension General Engines, Inc.	5306-0408-A13	10/05/2005	1	scanned
Water System Upgrades	5306-0408-A14	03/25/2005	n/a	scanned
Dura Cast Line Extension	5301-0408-A12	08/13/2001	1	scanned
BBS Add	5300-0408-A11	06/15/2000	n/a	scanned
Warner Southern Collage Line Extension	5300-0408-A10	06/06/2000	4	scanned
Genesis Pointe Estates	5300-0408-A9	5/30/2000	11	scanned
Warner Southern Collage Pontious Learning Center	5399-0408-A8	9/23/1999	1	scanned

**COMMENTS**There are approximately 13 more permits and approvals list for this system. All permit documents have been scanned.**ENFORCEMENT HISTORY {Minimum Last Twenty-Four Months}**

OGC Case Number	Referral Date	Resolution Date	Comments
n/a	n/a	n/a	none listed

**TREATMENT PROCESSES IN USE**

hypochlorination

Is any additional treatment needed?

None at this time

Do components / chemicals meet NSF standards?

Yes

**DISTRIBUTION SYSTEM**

Comments

Pipe Size Range/Type(s)	12" - 2" / various	
New/Altered Piping @ Plant(s) Color Coded & Labeled	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A	
Flow Measuring Device Type/Size/Location	6" electronic flow meters	
Flow Measuring Device Reading (gallons)	each well and, system meter	
Point of Entry Tap(s)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
Backflow Prevention Devices	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
Cross-connections Observed	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	
Bacteriological Sampling Plan Date	05/01/1999	
Satisfactory Bacteriological Sampling Plan Implementation	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
System Records Retention Compliance	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
Lead & Copper Sampling Plan Date	10/28/2013	
Disinfection By-Products Sampling Plan Date	05/01/2014	
Cross-connection Control Program Plan Date	2008	
Satisfactory Cross-connection Control Program Plan Implementation	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
Emergency Preparedness/Response Plan Date	06/21/2006	
Current Drinking Water Distribution System Map	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
Asbestos Waiver or Plan Date	Sampled 10/15/2003	

**OPERATION & MAINTENANCE**

Comments

Certified Operator	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
Operator Name	Anthony Staiano	
Operator Certification Class-Number	C-12223	
Operator Phone Number	863-638-1285	
Operator Cell Phone Number	863-412-3859	
Operator Fax Number	863-638-7441	
Operator Mailing Address	25 First Ave. North, Lake Wales, FL 33853	
Operator E-mail Address	none	
Operation & Maintenance Log	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
Operation and Maintenance Manual	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
Operator Visitation Frequency → → →	Required	Actual
	Hrs/day	0.6 6
	Days/wk	5+1 6
Non-consecutive Days	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A	
Monthly Operation Reports Submitted Regularly & Timely	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
Data Missing From Monthly Operation Reports	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A	
Plant Category - Class	V-C	
Number of Service Connections	752	
Present Population Served	1,948	
Population Basis	Oracle	
Population Seasonal (Timeframes)	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A	
Water System Used Over 60 Days Per Year	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
Number of Water Users 6 - 9 Months Per Year	n/a	
Number of Water Users Over 9 Months Per Year	1,948	
System Average Day Demand (Last 12 Months)	235,232 gpd	
System Maximum Day Demand (Last 12 Months)	355,000 gpd	
System Firm Capacity (Calculate assuming largest pump is out of service)	1,728,000 gpd	
System Maximum Day Design Capacity	2,880,000 gpd	Permitted for 2 MGD
Adequate Flushing Program (Frequency)	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
Sufficient Valve Exercising	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
Additional Comments	none	

**GROUND WATER SOURCES**

Well Number	1	2			
WMD Permit Number	unknown	unknown			
Florida Unique Well ID Number	AAC6486	AAC6487			
Grout Type	unknown	unknown			
Well Completion Date	1957	1973			
6'x6'x4" Concrete Pad / Condition	yes / poor	yes / fair			
Depth Drilled (feet)	1060	850			
Well Contamination History	none listed	none listed			
Drilling Method	unknown	unknown			
Casing Material	black steel	black steel			
Casing Diameter (inches)	10	10			
Casing Length (feet)	128	150			
Well Inundation Possible	unlikely	unlikely			
SET BACKS (feet)	Septic Tank	>200	>200		
	WW Plant	>500	>500		
	WW Plumbing	>100	>100		
	Other Sanitary Hazard	none seen	none seen		
PUMP	Type	vertical turbine	vertical turbine		
	Manufacturer	Peerless	Jacuzzi		
	Model Number	2615883M	unknown		
	Rated Capacity (gpm)	1500	2500		
MOTOR	Manufacturer	USEM	USEM		
	Model Number	286TPH	364TP		
	Horsepower	30	60		
Well Casing 12" Above Pad	no	no			
Well Casing Sanitary Seal	watertight	watertight			
Raw Water Sampling Tap	after check	after check			
Above Ground Check Valve	yes	yes			
Secured / Housed	yes	yes			
Well Vent Protected	yes	yes			
Comments	Well AAC6486 is water lubricated; per-lube line comes from just after the check valve. Well AAC6487 is oil lubricated using food grade oil. Both wells have Amarillo right angle drives (engine specifications list on page 6)				

**AUXILIARY POWER SOURCE**

Type	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	Comments
Description	Generator	
Functional	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
Automatic Switchover	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
Exercised Under Continuous Load Frequently	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
Operates All Necessary Equipment	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
Capacity Satisfies System Average Daily Water Demand	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
Additional Comments	Generator provides power to high service pumps and disinfection equipment. The well pumps are provided power from right angle drives systems. System has audio alarm that is telemetered to notify operator when there is a power outage. System also has agreement with Miller Electric to provide addition backups as needed.	

Plant Name: Park Water CompanyPWS ID# 6530408  
Survey Date 08/13/2018**DISINFECTION**

Type	Chlorination	Comments
Phase	<input checked="" type="checkbox"/> Gas <input type="checkbox"/> Liquid	
Number of Feeders	2	
Adequate Air-Pak	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
Alarms		
Loss of Cl <sub>2</sub> Capability	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
Loss of Cl <sub>2</sub> Residual	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
Cl <sub>2</sub> Leak Detection	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A	
Fresh Ammonia	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
Injection Point Location(s)	influent to elevated tank	
Automatic Switchover	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
Reserve Supply	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
Capacity [gas (lb/day)] or [liquid (gpd)]	100 lb/day	
Adequate Ventilation	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
Room Lightning	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
Safety Equipment	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
Feed Rate or Stroke [gas (lb/day)] or [liquid (%)]	25 lb/day	
Sign of Leaks	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No <input type="checkbox"/> N/A	
Feeder(s) Manufacturer	Superior	
Housed or Protected	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	
Chained Cylinders	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
Plant Residuals [mg/l]	Free 0.31 Total n/a	POE at plant
Remote Residuals [mg/l]	Free 0.62 Total n/a	Warner Univ. Admin back spigot.
Scales Functioning Properly	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
Repair Kits	<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> N/A	less than ton cylinders
DPD Test Kit	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No <input type="checkbox"/> N/A	
Additional Comments	The disinfection system has 2x 1hp Baldor booster pumps.	

**STORAGE FACILITIES**

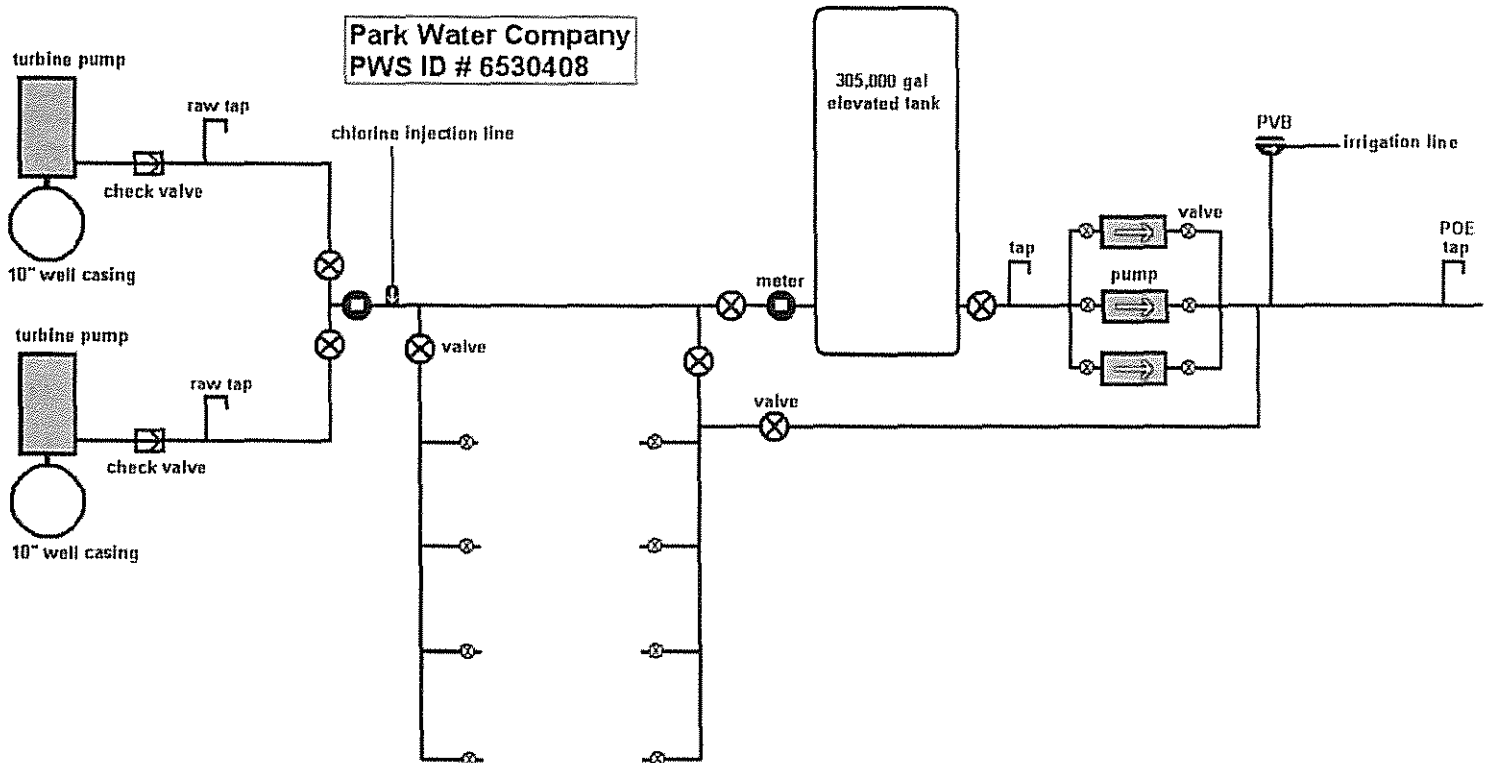
	(G) Ground (H) Hydropneumatic (E) Elevated (B) Bladder (C) Clearwell (R) Retention											
	Yes	No	N/A	Yes	No	N/A	Yes	No	N/A	Yes	No	N/A
Tank Type/Number	E/1											
Capacity (gal)	305,000											
Material	steel											
Gravity Drain	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
By-Pass Piping	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Protected Openings	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Pressure Gauge	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Pressure Relief Valve	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Air Relief Valve	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Sight Glass / Level Indicator	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Fittings for Sight Glass	<input type="checkbox"/>	<input type="checkbox"/>	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
On/Off Pressure (PSI)	63/70											
Secured Access	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Height to Minimum Water Level	90											
Height to Maximum Water Level	108											
Tank Equipped With Access Manhole	<input checked="" type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Tank Inspection Report Date												
Comments	System is equipped with loss of pressure alarm, set at 30 PSI.											

Plant Name: Park Water CompanyPWS ID# 6530408Survey Date 08/13/2018**HIGH SERVICE PUMPS**

Pump Number	1	2	3		
Pump Type	centrifugal	centrifugal	centrifugal		
Pump Manufacturer	FlowServe	FlowServe	Ingersoll Dresser		
Pump Model	D824	D824	0999-7472A		
Pump Capacity (gpm)	600 max*	600 max*	2000		
Motor Manufacturer	Baldor	Baldor	Baldor		
Motor Model	EJMM5318T	EJMM5318T	A220798		
Motor Horsepower	10	10	50		
Date Installed	August 2000	August 2000	August 2000		
Maintenance	as needed	as needed	as needed		
Comments	*Pumps have variable speed drives. Pump 1 & 2 will not operate when pump 3 is engaged. Pumps 1 & 2 alternate lead / lag daily. Lag pump starts at 350 gpm stops at 200 gpm. Pump 3 starts at 825 gpm (for fire protection).				

**RIGHT ANGLE DRIVE ENGINE**

Connected to Well	AAC6486	AAC6487
Type	Diesel Engine	Diesel Engine
Description	Waukesha LP	4.91 Ford Diesel
Functional	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Automatic Switchover	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
Exercised Under Continuous Load Frequently	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Operates All Necessary Equipment	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Capacity Satisfies System Average Daily Water Demand	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
Additional Comments	System is telemetered to notify operator when there is a power outage.	



## **APPENDIX "D"**

### **PERMITS**



## Appendix D

SWFWMD Water Use Permit No: 20 004005.006

See the permit attached

## Appendix D

SWFWMD Water Use Permit No: 20 004005.006

See the permit attached



An Equal  
Opportunity  
Employer

## Southwest Florida Water Management District

**Bartow Service Office**  
170 Century Boulevard  
Bartow, Florida 33830-7700  
(863) 534-1448 or  
1-800-492-7862 (FL only)

**Sarasota Service Office**  
6750 Fruitville Road  
Sarasota, Florida 34240-9711  
(941) 377-3722 or  
1-800-320-3503 (FL only)

2379 Broad Street, Brooksville, Florida 34604-6899  
(352) 796-7211 or 1-800-423-1476 (FL only)  
SUNCOM 628-4150 TDD only 1-800-231-6103 (FL only)  
On the Internet at: [WaterMatters.org](http://WaterMatters.org)

**Tampa Service Office**  
7601 Highway 301 North  
Tampa, Florida 33637-6759  
(813) 985-7481 or  
1-800-836-0797 (FL only)

May 26, 2011

Crooked Lake Park Water Company  
25 FIRST AVENUE NORTH  
LAKE WALES, FL 33854

Subject: Final Agency Action Transmittal Letter  
General Water Use Permit No: 20 004005.006

Dear Permittee(s):

Your Water Use Permit has been approved. Final approval is contingent upon no objection to the District's action being received by the District within the time frames described below.

You or any person whose substantial interests are affected by the District's action regarding a permit may request an administrative hearing in accordance with Sections 120.569 and 120.57, Florida Statutes, (F.S.), and Chapter 28-106, Florida Administrative Code, (F.A.C.), of the Uniform Rules of Procedure. A request for hearing must (1) explain how the substantial interests of each person requesting the hearing will be affected by the District's action, or proposed action; (2) state all material facts disputed by the person requesting the hearing or state that there are no disputed facts; and (3) otherwise comply with Chapter 28-106, F.A.C. Copies of Sections 28-106.201 and 28-106.301, F.A.C., are enclosed for your reference. A request for hearing must be filed with (received by) the Agency Clerk of the District at the District's Brooksville address within 21 days of receipt of this notice. Receipt is deemed to be the fifth day after the date on which this notice is deposited in the United States mail. Failure to file a request for hearing within this time period shall constitute a waiver of any right you or such person may have to request a hearing under Sections 120.569 and 120.57, F.S. Mediation pursuant to Section 120.573, F.S. to settle an administrative dispute regarding the District's action in this matter is not available prior to the filing of a request for hearing.

Enclosed is a 'Noticing Packet' that provides information regarding District Rules, 40D-1.1010, F.A.C. which addresses the notification of persons having substantial interests that may be affected by the District's action in this matter. The packet contains guidelines on how to provide notice of the District's action, and a notice that you may use.

Please be advised that the Governing Board has formulated a water shortage plan referenced in a Standard Water Use Permit Condition (Exhibit A) of your permit, and will implement such a plan during periods of water shortage. You will be notified during a declared water shortage of any change in the conditions of your Permit or any suspension of your Permit, or of any restriction on your use of water for the duration of any declared water shortage. Please further note that water conservation is a condition of your Permit and should be practiced at all times.

We are mailing the well tags to you for installation together with well tag installation instructions. If you prefer District staff to install the tags, please contact us. If you have any questions or concerns regarding your tags, please contact Mark Alford at extension 6110, in the Bartow Regulation Department. If you have any questions or concerns regarding your permit or any other information, please contact the Bartow Regulation Department and ask to speak to someone in the Water Use Regulation Section.

Sincerely,

**Michael K. Balser, M.P.A., P.G.**

Bartow Regulation Department

Enclosures: Approved Permit  
Rules 28-106.201 and 28-106.301 F.A.C.  
Noticing Packet

cc: Andreyev Engineering Inc  
Kevin J Egan

**SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT  
WATER USE  
GENERAL  
PERMIT NO. 20 004005.006**

**EXPIRATION DATE:** September 01, 2030

**PERMIT ISSUE DATE:** May 26, 2011

The Permittee is responsible for submitting an application to renew this permit no sooner than one year prior to the expiration date, and no later than the end of the last business day before the expiration date, whether or not the Permittee receives prior notification by mail. Failure to submit a renewal application prior to the expiration date and continuing to withdraw water after the expiration date is a violation of Chapter 373, Florida Statutes, and Chapter 40D-2, Florida Administrative Code, and may result in a monetary penalty and/or loss of the right to use the water. Issuance of a renewal of this permit is contingent upon District approval.

**TYPE OF APPLICATION:** Letter Modification

**GRANTED TO:** Crooked Lake Park Water Company  
25 FIRST AVENUE NORTH  
LAKE WALES, FL 33854

**PROJECT NAME:** PARK WATER CO-CROOKED LAKE SERVICE AREA

**WATER USE CAUTION AREA:** SOUTHERN WATER USE CAUTION AREA

**COUNTY:** Polk

**TOTAL QUANTITIES AUTHORIZED UNDER THIS PERMIT (in gpd)**

ANNUAL AVERAGE	302,000 gpd
PEAK MONTH 1	393,000 gpd

1. Peak Month: Average daily use during the highest water use month.

**ABSTRACT:**

This is a District-initiated modification of a public supply water use permit. This modification is to change the compliance reporting provisions for 20 year permits to every 10 years, removing the 15 year compliance reporting requirement. The permitted quantities remain unchanged. The two existing wells remain metered through a common master meter. The Standard Average Annual quantity continues to be 302,000 gallons per day (gpd), and the Peak Month quantity continues to be 393,000 gpd. Quantities are based on historic pumpage data, information submitted by the applicant, the District's population model, and the City's projected compliance per capita water use of 108 gallons per capita daily. The existing and proposed water use is for single family residential, industrial/commercial, common area landscape irrigation, and other metered uses.

Special Conditions include those that require the Permittee to continue to record and report monthly meter readings from all designated withdrawal points; submit a ten-year compliance review report; modify the permit to reflect incorporation of any new alternative sources of water; comply with the Southern Water Use Caution Area recovery strategy; comply with rolling 12-month average pumpage; cap all wells not in use; submit an annual public supply water use report that consists of the service area functional population, non-residential significant use, total withdrawals, treatment losses, imported and exported transfers of bulk water, adjusted per-capita water use rate, water billing rate structure, water conservation activities, unaccounted water losses, water audit update if water losses exceed 10%, alternative and reclaimed water use, and to provide an updated service area map; read each customer's meter; continue to implement a water conservation plan; continue to maintain a water-conservation oriented rate structure; adhere to compliance per-capita requirements; and provide a cost connection estimate for reclaimed water availability.

Changes from prior permit: The modification removes all 15 year compliance reporting and modifies compliance dates, designates a local District address for report submittals, updates condition language for the compliance reports, and adds a condition to provide a cost connection estimate for reclaimed water availability.

**WATER USE TABLE (in gallons per day)**

<b><u>USE</u></b>	<b><u>ANNUAL AVERAGE</u></b>	<b><u>PEAK MONTH</u></b>
PUBLIC SUPPLY	302,000	393,000

**IRRIGATION ALLOCATION RATE TABLE**

<b><u>CROP/USE TYPE</u></b>	<b><u>IRRIGATED ACRES</u></b>	<b><u>IRRIGATION METHOD</u></b>	<b><u>STANDARD IRRIGATION RATE</u></b>	<b><u>DROUGHT IRRIGATION RATE</u></b>
Lawn & Landscape Irrigation	1.00	Sprinkler O.P./Same	30.40"/yr.	
Other Metered Uses				
Residential Single Family				

**PUBLIC SUPPLY:**

Population Served:	2,745
Per Capita Rate:	108 gpd/person

**WITHDRAWAL POINT QUANTITY TABLE**

Water use from these withdrawal points are restricted to the quantities given below:

<b><u>I.D. NO. PERMITTEE/ DISTRICT</u></b>	<b><u>DIAM (IN.)</u></b>	<b><u>DEPTH TTL./CSD.FT. (feet bls)</u></b>	<b><u>USE DESCRIPTION</u></b>	<b><u>AVERAGE (gpd)</u></b>	<b><u>PEAK MONTH (gpd)</u></b>
1 / 1	10	1,060 / 128	Public Supply	151,000	196,500
2 / 2	10	856 / 150	Public Supply	151,000	196,500

**WITHDRAWAL POINT LOCATION TABLE****DISTRICT I.D. NO****LATITUDE/LONGITUDE**

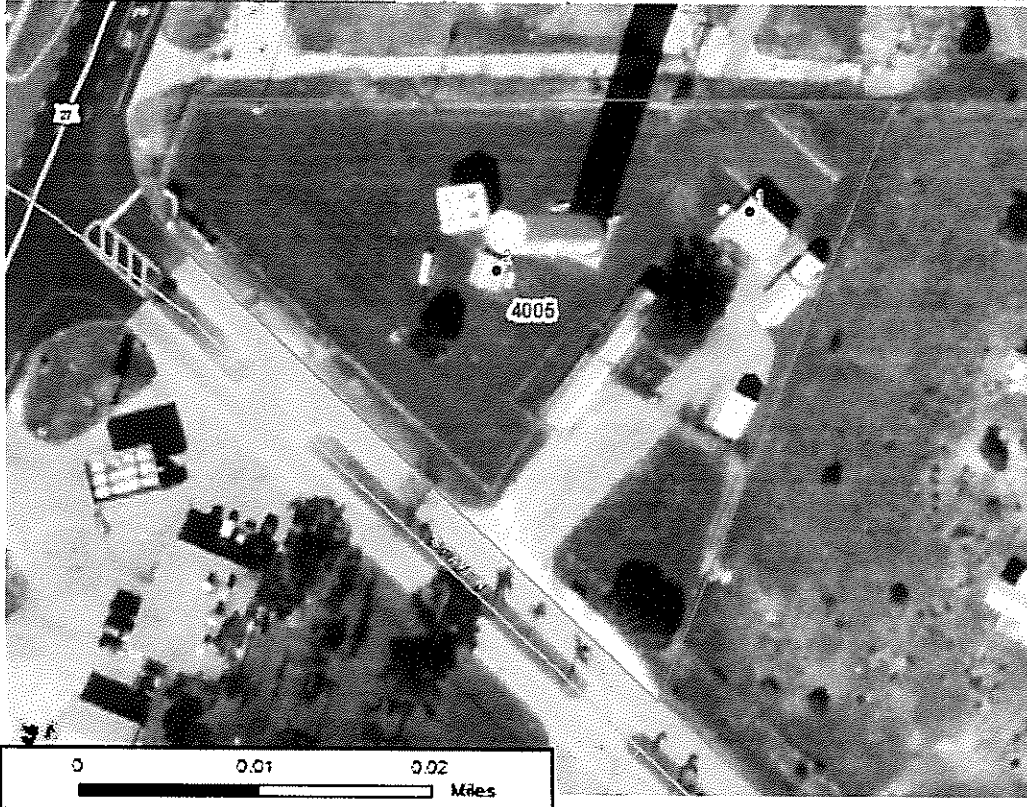
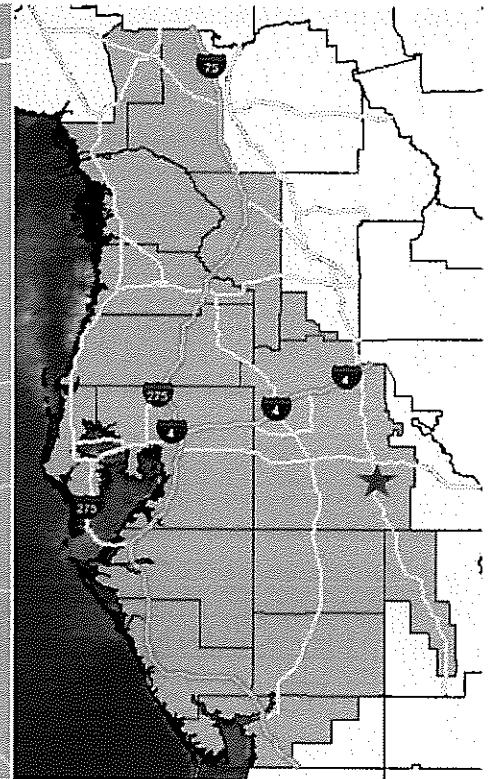
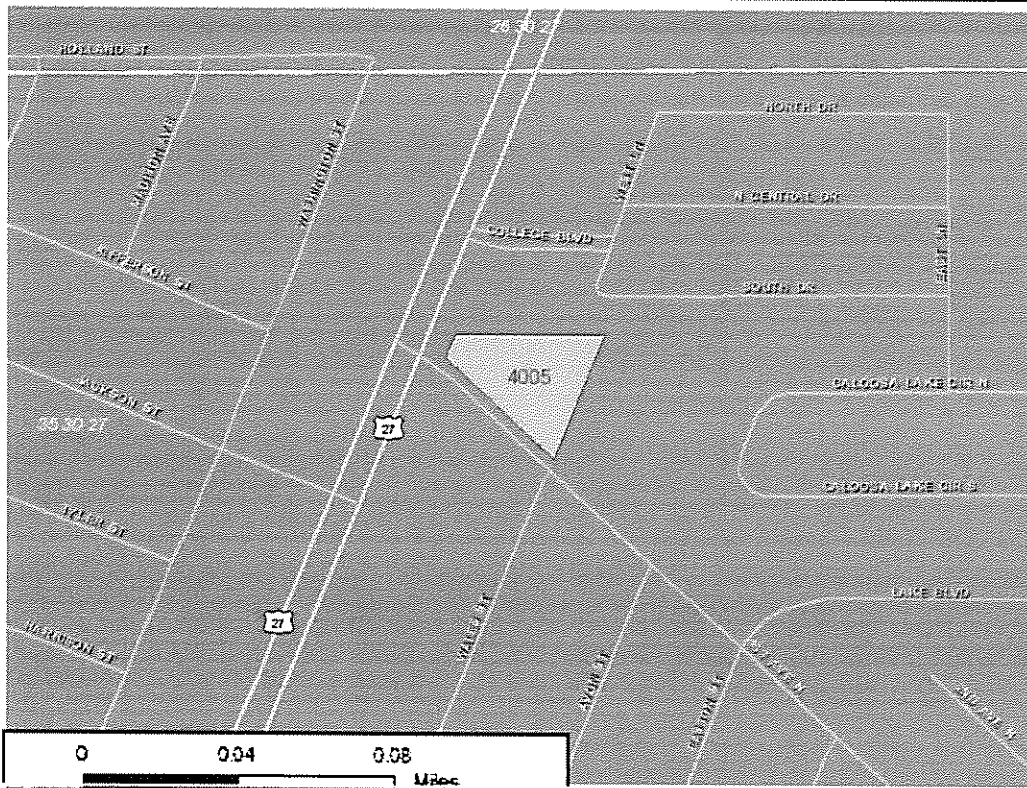
1

27° 50' 00.16"/81° 35' 18.34"

2

27° 49' 59.85"/81° 35' 19.83"

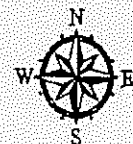
**Location Map**  
**Crooked Lake Park Water Company**  
**WUP No. 20 004005.006**



**Legend**

- DIDs
- WUP Boundary
- 2010 Natural Color Imagery

**POLK COUNTY**



*Southwest Florida  
 Water Management District*



**STANDARD CONDITIONS:**

The Permittee shall comply with the Standard Conditions attached hereto, incorporated herein by reference as Exhibit A and made a part hereof.

**SPECIAL CONDITIONS:**

1. The Permittee shall implement a leak detection and repair program as an element of an ongoing system maintenance program. This program shall include a system-wide inspection at least once per year.(309)
2. All reports and data required by condition(s) of the permit shall be submitted to the District according to the due date(s) contained in the specific condition. If the condition specifies that a District-supplied form is to be used, the Permittee should use that form in order for their submission to be acknowledged in a timely manner. The only alternative to this requirement is to use the District Permit Information Center ([www.swfwmd.state.fl.us/permits/epermitting/](http://www.swfwmd.state.fl.us/permits/epermitting/)) to submit data, plans or reports online. There are instructions at the District website on how to register to set up an account to do so. If the report or data is received on or before the tenth day of the month following data collection, it shall be deemed as a timely submittal.

All mailed reports and data are to be sent to:  
Southwest Florida Water Management District  
Bartow Regulation Department, Water Use Regulation  
170 Century Blvd.  
Bartow, Florida 33830-7700

Submission of plans and reports: Unless submitted online or otherwise indicated in the special condition, the original and two copies of each plan and report, such as conservation plans, environmental analyses, aquifer test results, per capita annual reports, etc. are required.

Submission of data: Unless otherwise indicated in the special condition, an original (no copies) is required for data submittals such as crop report forms, meter readings and/or pumpage, rainfall, water level evapotranspiration, or water quality data.  
(499)

3. The average day, peak monthly, and maximum daily, if applicable, quantities for District ID No(s).1 and 2, Permittee ID No(s). 1 and 2 as shown in the production withdrawal table are estimates based on historic and/or projected distribution of pumpage, and are for water use inventory and impact analysis purposes only. The quantities listed for these individual sources are not intended to dictate the distribution of pumpage from permitted sources. The Permittee may make adjustments in pumpage distribution as necessary up to 302,000 (gpd) gallons per day on an average basis, and up to 393,000 gpd on a peak monthly basis for the individual wells, so long as adverse environmental impacts do not result and the Permittee complies with all other conditions of this Permit. In all cases, the total average annual daily withdrawal, the total peak monthly daily withdrawal, and the total crop protection daily withdrawal are limited to the quantities set forth above.(221)
4. Within 90 days of the replacement of any or all withdrawal quantities from ground water or surface water bodies with an Alternative Water Supply, the Permittee shall apply to modify this permit to place equal quantities of permitted withdrawals from the ground and/or surface water resource on standby. The standby quantities can be used in the event that some or all of the alternative source is not available.(363)
5. The Permittee shall investigate the feasibility of using reclaimed water as a water source and submit a report describing the feasibility to the Permit Data Section, Performance Management Office, by June 17, 2020. The report shall contain an analysis of reclaimed water sources for the area, including the relative location of these sources to the Permittee's property, the quantity of reclaimed water available, the projected date(s) of availability, costs associated with obtaining the reclaimed water, and an implementation schedule for reuse, if feasible. Infeasibility shall be supported with a detailed explanation. If the use of reclaimed water is determined to be feasible by the Permittee or by the District, then the Permittee shall submit an application to modify this water use permit to include reclaimed water as a source of water. The modification application shall include a date when the reclaimed water will be available and shall indicate a proposed reduction in permitted quantities. If the permit application is not submitted by the Permittee, the District may reduce, following notice to the Permittee, the quantities authorized with this permit to account for the availability of reclaimed water.  
(458)
6. Any wells not in use, and in which pumping equipment is not installed shall be capped or valved in a water tight

manner in accordance with Chapter 62-532.500(3)(a)(4), F.A.C.(568)

7. The Permittee shall read each customer's meter and bill the customer no less frequently than bimonthly (every other month), and the customer's billing period usage shall be indicated on each bill. If billing units are not in gallons, a means to convert the units to gallons must be provided. In addition, the Permittee shall provide the following information as applicable to the customer at least once each calendar year:
  - A. To each utility-metered customer in each customer class - Information describing the rate structure and shall include any applicable:
    1. Fixed and variable charges
    2. Minimum charges and the quantity of water covered by such charges
    3. Price block quantity thresholds and prices
    4. Seasonal rate information and the months to which they apply
    5. Usage surcharges
  - B. To each utility-metered single-family residential customer - Information that describes the customer's water use relative to other single-family customers and shall include one or more of the following:
    1. The average or median single-family residential customer billing period water use calculated over the most recent three year period, or the most recent two year period if a three year period is not available to the utility. Data by billing period is preferred but not required.
    2. A means to calculate an efficient billing period use based on the customer's characteristics.
    3. A means to calculate an efficient billing period use based on the service area's characteristics.

(592)
8. This Permit is located within the Southern Water Use Caution Area (SWUCA). Pursuant to Section 373.0421, Florida Statutes, the SWUCA is subject to a minimum flows and levels recovery strategy, which became effective on January 1, 2007. The Governing Board may amend the recovery strategy, including amending applicable water use permitting rules based on an annual assessment of water resource criteria, cumulative water withdrawal impacts, and on a recurring five-year evaluation of the status of the recovery strategy up to the year 2025 as described in Chapter 40D-80, Florida Administrative Code. This Permit is subject to modification to comply with new rules.(652)
9. The Permittee shall maintain a water conserving rate structure for the duration of the permit term. Any changes to the water conserving rate structure described in the application shall be described in detail as a component of the next Water Use Annual Report due April 1 of the year following the change.(659)
10. The Permittee shall submit a "Water Use Annual Report" to the District by April 1 of each year on their water use during the preceding calendar year using the form, "Public Supply Water Use Annual Report Form" (Form No. LEG-R.023.00 (01/09)), referred to in this condition as "the Form," and all required attachments and documentation. The Permittee shall adhere to the "Instructions for Completion of the Water Use Annual Report" attached to and made part of this condition in Exhibit B. The Form addresses the following components in separate sections.
 

**Per Capita Use Rate**

A per capita rate for the previous calendar year will be calculated as provided in Part A of the Form using Part C of the Form to determine Significant Use deduction that may apply. Permittees that cannot achieve a per capita rate of 150 gpd according to the time frames included in the "Instructions for Completion of the Water Use Annual Report," shall include a report on why this rate was not achieved, measures taken to comply with this requirement, and a plan to bring the permit into compliance.

**Residential Use**

Residential use shall be reported in the categories specified in Part B of the Form, and the methodology used to determine the number of dwelling units by type and their quantities used shall be documented in an attachment.

**Non-Residential Use**

Non-residential use quantities provided for use in a community but that are not directly associated with places of residence, as well as the total water losses that occur between the point of output of the treatment plant and accountable end users, shall be reported in Part B of the Form.

**Water Conservation**

In an attachment to the Form, the Permittee shall describe the following:

  1. Description of any ongoing audit program of the water treatment plant and distribution systems to address reductions in water losses.
  2. An update of the water conservation plan that describes and quantifies the effectiveness of measures currently in practice, any additional measures proposed to be implemented, the scheduled implementation dates, and an estimate of anticipated water savings for each additional measure.
  3. A description of the Permittees implementation of water-efficient landscape and irrigation codes or

ordinances, public information and education programs, water conservation incentive programs, identification of which measures and programs, if any, were derived from the Conserve Florida Water Conservation Guide, and provide the projected costs of the measures and programs and the projected water savings.

#### Water Audit

If the current water loss rate is greater than 10% of the total distribution quantities, a water audit as described in the "Instructions for Completion of the Water Use Annual Report" shall be conducted and completed by the following July 1, with the results submitted by the following October 1. Indicate on Part A of the Form whether the water audit was done, will be done, or is not applicable.

#### Alternative Water Supplied Other Than Reclaimed Water

If the Permittee provides Alternative Water Supplies other than reclaimed water (e.g., stormwater not treated for potable use) to customers, the information required on Part D of the Form shall be submitted along with an attached map depicting the areas of current Alternative Water Use service and areas that are projected to be added within the next year.

#### Suppliers of Reclaimed Water

1. Permittees having a wastewater treatment facility with an annual average design capacity equal to or greater than 100,000 gpd:

The Permittee shall submit the "SWFWMD Annual Reclaimed Water Supplier Report" on quantities of reclaimed water that was provided to customers during the previous fiscal year (October 1 to September 30). The report shall be submitted in Excel format on the Compact Disk, Form No. LEG-R.026.00 (05/09), that will be provided annually to them by the District. A map depicting the area of reclaimed water service that includes any areas projected to be added within the next year, shall be submitted with this report.

2. Permittees that have a wastewater treatment facility with an annual average design capacity less than 100,000 gpd:

a. The Permittee has the option to submit the "SWFWMD Annual Reclaimed Water Supplier Report," Form No. LEG-R.026.00, as described in sub-part (1) above, or

b. Provide information on reclaimed water supplied to customers on Part E of the Form as described in the "Instructions for Completion of the Water Use Annual Report"

#### Updated Service Area Map

If there have been changes to the service area since the previous reporting period, the Permittee shall update the service area using the map that is maintained in the District's Mapping and GIS system.

(660)

11. The compliance per capita daily water use rate shall be no greater than 109 gallons per day (gpd). The Permittee shall calculate the compliance per capita rate as described in the Annual Report Condition on this permit and shall submit the calculations with the Annual Report by April 1 of each year.  
If the compliance per capita rate is greater than 109 gpd, the Permittee shall submit a report that documents why this rate was exceeded, measures previously or currently taken to reduce their compliance per capita rate, and a plan that describes additional measures and implementation dates for those measures to bring their compliance per capita rate to or below 109 gpd. This report shall be submitted with the Annual Report by April 1 for each year the compliance per capita rate exceeds 109 gpd. This report is subject to District approval. Justification for exceeding the adjusted gross per capita rate does not constitute a waiver of the District's authority to enforce the terms and conditions of the permit.  
(767)
12. Permittees having their own wastewater treatment plant that generate at least advanced-secondary treated effluent (high-level disinfection, as described in Rule 62-600.440(5), F.A.C.) to the minimum FDEP requirements for public access reuse shall respond in a timely manner to inquiries about availability from water use permit applicants for water uses where such reclaimed water is appropriate. If reclaimed water is or will be available to that permit applicant within the next six years, the Permittees shall provide a cost estimate for connection to the applicant.(674)
13. The following withdrawal facilities shall continue to be maintained and operated with existing, non-resettable, totalizing flow meter(s) or other measuring device(s) as approved by the Regulation Department Director: District ID No(s). 1, Permittee ID No(s). 1. Meter reading and reporting, as well as meter accuracy checks every five years shall be in accordance with instructions in Exhibit B, Metering Instructions, attached to and made part of this permit.(719)
14. The Permittee shall submit the analyses and summaries listed below on the dates required or upon request as described:  
Population Growth: By June 17, 2020, the permittee shall submit analyses and summaries of the long-term trends over the portion of the permit term that has elapsed through the remaining term of the permit that addresses population growth based on the District's BEBR medium based GIS model or equivalent methodology

approved by the District, non-population based factors such as large industrial or other uses, other water demand, and per capita use.

If the demands through June 17, 2020 are less than 90% of the projected demands reflected in the permit for that period or for the remainder of the term of the permit, the permittee shall demonstrate a legal, technical or other type of hardship as to why the permitted demand should not be reduced to an allocation based on actual demands experienced through the reporting period and demands projected through the remaining term of the permit. Within 90 days of a District notification to the permittee that the demonstration was not made, the permittee shall submit a request to modify the permit allocation consistent with actual and projected demands.

Adverse Impacts Indicated: At any time during the permit term, if data indicate adverse impacts to environmental or other water resource, offsite land use or a legal existing use, non-compliance with a minimum flow or level or associated recovery or prevention strategy, or interference with a reservation, or where data indicate the impacts predicted at the time of permit issuance were underestimated to the degree that the previous analysis is inadequate, the District shall notify the Permittee that an updated ground-water modeling analysis and data analysis is required. The updated groundwater modeling analysis and data analysis shall address compliance with all conditions of issuance pursuant to Rule 40D-2.301, F.A.C. The Permittee shall submit the updated impact analysis and data analysis within 60 days of notification.

Time-Specified Conditions Met: If the 10-year criteria that qualified the permittee for a 20-year permit are not achieved, the permit duration shall revert to the applicable duration provided in section 40D-2.321, unless this reversion would put the permit in an expired status or with less than a year of remaining duration. In such cases, the permit will expire one year following the final determination of non-achievement and will be limited to a permitted quantity that equals an additional two years future demand beyond current demand, as determined pursuant to section 3.0 of Part B, Basis of Review, of the Water Use Permit Information Manual from the point of final determination of non-achievement.

(765)

40D-2  
Exhibit A

**WATER USE PERMIT STANDARD CONDITIONS**

1. The Permittee shall provide access to an authorized District representative to enter the property at any reasonable time to inspect the facility and make environmental or hydrologic assessments. The Permittee shall either accompany District staff onto the property or make provision for access onto the property.
2. When necessary to analyze impacts to the water resource or existing users, the District shall require the Permittee to install flow metering or other measuring devices to record withdrawal quantities and submit the data to the District.
3. The District shall collect water samples from any withdrawal point listed in the permit or shall require the permittee to submit water samples when the District determines there is a potential for adverse impacts to water quality.
4. A District identification tag shall be prominently displayed at each withdrawal point that is required by the District to be metered or for which withdrawal quantities are required to be reported to the District, by permanently affixing the tag to the withdrawal facility.
5. The Permittee shall mitigate to the satisfaction of the District any adverse impact to environmental features or off-site land uses as a result of withdrawals. When adverse impacts occur or are imminent, the District shall require the Permittee to mitigate the impacts. Adverse impacts include the following:
  - A. Significant reduction in levels or flows in water bodies such as lakes, impoundments, wetlands, springs, streams or other watercourses; or
  - B. Sinkholes or subsidence caused by reduction in water levels;
  - C. Damage to crops and other vegetation causing financial harm to the owner; and
  - D. Damage to the habitat of endangered or threatened species.
6. The Permittee shall mitigate, to the satisfaction of the District, any adverse impact to existing legal uses caused by withdrawals. When adverse impacts occur or are imminent, the District shall require the Permittee to mitigate the impacts. Adverse impacts include the following:
  - A. A reduction in water levels which impairs the ability of a well to produce water;
  - B. Significant reduction in levels or flows in water bodies such as lakes, impoundments, wetlands, springs, streams or other watercourses; or
  - C. Significant inducement of natural or manmade contaminants into a water supply or into a usable portion of an aquifer or water body.
7. Notwithstanding the provisions of Rule 40D-1.6105, F.A.C., persons who wish to continue the water use permitted herein and who have acquired ownership or legal control of permitted water withdrawal facilities or the land on which the facilities are located must apply to transfer the permit to themselves within 45 days of acquiring ownership or legal control of the water withdrawal facilities or the land.
8. If any of the statements in the application and in the supporting data are found to be untrue and inaccurate, or if the Permittee fails to comply with all of the provisions of Chapter 373, Florida Statutes (F.S.), Chapter 40D, Florida Administrative Code (F.A.C.), or the conditions set forth herein, the Governing Board shall revoke this permit in accordance with Rule 40D-2.341, F.A.C., following notice and hearing.
9. Issuance of this permit does not exempt the Permittee from any other District permitting requirements.
10. The Permittee shall cease or reduce surface water withdrawal as directed by the District if water levels in lakes fall below the applicable minimum water level established in Chapter 40D-8, F.A.C., or rates of flow in streams fall below the minimum levels established in Chapter 40D-8, F.A.C.
11. The Permittee shall cease or reduce withdrawal as directed by the District if water levels in aquifers fall below the minimum levels established by the Governing Board.
12. The Permittee shall not deviate from any of the terms or conditions of this permit without written approval by the District.

13. The Permittee shall practice water conservation to increase the efficiency of transport, application, and use, as well as to decrease waste and to minimize runoff from the property. At such time as the Governing Board adopts specific conservation requirements for the Permittee's water use classification, this permit shall be subject to those requirements upon notice and after a reasonable period for compliance.
14. The District may establish special regulations for Water-Use Caution Areas. At such time as the Governing Board adopts such provisions, this permit shall be subject to them upon notice and after a reasonable period for compliance.
15. In the event the District declares that a Water Shortage exists pursuant to Chapter 40D-21, F.A.C., the District shall alter, modify, or declare inactive all or parts of this permit as necessary to address the water shortage.
16. This permit is issued based on information provided by the Permittee demonstrating that the use of water is reasonable and beneficial, consistent with the public interest, and will not interfere with any existing legal use of water. If, during the term of the permit, it is determined by the District that the use is not reasonable and beneficial, in the public interest, or does impact an existing legal use of water, the Governing Board shall modify this permit or shall revoke this permit following notice and hearing.
17. Within the SWUCA, if the District determines that significant water quantity or quality changes, impacts to existing legal uses, or adverse environmental impacts are occurring, the permittee shall be provided with a statement of facts upon which the District based its determination and an opportunity to address the change or impact prior to a reconsideration by the Board of the quantities permitted or other conditions of the permit.
18. All permits issued pursuant to these Rules are contingent upon continued ownership or legal control of all property on which pumps, wells, diversions or other water withdrawal facilities are located.

Exhibit B  
Instructions

METERING INSTRUCTIONS

The Permittee shall meter withdrawals from surface waters and/or the ground water resources, and meter readings from each withdrawal facility shall be recorded on a monthly basis within the last week of the month. The meter reading(s) shall be reported to the Permit Data Section, Performance Management Office on or before the tenth day of the following month. The Permittee shall submit meter readings online using the Permit Information Center at [www.swfwmd.state.fl.us/permits/epermitting/](http://www.swfwmd.state.fl.us/permits/epermitting/) or on District supplied scanning forms unless another arrangement for submission of this data has been approved by the District. Submission of such data by any other unauthorized form or mechanism may result in loss of data and subsequent delinquency notifications. Call the Performance Management Office in Brooksville (352-796-7211) if difficulty is encountered.

The meters shall adhere to the following descriptions and shall be installed or maintained as follows:

1. The meter(s) shall be non-resettable, totalizing flow meter(s) that have a totalizer of sufficient magnitude to retain total gallon data for a minimum of the three highest consecutive months permitted quantities. If other measuring device(s) are proposed, prior to installation, approval shall be obtained in writing from the Regulation Department Director.
2. The Permittee shall report non-use on all metered standby withdrawal facilities on the scanning form or approved alternative reporting method.
3. If a metered withdrawal facility is not used during any given month, the meter report shall be submitted to the District indicating the same meter reading as was submitted the previous month.
4. The flow meter(s) or other approved device(s) shall have and maintain an accuracy within five percent of the actual flow as installed.
5. Meter accuracy testing requirements:
  - A. For newly metered withdrawal points, the flow meter installation shall be designed for inline field access for meter accuracy testing.
  - B. The meter shall be tested for accuracy on-site, as installed according to the Flow Meter Accuracy Test Instructions in this Exhibit B, every five years in the assigned month for the county, beginning from the date of its installation for new meters or from the date of initial issuance of this permit containing the metering condition with an accuracy test requirement for existing meters.
  - C. The testing frequency will be decreased if the Permittee demonstrates to the satisfaction of the District that a longer period of time for testing is warranted.
  - D. The test will be accepted by the District only if performed by a person knowledgeable in the testing equipment used.
  - E. If the actual flow is found to be greater than 5% different from the measured flow, within 30 days, the Permittee shall have the meter re-calibrated, repaired, or replaced, whichever is necessary. Documentation of the test and a certificate of re-calibration, if applicable, shall be submitted within 30 days of each test or re-calibration.
6. The meter shall be installed according to the manufacturer's instructions for achieving accurate flow to the specifications above, or it shall be installed in a straight length of pipe where there is at least an upstream length equal to ten (10) times the outside pipe diameter and a downstream length equal to two (2) times the outside pipe diameter. Where there is not at least a length of ten diameters upstream available, flow straightening vanes shall be used in the upstream line.
7. Broken or malfunctioning meter:
  - A. If the meter or other flow measuring device malfunctions or breaks, the Permittee shall notify the District within 15 days of discovering the malfunction or breakage.
  - B. The meter must be replaced with a repaired or new meter, subject to the same specifications given above, within 30 days of the discovery.
  - C. If the meter is removed from the withdrawal point for any other reason, it shall be replaced with another meter having the same specifications given above, or the meter shall be reinstalled within 30 days of its removal from the withdrawal. In either event, a fully functioning meter shall not be off the withdrawal point for more than 60 consecutive days.

8. While the meter is not functioning correctly, the Permittee shall keep track of the total amount of time the withdrawal point was used for each month and multiply those minutes times the pump capacity (in gallons per minute) for total gallons. The estimate of the number of gallons used each month during that period shall be submitted on District scanning forms and noted as estimated per instructions on the form. If the data is submitted by another approved method, the fact that it is estimated must be indicated. The reason for the necessity to estimate pumpage shall be reported with the estimate.
9. In the event a new meter is installed to replace a broken meter, it and its installation shall meet the specifications of this condition. The permittee shall notify the District of the replacement with the first submittal of meter readings from the new meter.

#### FLOW METER ACCURACY TEST INSTRUCTIONS

1. **Accuracy Test Due Date** - The Permittee is to schedule their accuracy test according to the following schedule:
  - A. For existing metered withdrawal points, add five years to the previous test year, and make the test in the month assigned to your county.
  - B. For withdrawal points for which metering is added for the first time, the test is to be scheduled five years from the issue year in the month assigned to your county.
  - C. For proposed withdrawal points, the test date is five years from the completion date of the withdrawal point in the month assigned to your county.
  - D. For the Permittee's convenience, if there are multiple due-years for meter accuracy testing because of the timing of the installation and/or previous accuracy tests of meters, the Permittee can submit a request in writing to the Permitting Department Director for one specific year to be assigned as the due date year for meter testing. Permittees with many meters to test may also request the tests to be grouped into one year or spread out evenly over two to three years.
  - E. The months for accuracy testing of meters are assigned by county. The Permittee is requested but not required to have their testing done in the month assigned to their county. This is to have sufficient District staff available for assistance.

January	Hillsborough
February	Manatee, Pasco
March	Polk (for odd numbered permits)*
April	Polk (for even numbered permits)*
May	Highlands
June	Hardee, Charlotte
July	None or Special Request
August	None or Special Request
September	Desoto, Sarasota
October	Citrus, Levy, Lake
November	Hernando, Sumter, Marion
December	Pinellas

\* The permittee may request their multiple permits be tested in the same month.

2. **Accuracy Test Requirements:** The Permittee shall test the accuracy of flow meters on permitted withdrawal points as follows:
  - A. The equipment water temperature shall be set to 72 degrees Fahrenheit for ground water, and to the measured water temperature for other water sources.
  - B. A minimum of two separate timed tests shall be performed for each meter. Each timed test shall consist of measuring flow using the test meter and the installed meter for a minimum of four minutes duration. If the two tests do not yield consistent results, additional tests shall be performed for a minimum of eight minutes or longer per test until consistent results are obtained.
  - C. If the installed meter has a rate of flow, or large multiplier that does not allow for consistent results to be obtained with four- or eight-minute tests, the duration of the test shall be increased as necessary to obtain accurate and consistent results with respect to the type of flow meter installed.
  - D. The results of two consistent tests shall be averaged, and the result will be considered the test result for the meter being tested. This result shall be expressed as a plus or minus percent (rounded to the nearest one-tenth percent) accuracy of the installed meter relative to the test meter. The percent accuracy indicates the deviation (if any), of the meter being tested from the test meter.



3. **Accuracy Test Report:** The Permittees shall demonstrate that the results of the meter test(s) are accurate by submitting the following information within 30 days of the test:
- A. A completed Flow Meter Accuracy Verification Form, Form LEG-R.014.00 (07/08) for each flow meter tested. This form can be obtained from the District's website ([www.watermatters.org](http://www.watermatters.org)) under "Permits and Rules" for Water Use Permits.
  - B. A printout of data that was input into the test equipment, if the test equipment is capable of creating such a printout;
  - C. A statement attesting that the manufacturer of the test equipment, or an entity approved or authorized by the manufacturer, has trained the operator to use the specific model test equipment used for testing;
  - D. The date of the test equipment's most recent calibration that demonstrates that it was calibrated within the previous twelve months, and the test lab's National Institute of Standards and Testing (N.I.S.T.) traceability reference number.
  - E. A diagram showing the precise location on the pipe where the testing equipment was mounted shall be supplied with the form. This diagram shall also show the pump, installed meter, the configuration (with all valves, tees, elbows, and any other possible flow disturbing devices) that exists between the pump and the test location clearly noted with measurements. If flow straightening vanes are utilized, their location(s) shall also be included in the diagram.
  - F. A picture of the test location, including the pump, installed flow meter, and the measuring device, or for sites where the picture does not include all of the items listed above, a picture of the test site with a notation of distances to these items. with a notation of distances to these items.

#### ANNUAL REPORT SUBMITTAL INSTRUCTIONS

The "Public Supply Water Use Annual Report Form" (Form No. LEG-R.023.00 (01/09)), is designed to assist the Permittee with the annual report requirements, but the final authority for what must be included in the Water Use Annual Report is in this condition and in these instructions. Two identical copies of the "Public Supply Water Use Annual Report Form" and two identical copies of all required supporting documentation shall be included if submitted in hard copy. "Identical copy" in this instance means that if the original is in color, then all copies shall also be printed in color. If submitted electronically, only one submittal is required; however, any part of the document that is in color shall be scanned in color.

1. **Per Capita Use Rate** - A per capita rate for the previous calendar year will be progressively calculated until a rate of 150 gpd per person or less is determined whether it is the unadjusted per capita, adjusted per capita, or compliance per capita. The calculations shall be performed as shown in Part A of the Form. The Permittee shall refer to and use the definitions and instructions for all components as provided on the Form and in Part B, Chapter 3, Section 3.6 of the "Water Use Permit Information Manual." Permittees that have interconnected service areas and receive an annual average quantity of 100,000 gpd or more from another permittee are to include these quantities as imported quantities. Permittees in the Southern Water Use Caution Area (SWUCA) or the Northern Tampa Bay Water Use Caution Area (NTBWUCA), as it existed prior to October 1, 2007, shall achieve a per capita of 150 gpd or less, and those in these areas that cannot achieve a compliance per capita rate of 150 gpd or less shall include a report on why this rate was not achieved, measures taken to comply with this requirement, and a plan to bring the permit into compliance. Permittees not in a Water Use Caution Area that cannot achieve a compliance per capita rate of 150 gpd or less by December 31, 2019 shall submit this same report in the Annual Report due April 1, 2020.
2. **Residential Use** - Residential water use consists of the indoor and outdoor water uses associated with each category of residential customer (single family units, multi-family units, and mobile homes), including irrigation uses, whether separately metered or not. The Permittee shall document the methodology used to determine the number of dwelling units by type and the quantities used. Estimates of water use based upon meter size will not be accepted. If mobile homes are included in the Permittees multi-family unit category, the information for them does not have to be separated. The information for each category shall include:
  - A. Number of dwelling units per category,
  - B. Number of domestic metered connections per category,
  - C. Number of metered irrigation connections,
  - D. Annual average quantities in gallons per day provided to each category, and
  - E. Percentage of the total residential water use provided apportioned to each category.
3. **Non-Residential Use** - Non-residential use consists of all quantities provided for use in a community not directly associated with places of residence. For each category below, the Permittee shall include annual average gpd provided and percent of total non-residential use quantities provided. For each category 1 through 6 below, the number of metered connections shall be provided. These non-residential use categories are:

- A. Industrial/commercial uses, including associated lawn and landscape irrigation use,
  - B. Agricultural uses (e.g., irrigation of a nursery),
  - C. Recreation/Aesthetic, for example irrigation (excluding golf courses) of Common Areas, stadiums and school yards,
  - D. Golf course irrigation,
  - E. Fire fighting, system testing and other accounted uses,-
  - F. K-through-12 schools that do not serve any of the service area population, and
  - G. Water Loss as defined as the difference between the output from the treatment plant and accounted residential water use (B above) and the listed non-residential uses in this section.
4. **Water Audit** - The water audit report that is done because water losses are greater than 10% of the total distribution quantities shall include the following items:
- A. Evaluation of:
    - 1) leakage associated with transmission and distribution mains,
    - 2) overflow and leakage from storage tanks,
    - 3) leakage near service connections,
    - 4) illegal connections,
    - 5) description and explanations for excessive distribution line flushing (greater than 1% of the treated water volume delivered to the distribution system) for potability,
    - 6) fire suppression,
    - 7) un-metered system testing,
    - 8) under-registration of meters, and
    - 9) other discrepancies between the metered amount of finished water output from the treatment plant less the metered amounts used for residential and non-residential uses specified in Parts B and C above, and
  - B. A schedule for a remedial action-plan to reduce the water losses to below 10%.
5. **Alternative Water Supplied other than Reclaimed Water** - Permittees that provide Alternative Water Supplies other than reclaimed water (e.g., stormwater not treated for potable use) shall include the following on Part D of the Form:
- A. Description of the type of Alternative Water Supply provided,
  - B. County where service is provided,
  - C. Customer name and contact information,
  - D. Customer's Water Use Permit number (if any),
  - E. Customer's meter location latitude and longitude,
  - F. Meter ownership information,
  - G. General customer use category,
  - H. Proposed and actual flows in annual average gallons per day (gpd) per customer,
  - I. Customer cost per 1,000 gallons or flat rate information,
  - J. Delivery mode (e.g., pressurized or non-pressurized),
  - K. Interruptible Service Agreement (Y/N),
  - L. Month/year service began, and
  - M. Totals of monthly quantities supplied.
6. **Suppliers of Reclaimed Water** - Depending upon the treatment capacity of the Permittees wastewater treatment plant, the Permittee shall submit information on reclaimed water supplied as follows:
- A. Permittees having a wastewater treatment facility with an annual average design capacity equal to or greater than 100,000 gpd shall utilize the "SWFWMD Annual Reclaimed Water Supplier Report" in Excel format on the Compact Disk, Form No. LEG-R.026.00 (05/09). The "SWFWMD Annual Reclaimed Water Supplier Report" is described in Section 3.1 of Chapter 3, under the subheading "Reclaimed Water Supplier Report" and is described in detail in Appendix A to Part B, Basis of Review of the "Water Use Permit Information Manual."
  - B. Permittees that have a wastewater treatment facility with an annual average design capacity less than 100,000 gpd can either utilize the "SWFWMD Annual Reclaimed Water Supplier Report," Form No. LEG-R.026.00, as described in sub-part (1) above or provide the following information on Part E of the Form:

- 1) Bulk customer information:
  - a) Name, address, telephone number,
  - b) WUP number (if any),
  - c) General use category (residential, commercial, recreational, agricultural irrigation, mining),
  - d) Month/year first served,
  - e) Line size,
  - f) Meter information, including the ownership and latitude and longitude location,
  - g) Delivery mode (pressurized, non-pressurized).
- 2) Monthly flow in gallons per bulk customer.
- 3) Total gallons per day (gpd) provided for metered residential irrigation.
- 4) Disposal information:
  - a) Site name and location (latitude and longitude or as a reference to the service area map),
  - b) Contact name and telephone,
  - c) Disposal method, and
  - d) Annual average gpd disposed.

**Michael K. Balser, M.P.A., P.G.**

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Authorized Signature

SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT

This permit, issued under the provision of Chapter 373, Florida Statutes and Florida Administrative Code 40D-2, authorizes the Permittee to withdraw the quantities outlined above, and may require various activities to be performed by the Permittee as described in the permit, including the Special Conditions. The permit does not convey to the Permittee any property rights or privileges other than those specified herein, nor relieve the Permittee from complying with any applicable local government, state, or federal law, rule, or ordinance.



## Southwest Florida Water Management District

2379 Broad Street, Brooksville, Florida 34604-6899  
(352) 796-7211 or 1-800-423-1476 (FL only)  
SUNCOM 628-4150 TDD only 1-800-231-6103 (FL only)  
On the Internet at: [WaterMatters.org](http://WaterMatters.org)

An Equal  
Opportunity  
Employer

**Bartow Service Office**  
170 Century Boulevard  
Bartow, Florida 33830-7700  
(863) 534-1448 or  
1-800-492-7862 (FL only)

**Sarasota Service Office**  
6750 Fruitville Road  
Sarasota, Florida 34240-9711  
(941) 377-3722 or  
1-800-320-3503 (FL only)

**Tampa Service Office**  
7601 Highway 301 North  
Tampa, Florida 33637-6759  
(813) 985-7481 or  
1-800-836-0797 (FL only)

### NOTICING PACKET PUBLICATION INFORMATION

#### PLEASE SEE THE NEXT PAGE OF THIS NOTICE FOR A LIST OF FREQUENTLY ASKED QUESTIONS (FAQ)

The District's action regarding the issuance or denial of a permit, a petition or qualification for an exemption only becomes closed to future legal challenges from members of the public ("third parties"), if 1.) "third parties" have been properly notified of the District's action regarding the permit or exemption, and 2.) no "third party" objects to the District's action within a specific period of time following the notification.

Notification of "third parties" is provided through publication of certain information in a newspaper of general circulation in the county or counties where the proposed activities are to occur. Publication of notice informs "third parties" of their right to challenge the District's action. If proper notice is provided by publication, "third parties" have a 21-day time limit in which to file a petition opposing the District's action. A shorter 14-day time limit applies to District action regarding Environmental Resource Permits linked with an authorization to use Sovereign Submerged Lands. However, if no notice to "third parties" is published, there is no time limit to a party's right to challenge the District's action. The District has not published a notice to "third parties" that it has taken or intends to take final action on your application. If you want to ensure that the period of time in which a petition opposing the District's action regarding your application is limited to the time frames stated above, you must publish, at your own expense, a notice in a newspaper of general circulation. A copy of the Notice of Agency Action the District uses for publication and guidelines for publishing are included in this packet.

#### Guidelines for Publishing a Notice of Agency Action

1. Prepare a notice for publication in the newspaper. The District's Notice of Agency Action, included with this packet, contains all of the information that is required for proper noticing. However, you are responsible for ensuring that the form and the content of your notice comply with the applicable statutory provisions.
2. Your notice must be published in accordance with Chapter 50, Florida Statutes. A copy of the statute is enclosed.
3. Select a newspaper that is appropriate considering the location of the activities proposed in your application, and contact the newspaper for further information regarding their procedures for publishing.
4. You only need to publish the notice for one day.
5. Obtain an "affidavit of publication" from the newspaper after your notice is published.
6. Immediately upon receipt send the **ORIGINAL** affidavit to the District at the address below, for the file of record. **Retain a copy of the affidavit for your records.**

Southwest Florida Water Management District  
Records and Data Supervisor  
2379 Broad Street  
Brooksville, Florida 34604-6899

**Note:** If you are advertising a notice of the District's proposed action, and the District's final action is different, publication of an additional notice may be necessary to prevent future legal challenges. If you need additional assistance, please contact us at ext. 4360, at the Brooksville number listed above. (Your question may be on the FAQ list).

### FAQ ABOUT NOTICING

1. **Q.** Do I have to do this noticing, and what is this notice for?  
**A.** You do not have to do this noticing, unless you are issued a permit classified as an "Individual". You need to publish a notice if you want to ensure that a "third party cannot challenge the District's action on your permit, exemption, or petition at some future date. If you choose not to publish, there is no time limit to a third party's right to challenge the District's action.
2. **Q.** What do I need to send to the newspaper?  
**A.** The enclosed one page notice form entitled "Notice of Final Agency Action (or Proposed Agency Action) By The Southwest Florida Water Management District." You must fill in the blanks before sending it.
3. **Q.** Do I have to use the notice form, or can I make up my own form?  
**A.** You do not have to use our form. However, your notice must contain all information that is in the form.
4. **Q.** Do I send the newspaper the whole form (one page) or just the top portion that has blanks?  
**A.** Send the full page form which includes the **NOTICE OF RIGHTS** section on the bottom half.
5. **Q.** Do I type or print the information in the blanks? Or will the newspaper fill in the blanks?  
**A.** You are required to fill in the blanks on the form before sending it to the newspaper. Contact your selected newspaper for instructions on printing or typing the information in the blanks.
6. **Q.** The section 50.051, F.S. (enclosed) proof of publication form of uniform affidavit has blanks in the text. Do I fill in these blanks and send that to the newspaper?  
**A.** No. That section shows the affidavit the newspaper will send you. They will fill in the blanks.
7. **Q.** If someone objects, is my permit or exemption no good?  
**A.** If you publish a notice and a "third party" files a request for administrative hearing within the allotted time, the matter is referred to an administrative hearing. While the case is pending, generally, you may not proceed with activities under the challenged agency action. When the hearing is complete, the administrative law judge's (ALJ) recommendation is returned to the District Governing Board, and the Governing Board will take final action on the ALJ's recommendation. There is no time limit for a "third party" to object and file a request for administrative hearing if you do not publish a notice.
8. **Q.** I don't understand what I should put in the blanks on the Notice form?  
**A.**
  1. **County, Section/Township/Range, application No., permit No., proposed permit No., petition No., Exemption No., or permit inquiry No.** is on your Permit, Petition, Exemption, or Denial document.
  2. **Permit Type or Application Type** is Environmental Resource Permit, Water Use Permit, etc.
  3. **# of Acres** is the project acres. This is listed on the Environmental Resource Permit documents. For Water Use Permits, Exemptions, etc., you may put "Not Applicable" if unknown.
  4. **Rule or Statute reference** (Exemptions only). The rule and/or statute reference is at the top of page one in the reference line of the Exemption. For all others, put "Not Applicable" in this blank.
  5. **Type of Project** describes your project activity. Environmental Resource Permit = Agriculture, Commercial, Government, Industrial, Mining, Road Projects, Residential, Semi-Public or Water Quality Treatment. Water Use Permit = Agricultural (if irrigating, state that it is irrigation and specify what is being irrigated), Industrial Commercial, Recreation Aesthetic, Mining Dewatering, or Public Supply.
  6. **Project Name** is the name of your project, if applicable. If there is no project name, put "Not Applicable" in this blank.

**CHAPTER 50, FLORIDA STATUTES  
LEGAL AND OFFICIAL ADVERTISEMENTS**

<u>50.011</u>	Where and in what language legal notices to be published.
<u>50.021</u>	Publication when no newspaper in county.
<u>50.031</u>	Newspapers in which legal notices and process may be published.
<u>50.041</u>	Proof of publication; uniform affidavits required.
<u>50.051</u>	Proof of publication; form of uniform affidavit.
<u>50.061</u>	Amounts chargeable.
<u>50.071</u>	Court docket fund; service charges; publications.

**50.011 Where and in what language legal notices to be published.-**

Whenever by statute an official or legal advertisement or a publication, or notice in a newspaper has been or is directed or permitted in the nature of or in lieu of process, or for constructive service, or in initiating, assuming, reviewing, exercising or enforcing jurisdiction or power, or for any purpose, including all legal notices and advertisements of sheriffs and tax collectors, the contemporaneous and continuous intent and meaning of such legislation all and singular, existing or repealed, is and has been and is hereby declared to be and to have been, and the rule of interpretation is and has been, a publication in a newspaper printed and published periodically once a week or oftener, containing at least 25 percent of its words in the English language, entered or qualified to be admitted and entered as periodicals matter at a post office in the county where published, for sale to the public generally, available to the public generally for the publication of official or other notices and customarily containing information of a public character or of interest or of value to the residents or owners of property in the county where published, or of interest or of value to the general public.

**History.**-s. 2, ch. 3022, 1877; RS 1296; GS 1727; s. 1, ch. 5610, 1907; RGS 2942; s. 1, ch. 12104, 1927; CGL 4666, 4901; s. 1, ch. 63-387; s. 6, ch. 67-254; s. 21, ch. 99-2.

**Note.**-Former s. 49.01.

**50.021 Publication when no newspaper in county.**

When any law, or order or decree of court, shall direct advertisements to be made in any county and there be no newspaper published in the said county, the advertisement may be made by posting three copies thereof in three different places in said county, one of which shall be at the front door of the courthouse, and by publication in the nearest county in which a newspaper is published.

**History.**-RS 1297; GS 1728; RGS 2943; CGL 4667; s. 6, ch. 67-254.

**Note.**-Former s. 49.02.

**50.031 Newspapers in which legal notices and process may be published.**

No notice or publication required to be published in a newspaper in the nature of or in lieu of process of any kind, nature, character or description provided for under any law of the state, whether heretofore or hereafter enacted, and whether pertaining to constructive service, or the initiating, assuming, reviewing, exercising or enforcing jurisdiction or power, by any court in this state, or any notice of sale of property, real or personal, for taxes, state, county or municipal, or sheriff's, guardian's or administrator's or any sale made pursuant to any judicial order, decree or statute or any other publication or notice pertaining to any affairs of the state, or any county, municipality or other political subdivision thereof, shall be deemed to have been published in accordance with the statutes providing for such publication, unless the same shall have been published for the prescribed period of time required for such publication, in a newspaper which at the time of such publication shall have been in existence for 1 year and shall have been entered as periodicals matter at a post office in the county where published, or in a newspaper which is a direct successor of a newspaper which together have been so published; provided, however, that nothing herein contained shall apply where in any county there shall be no newspaper in existence which shall have been published for the length of time above prescribed. No legal publication of any kind, nature or description, as herein defined, shall be valid or binding or held to be in compliance with the statutes providing for such publication unless the same shall have been published in accordance with the provisions of this section. Proof of such publication shall be made by uniform affidavit.

**History.**-ss. 1-3, ch. 14830, 1931; CGL 1936 Supp. 4274(1); s. 7, ch. 22858, 1945; s. 6, ch. 67-254; s. 1, ch. 74-221; s. 22, ch. 99-2.

**Note.**-Former s. 49.03.

**50.041 Proof of publication; uniform affidavits required.**

(1) All affidavits of publishers of newspapers (or their official representatives) made for the purpose of establishing proof of publication of public notices or legal advertisements shall be uniform throughout the state.

(2) Each such affidavit shall be printed upon white bond paper containing at least 25 percent rag material and shall be 8.5 inches in width and of convenient length, not less than 5.5 inches. A white margin of not less than 2.5 inches shall be left at the right side of each affidavit form and upon or in this space shall be substantially pasted a clipping which shall be a true copy of the public notice or legal advertisement for which proof is executed.

(3) In all counties having a population in excess of 450,000 according to the latest official decennial census, in addition to the charges which are now or may hereafter be established by law for the publication of every official notice or legal advertisement, there may be a charge not to exceed \$2 for the preparation and execution of each such proof of publication or publisher's affidavit.

**History.**-s. 1, ch. 19290, 1939; CGL 1940 Supp. 4668(1); s. 1, ch. 63-49; s. 26, ch. 67-254; s. 1, ch. 76-58.

**Note.**-Former s. 49.04.

**50.051 Proof of publication; form of uniform affidavit.-**

The printed form upon which all such affidavits establishing proof of publication are to be executed shall be substantially as follows:

NAME OF NEWSPAPER  
Published (Weekly or Daily)  
(Town or City) (County) FLORIDA

STATE OF FLORIDA

COUNTY OF \_\_\_\_\_:

Before the undersigned authority personally appeared \_\_\_\_\_, who on oath says that he or she is \_\_\_\_\_ of the \_\_\_\_\_, a \_\_\_\_\_ newspaper published at \_\_\_\_\_ in \_\_\_\_\_ County, Florida; that the attached copy of advertisement, being a \_\_\_\_\_ in the matter of \_\_\_\_\_ in the \_\_\_\_\_ Court, was published in said newspaper in the issues of \_\_\_\_\_.

Affiant further says that the said \_\_\_\_\_ is a newspaper published at \_\_\_\_\_ in said \_\_\_\_\_ County, Florida, and that the said newspaper has heretofore been continuously published in said \_\_\_\_\_ County, Florida, each \_\_\_\_\_ and has been entered as periodicals matter at the post office in \_\_\_\_\_, in said \_\_\_\_\_ County, Florida, for a period of 1 year next preceding the first publication of the attached copy of advertisement; and affiant further says that he or she has neither paid nor promised any person, firm or corporation any discount, rebate, commission or refund for the purpose of securing this advertisement for publication in the said newspaper.

Sworn to and subscribed before me this \_\_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_ (year), by \_\_\_\_\_, who is personally known to me or who has produced (type of identification) as identification.

\_\_\_\_\_(Signature of Notary Public)\_\_\_\_\_

\_\_\_\_\_(Print, Type, or Stamp Commissioned Name of Notary Public)\_\_\_\_\_

\_\_\_\_\_(Notary Public)\_\_\_\_\_

**History.**-s. 2, ch. 19290, 1939; CGL 1940 Supp. 4668(2); s. 6, ch. 67-254; s. 1, ch. 93-62; s. 291, ch. 95-147.

**Note.**-Former s. 49.05.

**50.061 Amounts chargeable.-**

(1) The publisher of any newspaper publishing any and all official public notices or legal advertisements shall charge therefore the rates specified in this section without rebate, commission or refund.

(2) The charge for publishing each such official public notice or legal advertisement shall be 70 cents per square inch for the first insertion and 40 cents per square inch for each subsequent insertion, except that:

(a) In all counties having a population of more than 304,000 according to the latest official decennial census, the charge for publishing each such official public notice or legal advertisement shall be 80 cents per square inch for the first insertion and 60 cents per square inch for each subsequent insertion.

(b) In all counties having a population of more than 450,000 according to the latest official decennial census, the charge for publishing each such official public notice or legal advertisement shall be 95 cents per square inch for the first insertion and 75 cents per square inch for each subsequent insertion.

(3) Where the regular established minimum commercial rate per square inch of the newspaper publishing such official public notices or legal advertisements is in excess of the rate herein stipulated, said minimum commercial rate per square inch may be charged for all such legal advertisements or official public notices for each insertion, except that a governmental agency publishing an official public notice or legal advertisement may procure publication by soliciting and accepting written bids from newspapers published in the county, in which case the specified charges in this section do not apply.

(4) All official public notices and legal advertisements shall be charged and paid for on the basis of 6-point type on 6-point body, unless otherwise specified by statute.

(5) Any person violating a provision of this section, either by allowing or accepting any rebate, commission, or refund, commits a misdemeanor of the second degree, punishable as provided in s. 775.082 or s. 775.083.

(6) Failure to charge the rates prescribed by this section shall in no way affect the validity of any official public notice or legal advertisement and shall not subject same to legal attack upon such grounds.

**History.**-s. 3, ch. 3022, 1877; RS 1298; GS 1729; RGS 2944; s. 1, ch. 12215, 1927; CGL 4668; ss. 1, 2, 2A, 2B, ch. 20264, 1941; s. 1, ch. 23663, 1947; s. 1, ch. 57-160; s. 1, ch. 63-50; s. 1, ch. 65-569; s. 6, ch. 67-254; s. 15, ch. 71-136; s. 35, ch. 73-332; s. 1, ch. 90-279.

**Note.**-Former s. 49.06.

**50.0711 Court docket fund; service charges; publications.-**

(1) The clerk of the court in each county may establish a court docket fund for the purpose of paying the cost of publication of the fact of the filing of any civil case in the circuit court of the county by the style and of the calendar relating to such cases. This court docket fund shall be funded by \$1 mandatory court cost for all civil actions, suits, or proceedings filed in the circuit court of the county. The clerk shall maintain such funds separate and apart, and the proceeds from this court cost shall not be diverted to any other fund or for any purpose other than that established in this section. The clerk of the court shall dispense the fund to the designated record newspaper in the county on a quarterly basis.

(2) A newspaper qualified under the terms of s. 50.011 shall be designated as the record newspaper for such publication by an order of the majority of the judges in the judicial circuit in which such county is located, and such order shall be filed and recorded with the clerk of the circuit court for such county. The designated record newspaper may be changed at the end of any fiscal year of the county by a majority vote of the judges of the judicial circuit of the county ordering such change 30 days prior to the end of the fiscal year, notice of which order shall be given to the previously designated record newspaper.

(3) The publishers of any designated record newspapers receiving payment from this court docket fund shall publish, without additional charge, the fact of the filing of any civil case, suit, or action filed in such county in the circuit. Such publication shall be in accordance with a schedule agreed upon between the record newspaper and the clerk of the court in such county.

(4) The publishers of any designated record newspapers receiving revenues from the court docket fund established in subsection (1) shall, without charge, accept legal advertisements for the purpose of service of process by publication under s. 49.011(4), (10), and (11) when such publication is required of persons authorized to proceed as indigent persons under s. 57.081.

**History.**-s. 46, ch. 2004-265.

**NOTICE OF FINAL AGENCY ACTION BY  
THE SOUTHWEST FLORIDA WATER MANAGEMENT DISTRICT**

Notice is given that the District's Final Agency Action is approval of the \_\_\_\_\_ .  
(Permit Type)

on \_\_\_\_\_ acres to serve \_\_\_\_\_ known as \_\_\_\_\_ .  
(# of Acres) (Type of Project) (Project Name)

The project is located in \_\_\_\_\_ County, Section(s) \_\_\_\_\_ .  
(County Name) (Section)

Township \_\_\_\_\_ South, Range \_\_\_\_\_ East. The permit applicant  
(Township) (Range)

is \_\_\_\_\_ whose address is \_\_\_\_\_  
(name) (Address)

The permit No. is \_\_\_\_\_ .  
(Permit #)

The file(s) pertaining to the project referred to above is available for inspection Monday through Friday except for legal holidays, 8:00 a.m. to 5:00 p.m., at the Southwest Florida Water Management District  
(District) \_\_\_\_\_  
(Address of District Office issuing Permit)

**NOTICE OF RIGHTS**

Any person whose substantial interests are affected by the District's action regarding this permit may request an administrative hearing in accordance with Sections 120.569 and 120.57, Florida Statutes (F.S.), and Chapter 28-106, Florida Administrative Code (F.A.C.), of the Uniform Rules of Procedure. *A request for hearing must (1) explain how the substantial interests of each person requesting the hearing will be affected by the District's action, or final action; (2) state all material facts disputed by each person requesting the hearing or state that there are no disputed facts; and (3) otherwise comply with Chapter 28-106, F.A.C.* A request for hearing must be filed with and received by the Agency Clerk of the District at the District's Brooksville address, 2379 Broad Street, Brooksville, FL 34604-6899 within 21 days of publication of this notice (or within 14 days for an Environmental Resource Permit with Proprietary Authorization for the use of Sovereign Submerged Lands). Failure to file a request for hearing within this time period shall constitute a waiver of any right such person may have to request a hearing under Sections 120.569 and 120.57, F.S.

Because the administrative hearing process is designed to formulate final agency action, the filing of a petition means that the District's final action may be different from the position taken by it in this notice of final agency action. Persons whose substantial interests will be affected by any such final decision of the District on the application have the right to petition to become a party to the proceeding, in accordance with the requirements set forth above.

Mediation pursuant to Section 120.573, F.S., to settle an administrative dispute regarding the District's final action in this matter is not available prior to the filing of a request for hearing.



**PART II HEARINGS INVOLVING  
DISPUTED ISSUES OF MATERIAL FACT**

**28-106.201 Initiation of Proceedings.**

(1) Unless otherwise provided by statute, and except for agency enforcement and disciplinary actions that shall be initiated under Rule 28-106.2015, F.A.C., initiation of proceedings shall be made by written petition to the agency responsible for rendering final agency action. The term "petition" includes any document that requests an evidentiary proceeding and asserts the existence of a disputed issue of material fact. Each petition shall be legible and on 8.5 by 11 inch white paper. Unless printed, the impression shall be on one side of the paper only and lines shall be double-spaced.

(2) All petitions filed under these rules shall contain:

(a) The name and address of each agency affected and each agency's file or identification number, if known;

(b) The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests will be affected by the agency determination;

(c) A statement of when and how the petitioner received notice of the agency decision;

(d) A statement of all disputed issues of material fact. If there are none, the petition must so indicate;

(e) A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action;

(f) A statement of the specific rules or statutes the petitioner contends require reversal or modification of the agency's proposed action; and

(g) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency's proposed action.

(3) Upon receipt of a petition involving disputed issues of material fact, the agency shall grant or deny the petition, and if granted shall, unless otherwise provided by law, refer the matter to the Division of Administrative Hearings with a request that an administrative law judge be assigned to conduct the hearing. The request shall be accompanied by a copy of the petition and a copy of the notice of agency action.

*Specific Authority 120.54(3), (5) F.S. Law Implemented 120.54(5), 120.569, 120.57 F.S. History-New 4-1-97, Amended 9-17-98, 1-15-07.*

**PART III PROCEEDINGS AND HEARINGS  
NOT INVOLVING DISPUTED ISSUES OF  
MATERIAL FACT**

**28-106.301 Initiation of Proceedings**

(1) Unless otherwise provided by statute and except for agency enforcement and disciplinary actions initiated under subsection 28-106.2015(1), F.A.C., initiation of a proceeding shall be made by written petition to the agency responsible for rendering final agency action. The term "petition" includes any document which requests a proceeding. Each petition shall be legible and on 8.5 by 11 inch white paper or on a form provided by the agency. Unless printed, the impression shall be on one side of the paper only and lines shall be double-spaced.

(2) All petitions filed under these rules shall contain:

(a) The name and address of each agency affected and each agency's file or identification number, if known;

(b) The name, address, and telephone number of the petitioner; the name, address, and telephone number of the petitioner's representative, if any, which shall be the address for service purposes during the course of the proceeding; and an explanation of how the petitioner's substantial interests will be affected by the agency determination;

(c) An explanation of how the petitioner's substantial interests will be affected by the agency determination;

(d) A statement of when and how the petitioner received notice of the agency decision;

(e) A concise statement of the ultimate facts alleged, including the specific facts the petitioner contends warrant reversal or modification of the agency's proposed action;

(f) A statement of the specific rules or statutes that the petitioner contends require reversal or modification of the agency's proposed action;

(g) A statement of the relief sought by the petitioner, stating precisely the action petitioner wishes the agency to take with respect to the agency's proposed action; and

(h) A statement that no material facts are in dispute.

*Specific Authority 120.54(5) F.S. Law Implemented 120.54(5), 120.569, 120.57 F.S. History-New 4-1-97, Amended 9-17-98, 1-15-07, 12-24-07.*

Andreyev Engineering Inc  
3740 54TH AVENUE NORTH  
ST PETERSBURG, FL 33714

Crooked Lake Park Water Company  
25 FIRST AVENUE NORTH  
LAKE WALES, FL 33854

Kevin J Egan  
25 1ST AVE N  
LAKE WALES, FL 33859

**APPENDIX "E"**

**DEVELOPER AGREEMENTS**

## Appendix E

Atlantic Funding LTD Developer Agreement (see attached)

## **DEVELOPER AGREEMENT**

THIS AGREEMENT made and entered this \_\_\_\_ day of \_\_\_\_\_, 2017 by and between **ATLANTIC FUNDING, LTD.**, hereinafter referred to as "**Developer**", and **PARK WATER COMPANY, INC.**, hereinafter referred to as "**Company**".

WHEREAS, Developer owns or controls lands, located within and adjacent to the Company's Utility Service Areas, located in Polk County, Florida, and described in Exhibit "A", attached hereto and made a part hereof as if fully set out in this paragraph and hereinafter referred to as the "**Property**;" and

WHEREAS, Developer intends to develop the Property in phases for a combination of residential and commercial uses as currently approved by Polk County; and

WHEREAS, Company is the owner of a central water distribution system ("**Water System**") which provides potable water service to parties within its utility service boundary that was established pursuant to Chapter 180, Florida Statutes, as amended; and

WHEREAS, Developer desires that the Company provide central water distribution service for Developer's Property currently located within Company's utility service boundary and to provide for incorporation into the utility service boundary of Developer's adjacent Property, and the extension of Company's service territory is subject to the application and approval process by the Florida Public Service Commission. This process is lengthy and comes with application fees and administrative costs. Company would require the capacity reservation letter and all applicable plant capacity fees be paid for this phase of the project prior to applying for this extension of service territory. Park Water Company will not be held responsible should the commission not grant the extension of the service territory. If the extension is not granted, the plant capacity fees paid in excess of the actual cost including but not limited to application fees, engineering fees, legal and administrative fees shall be refunded to the developer.

WHEREAS, the Company is willing to provide, as required by Chapter 180, Florida Statutes and pursuant to the provisions of this Agreement and Company's prevailing Service Code, central potable water services to the Property and thereafter operate applicable facilities so that the occupants of the improvements on the Property will receive water supply at the established flow rates and pressure from Company;

NOW, THEREFORE, for and in consideration of the premises, the mutual undertakings and agreements herein contained and assumed, Developer and Company hereby covenant and agree as follows:

1. **Recitals**. The foregoing statements are true and correct.
2. **Service Code**. Developer agrees to strictly adhere to Company's prevailing Service Code, a current copy of which is attached hereto as **Exhibit "B"** and incorporated herein by reference ("**Service Code**").

3. **Assurance of Title.** At the time of execution of this Agreement, the Developer agrees to deliver to Company a copy of a Title Insurance Policy, in a form and substance satisfactory to Company with respect to the Property, which opinion shall include a current report on the status of the title, setting out the name of the legal title holders, the outstanding mortgages, taxes, liens and covenants. The provisions of this paragraph are for the purpose of evidencing Developer's legal right to grant the exclusive rights of service contained in this Agreement.

4. **Extension of Water Service.** Company and Developer agree to cooperate to provide for an extension of Company's existing central water distribution service to the Property. The proposed connection will be completed generally in multiple phases as follows:

a. In order to facilitate Developer's initial project to develop a 6,500 square foot gas/convenience store (the "**Initial Development**"), Company has provided a potable water capacity commitment letter, dated January 17, 2017, to Developer wherein the Company has committed potable water capacity for the Initial Development at the southeast corner of the intersection of U.S. 27 and S.R. 640. The Developer shall extend the Company's existing eight (8) inch water line located on the west side of U.S. 27, by jack and bore construction, to provide potable water service and fire service for the Initial Development on the Company's Property ("**8 Inch Water Line Extension**").

i. The Developer shall be allowed a credit towards the Fees otherwise due and payable hereunder (the "**Fee Credits**") in the amount equal to the documented design, engineering, materials and construction costs incurred by Developer (collectively, the "**Construction Expenses**") for the construction of the 8 Inch Water Line Extension. In the event that the Fee Credits exceed the amount of Fees owed by Developer to the Company with respect to the Initial Development, the Developer shall be provided a "pioneering" agreement whereby the Developer is reimbursed for the unreimbursed portion of the Construction Expenses at such time that other parties connect to the Extended Water Line, or further extensions thereof, with connection and other fees collected from said third parties, until the Developer has been reimbursed for all Construction Expenses. Plant Capacity Fees shall not be subject to the "Fee Credits" clause in this agreement. Plant Capacity Fees are for the maintenance of the Park Water Company onsite plant for water production and treatment. Main Line Extension Fees shall be the only fees subject to "Fee Credits".

ii. Further, Company agrees to not object to Developer's efforts to permit a well to provide additional fire water protection flows and pressures for the initial projects. Developer agrees to limit the use of the new well to only fire protection for Developer's projects.

b. In order to provide long term potable water service for commercial and residential development planned for the Property (the "**Additional Development**"), Developer and Company agree it is necessary to install a twelve (12) inch potable water main from Company's property to Developer's Property. Subject to the terms of this Agreement, Company agrees to allow Developer to construct approximately 1,600 linear feet of twelve (12) inch potable water main from Company's tower, along U.S. 27 to the southern boundary



of Developer's Property. In addition, Developer shall construct approximately 2,000 linear feet of twelve (12) inch potable water main from the southern boundary of the Property along U.S. 27, as generally depicted in **Exhibit "C"** to this Agreement. The potable water lines referenced in this paragraph shall be referred to as the **"Extended Water Line"**.

i. The Company shall provide the necessary easements or right-of-way approvals, at Company's sole cost and expense, to allow the Developer to extend the Extended Water Line from the Water System to the Property. The Company shall provide only easements required for construction on the Company's property. All other easements are to be provided by the developer including permitted use DOT and County Right of Ways and other private property as required by the engineered design.

ii. Upon completion of construction and certification of the Extended Water Line, Developer shall dedicate the ownership of the Extended Water Line to Company, and Company shall accept the Extended Water Line and be solely responsible for ownership, maintenance, repair and replacement.

iii. The Developer shall be allowed Fee Credits towards the Fees otherwise due and payable hereunder in the amount equal to the Construction Expenses incurred by Developer for the construction of the Extended Water Line. In the event that the Fee Credits exceed the amount of Fees owed by Developer to the Company, the Developer shall (A) be entitled to apply such excess Fee Credits towards subsequent Fees that may otherwise become due and payable hereunder and (B) be provided a "pioneering" agreement whereby the Developer is reimbursed for the unreimbursed portion of the Construction Expenses at such time that other parties connect to the Extended Water Line, or further extensions thereof, with connection and other fees collected from said third parties, until the Developer has been reimbursed for all Construction Expenses. Plant Capacity Fees shall not be subject to the "Fee Credits" clause in this agreement. Plant Capacity Fees are for the maintenance of the Park Water Company onsite plant for water production and treatment. Main Line Extension Fees shall be the only fees subject to "Fee Credits".

iv. The Developer anticipates developing the Additional Development in phases, and shall provide advance written notice to the Company at least six (6) months before the Developer needs committed capacity for any such commercial or residential development (the **"Capacity Notice"**).

e. The Developer shall submit reasonable documentation for the costs expended for the design, materials and construction of the 8 Inch Water Line Extension, the Extended Water Line or other improvements constructed pursuant to the provisions of this Agreement (collectively, the **"Company Improvements"**) for which Fee credits are available in accordance with the provisions of this Agreement. Developer shall obtain bids from at least three (3) contractors. With respect to the construction of Improvements, the Developer shall only be entitled to credits in the amount of the lowest of the three (3) contractor bids obtained by the Developer. Park Water Company shall have the opportunity to review the three bids obtained by the developer and should bids be higher than customary have the option to obtain up to three additional bids from Park Water Company approved vendors for comparison and

use for the establishment of fee credits.

5. **Fees.** Developer hereby agrees to pay to Company the following fees:

a. **Main Extension Charges.** In lieu of payment of Company's Main Extension Charges, Developer shall pay all Construction Expenses to design and construct the 8 Inch Water Line Extension and the Extended Water Line, as described above, subject to Developer's rights to Fee Credits as provided above and the Company's obligation to provide the necessary easements and or right-of-way for the construction of the Extended Water Line from the Water System to the Property. The Company shall provide only easements required for construction on the Company's property. All other easements are to be provided by the developer including permitted use DOT and County Right of Ways and other private property as required by the engineered design.

b. **Plant Capacity Charge.** For the reservation of capacity for the development of Developer's Property, subject to Developer's rights to Fee Credits as provided above (the "**Plant Capacity Charges**"), as follows: Plant Capacity Charges are not subject to Fee Credits.

i. For the Initial Development, Developer shall pay the Plant Capacity Charges in accordance with the Company's existing rate schedule in the normal course of the approval process for Developer's Initial Development.

ii. For the Additional Development, Developer shall pay the Plant Capacity Charges, in accordance with the Company's then existing rate schedule, with its Capacity Notice. No Capacity is reserved for any future phase until the written request for reservation is made and the total Plant Capacity Fees are for each phase.

c. **Meter Installation Fee** - The charge (collectively, the "**Meter Installation Fee**") imposed by the Company for the water meter, meter box, and appurtenances (collectively, the "**Meter**"), together with the installation of the Meter, installed at the request of Developer. Said Meter Installation Fee shall be paid by Developer in accordance with the Company's adopted and approved regulations at the time of installation and connection of the Meter. The Meter Installation Fee is for the residential size meter only. All boxes, tapping saddles, pipe, and valves shall be constructed by the developer at the time of the main extension for residential units. Non-residential meters, tapping saddles, pipe, and valves shall be paid by the developer at actual cost in lieu of the Meter Installation Fee.

6. **Equivalent Residential Connections Reserved** - The parties agree that the potable water capacity needed to provide service to the Property (the "**Reserved Capacity**") is as follows:

a. Company has reserved 20 equivalent residential connections ("**ERC's**") for the Initial Development in the normal course of the approval process for Developer's Initial Development.

b. Company will provide Reserved Capacity to Developer for the Additional

Development within sixty (60) days after receipt of the Capacity Notice to Company. The Developer generally expects the Additional Development, to be developed in phases to be determined at a later date, to include the following: All requests are subject to government approval should it exceed our permitted capacity at the time of request.

- i. Commercial retail development on approximately 24 +/- acres.
- ii. Approximately 427 single family residences
- iii. Approximately 350 multi-family units

c. The parties hereto acknowledge and agree that the Developer shall not be entitled to develop the Property with uses that exceed the Reserved Capacity granted pursuant to the provisions of this Agreement.

7. **Water Distribution System** - To induce Company to provide the water treatment facilities, and to continuously provide consumers located on the Property with water services, unless otherwise provided for herein, Developer hereby covenants and agrees, subject to Developer's rights to Fee Credits as provided above, to construct and to transfer ownership and control to Company of additional facilities and improvements to the Company's potable water distribution system, including, without limitation, the 8 Inch Water Line Extension, the Extended Water Line, and all lines, pipes, valves, fittings, laterals, hydrants and all other appurtenances and components of such water distribution system (the "**Owner Water Distribution System**"), constructed adequate in size to serve the Property. The Company Water Distribution System may be designed and constructed in phases so that any reference to or obligation regarding the Owner Water Distribution System shall be to that portion of the Owner Water Distribution System that has been designed and constructed at any given time.

Developer and Company mutually agree to cooperate to allow Developer to construct the Owner Water Distribution System, and either party, at the request of the other, shall join in any applications or documents that may be reasonably required by the governmental authorities having jurisdiction or granting access and easements to Company's Property, where necessary, to allow survey, construction or other installations required for the Owner Water Distribution System. Company hereby further agrees that the foregoing grants or promises of grants include the necessary right of ingress and egress to any part of Company's Property upon which Developer is constructing the Owner Water Distribution System, and that the foregoing grants shall be for only such period of time as Company or its successors or assigns require such rights, privileges or easements in the construction, ownership, maintenance, operation, repair, replacement or expansion of the Improvements or facilities that are a part of the Owner Water Distribution System.

Developer shall be responsible for the design, installation, and inspection and testing of the Owner Water Distribution System, and the associated costs, fees, and expenses, subject to Developer's rights to Fee Credits as provided above. The Company shall assume all responsibility, liability, and all obligations for ownership, maintenance, operation, repair, replacement or expansion of the Owner Water Distribution System upon issuance of a final letter of acceptance.

Upon completion of construction of the Owner Water Distribution System by Developer, Developer's engineer of record shall submit to Company all proper documentation as described in Company's Developer Procedures and Construction Standards and Specifications, a copy of which are attached hereto and incorporated herein by reference as **Exhibit "D,"** Developer understands and agrees that Company will withhold service to the Property until all required items are received and found to be reasonably acceptable to Company.

By these presents, Developer hereby covenants to transfer to Company title to all of the Owner Water Distribution System that are constructed or installed by Developer or Developer's contractor, pursuant to the provisions of this Agreement. Such conveyance shall take effect at the time Company issues its final letter of acceptance. Developer agrees to warrant and/or guaranty, or provide a manufacturer's or contractor's warranty and/or guaranty regarding, against faulty workmanship and defective materials for a period of one (1) year from the date of Company's final letter of acceptance with respect to all of the Owner Water Distribution System being transferred to Company.

Company agrees that the issuance of the final letter of acceptance for the Owner Water Distribution System installed by Developer shall constitute the assumption of responsibility and liability by Company for the continuous ownership, operation, maintenance, repair and replacement of the Owner Water Distribution System from that date forward. Developer understands and agrees that the Company shall assume ownership and responsibility for the Water Distribution System only up to the point of service as defined by the Company. Developer agrees to pay all costs associated with adjusting or relocating Improvements herein dedicated to Company during and after the warranty period when such adjustments or relocations are caused by changes initiated by Developer. In the event that such adjustments or relocations are caused by changes initiated by Developer's successors or assigns, such successors or assigns shall be responsible for such costs as a condition of the adjustment of relocation of the Company's Improvements.

In the event that Company, for whatever reason, does not take possession, ownership and control of the Owner Water Distribution System constructed by the Developer, and provides master metered service to the Developer for the use of several customers, the Developer shall be required to maintain water quality at each individual outlet which is in compliance with all drinking water standards promulgated by the Florida Department of Environmental Protection and Polk County Health Department. At no time shall such water quality standards be required to be in excess of those attained at Company's point of delivery to the master meter.

9. **Easements** - Developer hereby grants and gives to Company, its successors and assigns, subject to the terms of this Agreement, the exclusive right or privilege to construct, own, maintain and operate the Owner Water Distribution System to serve the Property; and the exclusive right or privilege to own, maintain, alter, replace and operate said Owner Water Distribution System in, under, upon, over and across the present and future streets, roads, alleys, easements, rights of way, and any public place as provided and dedicated to public use in the record plats, or as provided for in agreements, dedications or grants which are

independent of said record plats. Developer and Company agree to utilize Company's standard form of easement agreement and to provide title insurance consistent with Company's Developer Procedures for all easements. Developer shall obtain any and all necessary easements that may be required in order to carry out the terms, conditions and intent hereof, at Developer's expense, and shall convey same to Company in accordance with this paragraph. Mortgagees, if any, holding prior liens on the Property shall be required to release such liens, subordinate their position, join in the grant or dedication of the easements or rights-of-way, or give to Company assurance by way of a "non-disturbance agreement" that in the event of foreclosure, such mortgagee would continue to recognize the easement rights of Company, and not extinguish the Company's easement rights. All Owner Water Distribution System Improvements, save and except consumer installations, shall be covered by easements or rights-of-way if not located within platted or dedicated roads or rights-of-way for utility purposes.

Developer hereby affirms that, to the best of Developer's knowledge, all properties within which the Owner Water Distribution System is to be constructed are free of soil and ground water contamination.

**10. Agreement to Serve.** Upon the completion of construction and acceptable inspection of the Owner Water Distribution System, and the issuance of the final letter of acceptance by Company, Company covenants and agrees that it will connect or oversee the connection of the Owner Water Distribution System constructed by Developer in accordance with the terms and conditions of this Agreement. Such connection shall at all times be in accordance with rules, regulations and orders of the applicable governmental authorities. Company agrees that once it provides potable water service to the Property and Developer, or others have connected consumer installations to the Owner Water Distribution System, the Company will continuously provide, at its cost and expense, but in accordance with other provisions of this Agreement, including rules, regulations and rate schedules, potable water service to the Property in a manner to conform with all requirements of the applicable governmental and quasi-governmental entities having jurisdiction over the operations of Company.

**11. Exclusive Right to Provide Service.** Developer, as a further and essential consideration of this Agreement, agrees that Developer, or the successors and assigns of Developer, shall not engage in the business or businesses of providing potable water services to the Property during the period of time Company, its successors and assigns, provide potable water services to the Property, it being the intention of the parties hereto that under the foregoing provision and also other provisions of this Agreement, Company shall have the sole and exclusive right and privilege to provide potable water services to the Property located within the Company's utility service area and to the occupants of such residences, buildings or units constructed thereon, except as may be otherwise provided in this Agreement for irrigation or other non-potable uses.

**12. Rates.** Company agrees that the rates to be charged to Developer and individual consumers of water services shall be those set forth in the Company's Service Code. However, notwithstanding any provision of this Agreement, Company, its successors and assigns, may

establish and enforce, amend or revise, from time to time in the future, rates or rate schedules so established. Rates charged to Developer or consumers located upon the Property shall at all times be identical to rates charged for the same classification of service, as are or may be in effect throughout the service area of Company. Notwithstanding any provision in this Agreement, Company may establish, amend or revise, from time to time in the future, and enforce rules and regulations covering water services to the Property, including the Company's Service Code. In the event of a conflict of the provisions of this Agreement, such rules and regulations shall control.

Any such initial or future increased rates, rate schedules, and rules and regulations established, amended or revised and enforced by Company from time to time in the future, as provided by law, shall be binding upon Developer; upon any person or other entity holding by, through or under Developer; and upon any user or consumer of the water services provided to the Property by Company.

**13. Binding Effect of Agreement.** This Agreement shall be binding upon and shall inure to the benefit of Developer, Company and their respective assigns and successors by merger, consolidation, conveyance or otherwise subject to the terms and conditions of this Agreement. Developer and Company understand and agree that the Reserved Capacity reserved hereunder, or that is hereafter reserved by Developer from the Company, can be assigned by Developer to third parties who purchase all or a portion of Developer's Property or take title to all or a portion of the Property through other valid transfer or assignment, including, without limitation, the transfer or assignment of the Property as a result of a judicial proceeding such as mortgage foreclosure sale or a transfer in lieu of foreclosure, and the collateral assignment of said Reserved Capacity for the purposes of obtaining financing. In any such case, the Developer shall provide a notice or evidence of such assignment, or partial assignment as the case may be, to Company. Nothing herein shall preclude sales of individual units and assignment of rights of water service pertaining thereto.

**14. Notice.** Until further written notice by either party to the other, all notices provided for herein shall be in writing and transmitted by messenger, by mail, facsimile, or by telegram, and if to Developer, shall be mailed or delivered to Developer at:

Atlantic Funding Ltd., LLC  
Attn: William Cooley, MGR/Member  
229 Edmor Rd.  
West Palm Beach, Florida 33405  
[cool3003@bellsouth.net](mailto:cool3003@bellsouth.net)

With a copy to:

Jacob C. Dykxhoorn, Esquire  
Dykxhoorn Law Firm, P.A.  
225 E. Stuart Avenue  
Lake Wales, FL 33853  
[jack@dykxhoornlaw.com](mailto:jack@dykxhoornlaw.com)

And to Company, at:

Park Water Company, Inc.  
25 1st Ave. N  
Lake Wales, Florida 33859  
tstaiano@mecojax.com

**15. Miscellaneous.**

a. **Laws of Florida.** Regardless of where executed, this Agreement shall be governed by the laws of the State of Florida. Notwithstanding contrary principles of conflicts of law, if any, and it shall be and become effective immediately upon execution by both parties hereto, subject to any approvals which must be obtained from governmental authorities, if applicable.

b. **Costs and Attorney's Fees.** In the event the Company or Developer are required to enforce this Agreement by Court proceedings or otherwise, by instituting suit or otherwise, then the prevailing party shall be entitled to recover from the other party all costs incurred, including reasonable attorney's fees. Costs and attorney's fees include, but are not limited to, expenses associated with trial court, mediation, arbitration, appellate court or bankruptcy court proceedings. The Company and Developer shall each pay its own costs and attorney fees with respect to the negotiations and drafting of this Agreement, and the implementation of the matters set forth herein.

c. **Force Majeure.** In the event that the performance of this Agreement by either party is prevented or interrupted in consequence of any cause beyond the control of such party, including, but not limited to, acts of a public enemy, war, national emergency, allocation of or other governmental restrictions upon the use or availability of labor or materials, rationing, civil insurrection, riot, racial or civil rights disorder or demonstration, strike, embargo, flood, tidal wave, fire, explosion, bomb detonation, nuclear fallout, windstorm, hurricane, earthquake, or other casualty or disaster or catastrophe, unforeseeable failure or breakdown of pumping transmission or other facilities, any and all governmental rules or acts or orders or restrictions or regulations or requirements, acts or action of any government or public or governmental commission or board or agency or agent or official or officer, the enactment of any statute or ordinance or resolution or regulation by governmental entities having jurisdiction over the operation of such party or otherwise having valid legal jurisdiction, excluding any acts or rules or regulations adopted by such party, or rule or ruling or order, order or decree or judgment or restraining order or injunction of any court (individually or collectively, an act of "Force Majeure"), said party shall not be liable for such non-performance.

d. **Indemnification** - The parties hereto agree to indemnify and hold each other harmless from and against any and all liabilities, claims, damages, costs and expenses (including reasonable attorney's fees) to which it may become subject by reason of or arising out of the breach or non-performance of this Agreement. This indemnification provision shall survive the actual connection to Company's Water System.

e. The rights, privileges, obligations and covenants of Developer and Company shall survive the completion of the work of Developer with respect to completing the facilities and services to any development phase and to the Property as a whole.

f. This Agreement supersedes all previous agreements or representations, either verbal or written, heretofore in effect between Developer and Company, made with respect to the matters herein contained, and when duly executed, fully constitutes the agreement between Developer and Company. No additions, alterations or variations of the terms of this Agreement shall be valid, nor can provisions of this Agreement be waived by either party, unless such additions, alterations, variations or waivers are expressed in writing and duly signed by all signatories herein.

g. Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural, and the masculine, feminine and neuter genders shall each include the others.

h. Whenever approvals of any nature are required by either party to this Agreement, it is agreed that same shall not be unreasonably withheld or delayed.

i. Notwithstanding the gallonage calculations that could be made hereunder relative to ERCs, Developer agrees that the intention of this agreement is to reserve a given number of units of capacity for the Property and not for purposes of any other calculations.

j. It is agreed by and between the parties hereto that all words, terms and conditions contained herein are to be read in concert, each with the other, and that a provision contained under one heading may be considered to be equally applicable under another in the interpretation of this Agreement.

k. Failure to insist upon strict compliance of any of the terms, covenants or conditions herein shall not be deemed a waiver of such terms, covenants or conditions, nor shall any waiver or relinquishment of any right or power hereunder at any one time or times be deemed a waiver or relinquishment of such right or power at any other time or times.

l. Company shall, at all reasonable times and hours, have the right of inspection of Developer's internal lines and facilities, and Developer shall, at all reasonable times and hours, have the right to inspect Company's lines, facilities and tower. This provision shall be binding on the successors and assigns of the Company and Developer.

m. This Agreement is binding on the successors and assigns of the parties hereto.

n. Each party hereby agrees to grant such further assurances and provide such additional documents as may be reasonably required, each by the other, in order to carry out the terms, conditions and comply with the express intention of this Agreement.



IN WITNESS WHEREOF, Developer and Company have executed or have caused this Agreement, with the named Exhibits attached, to be duly executed in several counterparts, each of which counterpart shall be considered an original executed copy of this Agreement.

**PARK WATER COMPANY, INC.**

By \_\_\_\_\_

**Print Name: Anthony Staiano, President**

**TWO WITNESSES TO "COMPANY"**

\_\_\_\_\_  
Witness  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
Witness  
Print Name: \_\_\_\_\_

**STATE OF FLORIDA  
COUNTY OF POLK**

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2017, by Anthony Staiano, President of Park Water Company, Inc., who is personally known to me.

\_\_\_\_\_  
**Notary Public**

\_\_\_\_\_  
**Print Name**  
**Commission No:**  
**My Commission Expires:**  
**(Seal)**

**ATLANTIC FUNDING LTD., LLC**

By \_\_\_\_\_  
**William O. Cooley, Manager/Member**

**TWO WITNESSES AS TO “DEVELOPER”**

\_\_\_\_\_  
**Witness**

**Print Name:** \_\_\_\_\_

\_\_\_\_\_  
**Witness**

**Print Name:** \_\_\_\_\_

**STATE OF FLORIDA**

**COUNTY OF** \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2017, by William O. Cooley, Manager/Member of Atlantic Funding Ltd., LLC, who is personally known to me.

\_\_\_\_\_  
**Notary Public**

\_\_\_\_\_  
**Print Name**

**Commission No:**

**My Commission Expires:**

**(Seal)**

**PROPERTY DESCRIPTION**  
**EXHIBIT "A"**

**EXHIBIT "B"**  
**SERVICE CODE**

**EXHIBIT "C"**  
**EXTENDED WATER LINE**

**EXHIBIT “D”**  
**Company's Developer Procedures and Construction Standards and Specifications**

**APPENDIX "F"**  
**CONTRACTS AND LEASES**

Acquired by City

Excluded

## Appendix F

Utility TrakR Billing Software by Starnik - Cloud based software annual support Annual Contract \$3,876 annual cost. Includes support and standard software maintenance. (No agreement is on record. (This agreement is prepaid through 6/30/21

Master Meter Harmony Mobile meter reading system - Cloud based software support - a copy of the support agreement and warranty is available at Master Meter Inc. The annual support agreement cost is \$3,850 per year. (see attached agreement)  
Allegro Network support is \$5,000 per year (see attached agreement)

Alternative Choice Wireless has equipment located at our facility currently. They provide internet service and use the water tower for distribution of the signal. They have been given notice of termination of our agreement. They have requested when the time is appropriate to have discussions about leasing space from the new owner. If no agreement is made I will ask them to remove all of their equipment prior to closing.





harmony<sup>TM</sup>

**End User License Agreement (EULA)**

101 Regency Parkway • Mansfield, Texas 76063

**800-765-6518** – Toll Free

**817-842-8000** – Local Number

**817-842-8100** – FAX

IN WITNESS WHEREOF, the parties have reviewed this End User License Agreement ("Agreement") to be executed by their duly authorized representatives as of the day and year written below. The date of the last party to sign is the "Execution Date."

This Agreement shall commence on the Execution Date with extended warranty coverage becoming effective upon the expiration of the one-year standard warranty ("Effective Date").

Master Meter, Inc. ("Master Meter")

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

City of \_\_\_\_\_ ("Customer")

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

## SOFTWARE LICENSE

### License

Subject to all the terms and conditions of this Agreement that are applicable to Harmony Software (whether used by Customer in either an AMI or AMR System) and otherwise, and subject to the terms and conditions in Exhibit A, so long as Customer pays for use of certain Harmony Software, Master Meter hereby grants to Customer for the Ongoing Fees, a nonexclusive, non-transferable license under Master Meter's intellectual property rights (the "Harmony Software License") to use the Harmony Software solely for the Permitted Use. This Harmony Software License is personal to Customer and is non-sub-licensable to Affiliates or other third parties. Customer shall have no rights to the Harmony Software other than those expressly granted herein. This Harmony Software License contains no implied licenses. Customer expressly agrees to the terms and conditions set forth in Exhibit A – Tech Support. For clarity, this subsection shall only apply so long as both pricing for that specific item of Harmony Software has been provided to the Customer and the Customer is current in its payments for that specific item of Harmony Software.

Except as expressly authorized in accordance with the Permitted Use, Customer shall not (and shall not attempt to): (1) use, copy, adapt, translate, publish, display, sublicense, rent, lease, lend, transfer or distribute the Software, related documentation, or any copy thereof; (2) improve, enhance, revise, modify or make any other derivatives of the Software, related documentation or any copy or part thereof. Customer shall not reverse assemble, reverse compile, reverse engineer or otherwise translate or decode the Software or any part thereof, or any copy thereof. Master Meter's suppliers of software and documentation (or any part thereof) are beneficiaries of this provision. Customer shall not destroy, remove or otherwise alter any proprietary notices (including, but not limited to, copyright notices) on the Software or related documentation, or any copy thereof, and agrees to reproduce any such notice(s) on any copy thereof it makes pursuant to this Software License. All software licenses provided hereunder shall commence on the Effective Date and shall terminate immediately when this Agreement expires or is earlier terminated for any reason or if Customer uses the software provided hereunder other than for the Permitted Use.

### Access to Software

Customer shall ensure that only Customer employees and Customer independent contractors who need access to the Software for Customer to obtain the benefits of this Agreement may access it. Customer is liable for ensuring that its employees and independent contractors abide by the terms of this Agreement.

### Support and Maintenance

For so long as the Customer pays the Ongoing Fees, Master Meter shall provide Customer with ongoing software Patches, Updates, ongoing software maintenance and remote telephone support of the Software according to the terms set forth in Exhibit A.

### **Effect of Termination**

Upon the termination of the Software License, all rights of the Customer to use the Software shall immediately cease and Customer shall promptly remove and return to Master Meter all copies of the Software documentation and shall instruct all its employees that further use of the Software is prohibited.

### **UCITA**

To the maximum extent permitted by law, the Parties agree that the Uniform Computer Information Transaction Act as enacted by any state shall not apply, in whole or in part, to this Agreement.

### **Customer Data**

In performing the Services, Master Meter will comply with its Online Services Privacy Policy which is incorporated herein by reference. The Master Meter Online Services Privacy Policy is subject to change at Master Meter's discretion; however, Master Meter policy changes will not result in a material reduction in the level of protection provided for your data during the term of this Agreement. Master Meter reserves the right to provide the Services from locations, and/or through the use of authorized sub-contractors, worldwide. Customer agrees to and acknowledges that Master Meter and its Affiliates may access and use Customer Data for the purposes of providing software support, customer support, and technical support as contemplated by this agreement.

Neither Master Meter nor its Affiliates will disclose personal data or identification data of Customer or Customer's End-Users to any third parties unless specifically authorized by Customer. Customer acknowledges, accepts, and agrees that Services are provided and supplied in the form of a so-called "Cloud Service" provided by Master Meter's technology partners and, as a consequence, End-User data may be stored outside of the United States or the EU/EEA. Customer consents to the transfer and/or storage of End-User personal data outside the United States or the EU/EEA. Customer agrees to provide any notices, and obtain any End-User consents required by law, statute, or ordinance, related to Customer's use of the Services, including those related to the collection, storage, use, processing, transfer, destruction, and disclosure of End-User personal information.

### **Master Meter Data**

Master Meter Data includes any resultant data and any information, data, or other content derived from Master Meter's monitoring of Customer or Customer's End-Users access to, or use of, the Harmony Software, but does not include Customer's data or End-User data. Confidentiality and Master Meter's use of aggregated data: The confidentiality obligations set forth in this License Agreement are subject to the following: Customer hereby gives its permission to Master Meter, Inc.

and any of its affiliated companies, to use and disclose on an anonymous and/or aggregated basis (excluding any personally identifiable information) and data pertaining to the Utility end customers and their water consumption, including without limitations, derivative data and data combined with the data of other utilities, for purposes of project evaluation and research, product development, or other legitimate business purpose. This section shall survive any termination or expiration of this license agreement.

## **General Terms and Conditions**

- A. **Effective Date.** The term of this Support Agreement will commence on the Effective Date and continue for a period of 1 (one) year "**Initial Support Term.**" If Customer does not renew, or terminates for convenience, and later requests Support Services, Customer must (prior to receiving Support Services) pay prior unpaid Renewal Support Term years in full.
- B. **Renewal** Upon expiration of the Initial Support Term, this Agreement shall automatically renew for one (1) additional one-year term unless Customer provides written notice of nonrenewal at least 60 days prior to the end of the current term (each a "**Renewal Term**" and together with the Initial Term, the "**Term**"), or unless sooner terminated as provided in accordance with this Agreement. If the Term is renewed for any Renewal Term pursuant to this Section, the terms and conditions of this Agreement during such Renewal Term shall be the same as the terms and conditions in effect immediately prior to such renewal, subject to any change in the fees payable hereunder by Customer during the applicable Renewal Term. If either Party provides timely notice of its intent not to renew this Agreement, then, unless otherwise sooner terminated in accordance with its terms, this Agreement shall terminate on the expiration of the then-current Term.
- C. **Limitation of Liability. Maximum Liability.** EXCEPT AS OTHERWISE PROVIDED IN NO EVENT SHALL MASTER METER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL AMOUNT PAID TO MASTER METER PURSUANT TO THIS AGREEMENT. THE FOREGOING LIMITATIONS SHALL APPLY EVEN IF THE CUSTOMER'S REMEDIES UNDER THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE. THIS LIMITATION OF LIABILITY SETS FORTH MASTER METER'S SOLE LIABILITY AND ENTIRE OBLIGATION AND THE CUSTOMER'S EXCLUSIVE REMEDY FOR ANY ACTION THAT IS BROUGHT AGAINST MASTER METER.

**No Consequential or Indirect Damages.** EXCEPT AS OTHERWISE PROVIDED, IN NO EVENT SHALL MASTER METER OR ANY OF ITS BUSINESS PARTNERS BE LIABLE TO THE CUSTOMER OR ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES, INCLUDING ANY DAMAGES FOR BUSINESS INTERRUPTION, LOSS OF USE, DATA, REVENUE OR PROFIT, COST OF CAPITAL, COST OF SUBSTITUTE EQUIPMENT, DOWNTIME COSTS, ANY IN/OUT COSTS, MANUAL METER READ COSTS AND EXPENSES, WHETHER ARISING

**OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT MASTER METER WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.**

- D. **Infringement Indemnity.** Master Meter shall defend, indemnify and hold harmless Customer from and against any judgment by a court of competent jurisdiction or settlement reached from any litigation instituted against Customer by a third party which alleges that the AMI / AMR System provided hereunder infringes upon the patents or copyrights of such third party, provided that Master Meter shall have the right to select counsel in such proceedings and control such proceedings. Notwithstanding the foregoing, Master Meter shall have no liability under this indemnity unless Customer cooperates with and assists Master Meter in any such proceedings and gives Master Meter written notice of any claim hereunder within seven (7) days of receiving it. Further, Master Meter shall have no liability hereunder if such claim is related to; (i) any change, modification or alteration made to the AMI / AMR System by Customer or a third party, though this does not include any change, modification or alteration made by a Master Meter Authorized Distributor, (ii) use of the AMI / AMR System in combination with any goods or services not provided by Master Meter hereunder, (iii) Customer's failure to use a supported version of the Software or to otherwise take any corrective action as reasonably directed by Master Meter, (iv) compliance by Master Meter with any designs, specifications or instructions provided by Customer, or (v) any use of the AMI / AMR System other than for the Permitted Use. In the event the AMI / AMR System is adjudicated to infringe a patent or copyright of a third party and its use is enjoined, or, if in the reasonable opinion of Master Meter, the AMI / AMR System is likely to become the subject of an infringement claim, Master Meter, at its sole discretion and expense, may; (i) procure for Customer the right to continue using the AMI / AMR System or (ii) modify or replace the AMI / AMR System so that it becomes non-infringing. **THIS SECTION STATES CUSTOMER'S SOLE AND EXCLUSIVE REMEDY AND MASTER METER'S ENTIRE LIABILITY FOR ANY CLAIM OF INFRINGEMENT.**
- E. **Termination.** Either party may terminate this Agreement prior to the expiration of the Term if the other party commits a material breach of this Agreement and such material breach is not cured within sixty (60) days of written notice by the other party. Upon any expiration or termination of this Agreement, Master Meter's and Customer's obligations hereunder shall cease and the software license shall immediately cease. If Customer terminates they may, within 120 days of termination request a flat file export of prior 12 month's reads thereby releasing Master Meter of any and all further obligations and liability for the AMI / AMR System.

In the event of the termination of agreement by either party, customer agrees that Master Meter has the right to retain all customer data for a period of not less than 5 years.

- F. **Force Majeure.** No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations to make payments to the other party hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the affected party's reasonable control, including, without limitation: (a) acts of God; (b) flood, fire, earthquake,

explosion, or any other natural or manmade disaster or catastrophe; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) enactment, issuance, or operation of any municipal, county, state, or federal law, ordinance or executive, administrative, or judicial regulation, order or decree; (e) actions, embargoes or blockades in effect on or after the date of this Agreement; (f) action by any governmental authority; (g) national or regional emergency. The party suffering a Force Majeure Event shall give notice to the other party, stating the period of time the occurrence is expected to continue and shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized.

- G. **Intellectual Property.** No Intellectual Property is assigned to Customer hereunder. Master Meter shall own or continue to own all Intellectual Property used, created, and/or derived by Master Meter in the course of performing this Agreement. To the extent, if any, that any ownership interest in and to such Intellectual Property created and/or derived by Master Meter or the Master Meter Software does not automatically vest in Master Meter by virtue of this Agreement or otherwise, and instead vests in Customer, Customer agrees to grant and assign and hereby does grant and assign to Master Meter all right, title, and interest that Customer may have in and to such Intellectual Property. Customer agrees not to reverse engineer any Equipment or Software purchased or provided hereunder. Notwithstanding anything contained in this section to the contrary, the following shall not constitute, or be considered part of, the Intellectual Property, and Master Meter shall share all rights to the same: Customer's End Users' data and other data, procedures, or techniques generated by Customer's use of the Master Meter Software.
- H. **Confidentiality.** Both parties shall (and shall cause their employees and contractors to) keep all Confidential Information strictly confidential and shall not disclose it to any third party, except to the extent reasonably required to perform and enforce this Agreement or as required under applicable law, court order or regulation. The Confidential Information may be transmitted orally, in writing, electronically or otherwise observed by either party. Notwithstanding the foregoing, "Confidential Information" shall not include; (i) any information that is in the public domain other than due to Recipient's breach of this Agreement; (ii) any information in the possession of the Recipient without restriction prior to disclosure by the Discloser; or (iii) any information independently developed by the Recipient without reliance on the information disclosed hereunder by the Discloser. "Discloser" means either party that discloses Confidential Information, and "Recipient" means either party that receives it.
- I. **Non-Waiver of Rights.** No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.

- J. **Assignment and Sub-contracting.** Either party may assign, transfer or delegate this Agreement without requiring the other party's consent; (i) to an Affiliate; (ii) as part of a merger; or (iii) to a purchaser of all or substantially all of its assets. Apart from the foregoing, neither party may assign, transfer or delegate this Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld. Furthermore, Customer acknowledges Master Meter may use subcontractors to perform RF Field Equipment installation, the systems integration work (if applicable), or project management (if applicable), without requiring Customer's consent.
- K. **Amendments.** No alteration, amendment, or other modification shall be binding unless in writing and signed by both Customer and by a vice president (or higher) of Master Meter.
- L. **Governing Law and Dispute Resolution.**

**Governing Law and Venue. ALL DISPUTES ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL BE GOVERNED BY TEXAS LAW, EXCLUDING ITS CHOICE OF LAW RULES.**

Any dispute arising out of or in connection with the Agreement, including any question regarding its existence, validity or termination, will be resolved in accordance with this Section and will be settled, if possible, by negotiation of the Parties. Either Party may, by giving written notice, refer the dispute to a meeting of appropriate representatives of each Party, to be held within twenty (20) business days after giving notice. If the dispute is not resolved within thirty (30) business days after the date of the meeting of the Parties, or any later date to which the Parties may agree, either Party may submit the dispute to any mutually agreed mediation service for mediation by providing to the mediation service a joint, written request for mediation, setting forth the subject of the dispute and the relief requested. The parties shall cooperate with the mediation service and with one another in selecting a neutral mediator and in scheduling the mediation proceedings. The parties covenant that they will use commercially reasonable efforts in participating in the mediation. The parties agree that the mediator's fees and expenses and the costs incidental to the mediation will be shared equally between the parties.

These dispute resolution procedures are not intended to be used for disputes concerning actual, alleged or threatened breaches of a Party's confidentiality obligations or infringement of a Party's Intellectual Property Rights where the remedy being sought is injunctive or other equitable relief, and the Parties may immediately bring an action therefore seeking injunctive or other equitable relief. Any claims seeking monetary damages shall be resolved by arbitration as provided below, provided that such arbitration shall not preclude a Party's right to bring an action for injunctive or other equitable relief for breach of the confidentiality obligations or infringement of intellectual property rights, whether brought contemporaneously or otherwise.

In the event that the Parties are unable to resolve a dispute through mediation, then all disputes arising out of or in connection with this Agreement, which shall include, but are not limited to, all contracts entered into between the Parties, or the validity, enforceability or scope of this arbitration provision, shall be finally settled

under the Rules of Arbitration of the American Arbitration Association by three arbitrators appointed in accordance with said Rules. Such arbitrators shall each have not less than 10 years' experience in arbitration of commercial contracting disputes. The place of arbitration shall be Fort Worth, Texas. The Parties agree that the United States Federal Arbitration Act shall govern the interpretation, enforcement, and proceedings pursuant to the arbitration clause in this agreement. The arbitration shall be conducted in the English language. The arbitrators shall award to the prevailing party, if any, as determined by the arbitrators, all of its costs and fees. "Costs and fees" mean all reasonable pre-award expenses of the arbitration, including the arbitrators' fees, administrative expenses, travel expenses, out of pocket expenses such as copying and telephone, court costs, witness fees, and attorney's fees.

M. **Survival.** The provisions of this Agreement that are applicable to circumstances arising after its termination or expiration shall survive such termination or expiration.

N. **Severability.** If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

O. **Warranties/Disclaimers**

#### **DISCLAIMER OF WARRANTIES.**

EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT, ALL SERVICES AND PROVIDER MATERIALS ARE PROVIDED "AS IS" AND MASTER METER HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHER, AND PROVIDER SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, MASTER METER MAKES NO WARRANTY OF ANY KIND THAT THE SERVICES OR MASTER METER MATERIALS, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES, EXCEPT IF AND TO THE EXTENT EXPRESSLY SET FORTH IN THE SPECIFICATIONS, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE OR ERROR FREE. ALL THIRD-PARTY MATERIALS ARE PROVIDED "AS IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD PARTY MATERIALS IS STRICTLY BETWEEN CUSTOMER AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF THE THIRD-PARTY MATERIALS.

Master Meter does not guarantee, and Customer acknowledges that the Services provided may be subject to limitations, delays, and other problems inherent in the use of the internet or other communications



facilities. Master Meter is not responsible for any delays, delivery failures, or other damages resulting from such problems.

Any description of product, whether in writing or made orally by Master Meter, Inc. or its agents, specifications, samples, literature, models, bulletins, drawings, diagrams, data sheets or similar materials used in connection with any customer's order are for the sole purpose of identifying product and shall not be construed as an express or implied warranty. Any suggestions by Master Meter, Inc. or its agents regarding use, application, or suitability of product shall not be construed as an express or implied warranty unless confirmed to be such in writing by Master Meter, Inc.

## **Definitions**

- A. **"Affiliate"** of a party means any other entity controlling, controlled by, or under common control with such party, where "control" of an entity means the ownership, directly or indirectly, of 50% or more of either; (1) the shares or other equity in such entity; or (2) the voting rights in such entity.
- B. **"Allegro Base Station"** identifies the Master Meter manufactured device consisting of one transceiver, to be located on a tower that receives readings from the Allegro RF Endpoints (either directly or via an Allegro Repeater) by radio frequency and passes those readings to the Head End Communication Server by TCP/IP backhaul communication.
- C. **"Allegro RF Endpoints"** identifies the Master Meter transmission devices installed on devices such as meters, distribution automation equipment and demand/response devices located at Customer's End Users' premises that take the readings of the meters and transmit those readings by radio frequency to the relevant Allegro Base Station or Allegro Repeater.
- D. **"Allegro Repeater"** identifies the Master Meter manufactured device consisting of one transceiver, located on utility poles which relay a single transmission between the Allegro RF Endpoints and the Allegro Base Station.
- E. **"AMI System"** identifies the Master Meter Allegro Advanced Meter Infrastructure (AMI) System comprised of the Allegro RF Endpoints, the RF Field Equipment, software licenses, FCC licenses, and other equipment provided to Customer hereunder. The AMI System only includes the foregoing, as provided by Master Meter. The AMI System does not include goods, equipment, software, licenses or rights provided by a third party or parties to this Agreement.
- F. **"AMR System"** identifies Master Meter's technology of automating the collection of consumption, diagnostic, and status data from metering devices using a handheld, tablets, touch-read, and/or mobile "Drive-By" reading systems and transferring that data to a Meter Data Management (MDM) central database for billing, troubleshooting, and analyzing applicable metering data..

- G. **"CRM"** means the Customer Relationship Management software used to track and document issues reported to the Systems Technical Support team.
- H. **"Confidential Information"** means any and all non-public information of either party, including the terms of this agreement, all technical information about either party's products or services, pricing information, marketing and marketing plans, Customer's End Users' data, AMI / AMR System performance, AMI / AMR System architecture and design, AMI / AMR System software, other business and financial information of either party, and all trade secrets of either party.
- I. **"Covered Equipment"** includes installed base stations and repeaters.
- J. **"End User"** means any end user of water that pays Customer for the consumption of water.
- K. **"Equipment"** means the Allegro RF Endpoints, and RF Field Equipment.
- L. **"Field Devices"** means the meters, Endpoint Register Modules, and all other RF Endpoint transceivers.
- M. **"Head End Communication Server"** identifies the communication server consisting of software used to gather, store, and report data collected by the Allegro Base Stations from the Allegro RF Endpoints.
- N. **"Intellectual Property"** means patents and patent applications, inventions (whether patentable or not), trademarks, service marks, trade dress, copyrights, trade secrets, know-how, data rights, specifications, drawings, designs, moral rights, author's rights, and other intellectual property rights, including any derivations and/or derivative works, as may exist now or hereafter come into existence, and all renewals and extensions thereof, regardless of whether any of such rights arise under the laws of the United States or of any other state, country or jurisdiction, any registrations or applications thereof, and all goodwill pertinent thereto.
- O. **"Ongoing Fee"** means the annual fees, as applicable, to be paid by Customer during the Term of this Agreement.

- P. **"Patches"** means patches or other maintenance releases of the Software that correct processing errors and other faults and defects found previous versions of the Software.
- Q. **"Permitted Use"** refers to use of the software only for reading Customer's meters in the Service Territory. The Permitted Use does not include reading third party meters or reading meters outside the Service Territory.
- R. **"Release"** includes Patches, Updates and Upgrades.
- S. **"RF Field Equipment"** means, collectively, Allegro Base Stations and Allegro Repeaters.
- T. **"Service Territory"** identifies the geographic area where Customer provides water services to End Users as of the Effective Date.
- U. **"Software"** means all the Master Meter proprietary software provided pursuant to this Agreement, and any Patches, Updates, and Upgrades that are provided to Customer pursuant to the terms of this Agreement.
- V. **"Updates"** means releases of the Software that constitute a minor improvement in functionality.
- W. **"Upgrades"** means releases of the Software which constitute a significant improvement in functionality or architecture of the Software.

## **EXHIBIT A**

### **Technical Support**

Master Meter Technical Services provides utility customers with Tier 1 support of technical issues as well as any coordination of additional resources required to resolve the issue. Requests that require specialized skills will be forwarded through the Systems Technical Support team for further analysis. If Systems Technical Support has exhausted their level of support for the product type, they will escalate to the next level of support. Occasionally, on-site troubleshooting / analysis may be required. The preferred order of on-site support is:

- A. The Customer (for assistance with the easiest and lowest time-consuming activities such as power on / power off).
- B. The local distributor (where applicable).
- C. Master Meter Inc., Systems Technical Support or contracted personnel, where required to fulfill a contract commitment.

#### **1. Support Categories**

- 1.1. General questions regarding functionality, use of product, how-to, and requests for assistance on Master Meter AMR/AMI Network Equipment, and Metering Products.
- 1.2. Proactive reporting and resolution of problems.
- 1.3. Reactive reporting to isolate, document, and solve reported hardware/software defects.
- 1.4. Responding to service requests and product changes.
- 1.5. Addressing customer inquiries with printed or electronic documentation, examples, or additional explanation/clarification.

#### **2. Support Hours**

Standard Support Hours: Toll-free telephone support 1-800-928-6388 is available Monday thru Friday from 7:00AM CST to 5:00PM CST.

#### **3. Support Procedures**

- 3.1. Customer identifies an issue or potential problem and calls System Technical Support at **1-800-928-6388**. The Systems Technical Support Associate will work to resolve the issue making notes in the Customer Relationship Management Software (CRM).
- 3.2. Systems Technical Support will identify the caller by requesting their name, utility name and state. The nature of the problem and severity will be agreed upon by both parties (either at the time the issue is managed or prior to upgrading or downgrading an existing issue) using the definitions below as a guideline. The issue is then captured into the CRM Software for resolution tracking.

**D. Severity Levels Description:**

**Severity 1** - Customer's system is down. The system is unusable resulting in total disruption of work. No workaround is available and requires immediate attention. (Example: Network mass outage, all reading collection devices inoperable, inoperable head end software (e.g., Master Meter MDM)).

**Severity 2** - Major system feature/function failure. Operations are severely restricted; there is a major disruption of work, no acceptable work-around is available, and failure requires immediate attention. (Examples: Network equipment failure, head end software application has important functionality not working and cannot create export file for billing system operations.)

**Severity 3** - The system is usable and the issue doesn't affect critical overall operation. (Example: Minor network equipment failure; head end software application operable but reports are not running properly, modification of view or some non-critical function of the software is not running.)

**Severity 4** - Minor system issues, questions, new features, or enhancement requests to be corrected in future versions. (Examples: Minor system issues, general questions, and "How-To" questions.)

- 3.3. Systems Technical Support identifies whether or not the customer is on support. If the customer is not on support, the customer is advised of the service options and passed to accounting who will advise of any applicable charges that are required prior to continued support.
- 3.4. Calls are managed through Systems Technical Support on a first-come-first-serve basis. Level 1 Systems Technical Support will initially assist the customer and will typically respond/resolve the majority of calls based on their product knowledge and experience. A call history for the particular account is researched to note any existing pattern or if the call is a new instance. This research provides the representative a basis and understanding of the account as well as any associated problems and/or resolutions that have been communicated.
  - a. Systems Technical Support may confirm that there is an issue or problem that needs further analysis to determine its cause. The following information is collected: a detailed description of the issue's symptoms, details on the software/hardware product and version, a description of the environment in which the issue arises, and a list of any corrective action already taken.
  - b. Systems Technical Support may then check the CRM, to see if reports of a similar problem exist, and if any working solutions were provided. If an existing resolution is found that will address the reported issue, it shall be communicated to the customer. If confirmed that the issue has been resolved, the event is closed.
  - c. If there is no known defect or support that defines the behavior, Systems Technical Support will work with the customer to reproduce the issue. If the issue can be reproduced, Systems Technical Support will escalate the issue for further investigation / resolution.

If the issue involves units that are considered to be defective with no known reason, Systems Technical Support or AMR/AMI will direct the customer to the RMA team, or they may request an

RMA directly. If it is determined that a sample is required for further analysis, the customer will be provided with instructions that detail where to send the RMA sample(s) for further investigation. Once it is determined that the issue cannot be resolved by Tier 1 resources, the event will be escalated to Tier 2 support for confirmation/workarounds to resolve immediate issue. The RMA team will keep the customer and the Systems Technical Support advised should escalation be required. The response and escalation times are listed in Section 5.

#### 4. Response and Resolution Targets

Severity Level	Response Time	Target Resolution and Effort Level	Escalation Path
1	During regular business hours Master Meter will begin the service request process during the initial call.	<p>Master Meter will immediately assign trained and qualified team members to correct the error on an expedited basis and provide ongoing communication and status updates of a correction.</p> <p>Appropriate Resolutions:</p> <ul style="list-style-type: none"> <li>o Satisfactory workaround is provided.</li> <li>o Program patch is provided</li> <li>o Fix incorporated into future release</li> <li>o Fix or workaround incorporated into the CRM or Support Knowledge Base</li> </ul>	Master Meter will make diligent efforts during normal business hours. The Service Request will be raised to Systems Technical Support Management within 4 hrs, and to the next management level after 24 hours if the request is not resolved before then.
2	Master Meter will respond to the customer within 1 business day and will update the request at least once a day.	<p>Master Meter will assign trained and qualified team members to correct the error. Provide communication as updates occur.</p> <p>Appropriate Resolutions:</p> <ul style="list-style-type: none"> <li>o Satisfactory workaround is provided.</li> <li>o Program patch is provided</li> <li>o Fix incorporated into future release</li> <li>o Fix or workaround incorporated into the Support Knowledge Base</li> </ul>	Master Meter will make diligent efforts during normal business hours. The Service Request will be raised to Systems Technical Support Management after 3 business days if the request is not resolved before then.

3	Master Meter will respond to the customer within 2 business days.	90 Business Days	Master Meter will make planned efforts during normal business hours.
4	Master Meter will respond to the customer within 3-5 business days.	12 months	Master Meter will make commercially reasonable efforts to support the request during normal business hours.

Master Meter Support will make every reasonable effort to meet the following response and resolution targets: Severity, Standard Target Response, Standard Target Resolution, (one or more of the following):

## 5. Problem Escalation Process

- 5.1. If the normal support process does not produce the desired results, or if the severity has changed, the issue may be escalated as follows to a higher level.
- 5.2. Severity 1 issues are escalated by Sales or Systems Technical Support to a Support Coordinator if not resolved within 4 hours; to the next management level if not resolved within 24 hours.
- 5.3. A customer may escalate an issue by calling 1-800-928-6388. Please specify the details and Systems Technical Support representative worked with and the reason why the issue is being escalated.
- 5.4. In the event that a customer is not satisfied with the level of support or continual problem with their products, they may escalate a given issue to the Systems Technical Support Coordinator at 1-800-928-6388.

## 6. General Support Provisions and Exclusions

Specialized support from Master Meter is available on a fee basis to address support issues outside the scope of this support plan or if not covered under another specific maintenance contract. For example, specialized systems integration services or out of warranty network equipment repair that is not covered under a separate maintenance contract.



## Network Infrastructure Maintenance Agreement

IN WITNESS WHEREOF, the parties have caused this Network Infrastructure Maintenance Agreement ("Agreement") to be executed by their duly authorized representatives as of the date written below. The date of the last party to sign is the "Execution Date."

Master Meter, Inc. ("Master Meter")

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

City of \_\_\_\_\_ ("Customer")

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Downloaded by





## NETWORK INFRASTRUCTURE MAINTENANCE AGREEMENT

**Purchase of Equipment.** Customer shall purchase all Equipment from Master Meter, Inc. or Master Meter's authorized distributor pursuant to the terms and conditions (including any warranties on such Equipment) agreed by Customer and Master Meter's authorized distributor. This Agreement shall not affect any terms and conditions, including any warranty terms, agreed to by Customer and Master Meter's authorized distributor. If Customer elects to purchase any equipment or services directly from Master Meter, or if Customer pays any fees or other costs to Master Meter, then Master Meter's Terms of Sale shall apply. The "Terms of Sale" are available by calling 1-800-928-6388 or may be found online at the Master Meter website.

**Purchase of Coverage.** Maintenance Coverage for RF Field Equipment may be purchased anytime for equipment, so long as, at the time Maintenance Coverage is purchased, such equipment is covered under Master Meter's written Consolidated Warranty. The terms of this Agreement become effective upon payment by the Customer for Maintenance Coverage, the "Effective Date". Customer will be invoiced for Maintenance Coverage for RF Field Equipment 30 days prior to the expiration of the one-year standard warranty as covered by Master Meter's written Consolidated Warranty.

- A. Maintenance Coverage for RF Field Equipment may be purchased on a per-unit basis as follows:

Resource Number	Annual Fee	Coverage Provided
RHS-ALL-F-B5-SS	\$5000	One (1) Allegro Base Station
RHS-ALL-F-B5-ALC55	\$350	One (1) Standard/Solar Repeater
RHS-ALL-F-B5-ALCPC	\$100	One (1) Photocell Repeater

B. **Equipment Maintenance.**

1. **Preventive and Corrective Maintenance.** For RF Field Equipment for which Customer has purchased coverage under the Agreement ("Covered Equipment"), Master Meter shall (1) perform the preventive Maintenance Services that it determines is reasonably necessary to maintain such equipment in Operational Condition (defined below), and (2) diagnose and correct any failure in such equipment as necessary to meet Operational Condition (excluding minor cosmetic deficiencies such as blemishes, dents or scratches) in accordance with its written warranty procedures. The term "Operating Condition" means capable of performance in accordance with Master Meter's published specifications.

For Covered Equipment, Master Meter will perform the preventive Maintenance Services below:

- a. Every two (2) years, inspection of the site and the "Covered Equipment;"
  - b. System wide network health performance check, from the remote central office location; and,
  - c. Limited technical support, limited AMI system integration support, and AMI network troubleshooting.
2. **Customer Preventive and Corrective Maintenance Responsibilities.** Customer shall keep accurate records of Equipment serial numbers, locations, and maintenance activity as outlined in Exhibit A of the Allegro Troubleshooting and Maintenance Guide to assist Master Meter with the maintenance services. Customer shall provide reasonable assistance during remote troubleshooting activities.
  3. **Exclusions.** The services described herein do not include repairs related to:
    - a. damage due to external causes, including accident, abuse, misuse, problems with electrical power, acts of God, usage not in accordance with product instructions or in a configuration not approved by Master Meter;
    - b. services (including installation or de-installation) not performed or authorized by Master Meter; or,
    - c. use of parts, configurations or repair depots not certified by Master Meter.
    - d. Customer's failure to perform troubleshooting and maintenance responsibilities in accordance with this Agreement and as outlined in Exhibit A.
    - e. Products for which Master Meter has discontinued Maintenance Services. For any discontinued product, Master Meter will take commercially reasonable efforts to make available suitable replacement product.

4. **Restoring Covered Equipment to Maintenance Agreement.** If Customer discontinues or fails to purchase coverage after the end of the original warranty period, discontinues maintenance for any Covered Equipment or has equipment serviced or repaired by a third party that is not Master Meter certified, and thereafter wishes to add such equipment as Covered Equipment, Master Meter reserves the right to (1) inspect such equipment to determine whether it is in Operating Condition and/or (2) charge its current recertification fee, in addition to any fees associated with infrastructure maintenance coverage, prior to such equipment being included as Covered Equipment. Master Meter reserves the right to, at its sole discretion, reject inspected RF Field Equipment for inclusion as Covered Equipment under this Agreement.
5. **Replacement Equipment.** For RF Field Equipment for which Customer has purchased coverage under the Agreement ("Covered Equipment"), Master Meter shall provide & install refurbished equipment that has been previously repaired & certified by Master Meter at no additional cost to Customer. Upon shipment date of refurbished equipment, which establishes the Anniversary Date, the Customer will have 90 days to return failed covered equipment, with shipping costs covered by Master Meter. Failed equipment then becomes the property of Master Meter upon receipt. In the event that 90 day return deadline is not met, Customer will be billed for replacement equipment at current list price. In the event of an RF Field Equipment failure covered under Master Meter written consolidated warranty terms ("Covered Equipment") Master Meter shall provide & install new equipment.

### General Terms and Conditions

- A. **Effective Date.** The term of this Agreement will commence on the Effective Date and continue for a period of 1 (one) year "Initial Term".
- B. **Renewal.** Upon expiration of the Initial Term, this Agreement shall automatically renew for one (1) additional one-year term unless Customer provides written notice of nonrenewal at least 60 days prior to the end of the current term (each a "Renewal Term" and together with the Initial Term, the "Term"). If the Term is renewed for any Renewal Term pursuant to this Section, the terms and conditions of this Agreement during such Renewal Term shall be the same as the terms and conditions in effect immediately prior to such renewal, subject to any change in the fees payable hereunder by Customer during the applicable Renewal Term. If either Party provides timely notice of its intent not to renew this Agreement, then, unless otherwise sooner terminated in accordance with its terms, this Agreement shall terminate on the expiration of the then-current Term.
- C. **Limitation of Liability. Maximum Liability.** EXCEPT AS OTHERWISE PROVIDED IN NO EVENT SHALL MASTER METER'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT, WHETHER ARISING OUT OF OR RELATED TO BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, EXCEED THE TOTAL AMOUNT PAID TO MASTER METER PURSUANT TO THIS AGREEMENT. THE FOREGOING LIMITATIONS SHALL APPLY EVEN IF THE CUSTOMER'S REMEDIES UNDER THIS AGREEMENT FAIL OF THEIR ESSENTIAL PURPOSE. THIS LIMITATION OF LIABILITY SETS FORTH MASTER METER'S SOLE LIABILITY AND ENTIRE OBLIGATION AND THE CUSTOMER'S EXCLUSIVE REMEDY FOR ANY ACTION THAT IS BROUGHT AGAINST MASTER METER.

**No Consequential or Indirect Damages.** EXCEPT AS OTHERWISE PROVIDED, IN NO EVENT SHALL MASTER METER OR ANY OF ITS BUSINESS PARTNERS BE LIABLE TO THE CUSTOMER OR ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL OR PUNITIVE DAMAGES, INCLUDING ANY DAMAGES FOR BUSINESS INTERRUPTION, LOSS OF USE, DATA, REVENUE OR PROFIT, COST OF CAPITAL, COST OF SUBSTITUTE EQUIPMENT, DOWNTIME COSTS, ANY IN/OUT COSTS, MANUAL METER READ COSTS AND EXPENSES, WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT MASTER METER WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

- D. **Termination.** Either party may terminate this Agreement prior to the expiration of the Term if the other party commits a material breach of this Agreement and such material breach is not cured within sixty (60) days of written notice by the other party. Upon any expiration or termination of this Agreement, Master Meter's and Customer's obligations hereunder shall cease.

- E. **Force Majeure**. No party shall be liable or responsible to the other party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement (except for any obligations to make payments to the other party hereunder), when and to the extent such failure or delay is caused by or results from acts beyond the affected party's reasonable control, including, without limitation: (a) acts of God; (b) flood, fire, earthquake, explosion, or any other natural or manmade disaster or catastrophe; (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot or other civil unrest; (d) enactment, issuance, or operation of any municipal, county, state, or federal law, ordinance or executive, administrative, or judicial regulation, order or decree; (e) actions, embargoes or blockades in effect on or after the date of this Agreement; (f) action by any governmental authority; (g) national or regional emergency. The party suffering a Force Majeure Event shall give notice to the other party, stating the period of time the occurrence is expected to continue and shall use diligent efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized.
- F. **Confidentiality**. Both parties shall (and shall cause their employees and contractors to) keep all Confidential Information strictly confidential and shall not disclose it to any third party, except to the extent reasonably required to perform and enforce this Agreement or as required under applicable law, court order or regulation. The Confidential Information may be transmitted orally, in writing, electronically or otherwise observed by either party. Notwithstanding the foregoing, "Confidential Information" shall not include; (i) any information that is in the public domain other than due to Recipient's breach of this Agreement; (ii) any information in the possession of the Recipient without restriction prior to disclosure by the Discloser; or (iii) any information independently developed by the Recipient without reliance on the information disclosed hereunder by the Discloser. "Discloser" means either party that discloses Confidential Information, and "Recipient" means either party that receives it.
- G. **Non-Waiver of Rights**. No waiver by any party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the party so waiving. No waiver by any party shall operate or be construed as a waiver in respect of any failure, breach or default not expressly identified by such written waiver, whether of a similar or different character, and whether occurring before or after that waiver. No failure to exercise, or delay in exercising, any right, remedy, power or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege.
- H. **Assignment and Sub-contracting**. Either party may assign, transfer or delegate this Agreement without requiring the other party's consent; (i) to an Affiliate; (ii) as part of a merger; or (iii) to a purchaser of all or substantially all of its assets. Apart from the foregoing, neither party may assign, transfer or delegate this Agreement without the prior written consent of the other, which consent shall not be unreasonably withheld. Furthermore, Customer acknowledges Master Meter may use subcontractors to perform RF Field Equipment installation, the systems integration work (if applicable), or project management (if applicable), without requiring Customer's consent.
- I. **Amendments**. No alteration, amendment, or other modification shall be binding unless in writing and signed by both Customer and by a vice president (or higher) of Master Meter.

J. **Governing Law and Dispute Resolution.**

**Governing Law and Venue.** ALL DISPUTES ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL BE GOVERNED BY TEXAS LAW, EXCLUDING ITS CHOICE OF LAW RULES.

Any dispute arising out of or in connection with the Agreement, including any question regarding its existence, validity or termination, will be resolved in accordance with this Section and will be settled, if possible, by negotiation of the Parties. Either Party may, by giving written notice, refer the dispute to a meeting of appropriate representatives of each Party, to be held within twenty (20) business days after giving notice. If the dispute is not resolved within thirty (30) business days after the date of the meeting of the Parties, or any later date to which the Parties may agree, either Party may submit the dispute to any mutually agreed mediation service for mediation by providing to the mediation service a joint, written request for mediation, setting forth the subject of the dispute and the relief requested. The parties shall cooperate with the mediation service and with one another in selecting a neutral mediator and in scheduling the mediation proceedings. The parties covenant that they will use commercially reasonable efforts in participating in the mediation. The parties agree that the mediator's fees and expenses and the costs incidental to the mediation will be shared equally between the parties.

These dispute resolution procedures are not intended to be used for disputes concerning actual, alleged or threatened breaches of a Party's confidentiality obligations or infringement of a Party's Intellectual Property Rights where the remedy being sought is injunctive or other equitable relief, and the Parties may immediately bring an action therefore seeking injunctive or other equitable relief. Any claims seeking monetary damages shall be disputed by arbitration as provided below, provided that such arbitration shall not preclude a Party's right to bring an action for injunctive or other equitable relief for breach of the confidentiality obligations or infringement of intellectual property rights, whether brought contemporaneously or otherwise.

In the event that the Parties are unable to resolve a dispute through mediation, then all disputes arising out of or in connection with this Agreement, which shall include, but are not limited to, all contracts entered into between the Parties, or the validity, enforceability or scope of this arbitration provision, shall be finally settled under the Rules of Arbitration of the American Arbitration Association by three arbitrators appointed in accordance with said Rules. Such arbitrators shall each have not less than 10 years' experience in arbitration of commercial contracting disputes. The place of arbitration shall be Fort Worth, Texas. The Parties agree that the United States Federal Arbitration Act shall govern the interpretation, enforcement, and proceedings pursuant to the arbitration clause in this agreement. The arbitration shall be conducted in the English language. The arbitrators shall award to the prevailing party, if any, as determined by the arbitrators, all of its costs and fees. "Costs and fees" mean all reasonable pre-award expenses of the arbitration, including the arbitrators' fees, administrative expenses, travel expenses, out of pocket expenses such as copying and telephone, court costs, witness fees, and attorney's fees.

- K. **Survival.** The provisions of this Agreement that are applicable to circumstances arising after its termination or expiration shall survive such termination or expiration.
- L. **Severability.** If any term or provision of this Agreement is invalid, illegal or unenforceable in any jurisdiction, such invalidity, illegality or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal or unenforceable, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

M. Warranties/Disclaimers

**DISCLAIMER OF WARRANTIES.** EXCEPT FOR THE EXPRESS WARRANTIES SET FORTH IN THIS AGREEMENT, ALL SERVICES AND PROVIDER MATERIALS ARE PROVIDED "AS IS" AND MASTER METER HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHER, AND PROVIDER SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE OR TRADE PRACTICE. WITHOUT LIMITING THE FOREGOING, MASTER METER MAKES NO WARRANTY OF ANY KIND THAT THE SERVICES OR MASTER METER MATERIALS, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES, EXCEPT IF AND TO THE EXTENT EXPRESSLY SET FORTH IN THE SPECIFICATIONS, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE OR ERROR FREE. ALL THIRD-PARTY MATERIALS ARE PROVIDED "AS IS" AND ANY REPRESENTATION OR WARRANTY OF OR CONCERNING ANY THIRD PARTY MATERIALS IS STRICTLY BETWEEN CUSTOMER AND THE THIRD-PARTY OWNER OR DISTRIBUTOR OF THE THIRD-PARTY MATERIALS.

## Definitions

- A. **"Affiliate"** of a party means any other entity controlling, controlled by, or under common control with such party, where "control" of an entity means the ownership, directly or indirectly, of 50% or more of either; (1) the shares or other equity in such entity; or (2) the voting rights in such entity.
- B. **"Allegro Base Station"** identifies the Master Meter manufactured device consisting of one transceiver, to be located on a tower that receives readings from the Allegro RF Endpoints (either directly or via an Allegro Repeater) by radio frequency and passes those readings to the Head End Communication Server by TCP/IP backhaul communication.
- C. **"Allegro RF Endpoints"** identifies the Master Meter transmission devices installed on devices such as meters, distribution automation equipment and demand/response devices located at Customer's End Users' premises that take the readings of the meters and transmit those readings by radio frequency to the relevant Allegro Base Station or Allegro Repeater.
- D. **"Allegro Repeater"** identifies the Master Meter manufactured device consisting of one transceiver, located on utility poles which relay a single transmission between the Allegro RF Endpoints and the Allegro Base Station.
- E. **"AMI System"** identifies the Master Meter Allegro Advanced Meter Infrastructure (AMI) System comprised of the Allegro RF Endpoints, the RF Field Equipment, software licenses, FCC licenses, and other equipment provided to Customer hereunder. The AMI System only includes the foregoing, as provided by Master Meter. The AMI System does not include goods, equipment, software, licenses or rights provided by a third party or parties to this Agreement.
- F. **"Confidential Information"** means any and all non-public information of either party, including the terms of this agreement, all technical information about either party's products or services, pricing information, marketing and marketing plans, Customer's End Users' data, AMI System performance, AMI System architecture and design, AMI System software, other business and financial information of either party, and all trade secrets of either party.
- G. **"End User"** means any end user of water that pays Customer for the consumption of water.
- H. **"Head End Communication Server"** identifies the communication server consisting of software used to gather, store, and report data collected by the Allegro Base Stations from the Allegro RF Endpoints.

- I. **"Intellectual Property"** means patents and patent applications, inventions (whether patentable or not), trademarks, service marks, trade dress, copyrights, trade secrets, know-how, data rights, specifications, drawings, designs, moral rights, author's rights, and other intellectual property rights, including any derivations and/or derivative works, as may exist now or hereafter come into existence, and all renewals and extensions thereof, regardless of whether any of such rights arise under the laws of the United States or of any other state, country or jurisdiction, any registrations or applications thereof, and all goodwill pertinent thereto.
  
- J. **"RF Field Equipment"** means, collectively, Allegro Base Stations and Allegro Repeaters.



**APPENDIX "G"**  
**INVENTORY**

Acquired by City

Excluded



## Appendix G

Roughly 75 spare meter boxes and lids

Spare HMI for visual water plant control.

Spare Rosemont pressure sensor.

Spare Control Logix CPU for water plant control

Various spare PVC parts from ½" to 8", couplings, repair couplings, fittings, etc.

Various water keys, wrenches,

1 - 2" water meter

**APPENDIX "H"**  
**EQUIPMENT**

Acquired by City

Excluded

## Appendix H

- 1 - 75 KW propane generator and ATS backup for booster pumping station
- 1 - CAT 100KW diesel generator
- 1 - Ford direct right angle drive backup linked to well #2
- 1 - Waukesha direct right angle drive back up linked to well #1

**APPENDIX "I"**  
**ENVIRONMENTAL LAW COMPLIANCE**

## Appendix I

One known secondary monitoring violation in 2018 for odor. See the attached notice.  
We have had no complaints about odor.

**Mission:**

To protect, promote & improve the health of all people in Florida through integrated state, county & community efforts.

**Ron DeSantis**

Governor

**Scott A. Rivkees, MD**

State Surgeon General

**Vision:** To be the Healthiest State in the Nation

April 1, 2019

Tony Staiano  
Park Water Company Inc.  
25 First Avenue North  
Lake Wales, FL 33859

RE: Park Water Company Public Water System  
PWS ID No. 6530408 // Violation # 20190007534

**ODOR MCL VIOLATION**

Our records indicate that result received for Secondary Contaminant Odor sample dated December 4, 2018, detected 71 TON@40C. This result exceeded the maximum contaminant level (MCL) of 3.00 TON@40C. An MCL violation was generated for this parameter.

The department **recommends** that corrective action be taken for this contaminant. If complaints are received from your customers because of high levels of odor in the drinking water, you will be **required at that time to meet the applicable standards**.

If you have any questions, please contact me at (863) 578-2033.

Sincerely,

**Alphonse Inevil** / Compliance Officer*Alphonse Inevil, MSCE/ME Ed.*

Environmental Specialist III  
Environmental Health Division  
Florida Department of Health in Polk County  
2090 East Clower Street, Bartow, FL 33830-6741  
Office: (863) 578-2033 : FAX: (863) 534-0245  
Email: [Alphonse.Inevil@flhealth.gov](mailto:Alphonse.Inevil@flhealth.gov)  
<http://polk.floridahealth.gov/>

Mission: To protect, promote, and improve the health of all people in Florida through integrated state, county, and community efforts.

Email copy to:

[Tony Staiano] [simcoi@aol.com](mailto:simcoi@aol.com)**PARKWATERCO@AOL.COM****Florida Department of Health  
in Polk County**

ENVIRONMENTAL HEALTH DIVISION  
2090 East Clower Street • Bartow, FL 33830-6741  
PHONE: (863) 519-8330 • FAX: (863) 534-0245  
<http://polk.floridahealth.gov/>

**[www.FloridaHealth.gov](http://www.FloridaHealth.gov)**

TWITTER: HealthyFLA

FACEBOOK: FLDepartmentofHealth

YOUTUBE: fldoh

FLICKR: HealthyFla

PINTEREST: HealthyFla

*Florida Health: the first accredited public health system in the U.S.*

## **APPENDIX "J"**

### **PENDING OR THREATENED LEGAL ACTIONS**

## Appendix J

There are no known pending or threatened legal actions against Park Water Company



**APPENDIX "K"**

**REAL PROPERTY ENCROACHMENTS**

## Appendix K

There are no known Real Property Encroachments

**APPENDIX "L"**  
**SELLER CLOSING INDEBTEDNESS**

## Appendix L

Florida State Revolving Loan #DW5300010 - Current Balance \$1,122,420

Wells Fargo Business Line of Credit - Current Balance \$44,155

Promissory Note to William Staiano - Current Balance \$172,757

Anthony Staiano notes, paid in capital, and stock - \$460,355

**APPENDIX "M"**  
**CERTAIN EXCLUDED ASSETS**

## Appendix M

There are no excluded assets.