BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Joint Notice by Plantation Bay Utility Co., and the City of Bunnell, Florida of transfer of water and wastewater assets located in Flagler County and Volusia County, Florida to the City of Bunnell, Florida and request for cancellation of certificates.	)	DOCKET NO. Filed: September 27,2013

JOINT NOTICE OF TRANSFER OF PLANTATION BAY UTILITY CO., WATER AND WASTEWATER ASSETS LOCATED IN FLAGLER COUNTY AND VOLUSIA COUNTY,FLORIDA TO THE CITY OF BUNNELL, FLORIDA AND REQUEST FOR CANCELLATION OF CERTIFICATES

Plantation Bay Utility Co. ("Plantation Bay"), and the City of Bunnell ("City") file this Notice pursuant to Section 367.071(4), Florida Statutes, as notice of the transfer of Plantation Bay's water and wastewater assets in Flagler County and Volusia County to the City and to request the cancellation of the certificates issued to Plantation Bay by the Florida Public Service Commission (the "Commission").

1. The name and address of Plantation Bay and its authorized representative, for purposes of this Notice, are:

Plantation Bay Utility Co.
2379 Belville
Daytona Beach, FL 32119

Authorized Representative:

Sundstrom, Friedman & Fumero, LLP
Attn: William E. Sundstrom, Esq.
2548 Blairstone Pines Drive
Tallahassee, FL 32301
Phone: 850-877-6555

2. The name and address of the City and its authorized representative, for purposes of this Notice, are:

City Manager
City of Bunnell
1769 E. Moody Blvd.
Bunnell, FL 32110

Authorized Representative:

Nabors, Giblin & Nickerson, P.A.
Attn: John R. Jenkins, Esq.
1500 Mahan Drive, Suite 200
Tallahassee, FL 32308
Phone: 850-224-4070

3. After a diligent search of all Utility records, the management of Plantation Bay is unable to locate the Original Certificate Nos. 455-W and 389-S last issued by the Florida Public Service Commission in May of 2005. Attached as Composite Exhibit A are copies of those Certificates.

4. On February 6, 2013, the City conducted a public hearing in accordance with Section 180.301, Florida Statutes, addressed the factors identified in such statute and found the acquisition of the

water and wastewater assets of Plantation Bay ("Plantation Bay System") to be in the public interest.

5. The City obtained from Plantation Bay the most recent available income and expense statement, balance sheet, statement of rate base for regulatory purposes, and contributions-in-aid-of-construction.

6. The transaction closed and the City assumed possession of the assets on September 16, 2013.

7. Subsequent to the closing of this transaction Plantation Bay has retained no assets that would constitute a system providing or proposing to provide water or wastewater service to the public for compensation.

8. Plantation Bay has submitted a final bill to its customers and has transferred the customer deposits outstanding, with interest, to the City as required by this Commission or by law. Since all Plantation Bay's customers with deposits were credited with accrued interest as of August 31, 2013, the amount of interest accrued from that date to closing is minor. All deposits with accrued interest through closing were transferred to the City at closing via wire transfer and will be maintained by the City in accordance with their policies and procedures. This explanation and disposition complies with the requirements of subsection (4)(g) of Rule 25-30.037, FAC.

9. There are no outstanding issues relevant to Plantation Bay's water and/or wastewater facilities pending before the Commission.

10. Attached hereto as Exhibit B are the required forms to pay all outstanding regulatory assessment fees due from July 1, 2013 through the date of closing, which are being filed with the Commission's Division of Administration today, along with a check payable to the PSC for the full amount owed.

11. Section 367.071(4)(a), Florida Statutes, provides that the transfer of utility assets to a governmental authority shall be approved as a matter of right. Thus only the requirements in subsection (4) of Rule 25-30.037, Florida Administrative Code (the "Rule") apply.

The information identified in paragraph 4(a) of the Rule is provided in Section 1 herein. The information identified in paragraph 4(b) of the Rule is provided in Section 2 herein. The information identified in paragraph 4(d) of the Rule is provided in Section 7 herein. The information identified in paragraph 4(e) of the Rule is provided in Section 5 herein. The information identified in paragraph 4(f) of the Rule is provided in Section 6 herein. Attached as composite Exhibit C is a copy of the items identified in paragraph 4(c) of the Rule.

The parties respectfully request a Commission order consistent with Subsection (6) of the Rule, which provides that "[u]pon its receipt of items required in paragraphs 4(a), (b), (c), (d), (e) and (f), the Commission will issue an order acknowledging that the facilities or any portion thereof have been acquired by the governmental authority."

12. In accordance with the requirements of Rule 25-30.037(7), upon receipt of the items required by subsection (4)(g) and subsection (4)(h), the utility certificate will be canceled. The information provided in paragraphs 8, 9 and 10 hereof comply with the requirements of those subsections and as such the Commission should cancel the certificates of Rainbow Springs.

13. Notice is submitted without waiving any legal position or claims that Plantation Bay or the City may have regarding the standards and criteria to be utilized by the Commission in processing this Notice.

WHEREFORE, Plantation Bay and the City request that the Commission:

1. Acknowledge the acquisition of the Plantation Bay System by the City as set forth in this Notice; and

2. Cancel the Certificates of Plantation Bay attached hereto as composite Exhibit A.

Respectfully submitted,

SUNDSTROM, FRIEDMAN & FUMERO, LLP
2548 Blairstone Pines Drive
Tallahassee, Florida 32301
(850) 877-6555 (Telephone)

Robert C. Brannan, Esq.
Attorney for Plantation Bay Utility Co.

Nabors, Giblin & Nickerson, P.A.
Attn: John R. Jenkins, Esq.
1500 Mahan Drive, Suite 200
Tallahassee, FL 32308
Phone: 850-224-4070

John R. Jenkins, Esq.
Attorney for City of Bunnell, Florida

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by Hand Delivery and U.S. Mail this 27th day of September, 2013, to:

Curt Kiser, Esq.
General Counsel
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Robert C. Brannan
Attorney for Plantation Bay Utility Co.

COMPOSITE EXHIBIT A

COPIES OF PLANTATION BAY'S WATER AND WASTEWATER CERTIFICATES

COMMISSIONERS:
BRAULIO L. BAEZ, CHAIRMAN
J. TERRY DEASON
RUDOLPH "RUDY" BRADLEY
LISA POLAK EDGAR

STATE OF FLORIDA

TIMOTHY DEVLIN, DIRECTOR
DIVISION OF ECONOMIC REGULATION
(850) 413-6900

Public Service Commission

June 24, 2005

Ms. Valerie L. Lord
Rose, Sundstrom & Bentley, LLP
600 S. North Lake Blvd., Suite 160
Altamonte Springs, Florida 32701-6177

Re: Docket No. 050123-WS; Application for "quick take " amendment of Certificate Nos. 455-W and 389-S in Flagler County by Plantation Bay Utility Company.

Dear Ms. Lord:

Enclosed please find Certificate Nos. 455-W and 389-S which have been updated to reflect the Commission's finding in Docket No. 050123-WS. The revised tariff sheets which will reflect the amendment will be sent to you in the near future.

If you have any questions, please contact me at (850) 413-6970.

Sincerely,

Stanley D. Rieger
US/Engineer Specialist
Certification Section

SDR:kb
Enclosure
cc: Division of Commission Clerk & Administrative Services (Docket File, Security File)

FLORIDA

Public Service Commission

CERTIFICATE NUMBER

389-S

Upon consideration of the record it is hereby ORDERED that authority be and is hereby granted to

Plantation Bay Utility Co.

Whose principal address is

103 North Lake Drive

Ormond Beach, Florida 32174 (Flagler, Volusia)

to provide Wastewater service in accordance with the provisions of Chapter 367, Florida Statutes, the Rules, Regulations and Orders of this Commission in the territory described by the Orders of this Commission.

This Certificate shall remain in force and effect until suspended, cancelled or revoked by Orders of this Commission.

ORDER	15507	DATED	12/20/85	DOCKET	850616-WS
ORDER	25429	DATED	12/02/91	DOCKET	911112-WS
ORDER	PSC-95-0830-FOF-WS	DATED	7/12/95	DOCKET	950181-WS
ORDER	PSC-05-0491-FOF-WS	DATED	5/5/05	DOCKET	050123-WS

BY ORDER OF THE
FLORIDA PUBLIC SERVICE COMMISSION

Director
Division of Records & Reporting

FLORIDA

Public Service Commission

CERTIFICATE NUMBER

455-W

Upon consideration of the record it is hereby ORDERED that authority be and is hereby granted to

Plantation Bay Utility Co.

Whose principal address is

103 North Lake Drive

Ormond Beach, Florida 32174 (Flagler, Volusia)

to provide Water service in accordance with the provisions of Chapter 367, Florida Statutes, the Rules, Regulations and Orders of this Commission in the territory described by the Orders of this Commission.

This Certificate shall remain in force and effect until suspended, cancelled or revoked by Orders of this Commission.

ORDER	15507	DATED	12/20/85	DOCKET	850616-WS
ORDER	25429	DATED	12/02/91	DOCKET	911112-WS
ORDER	PSC-95-0830-FOF-WS	DATED	7/12/95	DOCKET	950181-WS
ORDER	PSC-05-0491-FOF-WS	DATED	5/5/05	DOCKET	050123-WS

BY ORDER OF THE
FLORIDA PUBLIC SERVICE COMMISSION

Director
Division of Records & Reporting

COMPOSITE EXHIBIT B

ITEMS REQUIRED BY RULE 25-30.037(4)(c), F.A.C.

AGREEMENT FOR PURCHASE AND SALE

OF

WATER ASSETS

By and Between

PLANTATION BAY UTILITY CO.

Seller,

and

CITY OF BUNNELL, FLORIDA

Purchaser

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AGREEMENT FOR PURCHASE AND SALE OF WATER ASSETS

THIS AGREEMENT FOR PURCHASE AND SALE OF WATER ASSETS ("Agreement") is made as of this __ day of March, 2013 by and between **Plantation Bay Utility Co.,** a Florida corporation (hereafter "Seller"), and the **City of Bunnell, Florida** a municipal corporation of the State of Florida ("Purchaser").

WHEREAS, Seller owns and operates potable a water supply, treatment, storage, transmission and distribution system ("Water System" or the "Utility System"), located in Flagler County and Volusia County, Florida, and commonly known as Plantation Bay Utility Co.; and

WHEREAS, Seller has been granted a certificate by the Florida Public Service Commission ("FPSC") to provide potable water services within a defined area within Flagler County and Volusia County, Florida more specifically identified in Seller's Tariff currently on file with the FPSC ("Service Area" or "Service Territory"); and

WHEREAS, the Purchaser has the power and authority to provide water service within its service territory; and

WHEREAS, the Purchaser and the Board of County Commissioners of Flagler County, Florida (the "County") have entered into, or shall enter into, an interlocal agreement establishing their respective rights and obligations concerning the operation and control of the Utility System; and

WHEREAS, the Purchaser desires to acquire the water utility assets of Seller by purchasing the Water System and Purchaser must rely upon the receipt of certain grant and/or loan funds from the Florida Department of Environmental Protection ("FDEP") to render the purchase of the Water System contemplated in this Agreement feasible; and

WHEREAS, Seller has informed Purchaser that it has requested or is in the process of requesting from the FPSC an index adjustment to its rates and such index increase shall be effective prior to closing the purchase and sale contemplated in this Agreement; and

WHEREAS, Seller agrees to sell the Water System 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 benefits to be derived from the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Seller and Purchaser hereby agree to sell and purchase the Utility System upon the following terms and conditions:

1. **RECITALS**. The foregoing recitals are true and correct and are incorporated herein.

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

a. Purchaser shall buy from Seller, and Seller shall sell to Purchaser, the Purchased Assets (as defined below) upon the terms, and subject to the conditions precedent, set forth in this Agreement.

b. Purchaser is purchasing the Purchased Assets and the Utility System "As-Is" "Where-Is" subject to "All Disclosed Faults."

c. "Purchased Assets" shall include all assets, business properties, and rights, both tangible and intangible, that Seller owns regarding the ownership, construction, operation or maintenance of the Utility System including, but not limited to:

i. The real property owned by Seller and all buildings and improvements located thereon, as identified in **Appendix "A"** to this Agreement ("Real Property").

ii. All easements, licenses, prescriptive rights, rights-of-way, rights to use public and private roads, highways, canals, streets and other areas identified in **Appendix "B-1"** and the Service Territory identified in **Appendix "B-2"** to this Agreement (which appendix also shall include a legal description of the Service Territory and a map showing all buildings and major components of the Water System).

iii. All water supply, treatment, storage, distribution, and transmission facilities, including, but not limited to, pumps, plants, wells, tanks, lift stations, transmission mains, distribution mains, supply pipes, valves, meters, meter boxes, service connections and all other physical facilities, equipment and property installations owned by Seller or to which Seller possesses rights and used in connection with the Utility System, as identified in **Appendix "C"** to this Agreement.

iv. All certificates, immunities, privileges, permits, license rights, consents, grants, ordinances, surveys, leaseholds, and all rights to construct, maintain and operate all or any portion of the Utility System and every right of every character whatever in connection therewith, and the obligations thereof (hereinafter referred to as the "Certificates"); together with all rights granted to Seller under the Certificates, as identified in **Appendix "D"** to this Agreement. **Appendix "D"** shall also identify any of the foregoing which are not transferable or which require third party consents to transfer.

v. All items of inventory owned by Seller on the Closing Date and used to operate and maintain the Utility System, which shall not be unnecessarily

depleted between the date of Seller signing this Agreement and the Closing Date. Inventory items/amounts as of the date of signing this Agreement shall include those items listed in **Appendix "G"**.

vi. All supplier lists, customer records, customer billing hardware and software, prints, plans, including plans in electronic or digital format, engineering reports, surveys, specifications, shop drawings, equipment manuals, and other information relating to the Utility System in Seller's possession, including any rights of Seller, if any, to obtain copies of such items from engineers, contractors, consultants or other third parties, in paper or electronic form.

vii. All sets of record drawings, including as-built drawings, showing all facilities of the Utility System, including all original tracings, sepias or other reproducible materials in Seller's possession, including any rights of Seller, if any, to obtain copies of such items from engineers, contractors, consultants or other third parties, in paper or electronic form.

viii. All rights and obligations of Seller under any Developer Agreements as identified in **Appendix "E"** to this Agreement. **Appendix "E"** shall identify any of the foregoing which are not transferable, which require third party consents for the assumption by Purchaser and for which the Developer has pre-paid Connection Charges, the amount of such pre-paid Connection Charges, the number of ERCs connected and the balance of ERCs remaining which have been pre-paid but have not yet been connected as of Seller signing this Agreement.

ix. All rights and obligations of Seller under all Contracts and Leases as identified in **Appendix "F"** to this Agreement. **Appendix "F"** shall contain a schedule identifying any Contracts or Leases which are not transferable or for which third party consents are necessary for the assumption by Purchaser.

x. All equipment, tools, parts, laboratory equipment, office equipment and other personal property owned by Seller and exclusively used to operate and maintain the Utility System as identified in **Appendix "H."**

d. "Excluded Assets". Notwithstanding any other provision in this Agreement that may be construed to the contrary, Purchased Assets do not include the Excluded Assets. The following assets are excluded from the Purchased Assets:

i. Cash, accounts receivable, bank accounts, equity and debt securities of any nature, deposits maintained by Seller with any governmental authority, and any prepaid expenses of Seller, which shall be Seller's sole property as of the Closing Date.

ii. Escrow and other Seller provisions for payment of federal and state taxes, and other obligations to governmental entities, including regulatory assessment fees, which shall be Seller's responsibility to pay through the Closing Date.

iii. The name and Florida corporation known as Plantation Bay Utility Co. and related logos and signage owned or used by Seller, including without limitation, logos and signage using the Plantation Bay Utility Co. name and logo.

3. **LIABILITIES.**

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

i. All liabilities to the customers of the Utility System incurred after the Closing Date where the operative act giving rise to the liability occurred after the Closing Date;

ii. Any liability of Purchaser under this Agreement or any other document executed in connection with this Agreement;

iii. Any liability of Purchaser based upon Purchaser's acts or omissions occurring after the Closing Date;

iv. Any liability arising from or related to the ownership, construction, operation and maintenance of the Utility System after the Closing Date.

b. Excluded Liabilities. Notwithstanding the foregoing, the following shall not constitute liabilities assumed by the Purchaser:

i. Purchaser does not assume any debts, liabilities, obligations, or other financial or service obligations of Seller, except as may be expressly provided in this Agreement. Purchaser does not assume and shall not be liable for any expense, assessment, exposure, fine, penalty, liability, act or omission of any kind whatsoever imposed or required by any third party, whether known or unknown, contingent, liquidated or not liquidated, arising or accruing under contract, law, tort, ordinance, law, regulation or otherwise, arising or accruing before or after the Closing Date where the operative act or omission was that of or attributable to the Seller for its actions prior to the Closing Date. Seller shall remain liable for and shall pay, perform or discharge all such liabilities and obligations; provided Seller is not hereby limited in its right to contest in good faith any such liabilities or obligations.

4. **PURCHASE PRICE.** The total consideration intended to be paid for the Utility System is the Purchase Price plus adjustments as set forth herein.

a. Purchaser shall pay to Seller for conveyance of the Purchased Assets, subject to the additions, adjustments and pro-rations referenced in this Agreement, a cash payment in the amount of Five Million Five Hundred Thousand Dollars ($5,500,000) via wire transfer to the account(s) designated by Seller at the Closing.

b. As additional compensation to the Seller, Seller shall receive One Hundred Fifty (150) prepaid equivalent single family residential unit water, wastewater (and reclaimed water if available) connections ("ERU") ("Prepaid Capital Charges"). The Prepaid Capital Charges shall be available for a period of seven (7) years from Closing, after which they will terminate if unused. The Prepaid Capital Charges shall not be subject to the assessment of any additional capital or capacity charge, but will be subject, as applicable, to the payment of any meter charges, pep tank charges, line tap charges, installation charges, and other costs of physical connection prior to service, and to base facility charges, guaranteed revenues, and other charges at such time as a meter is installed and service becomes available to the building or dwelling unit to which the connections are dedicated. The Prepaid Capital Charges may be assigned by Seller to third parties, at which time the lot or property receiving the benefit of the Prepaid Connection must be identified. No other assignment is permitted.

c. Upon the expiration of the above-referenced seven year period or the installation of the above-referenced Prepaid Capital Charges, whichever occurs first, all subsequent water, reclaimed water and wastewater connections, shall be subject to a guaranteed maximum impact fee/connection fee rate per ERU ("Maximum Guaranteed Rate") not to exceed Six Thousand Dollars ($6,000.00) per ERU. The Maximum Guaranteed Rate shall apply to no more than four hundred (400) ERU's of Seller's or Seller's designee's connections within the Service Territory and shall expire no later than ten (10) years from the date of Closing. In the event of a third party challenge to the Maximum Guaranteed Rate, Seller or its assigns agree to indemnify Purchaser and County against an adverse judgment as to the lawfulness of this provision, and further agree to defend any challenge to the Maximum Guaranteed Rate at its expense.

d. Adjustments to the Purchase Price shall include the reimbursement to Seller for all costs incurred in the preparation of new surveys, Environmental Site Assessments, and Seller's appraisal for loan purposes as required in this Agreement.

e. As a material inducement to Seller to execute this Agreement and perform its obligations hereunder, Purchaser covenants to Seller its successors and assigns as follows:

i. Purchaser shall provide water service to the Service Territory in the ordinary course of business, and shall extend service in a manner consistent with the Developer Agreements assigned pursuant to this Agreement and attached hereto as **Appendix "E"** and the Developer Agreement with Seller or its affiliate, the form of which is attached hereto as **Appendix "M."**

ii. Purchaser shall provide reclaimed water to the Seller or its affiliate at seven cents ($0.07) per one thousand gallons for a period of 10 years from the Closing Date pursuant to the Reclaimed Water Service Agreement attached hereto as **Appendix "N."**

iii. That rates charged for water service within the Service Territory shall be computed on a stand-alone basis in compliance with all Florida law requirements, and shall not now nor in the future include a surcharge as provided for in section 180.191 Florida Statutes.

5. **REPRESENTATIONS AND WARRANTIES OF SELLER.** As a material inducement to Purchaser to execute this Agreement and perform its obligations hereunder, Seller represents and warrants to Purchaser as follows:

a. Seller is a duly organized, validly existing corporation, and its status is active under the laws of the State of Florida. Seller has all requisite power and authority and has taken all requisite action necessary to (i) enter into this Agreement, and (ii) perform all of the terms and conditions of this Agreement.

b. The Board of Directors of Seller has approved Seller entering into this Agreement.

c. This Agreement constitutes, and all other agreements to be executed by Seller with respect to this Agreement will constitute, when executed and delivered, valid and binding obligations of Seller, enforceable in accordance with their terms.

d. The execution, delivery and performance of this Agreement will not violate any provision of law, order of any court or agency of government applicable to Seller, the Articles of Incorporation or By-Laws of Seller, nor any Certificate, indenture, agreement, or other instrument to which Seller is a party, or by which it is bound.

e. Seller has good and marketable title to the Real Property. The Real Property is subject to no mortgage, pledge, lien, charge, security interest, encumbrance, or restriction except Permitted Encumbrances, as defined in Article 6 of this

Agreement, other than those that will be satisfied or released by the Closing. At Closing, Seller shall deliver title to such Real Property free and clear of all debts, liens, pledges, charges or encumbrances whatsoever, other than Permitted Encumbrances. Other than as set forth in this Agreement, Seller makes no representation as to the condition of the Real Property.

f. Seller has exclusive possession, control and ownership to all Real Property and the Utility System and that all such real property has been identified in **Appendix "A"** hereto. All parts of the Utility System are located within the Real Property identified in **Appendix "A"** and the property interests identified in **Appendix "B-1."**

g. Seller has good and marketable title to all Purchased Assets. At Closing the Purchased Assets shall be subject to no mortgage, pledge, lien, charge, security interest, encumbrance, or restriction except Permitted Encumbrances related to Real Property only.

h. Environmental Law Compliance.

i. Definitions.

(a) "Environmental Law" means any federal, state, or local statute, order, regulation, or ordinance, or common law or equitable doctrine relating to the protection of human health or the environment in effect as of the Closing Date and includes, but is 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.), as such have been amended or supplemented as of the Closing Date, the regulations promulgated pursuant thereto, and in effect as of the Closing Date and any conditions and requirements contained in any permits possessed by Seller from any federal, state or local agencies necessary to operate the Utility System.

(b) "Hazardous Material" means petroleum or any substance, material, or waste which is regulated under any Environmental Law in the jurisdictions in which Seller conducts its business including, without limitation, any material or substance that is defined as or considered to be a "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," "restricted

hazardous waste," "pollutant," "toxic waste," or "toxic substance" under any provision of Environmental Law.

(c) "Release" means any release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, or dispersal into the environment, at or from any property owned or operated by Seller or related to Hazardous Materials generated by Seller.

(d) "Remedial Action" means all actions required to (i) clean up, remove, or treat any Hazardous Material; (ii) prevent the Release or threat of Release, or minimize the further Release of any Hazardous Material so it does not endanger or threaten to endanger public health or welfare or the environment; or (iii) perform pre-remedial studies and investigations or post-remedial monitoring and care directly related to or in connection with any such remedial action.

ii. Representations. To Seller's knowledge:

(a) Seller is in material compliance with all applicable Environmental Laws and has no material liability thereunder, and there is no reasonable basis for Seller to believe that any such liability exists, except as disclosed in **Appendix "I."**

(b) Seller has obtained all permits required, or has submitted application renewals for such permits in a timely manner, under applicable Environmental Laws, necessary for the operation of the Utility System as conducted as of the date of this Agreement.

(c) Seller has received oral or written notice within the last three years of the violations or alleged violations of applicable federal, state or local statutes, laws and regulations (including, without limitation, any applicable environmental, building, zoning, or other law, ordinance or regulation) relating to the Utility System as identified in **Appendix "I"** hereto and no other.

(d) There is no Hazardous Material in violation of any Environmental Law is located on the Real Property; no Real Property is listed or formally proposed for listing under CERCLA, the Comprehensive Environmental Response, Compensation Liability Information System ("CERCLIS") or on any similar state list that is the subject of federal, state, or local enforcement actions or other investigations that may lead to claims against Seller for clean-up costs, remedial work, damages to natural resources, or for personal injury claims, including, but not limited to, claims under

CERCLA; and there is no reasonable basis for Seller to be named in such claims or for any similar action to be brought against Seller.

(e) No written or verbal notification of a Release of a Hazardous Material has been filed by or on behalf of Seller or any third party with respect to the Utility System. No Utility System property is listed or proposed for listing on the National Priority List promulgated pursuant to CERCLA, or CERCLIS, or any similar state list of sites requiring investigation or clean up.

(f) No Hazardous Material has been released in violation of Environmental Law at, on, or under any Utility System property.

i. Except as provided in **Appendix "J"** hereto, there are no current actions, suits or proceedings at law or in equity pending or, to Seller's knowledge, threatened against the Seller before any federal, state, municipal or other court, administrative or governmental agency or instrumentality, domestic or foreign, which affect the Utility System or any of the Purchased Assets or the Seller's right and ability to make and perform this Agreement; nor is the Seller aware of any facts which to its knowledge are likely to result in any such action, suit or proceeding. Seller is not in default with respect to any Certificate, permit, order or decree of any court or of any administrative or governmental agency or instrumentality affecting the Utility System or any of the Purchased Assets. Seller agrees and warrants that it shall have a continuing duty to disclose up to and including the Closing Date the existence and nature of all pending judicial or administrative suits, actions, proceedings and orders which in any way relate to the Utility System.

j. No representation or warranty made by the Seller in this Agreement contains any untrue statement of material facts or omits to state any material fact required to make the statements herein contained not misleading.

k. After due inquiry Seller has no actual knowledge that Seller's use of the Real Property is in violation of any applicable state or local laws, rules or ordinances, including wellhead protection, zoning or other applicable requirements, nor are there any encroachments of any kind related to the Real Property, except as are identified in **Appendix "K"** hereto. For the purposes of construing this section, "actual knowledge" includes facts directly and personally known to Seller, or facts which Seller is presumed to have received directly or personally because evidence within Seller's possession or knowledge is sufficient to engage in a reasonable inquiry into the existence of such facts.

l. Following Closing, neither Seller nor any affiliate of Seller shall provide water or wastewater service within the Service Territory, or any property adjacent to the

Service Territory, in competition with the Purchaser. Purchaser shall take all appropriate and diligent steps to make additional water and wastewater capacity available to Seller, or its designee, within the Service Territory, provided that Seller, or its designee, pays for such capacity in full, in advance of its need for service, so that any improvements needed to provide such service can be timely designed, permitted, and constructed, and subject to any adopted Utility ordinance and standards manual. Subject to compliance with these requirements, and any applicable Developer Agreement, the parties agree that if Purchaser is unable to timely provide new service connections to Seller or its designee within the Service Territory, and following implementation of Purchaser's capital improvement program to upgrade the Seller's Water System and Wastewater System, Seller or its affiliate shall be permitted to enforce this service obligation through the remedy of specific performance and all other legal remedies available.

m. All representations or warranties made by Seller in this Agreement shall survive for a period of 270 days post Closing.

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

a. Purchaser has been duly organized, and is a validly existing political subdivision under the laws of the State of Florida. Purchaser 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. This Agreement constitutes, and all other agreements to be executed by Purchaser with respect to this Agreement, will constitute, when executed and delivered, valid and binding obligations of Purchaser, enforceable in accordance with their terms.

c. The execution, delivery and performance of this Agreement will not violate any provision of law, order of any court or agency of government applicable to Purchaser, nor any indenture, agreement, or other instrument to which Purchaser is a party, or by which it is bound.

d. All necessary public hearings and referenda required to authorize Purchaser's purchase of the Utility System and Purchaser entering into this Agreement will have been held in a manner and at the times duly required by law and all other appropriate governmental actions required to be taken by Purchaser will have been duly taken prior to the Closing Date.

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

a. At least sixty (60) days prior to the Closing, Seller shall obtain and provide to Purchaser a current title insurance commitment in favor of Purchaser issued by a title company licensed to do business in the State of Florida, covering the Real Property (and all or a portion of the Appendix B-1 easements as may be designated by the Purchaser), 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 Five Million Five Hundred Thousand Dollars ($5,500,000). The cost of the title insurance commitment and title insurance policy shall be borne by Seller. The title insurance commitment shall commit the insurer to issue loan policy and an owner's title insurance policy to Purchaser covering the Real Property (and all or a portion of the Appendix B-1 easements as may be designated by the Purchaser), 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 shall execute at, or prior to Closing, in favor of Purchaser and the title insurance company, all forms or affidavits required by the title insurance company including, but not limited to, 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.

Purchaser shall notify Seller in writing no more than thirty (30) days after receipt of the title insurance commitment of any alleged defect in Seller's title to the Real Property, other than the Permitted Encumbrances (such written notice to include all exceptions, encumbrances, liens, easements, covenants, restrictions or other defects in Seller's title to the Real Property other than the Permitted Encumbrances), which render or may render Seller's title to the Real Property (i) unmarketable in accordance with standards adopted by The Florida Bar, or (ii) uninsurable. Any objections to title to the extent not shown on the notice furnished by Purchaser in accordance with the provisions of this paragraph shall be deemed to have been waived by Purchaser and Purchaser shall not be entitled to any damages or other remedies. Seller shall have thirty (30) days after receipt of Purchaser's notice to eliminate the objections to title set forth in Purchaser's notice. However, in no event shall Seller be required to bring suit or expend any sum in excess of $50,000 in the aggregate to cure title defects (exclusive of mortgages against the Real Property, which are in a liquidated amount) that Seller has an obligation to discharge by the Closing pursuant to the terms of this Agreement. If Seller fails to deliver title as herein provided, then Purchaser 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.

b. Purchaser may not object to title by reason of the existence of any mortgage, lien, encumbrance, covenant, restriction or other matter that (i) may be satisfied with a payment of money and Seller advises Purchaser that Seller elects to do so by paying same at or prior to the Closing Date; (ii) any mechanic's lien or other encumbrance 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 Purchaser that Seller elects to do so at or prior to Closing; or (iii) the title insurance company issuing the title insurance commitments affirmatively insures-over.

c. Seller shall provide a copy of any detailed survey of the Real Property (as well as any parcel upon which a well is located), that Seller has procured in the twenty four months prior to this Agreement which shall identify all structures located on such parcels and any encroachments thereon or therefrom. Purchaser shall have the right, but not the obligation, to require Seller to update any survey, or request a new survey on the Real Property or well site. Costs incurred by Seller to update a survey or procure a new survey shall be reimbursed by Purchaser at Closing.

d. As used herein, "Permitted Encumbrances" include the following:

i. All present and future building restrictions, zoning regulations, laws, 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 or restrict the use of the Real Property or the operation of the Utility System.

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, or as may be set forth in any "Murphy Deeds", none of which, however, shall impair or restrict the use of the Real Property or the operation of the Utility System.

iv. Any lien, or right to lien, for services, labor or material, mortgage or other similar obligation that will be satisfied or discharged at or prior to Closing.

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

Conditions Precedent for Purchaser and Seller

a. Neither Party is prohibited by decree or law from consummating the transaction.

b. There is not pending on the Closing Date any legal action or proceeding that would (i) prohibit the acquisition or sale of the Purchased Assets, (ii) prohibit Purchaser or Seller from closing the transaction or Purchaser from paying the Purchase Price, or (iii) inhibit or restrict in any manner Purchaser's use, title, or enjoyment of the Purchased Assets.

c. Each of the other parties hereto has performed all of the undertakings required to be performed by them under the terms of this Agreement.

d. There has been no material adverse change in the physical condition of the Purchased Assets. For purposes of this Agreement, a "material adverse change" shall mean a loss or damage to the Purchased Assets that materially reduces: (1) their value in the aggregate; or (2) the ability to operate the Utility System as operated by Seller prior to the Closing Date.

e. 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.

f. The parties enter into the Agreement for Charitable Donation in the form attached as **Appendix "L;"** the [Seller's affiliate] and Purchaser enter into the Developer Agreement in the form attached as **Appendix "M-2;"** and the [Seller's Affiliate] and Purchaser enter into the Reclaimed Water Service Agreement in the form attached as **Appendix "N."**

The conditions precedent to Purchaser's obligation to close:

a. Seller shall have received FPSC authorization for 2012 rate indexing and implemented such increase prior to Closing.

b. Seller shall have provided to Purchaser an appraisal of the fair market value of the Water System in such form and content as is required to satisfy FDEP rules (Rule 62-552.300(2)(l), F.A.C.) which shall evidence a market value sufficient to secure State revolving loan funds in order to pay the Purchase Price.

c. Purchaser obtaining financing for the purchase through the FDEP State revolving loan fund with an annual interest rate no greater than three percent (3.0%) and a minimum term of thirty years.

d. Seller shall secure an acknowledgement from the Tomoka Community Development District ("District") that the District does not own or operate any potable water or sanitary wastewater facilities and that property within the District is subject to exclusive water, wastewater and reclaimed water service from the Seller, which service will be provided by Purchaser following Closing.

9. **PRE-CLOSING CONDUCT; COVENANTS**. Prior to the Closing Date, the parties covenant to each other, and shall conduct themselves, as follows:

a. During the period between execution of this Agreement and the Closing Date, Seller shall:

i. Operate and maintain the Utility System and Purchased Assets in a normal and ordinary manner to ensure that the condition of the Utility System and the Purchased Assets remain in all material respects unchanged, normal wear and tear and usage excepted, and the inventory on hand shall not be diminished or depleted, other than in the ordinary course of business;

ii Promptly notify Purchaser of any notification received by Seller from any person, business, or agency of any existing or potential Environmental Law violation;

iii. Provide Purchaser, or its designated agent(s), with unrestricted access to the business premises, Utility System, Purchased Assets, Seller's customer and operations books and records, employees, agents, or representatives, on reasonable advance notice (one business day) and during business hours;

iv. Promptly notify Purchaser of any event, activity or occurrence that has, or may have, a material adverse effect upon the Purchased Assets or this transaction;

b. During the period between execution hereof and Closing, Seller shall not:

i Enter into any contract, oral or written, relating to the Utility System or Purchased Assets without the prior written consent of Purchaser which consent shall not be unreasonably withheld, conditioned or delayed;

ii. Without the prior written consent of Purchaser, which shall not be unreasonably withheld, enter into any new Developer Agreements or modify any existing developer agreements. Copies of any new or modified developer agreements shall be promptly delivered to Purchaser and shall not be signed by Seller without prior written consent from Purchaser.

iii. Nor shall any affiliated company of Seller, enter into any agreement with any cell phone provider on or within 3 miles of the Real Property. The parties acknowledge and agree that Seller shall forward to Purchaser the proceeds, if any, from any agreement with a cell phone provider within 3 miles of the Real Property obtained by Seller or its affiliate prior to Closing and that Purchaser and County shall assume at Closing the rights and obligations of Purchaser pursuant to such an agreement or agreements for which Purchaser and County have provided written consent.

c. Seller shall maintain its existing levels of insurance on the Purchased Assets and Utility System and the risk of any loss shall remain with Seller through the Closing Date.

d. Within thirty (30) days of signing this Agreement, if Purchaser's requests, Seller shall obtain Phase I Environmental Site Assessments ("ESA") (and a subsequent Phase II ESA if Purchaser determines that one is necessary based on the Phase I survey results) of each parcel comprising the Real Property, each water well site, and each wastewater effluent disposal site. Seller shall provide a report from the party undertaking the ESA to Purchaser when available. Seller shall pay for ESAs, which expense shall be reimbursed by Purchaser at Closing. If such ESA discloses the presence of any Hazardous Material, Purchase shall notify Seller within ten (10) business days of receipt of such ESA, and Seller shall have the right to perform such cleanup and remediation as is necessary hereunder. Upon Seller's failure to perform such cleanup and remediation, prior to the Closing Date, Purchaser may elect to either (i) terminate this Agreement, in which event neither party shall have any liability to the other; or (ii) proceed to Closing without abatement of the Purchase Price.

e. Purchaser is relying upon its own due diligence investigation in entering into this Agreement. The Purchaser shall have until sixty (60) days after Seller has provided all of the documents requested by Purchaser to complete, at Purchaser's expense, financial, legal, engineering and operational due diligence investigations of the Purchased Assets. Based upon the results of such due diligence investigations Purchaser shall have the right to terminate this Agreement for any defects or problems revealed by such due diligence. Purchaser shall provide Seller with written notice of termination within ten (10) days of completion of such due diligence. During this period, Seller shall provide Purchaser and its representatives access to all Purchased Assets as set forth in this Agreement.

10. <u>TERMINATION OF AGREEMENT</u>.

a. This Agreement may be terminated (i) by mutual written consent of the parties, (ii) by either party if the transactions contemplated hereby have not closed by May 31, 2013, or (iii) as provided in paragraphs b. and c. below.

b. Purchaser 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, any pre-closing conduct, or any covenant of Seller set forth in Articles 8 and 9.

ii Any material breach of this Agreement by Seller, including, but not limited to, a material breach of any representation or warranty, if Seller has not cured such breach within 30 days after notice from Purchaser; provided, however, such breach must in any event be cured by the Closing Date unless the date for cure has been extended by Purchaser

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 Article 8.

ii. Any material breach of this Agreement by Purchaser, including, but not limited to, a material breach of any representation or warranty, if Purchaser has not cured such breach within 30 days after notice from Seller, 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. Upon the occurrence of any of the bases for termination of this Agreement, the party seeking to terminate this Agreement shall provide written notice of its termination of this Agreement to the other by delivering the same as provided in Article 15.c.

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

i To the extent permitted by Florida law, each party shall return all documents, including copies, in its possession, custody, or control, or in the possession, custody, or control, of its agents and consultants to the other, as the case may be. Each party, its agents and consultants, shall treat any information previously received as confidential, and shall not disclose or use such information, unless required by law.

ii Except as otherwise set forth in this Agreement, each party shall be responsible for payment of its own attorney and other professional fees and other costs of any nature whatsoever incurred prior to the termination of this Agreement.

iii. In the event the termination occurs as set forth in Articles 7.a. and 9.d, this Agreement shall forthwith become void and there shall be no liability on the part of Purchaser or Seller, or their respective Council members, members, managers, officers or directors.

11. CLOSING DATE AND CLOSING.

a. This transaction shall close on or before May 31, 2013, at a location mutually acceptable to both parties. . 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. Purchaser shall pay the Purchase Price, subject to any adjustment as provided for in this Agreement.

ii. Title to the Real Property shall be conveyed to Purchaser by Special Warranty Deed free of all claims, liens, or encumbrances whatsoever, other than Permitted Encumbrances. Title to the remaining Purchased Assets shall be conveyed to Purchaser by Bill of Sale free of all claims, liens, or encumbrances, whatsoever. Seller shall further provide to Purchaser such other instruments of conveyance as shall be, in the reasonable opinion of Purchaser and its counsel, necessary to transfer the Utility System and Purchased Assets in accordance with this Agreement and, when necessary or desirable, in recordable form.

iv. Seller shall assign to Purchaser its right, title and interest in those easements, licenses, etc. identified in **Appendix "B-1."**

v. Seller and Purchaser shall enter into separate Assignment and Assumption Agreements with respect to agreements which Purchaser agrees to assume from the (i) Developer Agreements identified in **Appendix "E"**, and (ii) Contracts and Leases identified in **Appendix "F."**

vi. Real property and personal property taxes on the Purchased Assets and Utility System, 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 Utility 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 Utility System and Purchased Assets, if any, shall be the obligation of Purchaser.

vii. 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 the Purchaser shall be paid for by the Seller.

viii. Connection Charges (defined as plant capacity, transmission line capacity, or other unit connection fees paid for the availability of utility capacity) received by Seller prior to Closing shall be retained by Seller if a structure has been built, and a physical connection to the Utility System has been made prior to closing. Connection Charges paid to Seller prior to Closing for which no connection has been made shall be paid over to Purchaser at Closing. Connection Chargers paid after Closing shall be retained by Purchaser. 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 Purchaser and paid by Seller to Buyer at closing through the Closing Statement or as otherwise mutually agreed to by the parties.

ix. 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 and wastewater service, net of any credit balances as of the Closing Date. Seller shall furnish to Purchaser, ten (10) days prior to Closing, a 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 and wastewater services rendered but not yet billed as of the Closing Date shall be rendered to Purchaser three (3) days prior to Closing. Upon approval and acceptance by Purchaser, ninety percent (90%) of such unbilled revenue shall be a credit (payment) to Seller on the Closing Statement. Purchaser shall be entitled to all revenues collected and derived from the operation of the Utility System after Closing.

x. 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.

xi. Except as otherwise provided herein, each of the parties shall pay the fees of its own attorneys, bankers, engineers, accountants, and other professional advisers or consultants in connection with the negotiation, preparation and execution of this Agreement, and any documents associated with the Closing.

xii. All bills of any kind for services, materials and supplies of any kind rendered in connection with the construction, operation and maintenance of the Utility System prior to Closing, including but not limited to electricity, phone service, and payroll for a period up to and including the

Closing Date, shall be paid by Seller. Purchaser shall be responsible for all such costs and expenses incurred subsequent to Closing.

xiii. Purchaser shall assume the liability for customer deposits, and Seller shall, by electronic transfer, transfer to Purchaser all customer deposits and accrued interest thereon, together with the list of customers for whom such deposits have been collected and corresponding amounts of such deposits through Closing.

xiv. Each party shall deliver to the other party a certificate stating that:

(a) The party is not prohibited by decree or law from consummating the transaction contemplated hereby.

(b) There is not pending on the Closing Date any legal action or proceeding that hinders the ability of either party to close the transaction.

(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 Purchaser, in a form reasonably acceptable to Purchaser, an opinion of Seller's counsel substantially to the effect that:

(a) Seller is validly organized, existing and its status is active under the laws of the State of Florida.

(b) This Agreement has been duly and validly executed and approved by Seller and is a valid and binding agreement upon Seller.

(c) The execution, delivery and performance of this Agreement will not violate any agreement of or binding on, or any law applicable to, Seller.

xvi. Purchaser shall deliver to Seller in a form acceptable to Seller, an opinion of Purchaser's Counsel substantially to the effect that:

(a) Purchaser is validly organized and existing as a political subdivision under the laws of the State of Florida.

(b) This Agreement has been duly and validly executed and approved by Purchaser and is a valid and binding agreement upon Purchaser.

(c) The execution, delivery and performance of this Agreement will not violate any agreement of, or binding on, or any law applicable to, Purchaser.

xvii. The parties (or Seller's affiliate) shall execute the Developer Agreement and Reclaimed Water Service Agreement which are Appendices to this Agreement, with all necessary exhibits attached.

xviii. Seller shall complete the donation of the assets that are the subject of the Agreement for Charitable Donation which is an Appendix to this Agreement.

12. POST CLOSING COOPERATION.

a. Seller and Purchaser shall, after the Closing Date, upon reasonable request of the other party and at no cost to the other party, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, all such further documents, acts, deeds, easements, assignments, transfers, powers of attorney and assurances as may be required in order to implement and perform any of the obligations, covenants and agreements of the parties arising from this Agreement, and to permit Purchaser to operate and maintain the Utility System in the manner operated by Seller at the time of Closing.

b. Each of the parties hereto shall provide the other with such assistance as reasonably may be requested in connection with the preparation of any tax return, audit or other examination by any taxing authority or any 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. Subject to the provisions of paragraph e. below, each party shall retain and provide the other with any records or information that may be relevant to such return, audit or examination, proceedings or determination. The party requesting assistance hereunder shall reimburse the other for reasonable expenses incurred in providing such assistance.

c. Seller agrees to provide reasonable assistance to the Purchaser to transition the administration (including customer services and accounting functions) and operation of the Utility System and Purchased Assets for a period of one hundred twenty (120) days after the Closing Date. Purchaser shall reimburse Seller for reasonable costs or expenses, without markup, incurred for any services provided under this subparagraph.

d. 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 one year from the Closing Date, and thereafter shall terminate.

e. Seller shall make good faith efforts, at no cost to Purchaser, to assist Purchaser in securing funding from the FDEP necessary for capital improvements to the Utility System by Purchaser post-Closing. The assistance to be rendered shall consist, at minimum, of attendance by representatives of Seller at all meetings with the FDEP relating to the required applications and funding processes.

f. At Closing, Seller and any applicable affiliated entity forever waive any claim or right to compensation or damages of any kind against Purchaser or County which relates to any encroachment, damage or encumbrance of any nature, type or kind that exist on the Closing Date and affecting the property of Seller or any affiliated entity located contiguous to the Real Property.

13. **THIRD PARTY BENEFICIARY.** Purchaser and Seller acknowledge and agree that Purchaser and County have entered or shall enter an interlocal agreement establishing their respective rights and obligations concerning the operation and control of the Utility System upon and after closing and, as such, the County is recognized as a third party beneficiary and signatory to this Agreement with all post-Closing rights of Purchaser to enforce its terms.

14. **MISCELLANEOUS PROVISIONS.**

a. This Agreement, the Documents and the Appendices hereto, collectively embody the entire agreement and understandings between the parties 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.

b. Within 15 days after the Closing, Seller shall prepare and the Purchaser and Seller will jointly submit a notice of transfer of the system to the FPSC in a Petition for Termination of the Certificates of Authorization of Seller. Seller shall file reports, if any, required to satisfy its outstanding gross receipts tax, regulatory assessment fees, and other obligations and governmental assessments through the date of Closing. All of Seller's costs and expense relative to the termination of Seller's relationship with the FPSC, including regulatory assessment fees, shall be borne by Seller. Copies of the Order(s) of the Commission acknowledging sale of the system to Purchaser shall be promptly provided to Purchaser upon Seller's receipt thereof.

c. Any notice 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.

If to Seller, such notice shall be delivered at:

David Haas, Chief Development Officer
Plantation Bay Utility Co.
2379 Belville
Daytona Beach, FL 32119
DHaas@icihomes.com

with a copy to:

Sundstrom, Friedman & Fumero, LLP
Attn: William E. Sundstrom, Esq.
2548 Blairstone Pines Drive
Tallahassee, FL 32301
850-877-6555
wsundstrom@sfflaw.com

If to Purchaser, such notice shall be delivered at:

City Manager
City of Bunnell
1769 E. Moody Blvd.
Bunnell, FL 32110
386-437-7500
amartinez@bunnellcity.us

with a copy to:

City Attorney
City of Bunnell
P.O. Box 819
Bunnell, FL 32110
386-437-1668
attorneynowell@gmail.com

with a copy to:

County Administrator
Flagler County
1769 East Moody Blvd., Bldg. 2
Bunnell, FL 32110
386-313-4000
ccoffey@flaglercounty.org

with a copy to:

County Attorney
Flagler County
1769 East Moody Blvd., Bldg. 2
Bunnell, FL 32110
386-313-4005
ahadeed@flaglercounty.org

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

d. The headings used are for convenience only, and they shall be disregarded in the construction of this Agreement.

e. The drafting of this Agreement was a joint effort of the parties, and in the interpretation hereof, it shall be assumed that no party had any more input or influence than any other.

f. This Agreement is solely for the benefit of the parties hereto, and except as provided in Section 13 of this Agreement, no other causes of action shall accrue upon or by reason hereof to or for the benefit of any third party (other than successors and assigns), who or which is not a formal party hereto.

g. In the event any term or provision of this Agreement is determined by appropriate judicial authority to be illegal or otherwise invalid, such provision shall be given its nearest legal meaning or be construed as deleted, as such authority determines, and the remainder of this Agreement shall be construed to be in full force and effect.

h. This Agreement may be amended or modified only if executed in writing and with the same formality as the original.

i. This Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the State of Florida.

j. All words, terms, and conditions herein contained are to be read in concert, each with the other, and a provision contained under one heading may be considered to be equally applicable under another heading in the interpretation of this Agreement.

k. Except as provided for herein, this Agreement may not be assigned without the prior written consent of the non-assigning party. If properly assigned, this Agreement shall be binding upon and inure to the benefit of the parties' successors and assigns.

l. 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 conducting his business.

m. Notwithstanding anything to the contrary contained herein or in any other instrument or document executed by or on behalf of the Purchaser or Seller in connection herewith, 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 Purchaser or Seller, or of any incorporator, member, director, trustee, officer, employee or agent of any successor to the Purchaser or Seller, in any such Person's individual capacity, and no such Person, in an individual capacity, shall be liable personally for any breach or non-observance of or for any failure to perform, fulfill or comply with any such stipulations, covenants, agreements or obligations, nor shall any recourse be had for the payment of the Purchase Price or for any claim based hereon or on any such stipulation, covenant, agreement, or obligation, against any such Person, in an individual capacity, either directly or through the Purchaser or Seller or any

[The remainder of the page left intentionally blank.]

successor to the Purchaser or Seller, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such Person, in an individual capacity, is hereby expressly waived and released. All references to the Purchaser in this paragraph shall be deemed to include the Purchaser, Council members, officers, employees, attorneys, contractors and agents. The provisions of this Section shall survive the termination of this Agreement.

o. Purchaser shall bear no liability for accrued or current salaries or benefits of any kind related to Seller's construction, operation, or maintenance of the Utility System up to and including Closing.

p. Any default by a party to this Agreement shall be considered a default under the Agreement for Charitable Donation and any default under the Agreement for Charitable Donation shall be considered a default under this Agreement.

IN WITNESS WHEREOF, the parties have hereunto caused this Agreement to be executed the day and year aforesaid in counterparts, each counterpart to be considered an original.

ATTEST:

Secretary

(SEAL)

SELLER:
PLANTATION BAY UTILITY CO.

MORI HOSSEINI
President

ATTEST:

Clerk

(SEAL)

PURCHASER:
CITY OF BUNNELL, FLORIDA

CATHERINE ROBINSON
Mayor

ATTEST:

Clerk

(SEAL)

FLAGLER COUNTY, FLORIDA:
BOARD OF COUNTY COMMISSIONERS OF FLAGLER COUNTY, FLORIDA

NATE MCLAUGHLIN
Chair

STATE OF FLORIDA
COUNTY OF FLAGLER

The foregoing instrument was acknowledged before me this 11th day ~~February~~ March, 2013 by Mori Hosseini, as President of Plantation Bay Utility Co., a Florida corporation, on behalf of the company. He is personally known to me or presented _____ as identification.

J. ANDREW HAGAN
Notary Public - State of Florida
My Comm. Expires May 3, 2016
Commission # EE 158604

Notary Public
My Commission Expires:

STATE OF FLORIDA
COUNTY OF FLAGLER

The foregoing instrument was acknowledged before me this ___ day of February, 2013, by Catherine Robinson, as Mayor of the City of Bunnell, on behalf of the City of Bunnell. She is personally known to me or presented _____ as identification.

Notary Public
My Commission Expires:

STATE OF FLORIDA
COUNTY OF FLAGLER

The foregoing instrument was acknowledged before me this ___ day of February, 2013, by Nate McLaughlin, Chair of the Board of County Commissioners of Flagler County, Florida, on behalf of Flagler County. He is personally known to me or presented _____ as identification.

Notary Public
My Commission Expires:

successor to the Purchaser or Seller, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such Person, in an individual capacity, is hereby expressly waived and released. All references to the Purchaser in this paragraph shall be deemed to include the Purchaser, Council members, officers, employees, attorneys, contractors and agents. The provisions of this Section shall survive the termination of this Agreement.

o. Purchaser shall bear no liability for accrued or current salaries or benefits of any kind related to Seller's construction, operation, or maintenance of the Utility System up to and including Closing.

p. Any default by a party to this Agreement shall be considered a default under the Agreement for Charitable Donation and any default under the Agreement for Charitable Donation shall be considered a default under this Agreement.

IN WITNESS WHEREOF, the parties have hereunto caused this Agreement to be executed the day and year aforesaid in counterparts, each counterpart to be considered an original.

ATTEST:

Secretary

(SEAL)

SELLER:
PLANTATION BAY UTILITY CO.

MORI HOSSEINI
President

ATTEST:

Clerk

(SEAL)

PURCHASER:
CITY OF BUNNELL, FLORIDA

CATHERINE ROBINSON
Mayor

ATTEST:

Clerk

(SEAL)

FLAGLER COUNTY, FLORIDA:
BOARD OF COUNTY COMMISSIONERS OF FLAGLER COUNTY, FLORIDA

NATE MCLAUGHLIN
Chair

STATE OF FLORIDA
COUNTY OF FLAGLER

The foregoing instrument was acknowledged before me this 11th day ~~February~~ March, 2013 by Mori Hosseini, as President of Plantation Bay Utility Co., a Florida corporation, on behalf of the company. He is personally known to me or presented _____ as identification.

Notary Public - State of Florida
My Comm. Expires May 3, 2016
Commission # EE 158004

Notary Public
My Commission Expires:

STATE OF FLORIDA
COUNTY OF FLAGLER

The foregoing instrument was acknowledged before me this 8th day of ~~February~~ April, 2013, by Catherine Robinson, as Mayor of the City of Bunnell, on behalf of the City of Bunnell. She is personally known to me ~~or presented~~ _____ ~~as identification~~.

DANIEL E. DAVIS
Notary Public - State of Florida
My Comm. Expires Jan 26, 2017
Commission # EE 842638
Bonded Through National Notary Assn

Notary Public
My Commission Expires:

STATE OF FLORIDA
COUNTY OF FLAGLER

The foregoing instrument was acknowledged before me this 8th day of ~~February,~~ April, 2013, by Nate McLaughlin, Chair of the Board of County Commissioners of Flagler County, Florida, on behalf of Flagler County. He is personally known to me or presented _____ as identification.

Lana Raymond

Notary Public
My Commission Expires:

LANA RAYMOND
Commission # EE 037551
Expires December 6, 2014
Bonded Thru Troy Fain Insurance 800-385-7019

AGREEMENT FOR CHARITABLE DONATION

OF

WASTEWATER ASSETS

By and Between

PLANTATION BAY UTILITY CO.

Donor,

and

CITY OF BUNNELL, FLORIDA

Donee

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AGREEMENT FOR CHARITABLE DONATION OF WASTEWATER ASSETS

THIS AGREEMENT FOR CHARITABLE DONATION OF WASTEWATER ASSETS ("Agreement") is made as of this __day of March, 2013 by and between **Plantation Bay Utility Co.,** a Florida corporation (hereafter "Donor"), and **the City of Bunnell, Florida** a political subdivision of the State of Florida ("Donee").

WHEREAS, Donor owns and operates potable water production, supply, treatment, storage and distribution systems ("Water System") and domestic wastewater collection, treatment and effluent disposal systems ("Wastewater System"), all of which are located in Flagler County and Volusia County, Florida, and commonly known as Plantation Bay Utility Co.; and

WHEREAS, Donor has been granted a certificate by the Florida Public Service Commission to provide wastewater services within a defined area within Flagler County and Volusia County, Florida ("Service Area" or "Service Territory") as identified in **Appendix B-2** herein; and

WHEREAS, the Donee has the power and authority to provide water, wastewater and reclaimed water infrastructure and service within its service territory; and

WHEREAS, Donor and Donee have entered into an Agreement for Purchase and Sale of Water Assets wherein Donee has agreed to purchase Donor's Water System assets ("Water Agreement"); and

WHEREAS, concurrent with the closing of the sale of its Water System assets to Donee, Donor desires to make a charitable donation of its Wastewater System assets ("Wastewater Assets") to Donee; and

WHEREAS, the Donee desires to acquire the wastewater utility assets of Donor by receiving a Charitable Donation from Donor, at no cost to the Donee, of the Wastewater System; and

WHEREAS, Donor has informed Donee that it has requested or is in the process of requesting from the Florida Public Service Commission ("FPSC") an index adjustment to its rates and such index increase shall be effective prior to Donee accepting the Wastewater Assets from Donor; and

WHEREAS, Donor agrees to donate the Wastewater Assets to Donee, and Donee agrees to accept the donation of the Wastewater Assets from Donor, on the terms and subject to the conditions set forth in this Agreement.

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NOW, THEREFORE, in consideration of the foregoing recitals and benefits to be derived from the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Donor and Donee hereby agree to the charitable donation of the Wastewater System upon the following terms and conditions:

1. **RECITALS**. The foregoing recitals are true and correct and are incorporated herein.

2. **COVENANT TO DONATE AND ACCEPT; DESCRIPTION OF DONATED ASSETS.**

   a. Donee shall accept from Donor, and Donor shall donate to Donee, the Donated Assets (as defined below) upon the terms, and subject to the conditions precedent, set forth in this Agreement.

   b. The Donated Assets are being donated "As-Is", "Where-Is" with "All Disclosed Faults." Donor makes no representations or warranties as to the condition of the Donated Assets.

   c. "Donated Assets" shall include all assets, business properties, and rights, both tangible and intangible, that Donor owns and uses exclusively in the ownership, construction, operation or maintenance of the Wastewater System including, but not limited to:

      i. The real property owned by Donor and all buildings and improvements located thereon, as identified in **Appendix "A"** to this Agreement ("Real Property").

      ii. All easements, licenses, prescriptive rights, rights-of-way and rights to use public and private roads, highways, canals, streets and other areas owned by Donor, used by Donor, or to which Donor possesses rights to serve within its wastewater Service Area in connection with the ownership, operation and maintenance of the Wastewater System, as identified in **Appendix "B-1"** to this Agreement.

      iii. All wastewater collection, treatment and disposal facilities of every kind and description whatsoever, including, but not limited to, pumps, plants, tanks, lift stations, transmission mains, collection pipes or facilities, effluent disposal facilities, valves, meters (if any), meter boxes, service connections and all other physical facilities, equipment and property installations owned by Donor or to which Donor possesses rights and used exclusively in connection with the Wastewater System, as identified in **Appendix "C"** to this Agreement.

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iv. All certificates, immunities, privileges, permits, license rights, consents, grants, ordinances, surveys, leaseholds, and all rights to construct, maintain and operate the Wastewater System and its plants and systems for the collection, treatment and disposal of wastewater, and every right of every character whatever in connection therewith, and the obligations thereof (hereinafter referred to as the "Certificates"); together with all rights granted to Donor under the Certificates, as identified in **Appendix "D"** to this Agreement; to the extent that Donor's rights to the foregoing are transferable. **Appendix "D"** shall also identify any of the foregoing which are not transferable or which require third party consents to transfer.

v. All items of inventory owned by Donor on the Donation Date (as defined below), which shall not be unnecessarily depleted between the date of Donor signing this Agreement and the Donation Date. Inventory as of the date of signing this Agreement by Donor includes, but is not limited to those items identified in **Appendix "G"** to this Agreement.

vi. All supplier lists, customer records, customer billing software, prints, plans, including plans in electronic or digital format, engineering reports, surveys, specifications, shop drawings, equipment manuals, and other information relating to the Wastewater System in Donor's possession, including any rights of Donor, if any, to obtain copies of such items from engineers, contractors, consultants or other third parties, in paper or electronic form.

vii. All sets of record drawings, including as-built drawings, showing all facilities of the Wastewater System, including all original tracings, sepias or other reproducible materials in Donor's possession, including any rights of Donor, if any, to obtain copies of such items from engineers, contractors, consultants or other third parties, in paper or electronic form.

viii. All rights and obligations of Donor under any Developer Agreements, as identified in **Appendix "E"** to this Agreement, which are assumed by Donee pursuant to Article 11.b.iv. **Appendix "E"** shall identify any of the foregoing which are not transferable, which require third party consents for the assumption by Donee and for which the Developer has pre-paid Connection Charges, the amount of such pre-paid Connection Charges, the number of ERCs connected and the balance of ERCs remaining which have been pre-paid but have not yet been connected as of Donor signing this Agreement.

ix. All rights and obligations of Donor under the Contracts and Leases, as identified in **Appendix "F"** to this Agreement. **Appendix "F"** shall

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contain a schedule identifying any Contracts or Leases which are not transferable or for which third party consents are necessary for the assumption by Donee.

x. All equipment, tools, parts, laboratory equipment, office equipment and other personal property owned by Donor and exclusively used to operate and maintain the Wastewater System as identified in **Appendix "H."**

d. "Excluded Assets". Notwithstanding any other provision in this Agreement that may be construed to the contrary, Contributed Assets do not include the Excluded Assets. The following assets are excluded from the Contributed Assets:

i. Cash, accounts receivable, bank accounts, equity and debt securities of any nature, deposits maintained by Donor with any governmental authority, and any prepaid expenses of Donor, which shall be Donor's sole property as of the Donation Date.

ii. Escrow and other Donor provisions for payment of federal and state taxes, and other obligations to governmental entities, including regulatory assessment fees, which shall be Donor's responsibility to pay through the Donation Date.

iii. The name and Florida corporation known as Plantation Bay Utility Co. and related logos and signage owned or used by Donor, including without limitation, logos and signage using the Plantation Bay Utility Co. name and logo.

3. <u>LIABILITIES</u>.

a. Assumed Liabilities. On the Donation Date, the Donee shall assume and agree to discharge only the following Liabilities of Donor (the "Assumed Liabilities"):

i. All liabilities to the customers of the Wastewater System incurred after the Donation Date where the operative act giving rise to the liability occurred after the Donation Date;

ii. Any liability of Donee under this Agreement or any other document executed in connection with this Agreement;

iii. Any liability of Donee based upon Donee's acts or omissions occurring after the Donation Date;

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iv. Any liability arising from or related to the ownership, construction, operation and maintenance of the Wastewater System after the Donation Date.

b. Excluded Liabilities. Notwithstanding the foregoing, the following shall not constitute liabilities assumed by the Donee: Donee does not assume any debts, liabilities, obligations, or other financial or service obligations of Donor, except as may be expressly provided in this Agreement. Donee does not assume and shall not be liable for any expense, assessment, exposure, fine, penalty, liability, act or omission of any kind whatsoever imposed or required by any third party, whether known or unknown, contingent, liquidated or not liquidated, arising or accruing under contract, law, tort, ordinance, law, regulation or otherwise, arising or accruing before or after the Donation Date where the operative act or omission was that of or attributable to the Donor for its actions prior to the Donation Date. Donor shall remain liable for and shall pay, perform or discharge all such liabilities and obligations; provided Donor is not hereby limited in its right to contest in good faith any such liabilities or obligations.

4. **ASSET DONATION**. Donor and Donee agree that Donee shall not be obligated to pay Donor for the conveyance of the Donated Assets but rather Donor shall donate the Donated Assets, together with all assets, facilities, rights and obligations related to and exclusively used in the Wastewater System. As a material inducement to Donor to execute this Agreement and perform its obligations hereunder, Donee covenants as follows:

a. Donee shall conduct all necessary public hearings and adopt such resolutions as required to authorize Donee's acceptance of the Charitable Donation and provide assistance, if necessary, to Donor, at no cost to the Donee, with regard to filings with all necessary and appropriate taxing and governmental authorities for Donor to seek the appropriate tax deduction for the Donation.

c. Donee shall provide wastewater service to the Service Territory in the ordinary course of business, and shall extend service in a manner consistent with the Developer Agreements assigned pursuant to this Agreement and attached hereto as **Appendix "E"** and the Developer Agreement with Donor or its affiliate, the form of which is attached hereto as **Appendix "L."**

d. That rates charged for wastewater service within the Service Territory shall be computed on a stand-alone basis in compliance with all Florida law requirements, and shall not now nor in the future include a surcharge as provided for in section 180.191 Florida Statutes.

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5. **REPRESENTATIONS AND WARRANTIES OF DONOR**. As a material inducement to Donee to execute this Agreement and perform its obligations hereunder, Donor represents and warrants to Donee as follows:

a. Donor is a duly organized, validly existing corporation, and its status is active under the laws of the State of Florida. Donor has all requisite power and authority and has taken all requisite action necessary to (i) enter into this Agreement, and (ii) perform all of the terms and conditions of this Agreement.

b. The Board of Directors of Donor has approved Donor entering into this Agreement.

c. This Agreement constitutes, and all other agreements to be executed by Donor with respect to this Agreement will constitute, when executed and delivered, valid and binding obligations of Donor, enforceable in accordance with their terms.

d. The execution, delivery and performance of this Agreement will not violate any provision of law, order of any court or agency of government applicable to Donor, the Articles of Incorporation or By-Laws of Donor, nor any Certificate, indenture, agreement, or other instrument to which Donor is a party, or by which it is bound.

e. Donor has good and marketable title to the Real Property. The Real Property is subject to no mortgage, pledge, lien, charge, security interest, encumbrance, or restriction except Permitted Encumbrances, as defined in Article 6 of this Agreement other than those that will be satisfied or released by the Donation Date. On the Donation Date, Donor shall deliver title to such Real Property free and clear of all debts, liens, pledges, charges or encumbrances whatsoever, other than Permitted Encumbrances. Other than as set forth in this Agreement, Donor makes no representation as to the condition of the Real Property.

f. Donor has exclusive possession, control and ownership to all Real Property and the Wastewater System, including that used or located on property controlled by Donor on the date of this Agreement. Except as otherwise identified in Appendix "A" or "B-1" to the Water Agreement, all of the Wastewater System is located within the Real Property identified in **Appendix "A"** and the property interests identified in **Appendix "B-1."**

g. Donor has good and marketable title to all Donated Assets. At Closing the Donated Assets shall be subject to no mortgage, pledge, lien, charge, security interest, encumbrance, or restriction except Permitted Encumbrances related to Real Property only.

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h. Environmental Law Compliance.

i. Definitions.

(a) "Environmental Law" means any federal, state, or local statute, order, regulation, or ordinance, or common law or equitable doctrine relating to the protection of human health or the environment in effect as of the Donation Date and includes, but is 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.), as such have been amended or supplemented as of the Donation Date, the regulations promulgated pursuant thereto, and in effect as of the Donation Date and any conditions and requirements contained in any permits possessed by Donor from any federal, state or local agencies necessary to operate the Wastewater System.

(b) "Hazardous Material" means petroleum or any substance, material, or waste which is regulated under any Environmental Law in the jurisdictions in which Donor conducts its business including, without limitation, any material or substance that is defined as or considered to be a "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," "restricted hazardous waste," "pollutant," "toxic waste," or "toxic substance" under any provision of Environmental Law.

(c) "Release" means any release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, or dispersal into the environment, at or from any property owned or operated by Donor or related to Hazardous Materials generated by Donor.

(d) "Remedial Action" means all actions required to (i) clean up, remove, or treat any Hazardous Material; (ii) prevent the Release or threat of Release, or minimize the further Release of any Hazardous Material so it does not endanger or threaten to endanger public health or welfare or the environment; or (iii) perform pre-remedial studies and investigations or post-remedial monitoring

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and care directly related to or in connection with any such remedial action.

ii. Representations. To Donor's knowledge:

(a) Donor is in material compliance with all applicable Environmental Laws and has no material liability thereunder, and there is no reasonable basis for Donor to believe that any such liability exists.

(b) Donor has obtained all permits required, or has submitted applications for such permits in a timely manner, under applicable Environmental Laws necessary for the operation of its business as conducted as of the date of this Agreement.

(c) Donor has received oral or written notice (or to Donor's knowledge verbal notice) within the last three years of the violations or alleged violations of applicable federal, state or local statutes, laws and regulations (including, without limitation, any applicable environmental, building, zoning, or other law, ordinance or regulation) relating to the Wastewater System as identified in **Appendix "I"**, hereto and no other.

(d) There is no Hazardous Material in violation of Environmental Law located on the Real Property or at any Wastewater System site that is owned by Donor, and none are listed or formally proposed for listing under CERCLA, the Comprehensive Environmental Response, Compensation Liability Information System ("CERCLIS") or on any similar state list that is the subject of federal, state, or local enforcement actions or other investigations that may lead to claims against Donor for clean-up costs, remedial work, damages to natural resources, or for personal injury claims, including, but not limited to, claims under CERCLA; and there is no reasonable basis for Donor to be named in such claims or for any similar action to be brought against Donor.

(e) No written or verbal notification of a Release of a Hazardous Material has been filed by or on behalf of Donor or any third party with respect to the Wastewater System. No Wastewater System property is listed or proposed for listing on the National Priority List promulgated pursuant to CERCLA, or CERCLIS, or any similar state list of sites requiring investigation or clean up.

(f) No Hazardous Material has been released in violation of Environmental Law at, on, or under any Wastewater System property.

i. Except as provided in **Appendix "J"** hereto, there are no current actions, suits or proceedings at law or in equity pending or, to Donor's knowledge, threatened against the Donor before any federal, state, municipal or other court, administrative or governmental agency or instrumentality, domestic or foreign, which affect the Wastewater System or any of the Donated Assets or the Donor's right and ability to make and perform this Agreement; nor is the Donor aware of any facts which to its knowledge are likely to result in any such action, suit or proceeding. Donor is not in default with respect to any Certificate, permit, order or decree of any court or of any administrative or governmental agency or instrumentality affecting the Wastewater System or any of the Donated Assets. Donor agrees and warrants that it shall have a continuing duty to disclose up to and including the Donation Date the existence and nature of all pending judicial or administrative suits, actions, proceedings and orders which in any way relate to the Wastewater System.

j. No representation or warranty made by the Donor in this Agreement contains any untrue statement of material facts or omits to state any material fact required to make the statements herein contained not misleading.

k. After due inquiry Donor has no actual knowledge that Donor's use of the Real Property is in violation of any applicable state or local laws, rules or ordinances, including wellhead protection, zoning or other applicable requirements, nor do they have any actual knowledge of any encroachments or encroachments of any kind related to the Real Property except as are identified in **Appendix "K"** hereto. For the purposes of construing this section, "actual knowledge" includes facts directly and personally known to Donor and/or Donee, or facts which Donor and/or Donee are presumed to have received directly or personally because evidence within Donor's or Donee's possession or knowledge is sufficient to engage in a reasonable inquiry into the existence of such facts.

6. **REPRESENTATIONS AND WARRANTIES OF DONEE.** As a material inducement to Donor to execute this Agreement and to perform its obligations hereunder, Donee represents and warrants to Donor as follows:

a. Donee has been duly organized, and is a validly existing political subdivision under the laws of the State of Florida. Donee 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.

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b. This Agreement constitutes, and all other agreements to be executed by Donee with respect to this Agreement, will constitute, when executed and delivered, valid and binding obligations of Donee, enforceable in accordance with their terms.

c. The execution, delivery and performance of this Agreement will not violate any provision of law, order of any court or agency of government applicable to Donee, nor any indenture, agreement, or other instrument to which Donee is a party, or by which it is bound.

d. All necessary public hearings and referenda required to authorize Donee's acceptance of the Wastewater System and Donee entering into this Agreement will have been held in a manner and at the times duly required by law and all other appropriate governmental actions required to be taken by Donee will have been duly taken prior to the Donation Date.

e. Donee acknowledges that, as of the date of execution hereof, Donor is in the process of finalizing a Consent Order with the Florida Department of Environmental Protection relative to effluent disposal by Donor's wastewater system, which is being gifted by Donor to Donee on the date of closing hereon. As such, said Order will be binding upon Donee upon its acceptance of such grant of donation.

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

a. At least sixty (60) days prior to the Closing, Donor shall obtain and provide to Donee a current title insurance commitment in favor of Donee issued by a title company licensed to do business in the State of Florida, covering the Real Property (and all or a portion of the Appendix B-1 easements as may be designated by the Donee), and encompassing legal and physical access from a dedicated public road, street, or highway, which access is insurable under the title policy, The parties agree that the value of the Real Property conveyed pursuant to this Agreement is incorporated in the Five Million Five Hundred Thousand Dollar ($5,500,000) purchase price set forth in the Water Agreement. To the extent possible, the title insurance commitment and policy provided for in the Agreement for Purchase and Sale of the Water Assets, and the premium paid therefor, shall cover and include the Real Property (and easements) conveyed in this Donation Agreement, in lieu of a separate commitment, policy and premium payment hereunder.. In the event a premium must be paid for a policy under this Agreement, the parties will agree on a de minimis amount for the lift stations conveyed hereunder. The cost of the title insurance commitment and title insurance policy shall be borne by Donor. The title insurance commitment shall commit the insurer to issue loan policy and an owner's title insurance policy to

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Donee covering the Real Property (and all or a portion of the Appendix B-1 easements as may be designated by the Donee), 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. Donor shall execute at, or prior to Closing, in favor of Donee and the title insurance company, all forms or affidavits required by the title insurance company including, but not limited to, 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.

Donee shall notify Donor in writing no more than thirty (30) days after receipt of the title insurance commitment of any alleged material defect in Donor's title to the Real Property, other than those accepted herein and the Permitted Encumbrances (such written notice to include all exceptions, encumbrances, liens, easements, covenants, restrictions or other defects in Donor's title to the Real Property other than the Permitted Encumbrances), which render or may render Donor's title to the Real Property (i) unmarketable in accordance with standards adopted by The Florida Bar, or (ii) uninsurable. Any objections to title to the extent not shown on the notice furnished by Donee in accordance with the provisions of this paragraph shall be deemed to have been waived by Donee and Donee shall not be entitled to any damages or other remedies. Donor shall have thirty (30) days after receipt of Donee's notice to eliminate the objections to title set forth in Donee's notice. However, in no event shall Donor be required to bring suit or expend any sum in excess of $50,000 in the aggregate to cure title defects (exclusive of mortgages against the Real Property, which are in a liquidated amount) that Donor has an obligation to discharge by the Donation pursuant to the terms of this Agreement. If Donor fails to deliver title as herein provided, then Donee may:

i. Accept whatever title Donor is able to convey; or

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

b. Donee may not object to title by reason of the existence of any mortgage, lien, encumbrance, covenant, restriction or other matter that (i) may be satisfied with a payment of money and Donor advises Donee that Donor elects to do so by paying same at or prior to the Donation Date; (ii) any mechanic's lien or other

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encumbrance 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 Donor advises Donee that Donor elects to do so at or prior to Donation; or (iii) the title insurance company issuing the title insurance commitments affirmatively insures-over.

c. Donor shall provide a copy of any detailed survey of the Real Property that Donor has procured in the twenty four months prior to this Agreement which shall identify all structures located on such parcels and any encroachments thereon or therefrom. Donee shall have the right, but not the obligation, to require Donor to update any survey, or request a new survey on the Real Property. Costs incurred by Donor to update a survey or procure a new survey shall be reimbursed by Donee at Closing.

c. As used above, "Permitted Encumbrances" include the following:

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

ii. Easements, restrictions, reservations, rights-of-way, conditions and limitations of record, if any, which are not coupled with any reverter or forfeiture provisions, including (without limitation) any drainage, canal, mineral, road, or other reservations of record in favor of the State of Florida or any of its agencies or governmental or quasi-governmental entities, or as may be set forth in any "Murphy Deeds", none of which, however, shall impair or restrict the use of the Real Property or the operation of the Utility System.

iii. Such other matters as are permitted under the terms of this Agreement, including but not limited to the Developer Agreements.

8. <u>CONDITIONS PRECEDENT TO DONATION</u>. The obligations of each party to close the transaction contemplated by this Agreement are subject to the conditions that, at or before the Donation Date:

Conditions Precedent for Donee and Donor.

a. Donee and Donor simultaneously close on the purchase and sale of the Water System assets of Donor pursuant to the Water Agreement by and between Donee, as Purchaser, and Donor as Seller.

b. Neither Party is prohibited by decree or law from consummating the transaction.

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c. There is not pending on the Donation Date any legal action or proceeding that would (i) prohibit the acquisition or donation of the Donated Assets, (ii) prohibit Donee or Donor from consummating the transaction or (iii) inhibit or restrict in any manner Donee's use, title, or enjoyment of the Donated Assets.

d. Each of the other parties hereto has performed all of the undertakings required to be performed by them under the terms of this Agreement.

e. There has been no material adverse change in the physical condition of the Donated Assets. For purposes of this Agreement, a "material adverse change" shall mean a loss or damage to the Donated Assets that materially reduces the ability to operate the Wastewater System as operated by Donor prior to the Donation Date.

f. All warranties and representations of the other party are true in all material respects as of the Donation Date.

Condition Precedent for Donee

a. Donor shall have received FPSC authorization for 2012 rate indexing and implemented such increase prior to closing.

b. Donor shall secure an acknowledgement from the Tomoka Community Development District ("District") that the District does not own or operate any sanitary wastewater facilities and that property within the District is subject to exclusive wastewater and reclaimed water service from the Donor, which service will be provided by Donee following Closing. The acknowledgement Donor obtains from the District as a condition precedent Water Agreement shall satisfy this condition precedent to the extent it incorporates wastewater and reclaimed water service.

9. **PRE-DONATION CONDUCT; COVENANTS**. Prior to the Donation Date, the parties covenant to each other, and shall conduct themselves, as follows:

a. During the period between execution of this Agreement and the Donation Date, Donor shall:

i. Operate and maintain the Wastewater System and Donated Assets in a normal and ordinary manner to ensure that the condition of the Wastewater System and the Donated Assets remain in all material respects unchanged, normal wear and tear and usage excepted, and the inventory

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on hand shall not be diminished or depleted, other than in the ordinary course of business;

ii Promptly notify Donee of any notification received by Donor from any person, business, or agency of any existing or potential Environmental Law violation;

iii. Provide Donee, or its designated agent(s), with unrestricted access to the business premises, Wastewater System, Donated Assets, Donor's books and records, employees, agents, or representatives, on reasonable advance notice (one business day) and during business hours.

iv. Promptly notify Donee of any event, activity or occurrence that has, or may have, a material adverse effect upon the Donated Assets or this transaction.

b. During the period between execution hereof and Donation, Donor shall not:

i Enter into any contract, oral or written, relating to the Wastewater System or Donated Assets without the prior written consent of Donee which consent shall not be unreasonably withheld, conditioned or delayed;

ii. Without the prior written consent of Donee, which shall not be unreasonably withheld, enter into any new Developer Agreements or modify any existing developer agreements. Copies of any new or modified developer agreements shall be promptly delivered to Donee and shall not be signed by Donor without prior written consent from Donee.

iii. Nor shall any affiliated company of Donor, enter into any agreement with any cell phone provider on or within 3 miles of the Real Property. The parties acknowledge and agree that Donor shall forward to Donee the proceeds, if any, from any agreement with a cell phone provider within 3 miles of the Real Property obtained by Donor or its affiliate prior to Closing and that Donee and County shall assume at Closing the rights and obligations of Donor pursuant to such an agreement or agreements for which the Donee and County have provided written consent.

iv. Enter any agreement with any cell phone provider with respect to the Wastewater System or Donated Assets. Notwithstanding the foregoing covenant, the parties acknowledge and agree that Donor shall forward to Donee the proceeds, if any, of any agreement with a cell phone provider relating to the Wastewater System or the Donated Assets obtained by Donor prior to Donation and that Donee and County shall assume at

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Donation the rights and obligations of Donor pursuant to such an agreement or agreements for which Donee and County have provided written consent.

c. Donor shall maintain its existing levels of insurance on the Donated Assets and Wastewater System and the risk of any loss shall remain with Donor through the Donation Date.

d. Within thirty (30) days of signing this Agreement, if Donee's requests, Donor shall obtain Phase I Environmental Site Assessments ("ESA") (and a subsequent Phase II ESA if Donee determines that one is necessary based on the Phase I survey results) of each parcel comprising the Real Property and each wastewater effluent disposal site. Donor shall provide a report from the party undertaking the ESA to Donee when available. Donor shall pay for ESAs, which expense shall be reimbursed by Donee at Closing. If such ESA discloses the presence of any Hazardous Material, Purchase shall notify Donor within ten (10) business days of receipt of such ESA, and Donor shall have the right to perform such cleanup and remediation as is necessary hereunder. Upon Donor's failure to perform such cleanup and remediation, prior to the Closing Date, Donee may elect to either (i) terminate this Agreement, in which event neither party shall have any liability to the other; or (ii) proceed to Closing.

e. Donee is relying upon its own due diligence investigation in entering into this Agreement. The Donee shall have until sixty (60) days after Donor has provided all of the documents requested by Donee to complete, at Donee's expense, financial, legal, engineering and operational due diligence investigations of the Purchased Assets. Based upon the results of such due diligence investigations Donee shall have the right to terminate this Agreement for any defects or problems revealed by such due diligence. Donee shall provide Donor with written notice of termination within ten (10) days of completion of such due diligence. During this period, Donor shall provide Donee and its representatives, access to all Purchased Assets as set forth in this Agreement.

10. <u>TERMINATION OF AGREEMENT</u>.

a. This Agreement shall automatically terminate should the parties fail to close on the Donee's purchase of Donor's Water System Assets pursuant to the Water Agreement.

b. This Agreement may be terminated (i) by mutual written consent of the parties, (ii) by either party if the transactions contemplated hereby have not closed by May 31, 2013, or (iii) as provided in paragraphs c. and d. below.

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c. Donee 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, any pre-closing conduct, or any covenant of Donor set forth in Articles 8 and 9.

ii Any material breach of this Agreement by Donor, including, but not limited to, a material breach of any representation or warranty, if Donor has not cured such breach within 30 days after notice from Donee; provided, however, such breach must in any event be cured by the Closing Date unless the date for cure has been extended by Donee

d. Donor 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 Article 8.

ii. Any material breach of this Agreement by Donee, including, but not limited to, a material breach of any representation or warranty, if Donee has not cured such breach within 30 days after notice from Donor, provided, however, such breach must in any event be cured prior to the Closing Date unless the date for cure has been extended by Donor.

d. Upon the occurrence of any of the bases for termination of this Agreement, the party seeking to terminate this Agreement shall provide written notice of its termination of this Agreement to the other by delivering the same as provided in Article 15.c.

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

i To the extent permitted by Florida law, each party shall return all documents, including copies, in its possession, custody, or control, or in the possession, custody, or control, of its agents and consultants to the other, as the case may be. Each party, its agents and consultants, shall treat any information previously received as confidential, and shall not disclose or use such information, unless required by law.

ii Except as otherwise set forth in this Agreement, each party shall be responsible for payment of its own attorney and other professional fees

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and other costs of any nature whatsoever incurred prior to the termination of this Agreement.

iii. In the event the termination occurs as set forth in Articles 7.a. and 9.d, this Agreement shall forthwith become void and there shall be no liability on the part of Donee or Donor, or their respective Council members, members, managers, officers or directors.

11. DONATION DATE AND DONATION.

a. This transaction shall be completed on or before May 31, 2013, at a location mutually acceptable to both parties. As used in this Agreement, the term "Donation Date" shall mean 12:00 a.m. date that this transaction is completed, unless extended by the mutual agreement of the parties.

b. At Donation:

i. Donor shall donate and convey the Wastewater System and Donated Assets to Donee, at no cost to Donee.

ii. Title to the Real Property shall be conveyed to Donee by Special Warranty Deed free of all claims, liens, or encumbrances whatsoever, other than Permitted Encumbrances. Title to the remaining Donated Assets shall be gifted to Donee by Bill of Sale free of all claims, liens, or encumbrances, whatsoever. Donor shall further provide to Donee such other instruments of conveyance as shall be, in the reasonable opinion of Donee and its counsel, necessary to transfer the Wastewater System and Donated Assets in accordance with this Agreement and, when necessary or desirable, in recordable form.

iii. Donor shall assign to Donee its right, title and interest in those easements, licenses, etc. identified in **Appendix "B-1."**

iv. Donor and Donee shall enter into separate Assignment and Assumption Agreements with respect to agreements which Donee agrees to assume from the (i) Developer Agreements identified in **Appendix "E"**, and (ii) Contracts and Leases identified in **Appendix "F."**

v. Real property and personal property taxes on the Donated Assets and Utility System, and any other applicable taxes, shall be prorated as of the Donation Date and Donor shall be required to pay its pro rata share at

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Donation. All other taxes, assessments and regulatory assessment fees accrued or owed by Donor as of the Donation Date with respect to the Wastewater System and Donated Assets shall remain the obligation of Donor. All other taxes and assessments imposed or attempted to be imposed from and after the Donation Date with respect to the Wastewater System and Donated Assets, if any, shall be the obligation of Donee.

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 the Donee shall be paid for by the Donor.

vii. Connection Charges (defined as plant capacity, transmission line capacity, or other unit connection fees paid for the availability of utility capacity) received by Donor prior to Closing shall be retained by Donor if a structure has been built, and a physical connection to the Utility System has been made prior to closing. Connection Charges paid to Donor prior to Closing for which no connection has been made shall be paid over to Donee at Closing. Connection Chargers paid after Closing shall be retained by Donee. A schedule of Connection Charges paid to Donor in the form of **Appendix "E"** shall be updated by Donor as of the Closing Date and provided to Donee and paid by Donor to Buyer at closing through the Closing Statement or as otherwise mutually agreed to by the parties.

viii. Donor shall receive payment from Donee for ninety percent (90%) of its accounts receivable (less than sixty (60 days old) for monthly water and wastewater service, net of any credit balances as of the Donation Date. Donor shall furnish to Donee, ten (10) days prior to Donation, a 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 and wastewater services rendered but not yet billed as of the Donation Date shall be rendered to Donee three (3) days prior to Donation. Upon approval and acceptance by Donee, ninety percent (90%) of such unbilled revenue shall be a credit (payment) to Donor on the Closing Statement. Donee shall be entitled to all revenues collected and derived from the operation of the Wastewater System after Donation.

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.

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x. Except as otherwise provided herein, each of the parties shall pay the fees of its own attorneys, bankers, engineers, accountants, and other professional advisers or consultants in connection with the negotiation, preparation and execution of this Agreement, and any documents associated with the Donation.

xi. All bills of any kind for services, materials and supplies of any kind rendered in connection with the construction, operation and maintenance of the Wastewater System prior to Donation, including but not limited to electricity, phone service, and payroll for a period up to and including the Donation Date, shall be paid by Donor. Donee shall be responsible for all such costs and expenses incurred subsequent to Donation.

xii. Donee shall assume the liability for customer deposits, and Donor shall, by electronic transfer, transfer to Donee all customer deposits and accrued interest thereon, together with the list of customers for whom such deposits have been collected and corresponding amounts of such deposits through Donation.

xiii. Each party shall deliver to the other party a certificate stating that:

(a) The party is not prohibited by decree or law from consummating the transaction contemplated hereby.

(b) There is not pending on the Donation Date any legal action or proceeding that hinders the ability of either party to close the transaction.

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

xiv. Donor shall deliver to Donee, in a form reasonably acceptable to Donee, an opinion of Donor's counsel substantially to the effect that:

(a) Donor is validly organized, existing and its status is active under the laws of the State of Florida.

(b) This Agreement has been duly and validly executed and approved by Donor and is a valid and binding agreement upon Donor.

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(c) The execution, delivery and performance of this Agreement will not violate any agreement of or binding on, or any law applicable to Donor.

xiii. Donee shall deliver to Donor in a form acceptable to Donor, an opinion of Donee's Counsel substantially to the effect that:

(a) Donee is validly organized and existing as a political subdivision under the laws of the State of Florida.

(b) This Agreement has been duly and validly executed and approved by Donee and is a valid and binding agreement upon Donee.

(c) The execution, delivery and performance of this Agreement will not violate any agreement of, or binding on, or any law applicable to, Donee.

12. POST DONATION COOPERATION.

a. Donor and Donee shall, after the Donation Date, upon reasonable request of the other party and at no cost to the other party, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, all such further documents, acts, deeds, easements, assignments, transfers, powers of attorney and assurances, at no cost to Donee, as may be required in order to implement and perform any of the obligations, covenants and agreements of the parties arising from this Agreement, and to permit Donee to operate and maintain the Wastewater System in the manner operated by Donor at the time of Donation.

b. Each of the parties hereto shall provide the other with such assistance as reasonably may be requested in connection with the preparation of any tax return, audit or other examination by any taxing authority or any 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. Subject to the provisions of paragraph e. below, each party shall retain and provide the other with any records or information that may be relevant to such return, audit or examination, proceedings or determination. The party requesting assistance hereunder shall reimburse the other for reasonable expenses incurred in providing such assistance.

c. Donor agrees to provide reasonable assistance to the Donee to transition the administration (including customer services and accounting functions) and

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operation of the Wastewater System and Donated Assets for a period of one hundred twenty (120) days after the Donation Date. Donee shall reimburse Donor for reasonable costs or expenses, without markup, incurred by any services provided under this subparagraph.

d. 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 one year from the Closing Date, and thereafter shall terminate.

e. Donor shall make good faith efforts, at no cost to Donee, to assist Donee in securing funding from the Florida Department of Environmental Protection necessary to render operation and necessary capital improvements to the Wastewater System by Donee post-Donation. The assistance to be rendered shall consist, at minimum, of attendance by representatives of Donor at all meetings with the Florida Department of Environmental Protection relating to the required applications, funding processes.

f. At Donation, Donor and any applicable affiliated entity forever waive any claim or right to compensation or damages of any kind against Donee or County which relates to any encroachment, damage or encumbrance of any nature, type or kind that exist on the Closing Date and affect the property of Donor or any affiliated entity located contiguous to the Real Property.

13. **THIRD PARTY BENEFICIARY**. Donee and Donor acknowledge and agree that City and the Board of County Commissioners of Flagler County, Florida ("County") have entered or shall enter an interlocal agreement establishing their respective rights and obligations concerning the operation and control of the Wastewater System upon and after closing and, as such, the County is recognized as a third party beneficiary and signatory to this Agreement with all post-Closing rights of City to enforce its terms.

14. **MISCELLANEOUS PROVISIONS.**.

a. This Agreement, the Documents and the Appendices hereto, collectively embody the entire agreement and understandings between the parties 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.

b. Within 15 days after the Donation, Donor shall prepare and the Donee and Donor will jointly submit a notice of transfer of the system to the FPSC in a Petition for Termination of the Certificates of Authorization of Donor. Donor shall file

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reports, if any, required to satisfy its outstanding gross receipts tax, regulatory assessment fees, and other obligations and governmental assessments through the Date of Donation. All of Donor's costs and expense relative to the termination of Donor's relationship with the FPSC, including regulatory assessment fees, shall be borne by Donor. Copies of the Order(s) of the Commission acknowledging sale of the system to Donee shall be promptly provided to Donee upon Donor's receipt thereof.

c. Any notice 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.

If to Donor, such notice shall be delivered at:

David Haas, Chief Development Officer
Plantation Bay Utility Co.
2379 Belville
Daytona Beach, FL 32119
DHaas@icihomes.com

with a copy to:

Sundstrom, Friedman & Fumero, LLP
Attn: William E. Sundstrom, Esq.
2548 Blairstone Pines Drive
Tallahassee, FL 32301
850-877-6555
wsundstrom@sfflaw.com

If to Donee, such notice shall be delivered at:

City Manager
City of Bunnell
1769 E. Moody Blvd.
Bunnell, FL 32110
386-437-7500
amartinez@bunnellcity.us

with a copy to:

City Attorney
City of Bunnell

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P.O. Box 819
Bunnell, FL 32110
386-437-1668
attorneynowell@gmail.com

with a copy to:

County Administrator
Flagler County
1769 East Moody Blvd., Bldg. 2
Bunnell, FL 32110
386-313-4000
ccoffey@flaglercounty.org

with a copy to:

County Attorney
Flagler County
1769 East Moody Blvd., Bldg. 2
Bunnell, FL 32110
386-313-4005
ahadeed@flaglercounty.org

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

d. The headings used are for convenience only, and they shall be disregarded in the construction of this Agreement.

e. The drafting of this Agreement was a joint effort of the parties, and in the interpretation hereof, it shall be assumed that no party had any more input or influence than any other.

f. This Agreement is solely for the benefit of the parties hereto, and except as provided in Section 13 of this Agreement, no other causes of action shall accrue upon or by reason hereof to or for the benefit of any third party (other than successors and assigns), who or which is not a formal party hereto.

g. In the event any term or provision of this Agreement is determined by appropriate judicial authority to be illegal or otherwise invalid, such provision shall be given its nearest legal meaning or be construed as deleted, as such authority determines,

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and the remainder of this Agreement shall be construed to be in full force and effect.

h. This Agreement may be amended or modified only if executed in writing and with the same formality as the original.

i. This Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the State of Florida.

j. All words, terms, and conditions herein contained are to be read in concert, each with the other, and a provision contained under one heading may be considered to be equally applicable under another heading in the interpretation of this Agreement.

k. Except as provided for herein, this Agreement may not be assigned without the prior written consent of the non-assigning party. If properly assigned, this Agreement shall be binding upon and inure to the benefit of the parties' successors and assigns.

l. 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 conducting his business.

m. Notwithstanding anything to the contrary contained herein or in any other instrument or document executed by or on behalf of the Donee or Donor in connection herewith, 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 Donee or Donor, or of any incorporator, member, director, trustee, officer, employee or agent of any successor to the Donee or Donor, in any such Person's individual capacity, and no such Person, in an individual capacity, shall be liable personally for any breach or non-observance of or for any failure to perform, fulfill or comply with any such stipulations, covenants, agreements or obligations, nor shall any recourse be had for the payment of the Purchase Price or for any claim based hereon or on any such stipulation, covenant, agreement, or obligation, against any such Person, in an individual capacity, either directly or through the Donee or Donor or any successor to the Donee or Donor, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such Person, in an individual capacity, is hereby expressly waived and released. All references to the Donee in this paragraph shall be deemed to include the Donee, Council members, officers, employees, attorneys,

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contractors and agents. The provisions of this Section shall survive the termination of this Agreement.

o. Donee shall bear no liability for accrued or current salaries or benefits of any kind related to Donor's construction, operation, or maintenance of the Wastewater System up to and including Donation.

p. Any default by a party to this Agreement shall be considered a default under the Agreement for Charitable Donation and any default under the Agreement for Charitable Donation shall be considered a default under this Agreement.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]
[EXECUTION PAGES TO FOLLOW]

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IN WITNESS WHEREOF, the parties have hereunto caused this Agreement to be executed the day and year aforesaid in counterparts, each counterpart to be considered an original.

DONOR:

ATTEST:

PLANTATION BAY UTILITY CO.

Secretary

MORI HOSSEINI
President

(SEAL)

DONEE:

ATTEST:

CITY OF BUNNELL, FLORIDA

Clerk

CATHERINE ROBINSON
Mayor

(SEAL)

ATTEST:

BOARD OF COUNTY COMMISSIONERS OF FLAGLER COUNTY, FLORIDA

Clerk

NATE MCLAUGHLIN
Chair

(SEAL)

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STATE OF FLORIDA
COUNTY OF FLAGLER

Mori Hosseini, as President

The foregoing instrument was acknowledged before me this 11th day March, 2013 by ~~David Hass, as Chief Development Officer~~ of Plantation Bay Utility Co., a Florida corporation, on behalf of the company. He is personally known to me.

J. ANDREW HAGAN
Notary Public - State of Florida
My Comm. Expires May 3, 2016
Commission # EE 156004

Notary Public

My Commission Expires:

STATE OF FLORIDA
COUNTY OF FLAGLER

The foregoing instrument was acknowledged before me this 8th day of April, 2013, by Catherine Robinson, as Mayor of the City of Bunnell, on behalf of the City of Bunnell. She is personally known to me.

Notary Public

My Commission Expires:

DANIEL E. DAVIS
Notary Public - State of Florida
My Comm. Expires Jan 26, 2017
Commission # EE 842638
Bonded Through National Notary Assn.

STATE OF FLORIDA
COUNTY OF FLAGLER

The foregoing instrument was acknowledged before me this 8th day of April, 2013, by ~~Barbara Revels~~ Nate McLaughlin, Chair of the Board of County Commissioners of Flagler County, Florida, on behalf of Flagler County. ~~She~~ He is personally known to me.

Lana Raymond

Notary Public

My Commission Expires:

LANA RAYMOND
Commission # EE 037551
Expires December 6, 2014
Bonded Thru Troy Fain Insurance 800-385-7019

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COMPOSITE EXHIBIT C

ITEMS REQUIRED TO PAY OUTSTANDING REGULATORY ASSESSMENT FEES

TO AVOID PENALTY AND INTEREST CHARGES, THE REGULATORY ASSESSMENT FEE RETURN MUST BE FILED ON OR BEFORE 01/30/2014

Large Water System Regulatory Assessment Fee Return

Florida Public Service Commission

(See Filing Instructions on Back of Form)

STATUS:

____ Actual Return
____ Estimated Return

PERIOD COVERED:
07/01/2013 TO 12/31/2013
07/01/2013 - 09/15/2013

WS479-13-W-2-R
Plantation Bay Utility Co.
2379 Beville Road
Daytona Beach, FL 32119-8720

Please Complete Below If Official Mailing Address Has Changed

FOR PSC USE ONLY

Check # _____

$ _____ 0604001 003001
$ _____ E
$ _____ P 0604001 004010
$ _____ I

Postmark Date _____
Initials of Preparer _____

(SYSTEM'S NAME)	(ADDRESS)	(CITY/STATE)	(ZIP)

Florida Public Service Commission Certificate	#	#	#
WATER OPERATING REVENUES			
1. Unmetered Water Revenues (460)	$	$	$
MEASURED WATER REVENUES			
2. Residential Revenues (461.1)	306,211.00		
3. Commercial Revenues (461.2)	15,362.87		
4. Industrial Revenues (461.3)			
5. Revenues from Public Authorities (461.4)			
6. Multiple Family Dwelling Revenues (461.5)			
7. **TOTAL METERED SALES**	$	$	$
FIRE PROTECTION REVENUES			
8. Public Fire Protection (462.1)			
9. Private Fire Protection (462.2)			
10. **TOTAL FIRE PROTECTION REVENUE**	$	$	$
11. Other Sales to Public Authorities (464)			
12. Sales to Irrigation Customers (465)			
13. SALES FOR RESALE (466)			
14. Interdepartmental Sales (467)			
15. **TOTAL WATER SALES (Lines 1+7+10+11+12+13+14)**	$	$	$
OTHER WATER REVENUES			
16. Guaranteed Revenues (Include Revenues from A.F.P.I. Charges) (469)			
17. Forfeited Discounts (470)			
18. Miscellaneous Service Revenues (471)	8,632.42		
19. Rents From Water Property (472)			
20. Interdepartmental Rents (473)			
21. Other Water Revenues (474) Describe:			
22. **TOTAL OTHER WATER REVENUES (Lines 16+17+18+19+20+21)**	$	$	$
23. **TOTAL WATER OPERATING REVENUES*(Lines 15+22)**	$	$	$
24. LESS: Expense for Purchased Water From FPSC-Regulated Utility	( )	( )	( )
25. NET WATER OPERATING REVENUES **(Line 23 Less Line 24)**	330,116.29		
26. Regulatory Assessment Fee Due – **(Multiply Line 25 by 0.045)**		14,855.23	
27. LESS: Payment for January 1-June 30 Period		(10,463.74)	
28. LESS: Approved Prior-Period Credit		( )	
29. NET REGULATORY ASSESSMENT FEE **(Line 26 Less Line 27)**		$ 4,391.49	
30. Penalty for Late Payment			
31. Interest for Late Payment			
32. **TOTAL AMOUNT DUE**		$ 4,391.49	

*These amounts must agree with Annual Report Schedule F-3
If service was purchased from a regulated utility, please insert its name: _____

AS PROVIDED IN SECTION 350.113, FLORIDA STATUTES, THE MINIMUM ANNUAL FEE IS $25

I, the undersigned owner/officer of the above-named vendor, have read the foregoing and declare that to the best of my knowledge and belief the above information is a true and correct statement. I am aware that pursuant to Section 837.06, Florida Statutes, whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his official duty shall be guilty of a misdemeanor of the second degree.

(Signature of System Official) — Secretary-Treasurer (Title) — 9/18/13. (Date)

Jean Trinder
(Please Print Name)

Telephone Number (386-236-4120 Fax Number (386-763-7820

F.E.I. No. 59-2511975

PSC/ECR 010-WL (Rev. 02/05)

TO AVOID PENALTY AND INTEREST CHARGES, THE REGULATORY ASSESSMENT FEE RETURN MUST BE FILED ON OR BEFORE01/30/2014

Large Wastewater System Regulatory Assessment Fee Return

Florida Public Service Commission

(See Filing Instructions on Back of Form)

STATUS:

____ Actual Return
____ Estimated Return

PERIOD COVERED:
07/01/2013 TO 12/31/2013
07/01/2013-09/15/2013

WS479-13-S-2-R
Plantation Bay Utility Co.
2379 Beville Road
Daytona Beach, FL 32119-8720

Please Complete Below If Official Mailing Address Has Changed

FOR PSC USE ONLY

Check # _____

$ _____ 0604002 000000
$ _____ E
$ _____ P 0604002 000000
$ _____ I

Postmark Date _____
Initials of Preparer _____

(SYSTEM'S NAME)	(ADDRESS)	(CITY/STATE)	(ZIP)
Florida Public Service Commission Certificate	#	#	#
WASTEWATER OPERATING REVENUES			
FLAT-RATE REVENUES			
1. Residential Revenues (521.1)	$	$	$
2. Commercial Revenues (521.2)			
3. Industrial Revenues (521.3)			
4. Revenues from Public Authorities (521.4)			
5. Multiple Family Dwelling Revenues (521.5)			
6. Other Revenues (521.6)			
7. **TOTAL FLAT-RATE REVENUES**	$	$	$
MEASURED REVENUES			
8. Residential Revenues (522.1)	395,870.44		
9. Commercial Revenues (522.2)	21,587.73		
10. Industrial Revenues (522.3)			
11. Revenues from Public Authorities (522.4)			
12. Multiple Family Dwelling Revenues (522.5)			
13. **TOTAL MEASURED REVENUES**	$	$	$
14. Revenues from Public Authorities (523)			
15. Revenues from Other Systems (524)			
16. Interdepartmental Revenues (525)			
17. **TOTAL (Lines 7+13+14+15+16)**	$	$	$
OTHER WASTEWATER REVENUES			
18. Guaranteed Revenues (Include Revenues from A.F.P.I. Charges) (530)			
19. Sales of Sludge (531)			
20. Forfeited Discounts (532)			
21. Rents from Wastewater Property (534)			
22. Interdepartmental Rents (535)			
23. Other Wastewater Revenues (536) Describe: Reuse and Service Income	1,423.35		
24. **TOTAL OTHER WASTEWATER REVENUES (Lines 18+19+20+21+22+23)**	$	$	$
25. **TOTAL WASTEWATER OPERATING REVENUES*(Lines 17+24)**	$	$	$
26. LESS: Expense for Purchased Wastewater Treatment from FPSC-Regulated Utility	( )	( )	( )
27. NET WASTEWATER OPERATING REVENUES **(Line 25 Less Line 26)**	418,881.52		
28. Regulatory Assessment Fee Due – **(Multiply Line 27 by 0.045)**		18,849.66	
29. LESS: Payment for January 1 – June 30 Period		(13,413.88)	
30. LESS: Approved Prior-Period Credit		( )	
31. NET REGULATORY ASSESSMENT FEE **(Line 28 Less Line 29)**		$ 5,435.78	
32. Penalty for Late Payment			
33. Interest for Late Payment			
34. **TOTAL AMOUNT DUE**		$ 5,435.78	

*These amounts must agree with Annual Report Schedule F-3
If service was purchased from a regulated utility, please insert its name: _____

AS PROVIDED IN SECTION 350.113, FLORIDA STATUTES, THE MINIMUM ANNUAL FEE IS $25

I, the undersigned owner/officer of the above-named vendor, have read the foregoing and declare that to the best of my knowledge and belief the above information is a true and correct statement. I am aware that pursuant to Section 837.06, Florida Statutes, whoever knowingly makes a false statement in writing with the intent to mislead a public servant in the performance of his official duty shall be guilty of a misdemeanor of the second degree.

(Signature of System Official)

Secretary-Treasurer
(Title)

9/18/13
(Date)

Jean Trinder
(Please Print Name)

Telephone Number (386-236-4120 Fax Number (386-763-7820

F.E.I. No. 59-2511975