

# ORCHID SPRINGS

DEVELOPMENT CORPORATION  
WATER AND SEWER

346 E CENTRAL AVENUE – WINTER HAVEN, FLORIDA 33880  
(863) 324-4445

June 26, 2015

Lee Eng Tan  
Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, FL 32399-0850

Re: Docket No. 140239-WS – Application for staff-assisted rate case in Polk County  
by Orchid Springs Development Corporation

## STAFF DATA REQUEST

Dear Ms. Tan:

In response to Staff Data Request dated June 2, 2015, we offer the following information for consideration.

### 1. List of Vendors for Contractual Services – Other for both water and wastewater:

Cassidy, Michael	Responsible for meter maintenance (monthly readings, meter replacement, etc.) as well as system repairs and preventative maintenance
Choice Networks, Inc.	Computer Operating System support/email
City of Winter Haven	Water plant maintenance and other repairs; lift station maintenance; by contract
Cross, Fernandez & Riley	Federal Tax Return preparation and long term tax planning
Haines City Fire Industrial Systems C&M	Annual Fire Hydrant testing
Prestige Plumbing, Inc.	Conversion of accounting data to Gemini Meter replacement/minor repairs

Randy Dowd Plumbing	Meter replacement/minor repairs
Rhinehart, Adam	Meter reading; misc. labor for repairs
Rhinehart, Nicholas	Meter reading; misc. labor for repairs
RVS Software	Billing software support and updates
Straughn & Turner Sunshine State One Call	Legal Advice  State utility line location
Sunstate Meter & Supply	Water meters
The Cassidy Organization	Management services per 1998 SARC
Tucker Paving	Road washout from storm which caused break in water line.
United Utility Service	Meter reading/minor repairs

2. The fluctuations for each of the requested water O&M accounts can be explained as follows:

- a. Purchased Water: The interconnect with the City of Winter Haven is opened whenever maintenance is required at the water plant for the well pump, the hydropneumatic tank and/or the pump for the sodium hypochloride solution. During 2013 there were more occasions for the interconnect to be opened than in 2014.
- b. Contractual Services – Testing: Three different types of testing are required on less than an annual basis. During 2013 the following tests were done in August/September:

NO2/NO3	1 test @ \$25.00 each	\$ 25.00
THMHAA	2 tests @ \$150.00 each	\$ 300.00
Pb/CuDW	10 tests @ \$20.00 each	\$ 200.00
	Total	\$ 525.00

These tests were not required in 2014 and were in addition to the 2013 Bacti tests.

- c. Contractual Services – Other: A good portion of the increase of \$18,884, to this expense was to the City of Winter Haven (\$8,258) for repairs and maintenance and to Sunstate Meter & Supply (\$2,272 – new water meters) for meters to

replace high use water meters on the system. A one-time expense of \$365 is included for conversion of the accounting system to Gemini. The expense for the Public Service Commission (\$2,000) should be reclassified to account 665. A one-time expense for Tucker Paving in December (\$3,867) was for repairs for a bad storm that caused wash-out that caused damaged near the El Dorado lift station.

- d. Bad Debt Expense: Bad Debt Expense varies from year to year. With the downturn in the economy there were many homes at Orchid Springs that were foreclosed and had past due amounts. The mortgage companies/banks do not pay the bills.
3. The fluctuations for each of the requested wastewater O&M accounts can be explained as follows:
- a. Purchased Wastewater: This amount fluctuates based on the number of people in residence at the time. The City of Winter Haven increases their rates in October each year which also contributes to this increase.
  - b. Contractual Services – Other: The majority of the increase of \$7,346, to this expense was to the City of Winter Haven (\$6,963) for repairs and maintenance. A one-time expense of \$365 is included for conversion of the accounting system to Gemini.
  - c. Bad Debt Expense: Bad Debt Expense varies from year to year. With the downturn in the economy there were many homes at Orchid Springs that were foreclosed and had past due amounts. The mortgage companies/banks do not pay the bills.
4. The Utility is operating from a different office from the prior Rate Case. Total Annual Rent is approved (1998 SARC) at \$6,000.00.

Square footage for the facility is 10,500 square feet. Square footage for the offices used by the Utility and the share of the common areas is calculated at approximately 1,000 square feet. See attached building layout from Polk County Property Appraiser.

The Utility shares space with other related and non-related enterprises. There is no lease agreement.

5. We believe that analysis of the Staff Audit Report, filed on March 20, 2015 (Document No. 01561-15) and the Utility's agreement or disagreement with each of the audit's findings has been made under separate cover.
6. Agreements with City of Winter Haven are attached for the following:
- a. Purchased water
  - b. Purchased wastewater
  - c. Contractual services

7. The 1998 SARC approved expenses for management services provided by The Cassidy Organization Inc., to Orchid Springs to include a full-time Secretary, President, Office Manager, and part-time Accountant.
  - a. Hours – compensated and non-compensated; Relevant duties and responsibilities of these positions for the past three years
    - i. Secretary – 40 hours per week; \$500/month compensated
    - ii. President –
      1. Day-to-day activities
      2. On-site review of the systems to maintain efficient level of services
      3. Make decisions on operating and capital expenditures
      4. Approve all payables
      5. Review finances
      6. Handle all regulatory matters (including liaisons with Department of Environmental Protection, Southwest Florida Water Management District, Public Service Commission, Polk County Health Department)
    - iii. Manager – 40 hours per week
      1. Coordinate, plan and conduct weekly mowing of all areas where needed
      2. Spraying chemicals
      3. Coordinate labor for various duties such as repairs
      4. Coordinate monthly readings of all water meters
    - iv. Part-time Accountant –
  - b. These duties were performed by the above listed personnel but were not fully compensated.
  - c. How are these services not duplicative of contractual services now provided by the City of Winter Haven and Beckert Price & Rowse
    - i. The City of Winter Haven performs daily/monthly tasks (including but not limited to testing, daily well maintenance, lift station maintenance); answers emergency and after hours phone calls from customers; is responsible for making repairs that require equipment and manpower the Utility does not have, as needed.
    - ii. Cross, Fernandez & Riley (f/k/a Beckert, Price & Rowse) prepares the annual tax return for the Utility and advises on long term tax planning.
    - iii. The Utility handles the day to day operation of the Utility including, but not limited to, customer service, billing, late notices, customer account management, account deposits, accounts payable, accounts receivable.

8. The Utility estimated an appropriate allowance for management services for the current test year (2014) based on the significant review and discussion of this allowance in the last rate case (1998). Contractual expenses for the operation of the WWTF were included in Contractual Services – Other and the switch to purchased wastewater treatment had no effect on management services. In fact, the agreement with the City of Winter Haven added an additional layer of management oversight that did not exist. The role and responsibilities captured in the management services allowance pertain to the following:
  - a. research, suggest, and establish new conservation methods for the utility,
  - b. provide financial and budgetary insight,
  - c. oversight of the enforcement and compliance with all policies and regulations,
  - d. customer service and billing, and
  - e. oversight of the daily management of operations and proper maintenance of utility.
  
9. As a result of meetings between the Utility and Department of Environmental Protection, along with the willingness of the City of Winter Haven to accept wastewater from Orchid Springs, it was mutually agreed by all parties that the best solution to resolve the consent order was for wastewater from Orchid Springs to be sent to the City of Winter Haven.
  
10.
  - a. The Utility performs the day-to-day operation of the Utility including, but not limited to, customer service, billing, late notices, customer account management, account deposits, accounts payable, accounts receivable.
  - b. The Utility performs services and repairs not done by the City of Winter Haven through in-house resources. These items are not billed to the Utility through The Cassidy Organization, Inc.

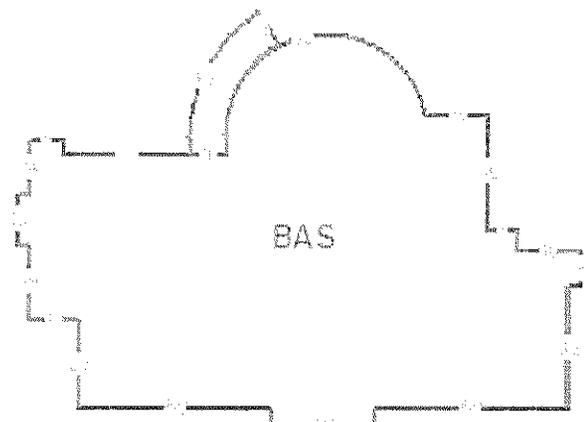
Sincerely,



Carol C. Rhinehart

CCR:S

Attachments

<b>Parcel ID: 262826605500013040</b> Owner: CENTRAL AVENUE LIBRARY LLC Mailing Address 346 E CENTRAL AVE WINTER HAVEN FL 33880-3046 Site Address 346 E CENTRAL AVE WINTER HAVEN FL 33880		<b>Value Information</b> Land Value: \$235,638.00 Building Value: \$344,500.00 Misc. Item(s) Value: \$4,145.00 Total Just Value (Market): \$584,283.00		<b>Non Ad-Valorem Assessments</b> Fire: Other:		<b>Sketch</b> 					
<b>Exemption Information</b> Add'l Homestead does not apply to all tax districts Homestead: \$0.00 Add'l. Homestead: \$0.00 Widow/er: \$0.00 Disability: \$0.00 Senior: \$0.00 Veteran: \$0.00 Other: \$0.00		<b>General Property Information</b> Neighborhood # 6666.00 Subdivision # 605500 Subdivision Name EAST COLLEGE ADD PB 1 P DOR Use Code (DOR) 1700 DOR Description Office Building 1 Story Short Legal: EAST COLLEGE ADD PB 1 PG 28 BLK 13 LOTS 4 THRU 8 & BEG NE COR SD LOT 4 N TO SR542 (CENTRAL AVE) W ALONG S SIDE SR542 TO PT WHERE EXT OF W LINE OF									
<b>Table Value (Tax Dist: 92410)</b>											
District Description	Tax Rate	Assessed Value	Assessed Taxes	Exemption	Tax Savings	Taxable Value	Taxes				
BOARD OF COUNTY COMMISSIONERS	6.866500	\$584,283.00	\$4,011.98	\$0.00	\$0.00	\$584,283.00	\$4,011.98				
POLK COUNTY SCHOOL BOARD - STATE	4.960000	\$584,283.00	\$2,898.04	\$0.00	\$0.00	\$584,283.00	\$2,898.04				
POLK COUNTY SCHOOL BOARD - LOCAL	2.248000	\$584,283.00	\$1,313.47	\$0.00	\$0.00	\$584,283.00	\$1,313.47				
CITY OF WINTER HAVEN	5.790000	\$584,283.00	\$3,383.00	\$0.00	\$0.00	\$584,283.00	\$3,383.00				
LAKE REGION LAKES MGMT DIST	0.492400	\$584,283.00	\$287.70	\$0.00	\$0.00	\$584,283.00	\$287.70				
SOUTHWEST FLA WATER MGMT DIST	0.365800	\$584,283.00	\$213.73	\$0.00	\$0.00	\$584,283.00	\$213.73				
<b>Total</b>	<b>20.72270</b>		<b>\$12,107.92</b>		<b>\$0.00</b>		<b>\$12,107.92</b>				
<b>Commercial Building Information</b> Year Built: 1976 Eff Yr Built: 1980 Description: OFFICE BUILDING Units: 1 Total Under Roof: 10,397 Stories: Bedrooms: Full Baths: Half Baths: Fireplaces: Living Area (SFLA):											
<b>Sales Information</b>											
Grantee Name	Vac/Imp	Sale Date	Sale Amount	OR Book	OR Page	Deed Type	Multi-Parcel Sale				
1 CENTRAL AVENUE LIBRARY LLC	I	28-Jun-2012	\$600,000.00	08695	00509	W	12				
2 BRANCH BANKING AND TRUST COMPANY	I	27-Dec-2011	\$100.00	08544	01673	CT	12				
3 PEREZ ERNESTO J	I	20-Jul-2004	\$800,000.00	5861	1511	W	02				
<b>Land Information</b>				<b>Miscellaneous Item(s) Information</b>							
Description	Ag/GreenBelt	Land Unit Type	Front	Depth	Units	Description	Yr Blt	Eff Yr Blt	Length	Width	Units
Commercial/Industrial	N	S	0	0	43663	ASPHALT	1976	1977	0	0	5,600
Commercial/Industrial	N	S	0	0	19063	PARKING BUMPER	1976	1977	0	0	8

QUESTION #4

Question 6A

WATER SYSTEM INTERCONNECTION AGREEMENT

THIS AGREEMENT, entered into on the latest date indicated below, is by and between ORCHID SPRINGS DEVELOPMENT CORPORATION, a Florida corporation ("OSDC"), and the CITY OF WINTER HAVEN, a Florida municipal corporation ("City").

WITNESSETH

WHEREAS, OSDC owns a potable water well and treatment facility (the "Facility"), which is operated under Florida Department of Health PWS ID No. 6531313. The Facility provides potable water to a development known as Orchid Springs, currently with approximately 186 single-family residential units, 301 apartments, and 15 commercial installations connected. The Facility is located at 710 Overlook Dr., Winter Haven, Florida, 22884; and

WHEREAS, on or about May 16, 2008, the parties entered into a Water System Operation, Service and Maintenance Agreement (the "Agreement") wherein the City has agreed to operate, service, and maintain the Facility;

WHEREAS, the City has potable water facilities near the Facility, and the parties desire to connect the Facility to the City's potable water facilities for emergency purposes;

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants herein, and intending to be legally bound, the parties agree as follows:

1. *Interconnection.* The parties agree that the City shall connect the city-owned potable water system to the Facility in accordance with the plan attached hereto as Exhibit "A" (the "Connection"). As part of such connection, the City shall install a valve between the City system and the Facility, which shall remain closed at all times that the Facility is operational.

(a). *Emergency Use.* The purpose of the Connection shall be to provide an emergency backup water source to customers of the Facility in the event the Facility is unable to provide water service for any period of time, in whole or in part. In the event the Facility becomes unable to provide service to the Facility's customers for any period of time, the Connection to the City system shall be opened during such period such that customers of the Facility receive water service from the City system.

(b). *Fees for Usage.* The parties acknowledge that a flow meter will be installed as part of the Connection, and that in the event of any use of potable water from the Connection, the City shall charge OSDC the then-current rates for such usage.

2. *Costs of Connection.* The City and OSDC shall each be responsible for one-half (1/2) of all costs and expenses incurred in the construction and installation of the Connection, other than costs of engineering and permitting. OSDC shall be responsible for all costs of engineering and permitting.

3. *Prior Agreement; Responsibility for Connection.* The parties agree that all terms and conditions of the Agreement remain in full force and effect, and that the obligations of the City shall also extend to the operation and maintenance of the Connection.

4. *Mutual Indemnification.*

4.1 *Indemnification by OSDC.* OSDC shall indemnify, save, and hold harmless the City against all liability, losses, damage, or other expenses, including reasonable attorney's fees, which may be imposed upon, incurred by, or assessed against the City by reason of any negligence on the part of OSDC or its employees, agents, contractors, licensees, or invitees

4.2 *Indemnification by City.* The City shall indemnify, save, and hold harmless OSDC against all liability, losses, damage, or other expenses, including reasonable attorney's fees, which may be imposed upon, incurred by, or assessed or claimed against OSDC by reason of any of the following:

4.2.1 Negligence on the part of the City or its employees, agents, contractors, licensees, or invitees;

4.2.2 Any failure on the part of the City to perform or comply with any requirement of this agreement.

5. *Indemnification.* Notwithstanding any other provision of this agreement, OSDC hereby agrees to indemnify and hold harmless the City for any and all claims that arise from the acts or omissions of OSDC, its employees, or agents during the term of this Agreement, including damages, costs and attorney's fees.

Notwithstanding any other provision of this agreement, the City hereby agrees to indemnify and hold harmless OSDC for any and all claims that arise from the acts or omissions of the City, its employees, or agents during the term of this Agreement, including damages, costs and attorney's fees.

In addition to the foregoing, the parties agree that neither the City nor OSDC shall be liable to the other party for any claims or damages which arise out of any act or failure to act of any customer connected to the Facility, and the City and OSDC expressly agrees not to hold the other party liable for any claim, liability, losses, damage, or other expenses arising out of any act or failure to act of any customer connected to the Facility.

6. *Representations and Warranties of City.* The City covenants and warrants that execution and performance of this Agreement does not violate any provision of the Constitution of the State of Florida, Florida Statutes, the Code of Ordinances of the City of Winter Haven, or any other applicable body of law that would render this Agreement void or voidable by the City. The City further covenants and warrants that all necessary approvals from the City Commission or any other board or body of the City from which approval may be required have been obtained.

7. *Entire Agreement.* This agreement, together with all referenced agreements, exhibits, and schedules, constitutes the final, complete, and exclusive statement of the terms of this agreement between the parties pertaining to the subject matter of this agreement, and supersedes all prior and contemporaneous understandings or agreements of the parties. No party has been induced to enter into this Agreement by, nor is any party relying on, any representation, understanding, warranty, agreement, or commitment outside those expressly set forth in this

agreement. Notwithstanding anything herein, this agreement is not intended to, and shall not, modify the Water System Operation, Service and Maintenance Agreement entered into between the parties on or about May 16, 2008.

8. *Notice.* All notices provided shall be registered, return receipt requested mail addressed to the appropriate party at the address designated for such party in the first paragraph of this agreement, or such other address as the party who is to receive such notice may designate in writing.

9. *Modification and Waiver.* No provisions of this agreement shall be amended, waived, or modified except by an instrument in writing signed by all of the parties hereto. No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by this Agreement shall be effective unless it is in writing and signed by the waiving party. No failure to assert any breach, failure, right, or remedy shall constitute a waiver thereto.

10. *Binding Effect.* This agreement shall bind the parties hereto and their successors and/or assigns.

11. *Fees and Costs.* In the event of any litigation by and between the parties hereto concerning the interpretation and/or enforcement of this agreement, the prevailing party(ies) shall be entitled to recover all costs incurred incident thereto, including reasonable attorney fees incident to court proceedings including pre-trial matters and proceedings at the trial level, appellate level, and federal bankruptcy court proceedings.

12. *Sections and Description Readings.* All section and description headings or paragraphs in this agreement are inserted for convenience only, and shall not affect the construction and/or interpretation of the terms and provisions contained herein.

13. *Severability.* Inapplicability or unenforceability of any provision(s) of this agreement shall not limit or impair the operation or validity of any other provision of this agreement.

14. *Construction and Enforcement.* This agreement shall be governed by and shall be construed in accordance with the laws of the State of Florida.

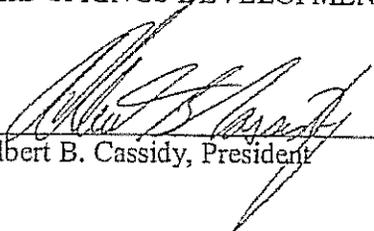
15. *Ambiguities.* Each party has participated fully in the review and revision of this Agreement. The language of this Agreement shall be interpreted as to its fair meaning, and not against either party, regardless of who was responsible for its drafting.

16. *Counterparts.* This agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be and constitute an original, but such counterpart shall together constitute one and the same instrument.

17. *Representation of Authority.* Each person signing this Agreement represents and warrants that he or she is authorized and has legal capacity to execute and deliver this Agreement.

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

ORCHID SPRINGS DEVELOPMENT CORPORATION

  
By: Albert B. Cassidy, President

(date)

03/06/09

CITY OF WINTER HAVEN

By: David L. Greene, City Manager (date)

Question 6B

## AGREEMENT CONCERNING WASTEWATER

THIS AGREEMENT, entered into on the latest date indicated below, is by and between ORCHID SPRINGS DEVELOPMENT CORPORATION, a Florida corporation ("OSDC"), and the CITY OF WINTER HAVEN, a Florida municipal corporation ("City").

### WITNESSETH

WHEREAS, OSDC owns and operates wastewater treatment facilities (the "Existing Facilities"). The facilities are operated as Florida Department of Environmental Protection ("DEP") facility number FLA012992, currently being operated pursuant to a consent order with DEP, OGC No. 04-1430 (the "Consent Order") most recently amended on May 23, 2007. The Existing Facilities provide wastewater transmission and treatment serving a development known as Orchid Springs, having approximately 206 single-family residential units, 301 apartments, and 15 commercial installations connected. The Existing Facilities are located at 710 Overlook Dr., Winter Haven, Florida, 22884; and

WHEREAS, OSDC intends to decommission the wastewater treatment portion of the Existing Facilities pursuant to the Consent Order and as a result OSDC will need to divert wastewater from the Existing Facilities to the City of Winter Haven sanitary sewer system on a temporary basis; and

WHEREAS, OSDC desires to deliver, and the City agrees to accept wastewater from Orchid Springs for appropriate treatment and disposal by the City in accordance with the terms of this Agreement;

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants herein, and intending to be legally bound, the parties agree as follows:

#### 1. *Definitions.*

- 1.1. "*Wastewater Transmission Facilities*" – All of the pipes, lines, valves, lift stations, and other related equipment between residential and/or commercial structures at Orchid Springs and the connection point with the nearest existing force main of the City. This term includes portions of the Existing Facilities but does not include those portions of the Existing Facilities which will be decommissioned pursuant to the Consent Order, including, but not limited to, the wastewater treatment plant and effluent ponds.
- 1.2. "*Service Date*" – No later than five (5) days after the date in which OSDC receives final approval from DEP to connect the Wastewater Transmission Facilities to the City's sanitary sewer system and begin diverting wastewater thereto.
- 1.3. "*Master Lift Station*" – *Is the newly constructed pump station that directs sewage flow from Orchid Springs to the City's facilities.*

2. *Provision of Service.* Beginning on the Service Date, the City covenants and agrees that it

will allow connection of the wastewater collection facilities at Orchid Springs to the sanitary sewer system of the City in accordance with the terms and intent of this Agreement. The City agrees that once it begins to provide wastewater service to Orchid Springs, that then and thereafter, the City will provide, in accordance with the other provisions of this Agreement, and of applicable laws, including rules and regulations, wastewater service to Orchid Springs in a manner to conform with all requirements of all government agencies having jurisdiction over the wastewater systems of the City and Orchid Springs so long as Orchid Springs complies with all requirements of this Agreement and applicable rules, regulations and laws. The parties have each individually examined the Wastewater Facilities and the City's sanitary sewer system, and covenant and warrant to each other that, to the best of their knowledge and belief, the anticipated flow rate will initially be approximately 50,000 gallons per day not to exceed 65,000 gallons per day.

3. *Maintenance, Upkeep, & Customer Service.* Beginning on the Service Date, and continuing thereafter, the City shall maintain and service the Wastewater Transmission Facilities as defined herein. Such obligations shall include, but not be limited to, the following obligations: to maintain and replace pipes and fittings as required, to maintain and replace lift stations and other equipment as required, to maintain and service connections to residential and/or commercial structures, and to maintain the Wastewater Transmission Facilities to comply with all governmental and permit requirements. The City shall pay for all utilities utilized by the Master Pump Station as more particularly defined herein. Wastewater customers at Orchid Springs shall be referred to the City to resolve any service-related problems and to handle connections and disconnections with the Wastewater Transmission Facilities. The City shall respond to customer service requests promptly and in a commercially reasonable manner consistent with the manner in which the City responds to customer service requests from its own customers. OSDC shall handle billing-related and administrative issues with customers. City shall bill OSDC for all maintenance, up keep and related services for the Wastewater Transmission Facilities it is required to perform hereunder which bills shall be paid within thirty (30) days of the rendering of the invoice.

4. *Fees.* In consideration of its obligations under this Agreement, the City shall charge in addition to any maintenance fees contemplated in paragraph three (3) above, and OSDC shall pay, a reasonable fee. Such fee shall be calculated by the City based on the volume of Orchid Springs wastewater pumped into the City's force main. The rate used to calculate such fee shall be the standard Residential Customer outside the city limits rate as defined in § 19-138, Code of Ordinances of the City of Winter Haven. The City shall invoice OSDC for all fees, which shall be paid within fifteen days of the rendering of the invoice.

5. *Calculation of Volume.* OSDC operates wells and a treatment plant providing fresh water to Orchid Springs. For the purpose of calculating the fee provided for in paragraph four (4) above, the volume of Orchid Springs wastewater pumped into the City's force main shall be presumed to be equal to the volume of potable water supplied to Orchid Springs customers by OSDC (except separately metered water that does not flow into the sewer system, such as for irrigation or swimming pools, or to customers not connected to the Wastewater Transmission Facilities). The City and OSDC shall reasonably cooperate to allow the City regular access to the data concerning the volume of OSDC-supplied water used by Orchid Springs customers. City shall use readings from Lift Station hour meters or Mag meter as

Sewer Charge -  
to base  
rate

if SF homes  
are included

are we  
including  
this  
volume  
calculation

back up for accuracy.

6. *Customer Billing.* OSDC shall bill Orchid Springs customers for wastewater service in an amount and manner determined by OSDC in its sole discretion. Such amount shall comply with all applicable laws, including rules and regulations (except City ordinances or rules), but shall not other than as provided in this Agreement be subject to regulation or determination by the City, and may not be limited by any ordinance, resolution, or act of the City.

7. *Mutual Indemnification and Liability Limitation.*

7.1. *Indemnification by OSDC.* OSDC shall indemnify, save, and hold harmless the City against all liability, losses, damage, or other expenses, including reasonable attorney's fees, which may be imposed upon, incurred by, or assessed against the City by reason of any of the following:

7.1.1. Negligence on the part of OSDC or its employees, agents, contractors, licensees, or invitees;

7.1.2. OSDC's Actions or failures to act at Orchid Springs or with respect to the Wastewater Transmission Facilities or the Existing Facilities;

7.1.3. Any failure on the part of OSDC to perform or comply with any requirement of this Agreement.

7.1.4. Any matters arising out of that Consent Order with the DEP, OGC No. 04-1430 most recently amended on May 23, 2007.

7.2. *Indemnification by City.* The City shall indemnify, save, and hold harmless OSDC against all liability, losses, damage, or other expenses, including reasonable attorney's fees, which may be imposed upon, incurred by, or assessed or claimed against OSDC by reason of any of the following:

7.2.1. Negligence on the part of the City or its employees, agents, contractors, licensees, or invitees;

7.2.2. Any failure on the part of the City to perform or comply with any requirement of this Agreement.

7.3. *Sovereign Immunity.* The liability and immunity of the City is governed by the provisions of § 768.28, Florida Statutes, and nothing in this Agreement is intended to extend the liability of the City beyond that contemplated in this Agreement or waive any immunity enjoyed by the City under that Statute regardless of whether any such obligations are based in tort, contract, statute, strict liability, and negligence, product liability or otherwise. This provision is solely for the benefit of OSDC, and the City shall not be directly liable to any third party by operation of this Section 7.3 except to the extent that such party is making a claim for damages by and through OSDC.

8. *Ownership of System.* The Existing Facilities and the Wastewater Transmission Facilities

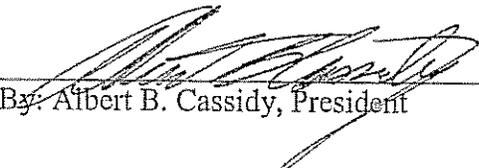
shall, at all times prior to, during the term of, and after expiration of this Agreement, be and remain the property of OSDC. It is anticipated that the Existing Facilities and the Wastewater Transmission Facilities may be purchased by the City within one (1) year from the effective date of this Agreement subject to the negotiation of and entering into an Agreement reflecting same

9. *Improvements to the System.* OSDC must construct, at its own expense, a lift station, and any and all other facilities necessary to connect the Wastewater Transmission Facilities with the force main of the City at a mutually agreeable location adjacent to Orchid Springs. Such construction shall comply with all applicable laws, including rules and regulations of any governmental entity with jurisdiction.
10. *Representation and Warranty of City.* The City covenants and warrants that execution and performance of this Agreement does not violate any provision of the Constitution of the State of Florida, Florida Statutes, the City's Charter or Code of Ordinances, or any other applicable body of law that would render this Agreement void or voidable by the City. The City further covenants and warrants that all necessary approvals from the City Commission or any other board or body of the City from which approval may be required have been obtained.
11. *Term.* The term of this Agreement shall begin on the date of execution of all parties and approval by the City's governing body and shall continue for two (2) years. The term of this Agreement shall automatically renew for successive three-year terms unless either party gives written notice to the other at least one (1) year prior to the expiration of any term that it intends to terminate the Agreement. Upon such notice, this Agreement shall terminate at the conclusion of the then-current term.
12. *Entire Agreement.* This Agreement, together with all referenced agreements, exhibits, and schedules, constitutes the final, complete, and exclusive statement of the terms of this agreement between the parties pertaining to the subject matter of this Agreement, and supersedes all prior and contemporaneous understandings or agreements of the parties. No party has been induced to enter into this Agreement by, nor is any party relying on, any representation, understanding, warranty, agreement, or commitment outside those expressly set forth in this Agreement.
13. *Notice.* All notices provided shall be registered, return receipt requested mail addressed to the appropriate party at the address designated for such party in the first paragraph of this agreement, or such other address as the party who is to receive such notice may designate in writing.
14. *Modification and Waiver.* No provisions of this agreement shall be amended, waived, or modified except by an instrument in writing signed by all of the parties hereto. No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by this Agreement shall be effective unless it is in writing and signed by the waiving party. No failure to assert any breach, failure, right, or remedy shall constitute a waiver thereto.
15. *Binding Effect.* This agreement shall bind the parties hereto and their successors and/or assigns.

16. *Fees and Costs.* In the event of any litigation by and between the parties hereto concerning the interpretation and/or enforcement of this agreement, the prevailing party(ies) shall be entitled to recover all costs incurred incident thereto, including reasonable attorney fees incident to court proceedings including pre-trial matters and proceedings at the trial level, appellate level, and federal bankruptcy court proceedings.
17. *Sections and Description Readings.* All section and description headings or paragraphs in this agreement are inserted for convenience only, and shall not affect the construction and/or interpretation of the terms and provisions contained herein.
18. *Severability.* Inapplicability or unenforceability of any provision(s) of this agreement shall not limit or impair the operation or validity of any other provision of this agreement.
19. *Construction and Enforcement.* This Agreement shall be governed by and shall be construed in accordance with the laws of the State of Florida.
20. *Ambiguities.* Each party has participated fully in the review and revision of this Agreement. The language of this Agreement shall be interpreted as to its fair meaning, and not against either party, regardless of who was responsible for its drafting.
21. *Counterparts.* This agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be and constitute an original, but such counterpart shall together constitute one and the same instrument.
22. *Representation of Authority.* Each person signing this Agreement represents and warrants that he or she is authorized and has legal capacity to execute and deliver this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement on the date indicated below.

ORCHID SPRINGS DEVELOPMENT CORPORATION

  
By: Albert B. Cassidy, President (date)

CITY OF WINTER HAVEN

By: David L. Greene, City Manager (date)

Attest:

---

By: Dorothy R. Johnson, City Clerk

Approved as to legal form:

---

By: Frederick J. Murphy, Jr., City Attorney

Question 60

**WATER SYSTEM OPERATION, SERVICE AND MAINTENANCE AGREEMENT**

THIS AGREEMENT, entered into on the latest date indicated below, is by and between ORCHID SPRINGS DEVELOPMENT CORPORATION, a Florida corporation ("OSDC"), and the CITY OF WINTER HAVEN, a Florida municipal corporation ("City").

WITNESSETH

WHEREAS, OSDC owns and operates a fresh water well and treatment facility (the "Facility"). The Facility is operated under Florida Department of Health PWS ID No. 6531313. The Facility provides fresh water to a development known as Orchid Springs, currently with approximately 186 single-family residential units, 301 apartments, and 15 commercial installations connected. The Facility is located at 710 Overlook Dr., Winter Haven, Florida, 22884; and

WHEREAS, the parties mutually desire for OSDC to contract with the City to operate, service, and maintain the Facility;

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants herein, and intending to be legally bound, the parties agree as follows:

1. *Definitions.*

- 1.1. "Facility" – All of the pipes, lines, valves, meters, pumps, wells, buildings, and other related equipment owned by OSDC and used for the purpose of pumping, treating, and supplying fresh water to residential and/or commercial structures at Orchid Springs.
- 1.2. "Service Date" - Simultaneously herewith, the parties have executed a certain AGREEMENT CONCERNING WASTEWATER. The Service Date as provided for herein shall occur on the Service Date as provided for in the AGREEMENT CONCERNING WASTEWATER.

2. *Provision of Service.* Beginning on the Service Date the City covenants and agrees to perform the following services:

- 2.1. Day-to-day operation, supervision, testing, and monitoring of the Facility;
- 2.2. All regular and as-needed maintenance, repairs, and upkeep of the Facility, including maintenance and replacement of pipes, valves, pumps, tanks, protective structures, and all other equipment at the Facility as determined by the City.
- 2.3. All necessary capital improvements, including replacement, and improvement of the Facility to comply with applicable standards of operation, duties of care, and compliance with applicable laws, rules, ordinances, permit requirements, and any other applicable government regulations;

- 2.4. Customer service, except customer service operations that OSDC is explicitly responsible for pursuant to this Agreement;
  - 2.5. Connections and disconnections with customers as may be required from time to time;
  - 2.6. Replenishment and supply of all chemicals and other consumable products used to treat water at the Facility; and
  - 2.7. All activities required for compliance with applicable laws, rules, ordinances, permit requirements, and any other applicable government regulations.
3. *Standard of Service.* The City agrees that once it begins to provide operation, service, and maintenance of the Facility to OSDC, that then and thereafter, all services of the City will comply with the other provisions of this Agreement, and of applicable laws, including rules and regulations, and in a manner to conform with all requirements of all government agencies having jurisdiction over the City and the Facility.
  4. *Customer Service.* Water customers at Orchid Springs shall be referred to the City to resolve any service-related problems and to handle connections and disconnections with the Facility. The City shall respond to customer service requests promptly and in a commercially reasonable manner consistent with the manner in which the City responds to customer service requests from its own customers. OSDC shall handle billing-related and administrative issues with customers.
  5. *Fees.* In consideration of its obligations under this Agreement, the City shall charge, and OSDC shall pay, all actual fees and costs expended by the City in furtherance of its obligations under this Agreement. The fee shall include but not be limited to actual labor related to such obligations, and supervisory labor, overhead, administrative labor, and the like. The City shall invoice OSDC for all fees, which shall be paid within thirty days of the rendering of the invoice. In addition, the City shall charge, and OSDC shall pay, the City's actual cost of all chemicals, including but not limited to chlorine or chloramine, used in treating water at Orchid Springs, and shall pay the City's direct cost of all materials and parts used in maintaining, repairing, or improving the Facility as contemplated in Paragraph 2 above. Any single expenditure for parts and materials in excess of \$3,000, other than chemicals, requires the prior notice and approval of OSDC. OSDC reserves the right to perform maintenance, repairs, or improvements at its own expense without the use of City labor or materials if the City consents to same.
  6. *Customer Billing.* OSDC shall bill Orchid Springs customers for water service in an amount determined by OSDC in its sole discretion. Such amount shall comply with all applicable laws, including rules and regulations, but shall not other than as provided in this Agreement be subject to regulation or determination by the City.
  7. *Mutual Indemnification.*
    - 7.1. *Indemnification by OSDC.* OSDC shall indemnify, save, and hold harmless the City against all liability, losses, damage, or other expenses, including reasonable attorney's fees, which may be imposed upon, incurred by, or assessed against the City by reason of

any of the following:

- 7.1.1. Negligence on the part of OSDC or its employees, agents, contractors, licensees, or invitees;
  - 7.1.2. OSDC's Actions or failures to act at Orchid Springs or with respect to the Facility;
  - 7.1.3. Any failure on the part of OSDC to perform or comply with any requirement of this Agreement.
  - 7.1.4. Any matters arising out of that Consent Order with DEP OGC No. 04-1430 most recently amended on May 23, 2007, and/or matters raised by any agency and/or entity with jurisdiction regarding all activities authorized under PWS ID No. 6531313.
- 7.2. *Indemnification by City.* The City shall indemnify, save, and hold harmless OSDC against all liability, losses, damage, or other expenses, including reasonable attorney's fees, which may be imposed upon, incurred by, or assessed or claimed against OSDC by reason of any of the following:
- 7.2.1. Negligence on the part of the City or its employees, agents, contractors, licensees, or invitees;
  - 7.2.2. Any failure on the part of the City to perform or comply with any requirement of this Agreement.
- 7.3. *Sovereign Immunity.* The liability and immunity of the City is governed by the provisions of § 768.28, Florida Statutes, and nothing in this Agreement is intended to extend the liability of the City regardless of whether any such obligations are based in tort, contract, statute, strict liability, and negligence, product liability or otherwise or waive any immunity enjoyed by the City under that Statute. This provision is solely for the benefit of OSDC, and the City shall not be directly liable to any third party by operation of this Section 7.3 except to the extent that such party is making a claim for damages by and through OSDC.
8. *Ownership of System.* The Facility shall, at all times prior to and during the term of this Agreement, be and remain the property of OSDC. It is anticipated that the Facility may be purchased by the City within one (1) year from the effective date of this Agreement subject to the negotiation of and entering into an Agreement reflecting same.
9. *Representations and Warranties of City.* The City covenants and warrants that execution and performance of this Agreement does not violate any provision of the Constitution of the State of Florida, Florida Statutes, the City's Charter or Code of Ordinances, or any other applicable body of law that would render this Agreement void or voidable by the City. The City further covenants and warrants that all necessary approvals from the City Commission or any other board or body of the City from which approval may be required have been obtained.

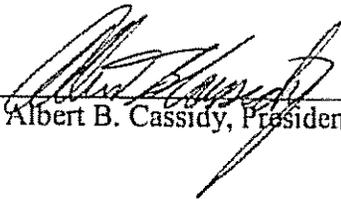
10. *Entire Agreement.* This Agreement, together with all referenced agreements, exhibits, and schedules, constitutes the final, complete, and exclusive statement of the terms of this agreement between the parties pertaining to the subject matter of this Agreement, and supersedes all prior and contemporaneous understandings or agreements of the parties. No party has been induced to enter into this Agreement by, nor is any party relying on, any representation, understanding, warranty, agreement, or commitment outside those expressly set forth in this Agreement.
11. *Term.* The term of this Agreement shall begin on the date of execution of all parties and approval by the City's governing body and shall continue for two (2) years. The term of this Agreement shall automatically renew for successive three-year terms unless either party gives written notice to the other at least one (1) year prior to the expiration of any term that it intends to terminate the Agreement. Upon such notice, this Agreement shall terminate at the conclusion of the then-current term.
12. *Notice.* All notices provided shall be registered, return receipt requested mail addressed to the appropriate party at the address designated for such party in the first paragraph of this agreement, or such other address as the party who is to receive such notice may designate in writing.
13. *Modification and Waiver.* No provisions of this agreement shall be amended, waived, or modified except by an instrument in writing signed by all of the parties hereto. No waiver of a breach, failure of any condition, or any right or remedy contained in or granted by this Agreement shall be effective unless it is in writing and signed by the waiving party. No failure to assert any breach, failure, right, or remedy shall constitute a waiver thereto.
14. *Binding Effect.* This agreement shall bind the parties hereto and their successors and/or assigns.
15. *Fees and Costs.* In the event of any litigation by and between the parties hereto concerning the interpretation and/or enforcement of this agreement, the prevailing party(ies) shall be entitled to recover all costs incurred incident thereto, including reasonable attorney fees incident to court proceedings including pre-trial matters and proceedings at the trial level, appellate level, and federal bankruptcy court proceedings.
16. *Sections and Description Readings.* All section and description headings or paragraphs in this agreement are inserted for convenience only, and shall not affect the construction and/or interpretation of the terms and provisions contained herein.
17. *Severability.* Inapplicability or unenforceability of any provision(s) of this agreement shall not limit or impair the operation or validity of any other provision of this agreement.
18. *Construction and Enforcement.* This Agreement shall be governed by and shall be construed in accordance with the laws of the State of Florida.
19. *Ambiguities.* Each party has participated fully in the review and revision of this Agreement. The language of this Agreement shall be interpreted as to its fair meaning, and not against either party, regardless of who was responsible for its drafting.

20. *Counterparts.* This agreement may be executed in any number of counterparts, each of which, when executed and delivered, shall be and constitute an original, but such counterpart shall together constitute one and the same instrument.

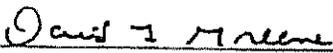
21. *Representation of Authority.* Each person signing this Agreement represents and warrants that he or she is authorized and has legal capacity to execute and deliver this Agreement.

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

ORCHID SPRINGS DEVELOPMENT CORPORATION

  
By: Albert B. Cassidy, President (date)

CITY OF WINTER HAVEN

 5/15/08  
By: David L. Greene, City Manager (date)

Attest:  
  
By: Dorothy R. Johnson, City Clerk

Approved as to legal form:

 5.16.08  
By: Frederick J. Murphy, Jr., City Attorney