

FLORIDA UTILITY SERVICES 1, LLC
3336 GRAND BLVD. SUITE 102
HOLIDAY, FL. 34690
863-904-5574

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2016 NOV 14 AM 9:17
COMMISSION
CLERK

November 7, 2016

Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL. 32399

RE: Docket # 110254-WS

Dear Commission Clerk:

Enclosed please an Application for Transfer to a Governmental Authority and attached exhibits for the above docket file.

On behalf of the utility,



Mike Smallridge

APPLICATION FOR TRANSFER TO A GOVERNMENTAL AUTHORITY

**(Pursuant to Section 367.071, Florida Statutes, and
Rule 25-30.038, Florida Administrative Code)**

To: **Office of Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850**

The undersigned hereby makes application for acknowledgement of the transfer of all or part of the utility's water and/or wastewater facilities in POLK County, Florida, and cancellation or amendment of Water Certificate No. 634 and/or Wastewater Certificate No. 544 and submits the following information:

PART I APPLICANT INFORMATION

- A) Contact Information for Utility/Seller. The utility/seller's certificated name, address, telephone number, and if applicable, fax number, e-mail address, and website address. The utility's name should reflect the business and/or fictitious name(s) registered with the Department of State's Division of Corporations:

FOUR POINTS UTILITY CORPORATION

Utility Name

3336 GRAND BLVD SUITE #102

Office Street Address

HOLIDAY

FL

34690

City

State

Zip Code

Mailing Address (if different from Street Address)

City

State

Zip Code

(863) 904-5574

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Phone Number

Fax Number

Federal Employer Identification Number

mike@fus11lc.com

E-Mail Address

Website Address

634

544

Water Certificate No.

Wastewater Certificate No.

- B) The contact information of the seller's authorized representative to contact concerning this application:

MICHAEL SMALLRIDGE

Name

3336 GRAND BLVD SUITE #102

Mailing Address

HOLIDAY

FL

34690

City

State

Zip Code

(863) 904-5574

() -

Phone Number

Fax Number

mike@fus1llc.com

E-Mail Address

- C) Contact Information for Governmental Authority. The name, address, telephone number, and if applicable, fax number, and e-mail address of the governmental authority.

POLK COUNTY

Governmental Authority's Name

330 W. CHURCH ST.

Office Street Address

BARTOW

FL

33830

City

State

Zip Code

(863) -

() -

Phone Number

Fax Number

E-Mail Address

D) The contact information of the governmental authority's authorized representative to contact concerning this application:

THOMAS NORSWORTHY
Name

330 W. CHURCH ST.
Mailing Address

BARTOW FL 33830
City State Zip Code

() - () -
Phone Number Fax Number

thomasnorsworthy@polk-county.net
E-Mail Address

PART II TRANSFER OF FACILITIES

A) DESCRIPTION OF SALE/TRANSFER AGREEMENT

1) Exhibit ____ - Provide the date on which the governmental authority assumed ownership or proposes to assume ownership, operation, management, or control of the utility. The transfer of facilities, or any portion thereof, from a regulated utility to a governmental authority shall be effective as of the date the governmental authority assumes ownership, operation, management, or control.

January 1, 2017

2) Exhibit A - Provide a copy of the contract or other document transferring the utility system to the governmental authority.

3) Exhibit ____ - Provide a statement that the governmental authority obtained from the utility or Commission the most recent available annual report.

POLK COUNTY HAS BEEN GIVEN THE MOST RECENT ANNUAL REPORT.

- 4) Exhibit _____ - Provide a statement describing the disposition of customer deposits and interest thereon.

CUSTOMER DEPOSITS AND INTEREST THEREON WILL BE REFUNDED
ON THE LAST BILLING FROM MICHAEL SMALLRIDGE AS RECEIVER.

- 5) Exhibit _____ - Provide a statement regarding the disposition of outstanding regulatory assessment fees, fines or refunds owed. The transfer of a regulated utility to a governmental authority shall not affect the utility's obligation to complete payment of regulatory assessment fees pursuant to Rule 25-30.120, F.A.C.

THE 2016 RAF'S WILL BE PAID BY MICHAEL SMALLRIDGE AS
RECEIVER AND THE 2016 ANNUAL REPORT WILL BE FILED BY
MICHAEL SMALLRIDGE AS RECEIVER.

B) DESCRIPTION OF FACILITIES NOT TRANSFERRED

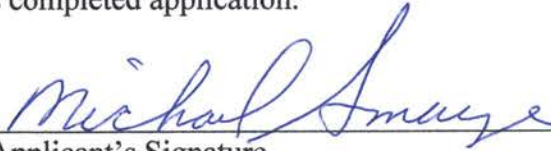
If a utility is transferring only a portion of its facilities to a governmental authority, it must provide the following additional information:

- 1) Exhibit N/A - A list of any utility assets not transferred to the governmental authority, if such remaining assets constitute a system providing or proposing to provide water or wastewater service to the public for compensation.
- 2) Exhibit N/A - A legal description of the territory not transferred to the governmental authority in the format prescribed in Rule 25-30.029, F.A.C.
- 3) Exhibit N/A - An official county tax assessment map or other map showing township, range, and section with a scale such as 1" = 200' or 1" = 400', with the remaining territory plotted thereon, consistent with the legal description provided in II.B.1.b. above.
- 4) Exhibit N/A - A tariff containing all rates, classifications, charges, rules, and regulations, which shall be consistent with Chapter 25-9, F.A.C. See Rule 25-30.038, F.A.C., for information about water and wastewater tariffs that are available and may be completed by the applicant and included in the application.

PART III SIGNATURE

Please sign and date the utility's completed application.

APPLICATION SUBMITTED BY:



Applicant's Signature

MICHAEL SMALLRIDGE

Applicant's Name (Printed)

RECEIVER

Applicant's Title

11/7/2016

Date

EXHIBIT A

**IN THE CIRCUIT COURT OF THE TENTH JUDICIAL CIRCUIT
IN AND FOR POLK COUNTY, FLORIDA**

In re the Petition of **POLK COUNTY**,
a political subdivision of the State of Florida,
to Appoint a Receiver for the **FOUR POINTS
UTILITY CORPORATION** and the
BIMINI BAY UTILITIES CORPORATION
pursuant to Section 367.165, Florida Statutes.

Case No. 53-2012CA-1525-00-0000
Section 04

**ORDER APPROVING RECEIVER MICHAEL SMALLRIDGE AND POLK COUNTY'S
JOINT MOTION FOR APPOINTMENT OF POLK COUNTY AS
SUCCESSOR RECEIVER FOR THE FOUR POINTS UTILITY CORPORATION
AND THE BIMINI BAY UTILITIES CORPORATION**

THIS CAUSE initially came before the Court on September 29, 2016, with the hearing thereon continuing November 4, 2016, upon Receiver Michael Smallridge and Polk County's Joint Motion for Appointment of Polk County as Successor Receiver for the Four Points Utility Corporation and the Bimini Bay Utilities Corporation. Appearing before the Court was counsel for Polk County, Thomas G. Norsworthy, Assistant County Attorney; Counsel for Receiver Michael Smallridge, Nicki Spirtos, Esq. (telephonically); and Receiver Michael Smallridge. This Court having reviewed the Motion and being otherwise fully advised in the premises finds, as follows:

1. **APPOINTMENT OF RECEIVER and TERM.** Receiver Michael Smallridge and Polk County's Joint Motion for Appointment of Polk County as Successor Receiver for the Four Points Utility Corporation and the Bimini Bay Utilities Corporation is hereby **GRANTED**. Polk County is appointed Successor Receiver for both the Four Points Utility Corporation and the Bimini Bay Utilities Corporation effective January 1, 2017. Unless otherwise relieved pursuant to a further order of the Court, the County's term as Successor Receiver for a Utility will end upon the conveyance and transfer of that Utility with and into the County Utility Systems and the receivership for that Utility will terminate.
2. The Polk County Case styled **KENNETH A. WARD v. FLORIDA UTILITY SERVICES 1, LLC, FOUR POINTS UTILITY CORPORATION and JACKIE LOVE**, Case No: 2015CC-004345-0000-00 (hereinafter "Pending Litigation") remains pending.
3. **FINAL BILLING.**
 - a. Receiver Michael Smallridge will mail his "final" invoices to each Utility's customers on January 10, 2017 for services through December 31, 2016. The final invoice from Receiver Michael Smallridge will include refunds of any credit balances.

- b. From and after the date of this Order, Receiver Michael Smallridge shall not enter into any new agreements for payment arrangements with any Utility customer.
 - c. Receiver Michael Smallridge will prepare a final accounting and pay all final bills and invoices for the goods and services received on or before December 31, 2016, except for each Utility's outstanding water and wastewater charges, inclusive of all services charges, late charges, and interest charges (collectively for each Utility, the "Unpaid County Charges"), due and owing to the County for which a Utility does not have sufficient funds to pay. Notwithstanding the County's appointment as Successor Receiver, each Utility's Unpaid County Charges shall be and remain amounts due and owing to the County. All remaining surplus funds of a Utility will be paid toward reducing its Unpaid County Charges.
 - d. If on or before December 31, 2016, the Pending Litigation is concluded with a Final Judgment that Receiver Michael Smallridge or the Four Points Utility Corporation is liable to the plaintiff, then Michael Smallridge shall timely confer with the County regarding the payment or appeal of such judgment. Receiver Michael Smallridge shall not pay or appeal any such judgment without the consent of the County.
4. Receiver Michael Smallridge will file an Application for Transfer with the Florida Public Service Commission within 10 days of this court's order. Receiver Michael Smallridge will be responsible for preparing the 2016 Utilities' Annual Report for Four Points Utility Corporation, filing the Annual Report with the Florida Public Service Commission and paying the 2016 Regulatory Assessment Fees due to the Florida Public Service Commission. Receiver Michael Smallridge shall cooperate with the County in filing an appropriate application or other documents necessary to obtain an exemption from regulation by the Florida Public Service Commission that would be effective upon the County's assuming duties as Successor Receiver.
5. **SURRENDER OF PROPERTY, ASSETS, DOCUMENTS, AND FACILITIES.** Receiver Michael Smallridge shall turn over all accounts, books, records, reports, audits, and assets of each Utility and provide a final accounting to the County on or before January 15, 2017. Any and all customer deposits will be transferred to the County on or before that date.
6. **POWERS OF THE SUCCESSOR RECEIVER.** To effectively and efficiently carry out the duties and responsibilities under this Order, Polk County shall have all authority and power necessary to efficiently and effectively operate and manage each Utility in such capacity as set forth in the Court's March 19, 2012 Order appointing the Receiver, and as restated below in subparagraphs a – n:
 - a. to provide and maintain water and wastewater services within the designated service areas, in compliance with all applicable permits, regulations and statutes;
 - b. to make extensions, expansions, repairs, replacements and improvements to the Utilities as appropriate and necessary;

- c. to collect rates, fees, charges and deposits for all services provided by the Utilities in accordance with all applicable state laws;
- d. to increase or decrease rates charged to customers served by the Utilities or to obtain a special assessment which may be necessary to pay for costs incurred by the Receiver in the operation, maintenance and improvement of the Utilities and for complying with the terms of this Receivership;
- e. to borrow funds and to pledge and encumber the facilities, assets and revenues of the Utilities for repayment thereof;
- f. to enter into contracts or agreements with any public agency or private entity providing for or relating to the operation and maintenance of the Utilities or the connection of customers to any other public or private utility;
- g. to accept gifts, grants or contributions in kind in connection with the management, operation and maintenance of the Utilities;
- h. to retain and pay the fees, costs and salaries of accounts, architects, engineers, attorneys, employees, or other professional consultants as necessary or desirable in the management, operation or maintenance of the Utilities and to ensure compliance with all the provisions of this Order for the rates, fees and charges authorized under this Section 6;
- i. to pay from revenues collected from the customers of the Utilities, all necessary and reasonable operating expenses contemplated in this Section 6, in a manner designed to continue the efficient, effective and environmentally sound operation of said Utilities;
- j. to connect customers of the Utilities to any other public or private water system or wastewater system with adequate capacity; to accept said customers in accordance with and subject to applicable requirements and payment of fees to said public or private system;
- k. upon completion thereto, the Receiver, with written approval from this Court, may discontinue the operation of the Utilities and dispose of all land, facilities, assets and revenues to satisfy all outstanding obligations of the Utilities. The Receiver shall give due notice to the owner and all creditors of the Utilities of the receivership prior to any disposal of the facilities;
- l. to sue or be sued, to implead or be impleaded, to complain and defend in any court and to seek all legal or equitable relief in accordance with applicable state law;
- m. to apply for and obtain any applicable federal, state and local governmental permits, certificates, licenses, or other approvals in order to operate and maintain the Utilities;
- n. to perform generally any other lawful acts necessary or desirable to carry out the express powers and authority granted and imposed herein.

In addition to the powers and authority stated above, the County as Successor Receiver is specifically granted the following authority and power:

- o. the right to individually meter each dwelling, residence or other unit, and to separately charge each customer for water and wastewater services;
- p. the ability, as the successor to each Utility, to repair, replace, maintain, improve, and expand each Utility system to include without limitation the right whether express, implied or necessary to utilize all public utility easements, private easements, licenses, and all other approvals or consents whether expressly or impliedly granted or reserved to each Utility for such purposes, together with the right of ingress and egress across all affected properties as necessary to reasonably exercise such rights and abilities;
- q. the right without limitation to commence repair, replacement, expansion, maintenance, and improvement of each Utility system to include without limitation the installation of water meters for each Utility customer or unit, backflow preventers and any and all other work necessary to bring each Utility system to a standard no less than the County utility system standards there were in effect when the Utilities were originally constructed (the "2001 Standards"), by and on behalf of the properties specially benefitted by all such repairs, maintenance, replacements, improvements and expansion;
- r. the right to establish Municipal Services Benefit Unit(s) in accordance with Florida Statutes, Section 125.01(q), by and through which Polk County may assess each property served by each Utility its separate, respective share of the costs Polk County has incurred and will incur to make the respective required repairs, replacement, expansion, maintenance, and improvements to each Utility system on behalf of those benefitted properties so each Utility system may be incorporated with and into the County utility systems; and
- s. the right, whether upon substantial completion of each Utility's repair and improvement to a standard at least equal to the 2001 Standards or earlier, and upon satisfaction of any and all applicatory statutory conditions, to convey and transfer all right, title, and interest in and to each Utility's water and wastewater system, inclusive without limitation of all easements, licenses, and all other property rights held by each Utility, to Polk County for incorporation with and into the County utility systems, and to execute all associated documents necessary for such conveyance and transfer;

all of which it may exercise without obtaining a further order from the Court. Unless otherwise sooner relieved pursuant to a subsequent order of the Court, the County's term as successor receiver for a Utility will end upon the conveyance and transfer of that Utility with and into the County utility systems, whereupon the receivership for that Utility will terminate. The reference herein to the 2001 Standards is not and shall not be a limitation as to the applicable utility standards the County may require the Utility systems to meet from and after the date a Utility is incorporated with and into the County utility systems.

7. **SUCCESSOR RECEIVER'S OBLIGATION TO OPERATE THE UTILITIES.** The Utilities shall be operated by the County in such a manner so as to provide efficient,

effective, environmentally sound, continuous service to the customers of the Utilities during the term of the Receivership, as can be provided from the revenues of the Utilities.

8. **SEPARATION OF FUNDS.** Until such time as a Utility is transferred to the County's utility system, the County is hereby directed to maintain separate accounts and records for the management of the Utilities. Additionally, this Court hereby directs that prior to a Utility's transfer into the County's utility system, revenues from the Utilities are not to be considered as the revenues of the County, nor are the revenues from any of the County's departments, divisions, businesses, or employment considered to be revenues of the Utilities.

MMR
9. **SUCCESSOR RECEIVER'S IMMUNITY FROM LIABILITY AND VIOLATIONS.** ~~As consideration for the County assuming the responsibility for the continued operation and maintenance of the Utilities, the County and its agents and employees are hereby declared to be held harmless and not legally responsible for any and all claims, liability, demands, damages, expenses, fees, fines, penalties, suits, proceedings, actions and fees, including attorneys' fees, that have risen or may arise out of the past design, construction, operation and maintenance of the Utilities. This immunity shall include without limitation: immunity from injury to persons, damage to property or property rights, or violation of any governmental law, rule, regulation or requirement that may arise from the design, construction, operation, repair, improvement, or maintenance of the Utilities to the date of the appointment of the County as Successor Receiver.~~

10. **SUCCESSOR RECEIVER'S ACCOUNTING TO THE COURT.** During its tenure as Successor Receiver, the County shall submit to the Court quarterly financial and operational reports for both the Four Points Utility Corporation and for the Bimini Bay Utilities Corporation.

11. **CONTINUED JURISDICTION.** This Court shall retain jurisdiction in this cause to enter such further orders or as it deems appropriate.

DONE AND ORDERED in Chambers in Bartow, Polk County, Florida this 4th day of November, 2016.

/s/ Mark F. Carpanini

MARK F. CARPANINI, Circuit Judge

Copies furnished to:

Thomas G. Norsworthy, Assistant County Attorney
Nicki Spirtos, Counsel for Receiver Michael Smallridge