

SCANNED

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for Transfer of) Docket No. 990397-745
 Water and Wastewater Facilities of) Filed: _____
 Mangonia Park Utility Company to the)
 Town of Mangonia Park in Palm Beach)
 County, Florida, and Request for)
 Cancellation of Certificates Nos. 078-W)
 and 067-S)

APPLICATION FOR AUTHORITY TO TRANSFER TO
 GOVERNMENTAL AUTHORITY THE WATER AND
 WASTEWATER FACILITIES OF MANGONIA PARK UTILITY
 COMPANY TO THE TOWN OF MANGONIA PARK IN PALM
 BEACH COUNTY, FLORIDA, AND REQUEST FOR
 CANCELLATION OF CERTIFICATES NOS. 078-W AND 067-S

The Mangonia Park Utility Company ("Utility") makes Application for Authority to Transfer all of its water and wastewater facilities operated under Water Certificate No. 078-W and Wastewater Certificate No. 067-2 located in Palm Beach County, Florida, to the Town of Mangonia Park, a Florida municipal corporation ("Town"), pursuant to Section 367.071, Florida Statutes, and submits the following.

1. Pursuant to Florida Administrative Code Section 25-30.037(4), Utility sets forth the following required information:

(a) The name and address of the Utility and its authorized representative are:

Mangonia Park Utility Company
 P.O. Box 8006
 West Palm Beach, FL 33407
 Theresa J. Cox, President
 (561) 845-1365

MAIL ROOM
 600 N. STATE ST.

MAR 29 9 57 AM '99

RECEIVED DOCUMENT NUMBER-DATE

~~01029~~

FPSC-RECORDS/REPORTING

- (b) The name and address of the Town and its authorized representative are:

Town of Mangonia Park
1755 East Tiffany Drive
Mangonia Park, Florida 33407
Darla Levy, Town Administrator
(561) 845-1235

- (c) A copy of the contract transferring the Utility assets to the Town is attached.

- (d) Section 25-037(4)(d), FAC, is not applicable.

- (e) The Town obtained from the Utility, the most recent available income and expense statement, balance sheet, statement of rate base for regulatory purposes, and contribution-in-aid-of-construction.

- (f) The Town approved the acquisition of the Utility on March 16, 1999. The Closing of the acquisition is expected to take place on April 1, 1999.

- (g) The customer deposits and interest thereon are being transferred to the Town at closing, and the Town is taking responsibility for the disposition of such deposits and interest.

- (h) Any outstanding regulatory assessment fees, fines or refunds (of which none are outstanding) will remain the responsibility of the Utility after closing of the acquisition by the Town.

2. Copies of notices and other documents in this proceeding directed to Mangonia Park Utility Company should be served on Ms. Theresa J. Cox:

WHEREFORE, the Mangonia Park Utility Company files this Application and respectfully requests the Commission to approve this Application for Authority to Transfer, submitted this 26th day of March, 1999.

I, Theresa J. Cox, President of Mangonia Park Utility Company do solemnly swear or affirm that the facts stated in the foregoing application and all exhibits attached thereto are true and correct and that said statements of fact thereto constitute a complete statement of the matter to which it relates.

Mangonia Park Utility Company

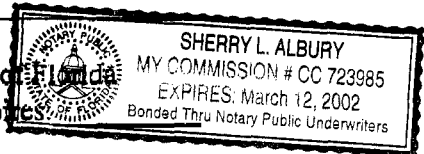
Theresa J. Cox
By: Theresa J. Cox, its President

STATE OF FLORIDA)
) SS:
COUNTY OF PALM BEACH)

The foregoing instrument was acknowledged before me this ___ day of March, 1999, by Theresa J. Cox, as President of Mangonia Park Utility Company, on behalf of the company. The affiant is personally known or ___ produced identification (type of identification produced _____).

Sherry L. Albury
Notary Public

Print Name
Notary Public, State of Florida
My Commission expires





TOWN OF MANGONIA PARK

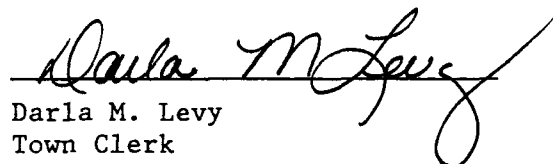
1755 EAST TIFFANY DRIVE
MANGONIA PARK, FLORIDA 33407
407/848-1235 FAX: 407/848-6940

STATE OF FLORIDA :
COUNTY OF PALM BEACH:

I, Darla M. Levy, Town Clerk of the Town of Mangonia Park,
Palm Beach County, Florida, do hereby certify that the attached
document is a true and correct copy of Res. 99-10 of MANGONIA PARK

UTILITY ASSET PURCHASE AGREEMENT.
IN WITNESS WHEREOF, I have hereunto set my hand and affixed
the seal of the Town of Mangonia Park, Florida, this 26th day of
MARCH, 1999.

(SEAL)



Darla M. Levy
Town Clerk

RESOLUTION NO. 99-10

A RESOLUTION OF THE TOWN COUNCIL OF THE TOWN OF MANGONIA PARK APPROVING THE CONTRACT BETWEEN THE TOWN OF MANGONIA PARK AND THE MANGONIA PARK UTILITY COMPANY FOR THE PURCHASE BY THE TOWN OF MANGONIA PARK OF THE PRIVATE WATER AND WASTEWATER UTILITY OWNED BY THE MANGONIA PARK UTILITY COMPANY; AUTHORIZING ALL TOWN OFFICIALS, EMPLOYEES, CONSULTANTS, ETC. TO DO ALL THINGS NECESSARY TO COMPLETE THIS TRANSACTION; AND TO CARRY OUT THE TERMS OF THE CONTRACT; PROVIDING AN EFFECTIVE DATE; AND FOR OTHER PURPOSES.

WHEREAS, the Town Council of the Town of Mangonia Park as the governing body, pursuant to the authority vested therein as set forth in Chapters 166 and 180, Florida Statutes, and the Town Charter and Code of Ordinances, is authorized and empowered to enter into a contract for the acquisition of the private water and wastewater utility currently providing services to the residents of the Town of Mangonia Park and owned by the Mangonia Park Utility Company; and

WHEREAS, the public hearing requirements provided for in Chapter 180, Florida Statutes, have been satisfied; and

WHEREAS, the Town Council has carefully considered all evidence with regard to the purchase of the water and wastewater facility as mandated by Section 180.301, Florida Statutes, at its public hearings held February 16, 1999 and March 16, 1999; including, but not limited to; the current financial and physical status of the utility; the existing rate base of the utility for regulatory purposes; the reasonableness of the terms of the contract for the purchase and sale of the utility; the alternatives to the purchase of the utility by the Town; and the impacts of the purchase and sale on the utility customers, both positive and negative; and

WHEREAS, the Town of Mangonia Park has prepared this resolution to constitute a statement in accordance with and pursuant to Section 180.301(10), Florida Statutes, showing that the purchase of the utility is in the public interest and that the Town of Mangonia Park has the financial ability to provide utility services to the public; and

WHEREAS, the Town Council has considered the evidence and testimony presented by interested parties as well as the recommendations of various Town Consultants and believes this

purchase to be in the best interests of the citizens of the Town of Mangonia Park and the general public.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF MANGONIA PARK, FLORIDA, THAT:

Section 1: The Town Council of the Town of Mangonia Park hereby approves the Contract for Sale and Purchase of the Mangonia Park Utility Company (attached hereto as Exhibit A) authorizes Alan J. Palmer, Mayor, to sign and execute said contract on behalf of the Town and authorizes all Town officials, employees, consultants, etc. do all things necessary to complete the transaction and carry out the terms of the contract.

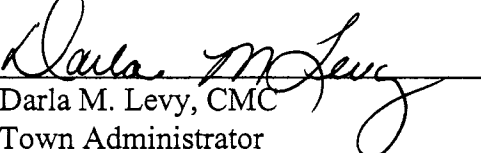
Section 2: Effective Date. This Resolution shall take effect immediately upon its adoption by the Town Council.

PASSED AND ADOPTED this 16th day of MARCH, 1999.

TOWN OF MANGONIA PARK


Alan J. Palmer, Mayor

ATTEST:


Darla M. Levy, CMC
Town Administrator

(SEAL)

**MANGONIA PARK UTILITY ASSET PURCHASE AGREEMENT
PALM BEACH COUNTY, FLORIDA**

This Agreement is entered into on this 2nd day of March, 1999 by and between Mangonia Park Utility Company, a Florida corporation, (hereinafter referred to as "Seller") and the Town of Mangonia Park, Florida, a Florida municipal corporation (hereinafter referred to as "Purchaser").

WITNESSETH

WHEREAS the Seller is the owner of a water supply storage and distribution system, as well as a sewage collection system which has been installed to provide central water and sewer service to approximately 1,000 Equivalent Residential Connections each in Palm Beach County, Florida, and more fully described on Exhibit 1, attached, (hereinafter referred to as the "Property"); and

WHEREAS, Purchaser desires to acquire, and Seller desires to sell the water supply, treatment, storage and distribution facilities, as well as the sewage collection facilities (collectively the "Facilities") installed to provide water and sewer service to the Property, subject to the terms and conditions of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants as hereinafter set forth, the parties hereto agree as follows:

ARTICLE I

REPRESENTATIONS BY SELLER

Seller represents and warrants that:

1. Seller is a corporation duly incorporated, validly existing and in good standing under the laws of the State of Florida. Seller's Certificate of Incorporation contains charter

powers authorizing it to construct, operate and maintain a public water supply and distribution, as well as a sewage collection system.

2. Seller is, and at the Closing (the "Closing" as hereinafter defined) will be, the owner of the Facilities with good and marketable title, free and clear of all liens and encumbrances.

3. Seller has obtained from the Florida Public Service Commission (hereinafter referred to as the "Commission") a Certificate of Public Convenience and Necessity, and authorization and approval of rates, rules and regulations for water and sewer service within the Property.

4. Seller will cooperate fully, at no expense to Seller, with Purchaser in any and all applications or petitions to public authorities deemed necessary or desirable by Purchaser in connection with the purchase of the Facilities from Seller as contemplated herein.

5. Attached hereto as Exhibit 2 is a detailed list of the Facilities of Seller to be acquired by Purchaser, pursuant to this Agreement, showing both their respective installation or construction costs, as well as their current depreciable tax basis. Said Facilities include all water and sewer utility assets, equipment and real estate owned or leased by the Seller within the Property, including but not limited to three (3) wells with a combined capacity of 550 gallons per minute, a 100,000 gallon elevated storage tank, a water treatment plant, a complete water distribution system, and a complete central sewer collection system. The engineering plans and specifications for the Facilities have been attached hereto as Exhibit 3. Said Facilities expressly do not include cash on hand, accounts receivable and contingent and matured claims of Seller detailed on Exhibit 3A attached hereto, all of which shall remain with the Seller after closing.

6. Attached hereto as Exhibit 4 is a list, signed by the Seller, and briefly describing, as of the date of this Agreement, the following:

- a. All pending or threatened actions at law, suits in equity or administrative proceedings relating to the Facilities;
- b. All contracts or obligations of any nature between Seller and any other party, including all developer agreements relating to the Property;
- c. All real estate in the Property owned by Seller to be transferred hereunder.

7. Seller will transfer the Facilities to Purchaser in "as is" and "where is" condition.

8. Except as indicated in Exhibit 4, there are no pending or threatened actions at law or suits in equity relating to the Facilities, or any pending or threatened proceedings before the Commission or any other governmental agency.

9. Except as indicated in Exhibit 4, there are no contracts or obligations of any nature between Seller and any other party relating to the Facilities.

10. Neither Seller nor any entity or individual affiliated with Seller has executed any agreement with purchasers of lots within the Property, or any other parties, whereunder such purchasers or other parties have acquired any interest in the Facilities used or to be used in rendering service to them. Seller has entered into Developer Agreements which remain to be completed as which are set forth as Exhibit 4. Purchaser shall assume all obligations of the Seller therein at Closing.

11. Between the date hereof and the Closing, the water and sewer utility business of Seller will be operated in the ordinary course and Seller will, at all reasonable times, permit Purchaser, its attorneys and agents, to examine Seller's books, accounts, and other records and physical properties relating to the Facilities.

12. Prior to Closing, the consummation of the transactions contemplated herein will have been duly authorized by all necessary action, corporate or otherwise, on behalf of Seller.

13. Seller has filed all tax returns which are required to be filed, and each such return which has been filed is true and correct, and Seller has paid all taxes shown as payable on such returns when and as required by applicable law.

14. No representation or warranty by Seller in this Agreement, or any statement or certificate furnished or to be furnished to Purchaser pursuant hereto or in connection with the transactions contemplated herein, contains or will contain any untrue statement of a material fact or omits or will omit to state a material fact necessary to make the statements contained herein or therein not misleading.

ARTICLE II

CLOSING AND PURCHASE PRICE

15. Closing

- a. Closing shall take place on April 1, 1999 at the offices of Seller's counsel, or at such other time or place as Seller and Purchaser may agree upon.
- b. At the Closing, the Seller will, upon due performance by Purchaser of its obligations under the Agreement, deliver:
 - i. Such good and sufficient warranty deeds, bills of sale with covenants of warranty, and sufficient instruments of sale, in form and substance reasonably satisfactory to Purchaser's counsel, as shall be required to vest in Purchaser good, indefeasible and marketable title to all of the Facilities and related real estate used or

- to be used for the water system and the sewer system in the Property, free and clear of liens and encumbrances of every nature;
- ii. All of the files, documents, papers, agreements, books of account, customer lists, original cost invoices, engineering drawings, and records possessed by Seller pertaining to the water and sewer utility business conducted by Seller in the Property, other than its minute books and stock records, and any other records reasonably needed by Seller;
 - iii. All orders, permits, licenses or certificates issued or granted to Seller by any governmental authority in connection with any authorization related to the construction, operation or maintenance of its Facilities or the conduct of its sewer utility business;
 - iv. A title insurance policy in an amount of \$500,000 for all the real estate listed on Exhibit 2 showing good and marketable title in Purchaser, subject only to the standard title exceptions; and
 - v. An opinion of Counsel for Seller, dated as of the Closing, that upon the execution of this Agreement and delivery to Purchaser of the Bill of Sale for the non-real property Facilities, that Purchaser will then have good and marketable title to the non-real property Facilities, free and clear of all liens and encumbrances.
- c. At the Closing and from time to time thereafter, Seller shall execute and deliver such further instruments of sale, conveyance, transfer and assignment, and take such other action as Purchaser may reasonably

request, in order more effectively to sell, convey, transfer and assign to Purchaser any of the Seller's Facilities, to confirm the title of Purchaser thereto and to assist Purchaser in exercising rights with respect thereto.

16. Purchase Consideration

- a. At the Closing Purchaser shall, upon due performance by Seller of its obligations under the Agreement, deliver to the Seller, the Purchase Price (the "Purchase Price") in the amount of \$835,000.00 (EIGHT HUNDRED THIRTY-FIVE THOUSAND DOLLARS), increased by the amount of any unbilled revenues and current customer accounts receivable (which Seller represents and warrants will be collected at their face amount) transferred by Seller to Purchaser and decreased by customer deposits assumed by Purchaser and decreased by any and all liabilities (current, accrued, long-term or other) assumed by Purchaser. The parties shall reconcile the actual unbilled revenues and accounts receivable collected by the Purchaser, offset by available customer deposits, ninety (90) days after the Closing.
- b. For a period of five (5) years after the Closing, Purchaser agrees to pay Seller or its assigns, the sum of \$250 for each new ERC connecting to the water facilities and \$250 for each new sewer ERC connecting to the sewer facilities. Payment will be made semi-annually based on the number of new ERCs within the previous six-month period. Purchaser shall in the normal course of business diligently connect all ERCs that seek water and/or sewer service from Utility in compliance with all environmental, health and safety laws, rules and regulations of government authorities. Each single-family

home connection to the water and/or sewer facilities of the Utility after the Closing shall be treated as one water ERC and/or one sewer DERC, respectively. Each multi-family home connection to the water and/or sewer facilities of the Utility after the Closing shall be treated as 7/10 of a water ERC and 7/10 of a sewer ERC per unit, respectively. Multi-family residential units include, but are not limited to, apartments, condominium units, hotel rooms, motel rooms, prison cells and hospital beds. Non-residential uses shall be converted to ERCs by dividing the average daily water flow in gallons estimated to be consumed by the non-residential customer(s) as set forth in published tables of the State Health Department, by 350, and the result shall be treated as one water and/or one sewer ERC, respectively.

ARTICLE III

COMMISSION APPROVAL

17. **Commission Approval** - As a condition subsequent to Closing, Seller shall apply for approval of the transfer of utility assets with the Florida Public Service Commission. Purchaser shall cooperate with Seller in obtaining such approval.

ARTICLE IV

GENERAL

18. Upon purchase of the Facilities of Seller, Purchaser agrees to supply all customers within the Property with adequate and customary sewer utility service, and to operate, maintain and repair Facilities acquired herein.

19. The failure of either party hereto to enforce any of the provisions of this Agreement or the waiver thereof in any instance by either party shall not be construed as a general waiver or relinquishment on its part of any such provisions, but the same shall, nevertheless, be and remain in full force and effect.

20. Any notice of delivery required to be made hereunder may be made by mailing a copy thereof addressed to the appropriate party as follows:

If to Purchaser: Town of Mangonia Park
1755 E. Tiffany Drive
Mangonia Park, FL 33407
Att: Town Manager

With a Copy To: Moyle, Flanigan, Katz, Kolins,
Raymond & Sheehan, P.A.
625 N. Flagler Drive, 9th Floor
West Palm Beach, FL 33401
Att: Peter L. Breton, Esq.

With a Copy To: Corbett and White
505 South Flagler Drive, Suite 1003
West Palm Beach, FL 33401
Att: Trela White, Esq.

If to Seller: Magonia Park Utility Company
P. O. Box 8006
West Palm Beach, FL 33407
Att: Theresa Cox, President

With a Copy To: Greenberg Traurig
777 South Flagler Drive, Suite 300 East
West Palm Beach, FL 33401
Att: Laurie Gildan, Esq.

Delivery when made by registered or certified mail, shall be deemed complete upon mailing.

21. The Exhibits to this Agreement are a part hereof and are hereby incorporated in fully by reference.

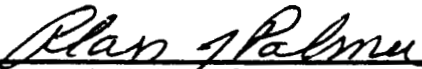
22. This Agreement shall be governed by the laws of the State of Florida.

23. The representations and warranties contained herein shall survive, and continue in effect, after the Closing. Seller agrees to indemnify Purchaser, its successors and assigns, and hold it harmless against any loss, damage, liability, expense or cost, accruing or resulting from any misrepresentation or breach of any representation, or warranty or agreement made or to be performed by Seller under this Agreement or from any misrepresentation in or material omission from any certificate or other documents furnished or to be furnished to Purchaser by Seller.

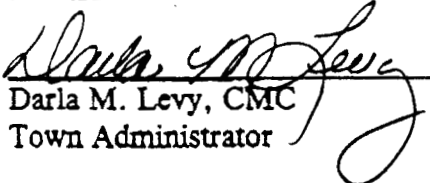
24. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year first above written.


**TOWN OF MANGONIA PARK, FLORIDA,
a Florida municipal corporation**

By: 
Alan J. Palmer, Mayor

ATTEST:


Darla M. Levy, CMC
Town Administrator

MANGONIA PARK UTILITY COMPANY

By: 
Theresa Cox, President