

State of Florida



ORIGINAL

050314

# Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

## -M-E-M-O-R-A-N-D-U-M-

**DATE:** July 7, 2005

**TO:** Kay B. Flynn, Chief of Records and Hearing Services, Division of the Commission Clerk & Administrative Services

**FROM:** Cheryl A. Johnson, Regulatory Analyst IV, Division of Economic Regulation

**RE:** Application for transfer of facilities operated under Certificate No. 434-W in Highlands County from Sebring Ridge Utilities, Inc. to City of Avon Park Utilities

Please include the attach document in docket file of Docket No. 050314-WU.

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**THE CITY OF AVON PARK**  
**AND**  
**SEBRING RIDGE UTILITES, INC.**  
**AGREEMENT FOR PURCHASE AND SALE**  
**OF**  
**WATER SYSTEM**

THIS AGREEMENT, made and entered into this 26<sup>th</sup> day of JAN, 2004, by and between the City of Avon Park, Florida, a municipal corporation of the State of Florida (hereafter "CITY"), and Sebring Ridge Utilities, Inc. (hereafter "SELLER").

**RECITALS**

The SELLER owns and operates the Water System under the regulation of the Florida Public Service Commission (FPSC), Certificate Number 434W.

1. The SELLER is willing to sell the Water system to the CITY, and the CITY is willing to purchase the water system from the SELLER.
2. The CITY has held a public hearing on the proposed purchase of the SELLER's Water System and, after consideration, at a minimum, of all the factors enumerated in Section 180.301, Florida Statutes, has determined that such purchase is in the public interest. As part of that process, the CITY has examined the SELLER's water system physical assets, regulatory compliance, the existing financial structure, and the long-range needs and goals of the CITY relative to the provision of water service to its present and future customers.
3. The CITY and SELLER are empowered to be bound by the terms and conditions set forth in this Agreement.

ACCORDINGLY, in consideration of the above recitals and benefits to be derived from the mutual observation of the covenants contained herein, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged by the CITY and SELLER, the CITY and SELLER agree as follows:

**SECTION 1. RECITALS.** The above recitals are true and correct, and form a material part of this Agreement.

**SECTION 2. DEFINITIONS.** The CITY and SELLER agree that in construing this Agreement, the following words, phrases, and terms shall have the following meanings unless the context requires otherwise:

- 2.1 "Accounts Receivable" is those billed amounts which customers have not paid as of the Closing Date.

- 2.2. "Additional Stock" shall mean all consumables; spare parts and other non-fixed assets.
- 2.3. "Closing Date" or "closing" shall mean the date as set forth herein on which the purchase and sale of the Purchased Assets is finalized and title to all such Purchased Assets is transferred from SELLER to CITY, as provided in Section 15.3 of this Agreement.
- 2.4. "Commitment" shall mean the title commitment to be obtained by CITY with respect to the Real Property purchased by CITY as provided in Section 6 of this Agreement.
- 2.5. "Easements" means those rights, privileges, easements, licenses, prescriptive rights, rights-of-way, and rights to use public and private roads, highways, streets, and other areas owned and/or used by SELLER in connection with the construction, reconstruction, installation, maintenance and operation of the utility system which are to be purchased by CITY as part of the Purchased Assets.
- 2.6. "Latent Defects" means hidden, not apparent, or unobserved defect due to faulty material, manufacturing, construction, environmental pollution or other reason that existed on or prior to the Closing Date.
- 2.7. "Open Contracts" means any contract for goods or services executed by SELLER and any third party, which continues in force and effect after closing.
- 2.8. "Permitted Exceptions," means those permitted exceptions to or conditions upon title to the Real Property and Easements sold to the CITY, which are listed.
- 2.9. "Purchased Assets" means all that real, personal and intangible property which forms the Water System as further delineated in Sections 3 and 4 of this Agreement which are to be sold by SELLER to CITY pursuant to this Agreement.
- 2.10. "Real Property" means the real property described in Exhibit "A" to this Agreement, which will be part of the Purchased Assets being sold by SELLER to CITY pursuant to this Agreement.
- 2.11. "Unbilled Revenue" means the revenue due SELLER for that period of time where service is provided from the latest billed date to the Closing Date. Unbilled revenue is calculated by a proration of the number of days of each customer's first billing period following the Closing Date.
- 2.12. "Water System" means the entire water production, storage, treatment, transmission and distribution system (including records, rights, permits and licenses, and consumable items) currently owned and utilized by the

SELLER in the Sebring Ridge service area, in its water service and which forms part of the basis of the Purchased Assets.

### **SECTION 3. PURCHASE AND SALE OF WATER SYSTEM ASSETS.**

The SELLER, pursuant to the circumstances noted in the Recitals above, agrees to sell and the CITY agrees to buy the Water System, consisting of the real, personal and mixed property used or held for use in connection with the Water System, hereafter referred to as the "Purchased Assets". The Purchased Assets shall not include the Excluded Assets described in Subsection 4.8 below.

**SECTION 4. PURCHASED ASSETS.** On the Closing Date, SELLER shall sell, assign, transfer, convey and deliver to CITY, and CITY shall purchase, accept and pay for all of the right, title and interest, in and to the following property and assets:

4.1 **Real Property.** The Real Property and interests in Real Property, owned by the SELLER, as described in Exhibit "A" hereof, whereupon water production, storage, treatment, transmission, and distribution facilities and other water service facilities are located.

4.2 **Easements and Other Rights.** All rights, privileges, easements, licenses, prescriptive rights, rights-of-ways, and rights to use public and private roads, highways, streets, and other areas owned and/or used by the SELLER in connection with the construction, reconstruction, installation, maintenance and operation of the Water System and the Purchased Assets (collectively referred to as the "Easements"). The CITY acknowledges that there are a number, not to exceed four (4), of the SELLER'S 1 and 2 inch water lines that do not have easements associated with them. **The CITY also acknowledges that there is approximately 150 feet of six-inch water line that is not associated with an easement. The CITY agrees that the aforementioned conditions will not be the SELLER'S responsibility at the time of closing.**

4.3 **Plant and Other Facilities.** The following assets owned by the SELLER and used or held for use in connection with the Utility System, as more specifically described in Exhibit "D" hereof, including all water production, treatment plant, storage, treatment, transmission, distribution, pumping, and other water facilities of every kind and description whatsoever including without limitation, all trade fixtures, leasehold improvements, pumps, generators, controls, transmission pipes or facilities, valves, meters, service connections, and all other water service connections, and all other water physical facilities and property installations in use in connection with the operation of the Water System by the SELLER.

4.4 **Equipment.** Inventory of all equipment, vehicles, tools, parts, laboratory equipment, office equipment and other personal property owned by the SELLER and/or utilized by the SELLER exclusively in connection with the operation of the Water System.

4.5 **Customer Records and Supplier Lists; Plans and Specifications.** All current customer records and supplier lists, as-built surveys and water plans, plats, engineering and other drawings, designs, blueprints, plans and specifications, any and all reproducible documents, mylars, sepias, electronic files, and other original documents

used or held for use with the Water System, accounting and customer records and all other information and business records in the possession of the SELLER that relate to the operation of the Water System. The SELLER may make copies of its books, plans and records, at its expense, before transferring the original or copies of the books, plans and records to the CITY. These documents shall include any such documents related to work-in progress, if any,

4.6 Permits, Licenses, and Approvals, Leases and Other rights. Subject to all necessary regulatory approvals and to all conditions, limitations or restrictions contained therein, all existing original certificates, permits and other governmental authorizations and approvals, leases, or other rights of any kind in the possession of SELLER necessary to operate and maintain the Utility System in accordance with all governmental requirements. The CITY agrees to execute necessary forms required by governmental agencies to transfer and to assume SELLER's future obligations under said permits and approvals. These certificates, permits, and approvals shall include any such certificates, permits, and approvals related to work-in-progress, if any.

4.7 Service Area/Customers. The SELLER shall transfer all rights for service to the CITY for the Water System and inclusive of all customers.

4.8 Excluded Assets. The following assets of SELLER regarding the Water System shall not be included in the assets conveyed to CITY as part of the Purchased Assets.

- a. SELLER's cash and SELLER's bank account;
- b. SELLER's accounts receivable;
- c. SELLER's unbilled revenue;
- d. Federal, State or Local Tax or other deposits (excluding customer deposits) maintained by SELLER with any governmental authority or utility for SELLER's use and benefit;
- e. SELLER's prepaid expenses.

4.9 Construction Work-in-Progress. The construction work-in-progress and Other Open contracts sold by the SELLER and purchased by CITY.

## SECTION 5. PURCHASE PRICE AND PAYMENT.

5.1 Cash Considerations. The CITY agrees to pay to SELLER on the Closing Date, and the SELLER agrees to accept for the Water System the amount of \$1.8 million to be paid in the following manner: \$500,000.00 down at the time of closing and the balance plus 4 % APR to be paid in five equal installments on the anniversary of the date of the closing beginning in the year 2006.

5.2 Other Considerations. The City agrees that the SELLER or the SELLER'S designee may connect 20 single-family residential units to the Water System at no cost to the SELLER. The CITY agrees to issue an instrument to the SELLER pledging the revenues of the Water and Sewer Fund as security for the amount self-financed by the CITY. The CITY agrees to allow the SELLER to have the used

**parts from the gaseous chlorine system when and if the CITY converts to a liquid chlorine system.**

**SECTION 6. TITLE EVIDENCE.** The CITY Attorney shall issue a title commitment and policy for an Owner's ALTA Form B Marketability Policy in favor of the SELLER in the amount of the highest insurable value as permitted by the title insurance company, licensed in Florida as selected by the CITY in its sole discretion.

As to the Easements being purchased, the CITY shall be permitted to examine the title to each Easement held by the SELLER. Upon completion of the title examinations of the Easements by the CITY, the CITY and SELLER agree to review the marketability of title of each title examined and if said title is marketable, the SELLER agrees to transfer to the CITY said Easement with full warranties. In the event title to said Easement, is not marketable, within fifteen (15) days of being notified of the condition of title to the said Easements, the CITY shall notify the SELLER in writing, specifying the defects to title. Thereupon, the SELLER shall have thirty (30) days to remove the defect from said title and produce marketable title. If the SELLER is unable to produce marketable title within thirty (30) days, then the CITY shall have the right to accept title "as is" or the CITY may terminate this Agreement without liability by either party to the other. The CITY is hereby placed on notice that the SELLER is generally unaware of the condition of title to the Easements received by the SELLER through the years. In the event, the SELLER is unable to cure the defects in the title to the Easement, then, the SELLER shall specially warrant title to said Easements representing that the SELLER has committed no act that would result in the placement of a mortgage, lien, claim or other encumbrance of any type or nature on said Easements. In the event the CITY chooses not to perform a title examination on an particular Easement, or it cannot be determined if the SELLER currently has title to said Easement in its name, then the SELLER's Easement rights shall be transferred to the CITY without any warranty of title.

As to the Real Property, the CITY shall have fifteen (15) days from receipt of the Title Commitment within which to examine same. If the CITY finds title, as shown on the Commitment, to be defective (i.e., matters which render title unmarketable in accordance with the title standards adopted by the Florida Bar and are not Permitted Exceptions), the CITY shall within fifteen (15) days notify the SELLER in writing specifying the defect(s), provided that if the CITY fails to give the SELLER written notice of defect(s), the defects shown in the Commitment shall, anything in this Agreement notwithstanding, be deemed to be waived as title objections to closing this transaction and the SELLER shall be under no obligation whatsoever to take any corrective action with respect to same nor to warrant title to same in its statutory warrant deed of conveyance. If the CITY has given the SELLER timely written notice of defect(s) and the defect(s) render the title other than as required by the Agreement, the SELLER shall use its reasonable efforts to cause such defects to be cured by the Closing Date. In the event that defects are timely raised and the SELLER, after exercising all reasonable efforts, cannot clear same prior to the closing Date, then, in that event, the CITY shall have the right to purchase the Real Property in its then existing condition of title, or to rescind and terminate this Agreement without liability by either party to the other. Notice of such election shall be given by the CITY to the SELLER, in writing, as contemplated in this Agreement, within the time herein prescribed.

**SECTION 7. REPRESENTATIONS AND WARRANTIES OF SELLER.** The SELLER represents and warrants to CITY that:

7.1 Organization, Standing and Power. The SELLER has all requisite power and authority to own, lease and convey the assets and real property that comprise the Water System, and to conduct its businesses related thereto as it is currently being conducted.

7.2 Authority For Agreement. The SELLER has the power and authority to execute and deliver this Agreement and to carry out its obligations hereunder. This Agreement has been duly authorized by all action required to be taken by the SELLER, has been duly executed and delivered by the SELLER, and constitutes a valid and binding obligation of the SELLER, enforceable in accordance with its terms.

7.3 Good and Marketable Title. Subject to the Permitted Exceptions, the SELLER has good and marketable title to the Purchased Assets with the exception of the Easements and other rights as set forth in Sections 4.2 and 6.

7.4 Leases. None of the Purchased Assets are subject to any interest of any lessor or lessee.

7.5 No Governmental Violations. The SELLER is not aware and has not been notified of the existence of any violations of any governmental rules, regulations, permitting conditions or other governmental requirements applicable to the ownership, maintenance or operation of the Water System.

7.6 No Record Violations. The SELLER is not aware and has not been notified of any restrictions or conditions of record, which would adversely affect the use of the Water System on the Real Property or Easements.

7.7 Absence of Changes. After the date of the execution of this Agreement, the SELLER shall not:

(1) make any changes in the condition of properties, assets, liabilities, business or operations other than changes in the ordinary course of business which are not, either in any case or in the aggregate, materially adverse to the operation of the Water System.

(2) dispose or create debt concerning any of the Water System's assets or properties of material value (in excess of \$5,000) except in the furtherance of this Agreement, except in the ordinary course of business and except with the CITY's consent, which shall not be unreasonably withheld, delayed or conditioned.

(3) subject to available administrative remedies pursuant to Chapter

120, Florida Statutes, or any administrative or judicial procedures or proceedings applicable to particular permits, intentionally fail to comply with all Utility System's permit requirements; and

(4) fail to seek or obtain any necessary permit extensions or renewals so that said permits are valid, extended or seeking extension as of the Closing Date.

7.8 Disclosure. 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. Should the SELLER become aware that any of the representations or warranties of CITY provided for herein are, or may reasonably be, materially untrue or incorrect, SELLER will promptly advise the CITY of same, in writing, specifying in reasonable detail the reasons why the SELLER believed such representations or warranties of CITY are, or may reasonably be, untrue or incorrect.

7.9 Survival of Covenants. SELLER agrees that its representations and warranties set forth herein are true and correct as of the date of the execution hereof, shall be true and correct at the time of the Closing Date, and shall survive the Closing Date.

7.10 Necessary Governmental Permits and Approvals. As of the Closing Date, the SELLER warrants that it shall transfer to the CITY all necessary governmental permits and approvals such that the CITY can operate the water system at their respective permitted volume capacities.

7.11 No Violation by Virtue of Execution. The execution, delivery and performance of this Agreement will not violate any provision of law, order of any court or agency of government, the Articles of Incorporation or any by-laws of the SELLER, or any indenture, agreement, or other instrument to which the SELLER is a party, or by which it is bound.

7.12 Location of Plants. The water plans and wells used in the operation of the Water System are located on the Real Property and Easements, and the use of such water plants, well on the Real Property does not violate any zoning certifications, special exceptions or variances in a manner which would prohibit or materially interfere with the operation and maintenance of such water plants.

7.13 Assignment of Certain Agreements. The SELLER agrees that it shall obtain all necessary assignments, consents, and approvals in order to assign the agreements to the CITY.

7.14 No Construction. There is no construction work in progress on the Real Property.

7.15 Information and Documents Provided. SELLER has provided all documents and information requested in furtherance of this Agreement by CITY in relation to the Water System and Purchased Assets which are available or can be reasonably available to SELLER.

7.16 Lead and Copper Rule Compliance. The SELLER agrees to obtain an approved compliance plan with the appropriate governmental agencies for compliance with State and Federal rules regarding levels of lead and copper in the water system sampling and testing pursuant to the plan, and shall have submitted to the appropriate governmental agencies the analytical results of the first series of sampling and testing on the appropriate forms prior to January 24, 2005.

7.17 Sewer Utility: Seller grants to City right of first refusal to purchase Seller's sewer utility if Seller decides to sell said sewer utility. City agrees to terminate water service if Seller notifies City that a customer is two (2) months delinquent in payment of the sewer bill. **The CITY agrees to not compete with the SELLER in the providing of wastewater collection and treatment services.**

**SECTION 8. CONDUCT PENDING CLOSING.** The SELLER covenants that pending closing:

8.1 Business Conduct. Except as otherwise consented to in writing by CITY, whose consent shall not be unreasonably withheld, delayed or conditions, for the period beginning on the date of execution of this Agreement and ending on the Closing Date, SELLER shall:

- (1) operate the Water System in, and only in, the usual, regular and ordinary course and nevertheless comply with all applicable governmental requirements and law;
- (2) maintain all of the Water System's material structures, equipment, permits, Real Property, Easement and other tangible personal property in good repair, order and condition, except for depletion, depreciation, ordinary wear and tear and damage by unavoidable casualty;
- (3) keep in full force and effect insurance comparable in amount and scope of coverage to insurance now carried by it for the Water System;
- (4) perform in all material respects all of its obligations under agreements, contracts and instruments relating to or affecting the Utility System's properties, assets and operation;
- (5) subject to available administrative remedies pursuant to Chapter 120, Florida Statutes, or any administrative judicial procedures or proceedings applicable to particular permits, comply in all material respect with all statutes, laws, ordinances, rules and regulations applicable to it and to the operation of the Water System;
- (6) promptly advise the CITY, in writing, of any material change which adversely affects the operation of the Water System;
- (7) not enter into any transaction, including without limitation, the purchase with an associated debt, sale or exchange or property the value of which

exceeds \$5,000 (as defined in 7.9.(2), which relates to the Water System, except in furtherance of this Agreement with the CITY.

(8) subject to available administrative remedies pursuant to Chapter 120, Florida Statutes, or any administrative or judicial procedures or proceedings applicable to particular permits, comply with all Water System permit requirements and obtain or seek all necessary permit extensions or renewals with no additional operational or capital obligations such that said permits or applications are valid as of the Closing Date.

8.2 Risk of Loss. The SELLER shall bear the risk of loss, damage or destruction of the Purchased Assets by fire or other casualty prior to and including the Closing Date. If any portion of the Purchased Assets is damaged by fire, act of God or other casualty before the Closing Date, the CITY shall have the option of (1) taking the Purchase Assts as is, without reduction in price, together with the SELLER's assignment to the CITY of all rights under its insurance policies and all of the insurance proceeds, if any; or (2) taking the Purchased Assets, as is, with a reduction in price, mutually agreed to by SELLER and CITY; or (3) terminating this Agreement without liability by either party to the other.

8.3 No Transfers or Encumbrances. From and after the date of the execution of this Agreement, SELLER will not, without the prior written consent of the CITY, which shall not be unreasonably withheld, dispose of, hypothecate, or encumber any of the Purchased Assets, with the exception of any transactions occurring in the ordinary course of SELLER's business.

8.4 Access to Records. The SELLER will at all times cooperate by providing reasonable access, upon prior written notice (not less than forty-eight (48) hours in advance), to their records and facilities applicable to the Water System for inspection to assist in acquainting the CITY's operating and administrative personnel in the operation of the Water System; provided, however, that no such inspection shall materially interfere with the operation of the Water System or the day-to day activities of the SELLER's personnel.

8.5 Performance of Closing Conditions. The SELLER shall perform all of the conditions to closing, which should be performed by the SELLER prior to the Closing Date as provided herein.

8.6 Insurance. Prior to closing, the SELLER shall maintain adequate fire and extended coverage insurance to cover the cost of any repairs to the Purchased Assets that may be required by casualty damage.

8.7 Examination and Inspection. The SELLER will permit reasonable examination by the CITY's authorized representatives of all existing contractual obligations, physical systems, assets, real estate, rights-of-way, easements and inventories which are utilized by the SELLER in connection with the Water System. No such examination by the CITY's authorized representatives shall interfere with the SELLER's operations of the Water System or the day-to-day operations of the SELLER's personnel. The SELLER shall make these assets and records available for examination by the

CITY's authorized representatives at reasonable times and upon request from the CITY. Such facilities will be properly maintained by the SELLER within the custom and usage of the water industry in Florida until the Closing Date.

**SECTION 9. REPRESENTATIONS AND WARRANTIES OF CITY.** The CITY represents and warrants to the SELLER, as follows:

9.1 Organization, Standing and Power of CITY. The CITY is a municipal corporation duly chartered and validly existing under the laws of the State of Florida and has all requisite municipal power and authority to enter into this Agreement, to own and lease real and personal property, and to carry out and perform the terms and provisions of the Agreement.

9.2 Disclosure. No representation or warranty made by the CITY in this Agreement contains or will contain any untrue statement of material facts or omits or will omit to state any material fact required to make the statements herein contained not misleading. Should the CITY become aware that any of the representations or warranties of SELLER provided for herein are, or may reasonably be, materially untrue or incorrect, CITY will promptly advise the SELLER of same, in writing, specifying in reasonable detail the reasons why the CITY believes such representations or warranties of SELLER are, or may reasonable be, untrue or incorrect.

9.3 Litigation. There are no actions, suits, or proceedings at law or in equity, pending against the CITY before any Federal, State, municipal or other court, administrative or governmental agency or instrumentality, domestic or foreign, which affect the CITY's ability to enter into and perform this Agreement. The CITY shall have the 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 its ability to perform its obligations under the Agreement.

9.4 Public Interest. The CITY has fulfilled and complied with the provisions of Section 180.301, Florida Statutes (2004), relative to the purchase and sale of SELLER's water systems prior to the CITY's execution of this Agreement.

9.5 Performance of Closing Conditions. The CITY shall perform all of the conditions to closing, which should be performed by the CITY prior to the Closing Date as provided herein.

9.6 Survival of Covenants. The CITY agrees that its representation and warranties set forth herein are true and correct as of the date of the execution hereof, shall be true and correct at the time of the Closing Date, and shall survive the Closing Date.

9.7 Delivery of Resolution. The CITY will deliver to SELLER a certified copy of a resolution of the CITY COUNCIL approving the CITY's execution and performance of this Agreement within five (5) business days of CITY's execution hereof.

9.8 No Conflicts. The execution, delivery and performance of this Agreement will not violate any provision of law, order of any court or agency of government, the charter of the CITY, or any administrative regulation or decree, or any provision of the

Constitution or the laws of the State of Florida relating to the CITY or its affairs or any ordinance, resolution, agreement, indenture, lease, or other instrument to which the CITY is a party, subject to or by which it is bound.

9.9 Police Power. Subject to the police power of the CITY and its ability to charge its prevailing capital charges, the CITY shall after closing fulfill the SELLER's obligations to furnish water services as of the date of Closing. The CITY shall serve all existing customers who comply with ordinances and resolutions of the CITY. IT is the CITY's intent to serve those potential customers not connected to the system located in the area described by Exhibit "A".

9.10 CITY Actions. The CITY shall take no action inconsistent with its express obligations under the terms and conditions of this Agreement. The CITY further covenants that all its express obligations under the terms and conditions of this Agreement shall survive the Closing Date.

9.11 Inspections. All inspections of the Water System by the CITY or its representatives performed pursuant to this Agreement shall not materially interfere with the operation of the Utility System or the day-to-day activities of the SELLER's personnel.

9.12 Preservation of Service Area. In the event the CITY becomes aware that the service area (as described by Exhibit "A") is threatened or infringed upon, then, the CITY shall give the SELLER notice of said threat or infringement. Whether or not notified by the CITY, the SELLER shall be permitted to take any action it deems necessary to protect its rights and interest as set forth in Section 5.2, above. However, the SELLER shall not be permitted to pursue any action in a manner using the CITY's name or capacity for the SELLER's use and benefit.

**SECTION 10. ADDITIONAL CONDUCT PENDING CLOSING.** The CITY and the SELLER covenant with each other that pending the closing on this transaction, neither shall obstruct, hinder or interfere in the operation of the Water System by the SELLER or with the processing and consideration by governmental agencies of any applications or petitions filed by the SELLER or CITY that are related to the Utility System. SELLER shall execute all necessary documents to assist in securing necessary governmental approval(s) for the renewal, expanded use, and transfer of said permit, and shall use its best efforts to assist the CITY in obtaining all such necessary governmental approvals.

**SECTION 11. ADJUSTMENTS AND PRORATIONS: CLOSING COSTS.**  
At the time of closing, the parties covenant and agree that the following adjustments shall be made:

11.1 Latent Defect Escrow Account. Both unbilled revenue and accounts receivable are owned by the SELLER, yet shall be deposited into a Latent Defect Escrow Account. Said account shall be maintained by the CITY in an interest bearing account, drawing interest at prevailing and available rates of interest for a period of two (2) years from the date of Closing. During such term the CITY upon discovery of any Latent Defect may draw upon such account to correct and cure the Latent Defect. The CITY

shall provide written notice of the discovery and repair of any such Latent Defect. While the SELLER may object or contest a determination by the CITY as to the existence of or cost to repair or cure any Latent Defect, the CITY is entitled to draw upon the account, at its sole discretion, to repair or cure any Latent Defect it determines to be a threat to the public welfare, health and safety of its citizens. At the end of the two (2) year term, the CITY shall transfer all amounts remaining in the account, plus interest to the SELLER.

The SELLER shall only be liable for the costs to cure the Latent Defects to the extent of the Latent Defects Escrow Account. Costs to cure Latent Defects in excess of the amount contained in the Latent Defect Escrow Account shall be borne solely by the CITY.

As to Easements or the failure of an underground facility to be located in an Easement, the CITY shall provide written notice to the SELLER of the discovery of this type of Latent Defect. The SELLER shall have the right to resolve or cure any defect based upon an Easement or failure of any underground facility to be located within an Easement within one hundred twenty days (120) prior to the CITY taking any remedial action unless the CITY determines that such action must be taken immediately to avoid a threat to the public health safety and welfare of its citizens or the general public. Any remedial action required by the CITY for curing all Latent Defects resulting from an Easement or an underground facility failing to be located within an Easement is limited to a total reimbursement from the Latent Defects Escrow Account in an amount not exceeding ten thousand dollars (\$10,000) total for all occurrences. However, such limitation on reimbursement shall not apply to Real Property and Easement titles fully or specially warranted by the SELLER.

11.2 Invoices Prior to Closing. The SELLER shall request all of its suppliers and vendors to submit final invoices for services, materials, and supplies, including electricity for the period up to and including the Closing Date. The SELLER shall be responsible for, and shall provide to the CITY, upon request, evidence of the payment of all such invoices.

11.3 Time of Proration. All adjustments and prorations shall be calculated as of 11:59 p.m. of the Closing Date.

11.4 Corrective Instruments. SELLER shall pay all costs of recording any releases, satisfactions or corrective instruments, if any.

11.5 Special Assessments. SELLER will pay certified, confirmed or ratified special assessments or municipal liens prorated as of the date of Closing.

11.6 Taxes or Regulatory Assessments. SELLER shall pay any taxes on gross receipts or regulatory assessment fees incurred by SELLER as of the Closing Date.

11.7 Utility Bills. The bills for electricity and other utility services for the month in which this Closing shall take place shall be prorated between the parties at Closing and arrangements made for the appropriate utilities to bill CITY for services rendered subsequent to the Closing.

11.8 Other Prior Bills. SELLER shall pay all bills for other services, materials and supplies rendered in connection with the operation of the Utility System prior to the Closing Date.

11.9 Documentary Stamps. The SELLER shall pay all documentary stamps, on the deeds of conveyance of Real Property and Easements included in the Purchased Assets.

11.10 Title Insurance. The CITY shall pay the Title Insurance and all related costs.

**SECTION 12. INDEMNITIES.** Except as otherwise provided for in this Agreement, the SELLER shall indemnify and hold the CITY, its representative agents and employees harmless from and against any and all claims, liability, demands, damages, surcharges, refunds, expenses, fees, fines, penalties, suits, proceedings, actions and fees, including damage to property or property rights that may arise from or are related to third party claims arising from or related to acts, errors, or omissions of the SELLER, its agents, employees, servants, licensees, invitees, or contractors or by any person under the control or direction of the SELLER arising out of (1) its operation, maintenance, or management of the Water System up to and including the Closing Date, (2) any other local, State, or Federal enforcement case that may be later filed after the Closing Date related to alleged or actual violations of local, State, or Federal laws, rules, ordinances, policies, or requirements that occurred prior to or on the Closing Date. IN addition, SELLER shall indemnify and hold the CITY, its representative's agents, and employees harmless from environmental pollution on the Closing Date located within the property shown on Exhibit "H".

To the extent permitted by law without waiving sovereign immunity and except as otherwise provided for in this Agreement and subject to Section 768.28, F.S. the CITY shall indemnify and hold the SELLER, its representative agents and employees harmless from and against any and all third party claims, liability, demands, damages, surcharges, refunds, expenses, fees, fines, penalties, suits, proceedings, actions and fees, including damage to property or property rights that may arise from or which are related to the acts, errors, or omissions of the CITY, its agents, employees, servants, licensees, invitees, or contractors or by any person under the control or direction of the CITY arising out of (1) its operation, maintenance, or management of the Utility System subsequent to the Closing Date, (2) any other local, State, or Federal enforcement case that may be later filed after the Closing Date related to alleged or actual violations of local, State, or Federal laws, rules, ordinances, policies, or requirements that occurred subsequent to the Closing Date, related to the Utility Systems.

### **SECTION 13. CLOSING.**

13.1 Location of Closing. The place of closing shall be in Sebring, Florida at the law offices of Michael M. Disler located at 329 S. Commerce Avenue, and such closing shall occur on or before January 25, 2005, (the "Closing Date"). Notwithstanding anything to the contrary, the Closing of this transaction shall take place upon the delivery of the Purchase Price to the SELLER in the manner and on the date provided for in this

Agreement. The parties may mutually agree to alter the Closing Date upon written addendum to this Agreement.

**SECTION 14. CLOSING DOCUMENTS AND PROCEDURES.**

14.1 Deliveries from SELLER. The following documents shall be delivered by the SELLER to the CITY for a reasonable opportunity to review and shall be executed on the Closing Date.

(1) Warranty deeds to all of the Real Property owned by the SELLER conveying to the CITY all of the SELLER's right, title and interest in all such property and warranting that such Real Property is free and clear of all liens, claims and encumbrances;

(2) Instruments of conveyance, in appropriate recordable form, of all the Easements conveying to the CITY all of its right, title and interest in all such Easements, together with all utility improvements thereto;

(3) General assignment to and assumption by the CITY of all other interests in the Property, together with a general assignment of all Contracts, Agreements, permits and approvals as provided for in the manner specified in the Agreement;

(4) Bills of sale or other documents of assignment and transfer, with full warranties of title as specified in this Agreement, to all Water System assets;

(5) Copies of all business records sold to the CITY hereby (originals thereof to be delivered at Closing);

(6) Copies of all permits, governmental authorizations and approvals, together with applications for transfer approvals from any and all agencies that have issued said permits, authorizations, and approvals (originals thereof to be delivered at Closing);

(7) Such other affidavits and acknowledgements as the title company shall reasonable request in order to cause the title company to issue the policy evidencing marketable title as contemplated herein;

(8) A corporate officer's certificate confirming that the SELLER's warranties hereunder are true and correct as of the Closing Date;

(9) Evidence of insurance as contemplated by Subsection 8.1(3) hereof; and

(10) Such other instruments and documents, in form approved by the CITY's counsel as may be reasonably required in order to transfer ownership and possession of the Purchased Assets to the CITY; provided that none of such documents shall result in any additional liability on the part of SELLER not otherwise provided for in this Agreement.

14.2 Deliveries from the CITY. On the Closing Date, the CITY shall pay the Purchase Price by delivering Federal funds to the SELLER in the amount due SELLER as provided in Section 5 of this Agreement. The CITY shall also deliver at the Closing, the executed form of an assumption of the agreements set forth in Section 21 of this Agreement, an assumption of the leases, permits, agreements, approvals and other interest in the Purchased Assets being assigned by the SELLER, as provided by the SELLER pursuant to Subsection 16 hereof, and a certified copy of a resolution of the CITY approving this transaction, if not previously delivered to SELLER. Said documents shall be executed on the Closing Date. The assignments and assumptions being prepared by the parties may be incorporated into one document at the convenience of the parties. The CITY shall also deliver at Closing: (a) such affidavits and acknowledgements as the title company shall reasonably in order to cause said title company to issue a title insurance policy evidencing a marketable title in CITY; (b) a CITY Officer's Certificate confirming that the warranties of CITY's set forth in this Agreement applicable to the Closing are true and correct as of the Closing; and (c) such other instruments and documents as SELLER's Counsel may reasonably require, in form approved by CITY's Counsel, in order to transfer possession and control of the Purchased Assets to CITY, provided that none of such documents shall result in any additional liability on the part of CITY not otherwise provided for in this Agreement.

**SECTION 15. RESPONSIBILITY FOR PROFESSIONAL FEES AND COSTS.** Each party hereto shall be responsible for its own attorneys' fees, engineering fees, accounting fees and other costs in connection with the preparation and execution of this Agreement, the closing of the transaction contemplated herein and in connection with all judicial and administrative proceedings related to the acquisition of the Water System.

**SECTION 16. OMISSIONS.** The SELLER and the CITY warrant to the other that the transaction contemplated by this Agreement is a direct, private transaction between the SELLER and the CITY without the use of a broker or commissioned agent.

**SECTION 17. NOTICES: PROPER FORM.** Any notices required or allowed to be delivered hereunder shall be in writing and may either by (1) hand delivered, (2) sent by recognized overnight courier (such as Federal Express) or (3) mailed by certificate or registered mail, return receipt requested, in a postage prepaid envelope, and addressed to a party at the address set forth opposite the party's name below, or at such other address as the party shall have specified by written notice to the other party delivered in accordance herewith:

SELLER:                    Sebring Ridge Utilities  
                                  3625 Valerie Blvd  
                                  Sebring, FL 33870

CITY:                        City of Avon Park  
                                  110 E. Main St.  
                                  Avon Park, FL 33825

Notices personally delivered by hand or sent by overnight courier shall be deemed given on the date of delivery and notices mailed in accordance with the foregoing shall be deemed given three (3) days after deposit in the U.S. mail.

**SECTION 19. ENTIRE AGREEMENT.** This instrument constitutes the entire Agreement between the parties and supersedes all previous discussions, understandings, and agreements between the parties relating to the subject matter of this Agreement. This Agreement may not be changed, altered or modified except by an instrument in writing signed by the party against whom enforcement of such change would be sought.

**SECTION 20. AMENDMENT.** Amendments to and waivers to the provisions of the Agreement shall be made by the parties only in writing by formal amendment.

**SECTION 21. APPLICABLE LAW.** This Agreement shall be construed, controlled, and interpreted according to the laws of the State of Florida.

**IN WITNESS WHEREOF,** the parties hereto have executed this Agreement on the date and year first above written.

Signed, sealed and delivered in the presence of:

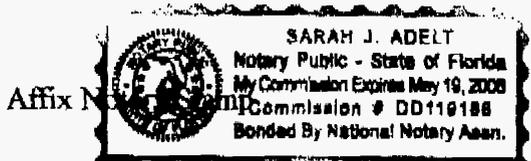
For the City of Avon Park

ATTEST: [Signature]  
BY: C.B. Shirey  
CITY MANAGER

BY: [Signature]  
Thomas A. Macklin  
MAYOR

STATE OF FLORIDA  
COUNTY OF HIGHLANDS

The foregoing instrument was acknowledged before me this 25<sup>th</sup> day of JANUARY, 2005 by THOMAS A. MACKLIN as, MAYOR of the CITY OF AVON PARK and executed the foregoing instrument on behalf of the CITY OF AVON PARK.



[Signature]  
Signature of Notary Public  
SARAH J. ADELTA  
Print Notary Name  
My Commission Expires: 5-19-06  
Commission No: DD119188

Personally known, or  
 Produced Identification  
Type of Identification Produced: \_\_\_\_\_

For the Sebring Ridge Utilities

ATTEST: C.B. Shrey

BY: Christopher Miller

BY: C.B. SHREY

Christopher Miller  
PRESIDENT

STATE OF FLORIDA  
COUNTY OF HIGHLANDS

The foregoing instrument was acknowledged before me this 26 day  
of January, 2005, by Christopher Miller as, President  
of the SEBRING RIDGE UTILITIES, INC. and executed the foregoing instrument on  
behalf of the SEBRING RIDGE UTILITIES, INC.



Kristina M. Sharpe  
Signature of Notary Public

Affix Notary Stamp

Kristina M. Sharpe  
Print Notary Name  
My Commission Expires: \_\_\_\_\_  
Commission No: \_\_\_\_\_

Personally known, or  
 Produced Identification

Type of Identification Produced: Florida Drivers License