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January 22, 2003

via Federal Express delivery

Director, Division of the Commission Clerk and  
Administrative Services  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, Florida 32399-0850

Re: Application of Farmton Water Resources, LLC for original Water  
Certificate in Volusia and Brevard Counties, Florida,  
PSC Docket No. 2012256-WU

021256 WU

Dear Sir or Madam:

I have enclosed the original and seven copies of the *City of Titusville's Objection to Application for Original Water Certificate and Petition for Formal Hearing* for filing in your records of the above-referenced proceeding. For your convenience, I have also enclosed a copy of this document on diskette in Word 2000 format.

Thank you for your attention to this matter. Please do not hesitate to contact me if you need anything further.

Sincerely,

de la PARTE & GILBERT, P.A.

Edward P. de la Parte, Jr.

cc: F. Marshall Deterding, Esq. (via U.S. Mail)

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE:

Application of Farmton Water Resources,  
LLC for original Water Certificate in Volusia  
and Brevard Counties, Florida

DOCKET NO. 021256-WU

THE CITY OF TITUSVILLE'S OBJECTION TO  
APPLICATION FOR ORIGINAL WATER CERTIFICATE  
AND PETITION FOR FORMAL HEARING

Pursuant to Sections 120.569, 120.57 and 367.045, Florida Statutes and Florida Administrative Code Rules 25-30.031 and 28-106.201, Petitioner, City of Titusville, Florida ("City"), by and through its undersigned attorneys, hereby objects to the Application for Original Water Certificate submitted by Farmton Water Resources, LLC ("Farmton"), and requests a formal administrative hearing alleging as follows:

THE PARTIES

1. The City is a municipal corporation of the State of Florida located in Brevard County. It is also a "political subdivision" and "governmental authority," as those terms are defined in Sections 1.01(8) and 367.021(7), Florida Statutes, respectively. The City's mailing address is 555 South Washington Avenue, Titusville, Florida 32796-3584. However, for purposes of this proceeding, all communication, correspondence, pleadings, notices and other legal papers should be directed to its undersigned attorney.

2. The Florida Public Service Commission ("Commission") is a state agency with exclusive authority to regulate certain non-government-owned wa-

ter and wastewater utilities pursuant to Chapter 367, Florida Statutes. The Commission's mailing address is 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850. The only case number or other identification of which the City is aware is Docket No. 021256-WU.

3. Allegedly, Farmton is a limited liability corporation incorporated in Delaware on February 26, 2002 and registered to do business in Florida on March 20, 2002. Its mailing address is 1625 Maytown Road, Osteen, Florida.

### **BACKGROUND**

4. The City owns and operates a water utility serving an estimated population of 43,845 persons within Brevard County, Florida. It currently holds Consumptive Use Permit 2-009-0008UM2GR2 issued by the St. Johns River Water Management District ("District"), which authorizes the withdrawal of ground water at an annual rate of 2,372.5 million gallons a year ("mgy") or an annual average daily rate of 6.5 million gallons a day ("mgd"). However, the City's reliable raw water capacity is limited to an annual average rate of approximately 4.0 mgd from its existing facilities, the Area II and III wellfields, because of saltwater intrusion and other concerns. On March 6, 2001, the City applied to the District for a permit modification to increase its reliable raw water capacity by developing a new wellfield in northwest Brevard County known as the Area IV wellfield. The new wellfield would be located in Sections 4 and 5, Township 20 South, Range 34 East within the right-of-way of the Florida East Coast Railway. The City proposes to withdraw raw water from this wellfield at an annual average daily rate of 2.75 mgd and a maximum daily rate of 6.5 mgd. During

the wet season (July-September), when the surficial aquifer is full, the City would withdraw raw water primarily from the Area II and Area III wellfields and during the dry season, when the surficial aquifer is low, withdrawals would be primarily from the Area IV wellfield. The City believes this mode of operation will increase its annual average reliable raw water capacity to 6.5 mgd and thus enable it to provide retail water service to existing and future customers.

5. The Miami Corporation owns the land surrounding the railroad right-of-way on which the Area IV wellfield will be located. The Miami Corporation is affiliated with Farmton. In 2002 and 2003, representatives of the two companies have approached the City on several occasions with an offer to sell bulk raw water. The offer would require the City to abandon the Area IV wellfield. The bulk raw water offered by Farmton water would be used to increase the reliable raw water capacity, which would enable the City to provide retail water service to its existing and future customers.

6. On or about December 20, 2002, Farmton submitted the Application to the Commission, which was assigned Docket No. 021256-WU. The Application seek authorization pursuant to Sections 367.031 and 367.045, Florida Statutes and Florida Administrative Code Rule 25-30.033 to provide residential water service and fire protection water service within a service area to be located in Volusia and Brevard Counties and bulk raw water service to neighboring utilities located outside the proposed service area.

7. Attached as Exhibit A to the Application is the "Engineering and Financial Report in Support of Application Certification Before the Florida Public

Service Commission" dated December 2002, which was prepared by Hartman & Associates, Inc. ("Engineering Report"). According to Section 2 of the Engineering Report, Farmton will provide bulk raw water from wells located within the proposed service area to utilities outside the service area to enable those utilities to meet the potable water supply needs of their customers. Section 2 further states that bulk raw water service up to an annual average rate of 2.75 mgd may be needed over the next 10 years based on unidentified water supply analyses by the District. Section 5 of the Engineering Report states that fifteen 12-inch wells will be constructed in two phases in northern Brevard County in order to meet this alleged demand. Based on this assumption, the Engineering Report anticipates the total capital cost of the bulk raw water supply will be \$5,274,000.00 and the annual operation and maintenance cost will range from \$100,000 in 2002 to \$288,900 in 2011. Using these costs in combination with several assumptions described in Section 6 such as minimum annual usage and a combination of fixed and gallonage cost results, the Engineering Report estimates a bulk raw water rate to be used by Farmton.

8. Attached as Exhibit F to the Application is the proposed water tariff for Farmton. This exhibit includes a Bulk Raw Water Service Rate Schedule. This rate schedule would purport to control bulk raw water service.

9. Attached as Exhibit H to the Application is a legal description of Farmton's proposed service area. The legal description indicates that all of Sections 4 and 5 in Township 20 South, Range 34 East in Brevard County, Florida is located within the proposed service area.

10. On or about December 20, 2002, Farmton purportedly mailed a Notice of Application for Original Certificate (“Mailed Notice”) to local governments, utilities, and other entities in Seminole, Volusia and Brevard Counties, including the City.

11. Farmton purportedly published Notice of the Application for Original Certificate (“Published Notice”) in newspapers of general circulation in Brevard, Seminole and Volusia Counties on or about December 25, 28 and 29, 2002, respectively.

#### **CITY’S SUBSTANTIAL INTERESTS**

12. The City is substantially affected by Farmton’s Application. The City is a government authority and political subdivision located within Brevard County, Florida. It owns and operates a water utility within Brevard County, Florida. Farmton has identified the City as a likely bulk raw water customer by offering to provide bulk raw water service and seeking authorization to develop bulk water supplies in an amount equal to the proposed capacity of the City’s Area IV wellfield. Finally, the City is developing water supply facilities within the proposed service area, which will compete with the bulk raw water Farmton is proposing to sell to the City.

#### **DISPUTED ISSUES OF MATERIAL FACT AND LAW AND OBJECTIONS TO THE APPLICATION**

13. Whether Farmton is exempt from regulation by the Commission because:

a. The current or proposed water or wastewater treatment facilities and distribution or collection systems have or will have the capacity, excluding

fire flow capacity, equal to or less than 10,000 gallons per day or 40 equivalent residential connections (“ERCs”), as specified in Section 367.022(6), Florida Statutes and Florida Administrative Code Rule 25-30.055?

b. The proposed bulk raw water service is for sale to government authorities or utilities regulated either by the Commission or a county for resale, as specified in Section 367.022(12), Florida Statutes?

14. Whether Farmton’s proposed residential, fire protection and bulk raw water services will be in competition with, or a duplication of, any other system or portion of system, as specified in Section 367.045(5), Florida Statutes?

15. If Farmton’s proposed residential, fire protection and bulk raw water services will be in competition with, or a duplication of, any other system or portion of system, whether such other system or portion of system is inadequate to meet the reasonable needs of the public or that the person operating the system is unable, refuses or neglects to provide reasonable adequate service, as specified in Section 367.045(5), Florida Statutes?

16. Whether denying the Application, amending the Application or granting the application in part with modifications is in the public interest, as specified in Section 367.045(5), Florida Statutes?

17. Whether granting the Application is consistent with the local comprehensive plans of the counties and municipalities having jurisdiction over all or part of Farmton’s proposed service area, as specified in Section 367.045(5), Florida Statutes?

18. Whether the Mailed Notice and the Published Notice comply with the requirements of Florida Administrative Code Rule 25-30.030?

19. Whether the Application complies with Florida Administrative Code Rule 25-30.033?

20. Whether Farmton is otherwise entitled to approval of the Application pursuant to Chapter 367, Florida Statutes and Florida Administrative Code Chapter 25-30?

#### ULTIMATE FACTS AND APPLICABLE LAW SUPPORTING THE OBJECTIONS

21. Section 367.022(12), Florida Statutes provides in pertinent part as follows:

The following are not subject to regulation by the commission as a utility nor are they subject to the provisions of this chapter, except as expressly provided:

\* \* \*

(12) **The sale for resale of bulk supplies of water or the sale or resale of wastewater services to a governmental authority or a utility regulated pursuant to this chapter either by the commission or the county.**

(Emphasis Added). This provision expressly precludes Commission regulation of the sale of bulk water to a government authority or utility for resale to the public. The Commission case most directly on point is *In re: Application by United Water Florida, Inc. for Approval of Tariff Sheets for Wholesale Water and Wastewater Service in St. Johns County*, Order No. PSC-00-1238-FOF-WS (2000). In that case, United Water Florida, Inc., a Class A water and wastewater utility, filed an application for approval of wholesale water and wastewater service to St. Joe Utilities Company, a utility regulated by St. Johns County. The Commis-



sion declined to approve the request because the transaction between United Water Florida, Inc. and St. Joe Utilities Company was exempt from Commission regulation.

As a result of the 1999 amendment to Section 367.022(12), Florida Statutes, the contemplated sale by UWF of wholesale water and wastewater service to St. Joe to enable St. Joe to provide retail service, is clearly within the purview of Section 367.022(12), Florida Statutes, and is therefore exempt from this Commission's regulation. In this instance, UWF is proposing to sell both wholesale and water and wastewater services to St. Joe, a utility regulated by St. Johns County.

*Id.* Similarly, in the case at bar, Farmton is proposing to sell bulk raw water to utilities in the region in order to enable them to provide retail service to the public. Article XI of the Application indicates "Certification of the Utility by the Commission will allow the Applicant to... properly plan for and manage the water resources of the area for the benefit of all needs within the proposed territory and **bulk needs outside that territory.**" (Emphasis Added). Article XXII of the Application indicates that an explanation of the existing and proposed bulk raw water service is contained in Exhibit A (Engineering Report). Section 1.3 of the Engineering Report titled "Overview" indicates "The bulk raw water will be provided to utilities outside the proposed service area." Section 2.1 of the Engineering Report titled "Types of Services to be Provided" states "The bulk raw water service will consist of pumping water from wells and delivering it to the entity(s) in need of such water for treatment to potable drinking water standards." Taken as a whole, these statements clearly establish that Farmton is seeking authorization to sell bulk raw water to government authorities and

utilities in the region so these entities can treat the water to potable drinking water standards for resale to the public. As indicated in *In re: Application by United Water Florida, Inc. for Approval of Tariff Sheets for Wholesale Water and Wastewater Service in St. Johns County, supra.*, this request exceeds the Commission's authority and must be rejected pursuant to Section 367.022(12), Florida Statutes.

22. Section 367.022(6), Florida Statutes provides in pertinent part as follows:

The following are not subject to regulation by the commission as a utility nor are they subject to the provisions of this chapter, except as expressly provided:

\* \* \*

(6) Systems with the capacity or proposed capacity to serve 100 or fewer persons.

Florida Administrative Code Rule 25-30.055 interprets this provision to require proof that the current or proposed water treatment and distribution facilities have or will have the capacity, excluding fire flow, to serve more than 40 ERCs. The number of ERCs that Farmton proposes to serve is summarized in Exhibit B to the Application, which is titled "Farmton Water Resources LLC Estimated Equivalent Residential Connections (ERCs) Test Year 2009." This exhibit indicates the total number of ERCs will be 7,325, which is composed of 2 ERCs for existing residential water service, 94 ERCs for future residential water service (including service to the Miami Tract Hunt Club, Inc.)<sup>1</sup> and 7,229 ERCs for fu-

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<sup>1</sup> According to Section 2.3 of the Engineering Report, the ERCs for the Miami Hunt Tract Club, Inc. were calculated assuming 2.5 persons per family and a water use rate of 50 gallons per day per person. This yields a total water use rate of 32,500 gallons per day. This number was then

ture bulk raw water service. For the reasons stated in the preceding paragraph, the Commission is precluded from regulating or considering Farmton's proposed bulk raw water service. Consequently, the capacity of Farmton's system is at best only 96 ERCs. Of this total amount, 93 ERCs are intended to serve the alleged needs of the Miami Tract Hunt Club. In other words, but for the future needs of the Miami Tract Hunt Club, the Application does not demonstrate sufficient water service capacity to justify granting the Application. The only proof Farmton has offered of the Miami Tract Hunt Club's future needs is an ambiguous letter from its President, Mike Thomas, dated February 6, 2002, which appears as Exhibit D to the Application. Although the letter indicates the club has 260 families, who would be interested in purchasing residential water service from Farmton, it does not indicate how many of those families will actually be using the proposed residential water service during the course of any given year, much less the 2009 Test Year, nor does the letter indicate how many family members will actually be water customers. The Engineering Report assumes that 650 persons (260 families x 2.5 family members = 650 persons) will use the service, but this assumption is not justified by the one letter. Also, the Engineering Report assumes each of these 650 persons will use 50 gallons per day or 18,250 gallons per year, however, this assumption is not reasonable given the fact that water service at the hunting camps will only be used intermittently during the hunting season and possibly a few other times during the year. In

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divided by 350 gallons per day in order to determine the number of ERCs. The resulting number was 93 ERCs, which represents all about one of the ERCs identified in Exhibit B for "General Service."

summary, the information submitted in the Application does not clearly show that Farmton's proposed water service is subject to regulation by the Commission.

23. According to Section 367.045(5)(a), Florida Statutes, the Application must demonstrate that the original water certificate and initial water tariff are consistent with the public interest. At a minimum, Florida Administrative Code Rule 25-30.033(1) requires that the Application demonstrate a need for the requested service, which could not be met by other utilities. The Application requests authorization to provide bulk raw water service to utilities in the region. The Engineering Report indicates there is a demand for up to 2.75 mgd of bulk raw water during the next 10 years. This demand is based on unnamed District studies. The only demand for bulk raw water service of which the City is aware of is its own need for an additional 2.75 mgd to enable it to increase the reliability of its water system. However, this need will soon be satisfied by the expansion of the City's existing water system to provide an additional 2.75 mgd from the Area IV wellfield, which will be located on a railroad right-of-way within the proposed service area. Consequently, whatever need exists in the region for bulk raw water service, can be satisfied through an expansion of existing water systems or through the purchase of excess bulk raw water from existing systems. Therefore, Farmton has failed to demonstrate that granting the Application is in the public interest.

24. Section 367.045(5)(a), Florida Statutes provides in pertinent part as follows:

The commission may not grant a certificate of authorization for a proposed system, or an amendment to a certificate of authorization for the extension of an existing system, which will be in competition with, or a duplication of, any other system or portion of a system, unless it first determines that such other system or portion thereof is inadequate to meet the reasonable needs of the public or that the person operating the system is unable, refuses, or neglects to provide reasonably adequate service.

According to the Application and the attached Engineering Report, Farmton is proposing to provide up to 2.75 mgd of bulk raw water service in the region during the next 10 years. This demand is based on unnamed District studies. Assuming for the sake of argument this dubious estimate is correct, the Application fails to demonstrate that existing water systems are incapable of meeting this demand or the owners are unable, refuse or have neglected to provide reasonably adequate service. The City believes that government authorities and utilities in the region are capable of meeting their existing or future demands for bulk raw water service by expanding their own systems or purchasing excess bulk raw water from other existing systems. For example, the City is developing an additional wellfield that by itself would be capable of supplying the 2.75 mgd of bulk raw water, which Farmton indicates is needed in the region. This facility would be an extension of the City's existing water system and would be more cost-effective than Farmton's estimated bulk raw water rate. The City is also much farther along with its plans than Farmton insofar that it filed for a consumptive use permit application in March 2001 and is close to completing the permit review process, while Farmton must successfully complete the current application process before it would even be in position to apply for a consumptive use permit for its proposed bulk raw water facilities. In sum-

mary, the expansion of the City's existing water system is in competition with and will duplicate Farmton's proposed bulk raw water supply to meet the same 2.75 mgd of bulk raw water demand identified in the Application and Farmton has failed to demonstrate that the City's efforts are inadequate to meet this need. Therefore, the Commission does not have any choice but to deny the Application pursuant to Section 367.045(5)(a), Florida Statutes.

25. According to Section 367.045(5)(b), Florida Statutes, the Commission must consider whether issuance of a certificate of authorization is inconsistent with the local comprehensive plan of a county or municipality, if an objection raising this issue has been timely made. Section 367.045(4), Florida Statutes allows a county or municipality to object on the grounds that issuance of a certificate of authorization would violate established local comprehensive plans pursuant to Sections 163.3161-163.3211, Florida Statutes. Florida Administrative Code Rule 25-30.033(1) requires an application for original water certificate to contain a statement that to the best of the applicant's knowledge, the provision of service will be consistent with the water and wastewater sections of the local comprehensive plan as approved by the Department of Community Affairs, at the time the application is filed. Volusia County has adopted a comprehensive plan, which has been approved by the Department of Community Affairs. The Potable Water Sub-Element of the Volusia County Comprehensive Plan is contained in Chapter 7. Although Article XIV of the Application indicates that Farmton's proposed water service is consistent with the water sections of

Volusia County's Comprehensive Plan, in reality, the proposal conflicts with the Potable Water Sub-Element, as follows:

a. Policy 7.1.1.7 of the Volusia County Comprehensive Plan prohibits the extension of water lines or establishment of central systems of potable water outside the water service areas (County, municipal or other established by an adopted service area agreement), unless such extension or facility will mitigate existing or potential problems of public health, safety or welfare. According to the Application, Farmton proposes to extend water lines in Volusia County in order to provide residential and bulk raw water service. However, these lines will extend outside any existing water service area and Farmton does not presently have a water service area agreement with Volusia County. Additionally, the Application does not indicate that extension of these lines is necessary to mitigate existing or potential problems of public health, safety or welfare. Therefore, the Application conflicts with the Comprehensive Plan.

b. Policy 7.1.1.9 of the Volusia County Comprehensive Plan specifically prohibits privately-owned potable water systems that are not located in an area encompassed by an adopted water service area agreement, a County water service area, Rural Community, Rural Village or Rural Recreational area, except for the purpose of correcting existing or potential conditions which have been determined to be a hazard to the public health, safety or welfare. According to the Application, Farmton proposes to provide potable residential water service and provide bulk raw water for treatment and use in potable water systems in portions of Volusia County, which are not located in an area encompassed by

an adopted water service area agreement, a County water service area, Rural Community, Rural Village or Rural Recreational Area. Additionally, the Application does not indicate that the provision of potable residential water service or bulk raw water in those areas is needed to correct an existing or potential condition, which has been determined to constitute a hazard to public health, safety or welfare. Therefore, the Application conflicts with the Comprehensive Plan.

c. Policy 7.1.1.12 of the Volusia County Comprehensive Plan only allows the construction of potable water wells, which comply with one or more of the circumstances listed in the policy and, which have been approved by the Volusia County Environmental Management Service Group. The Application does not allege or contain information establishing that the proposed residential potable water wells meet one or more of the applicable circumstances listed in Policy 7.1.1.12 and that the wells have been or will be approved by the Volusia County Environmental Management Service Group. Therefore, the Application conflicts with the Comprehensive Plan.

d. Policy 7.1.1.14 of the Volusia County Comprehensive Plan prohibits the establishment of package treatment plants outside of water service areas, except in Rural Communities and Rural Recreational Areas or, where the Florida Department of Environmental Protection or other appropriate agency has determined such a facility is needed to correct existing or potential problems of public health, safety or welfare. According to the Application, Farmton proposes to establish a package treatment plant with each residential potable



water well. However, Farmton's proposed service area in Volusia County is located outside of water service areas and Rural Communities and Rural Recreational Areas and Farmton has not entered into a water service area agreement with Volusia County. Additionally, the Application does not allege that construction of these package treatment plants has been determined by the Florida Department of Environmental Protection or other appropriate agency to be necessary to correct existing or potential problems of public health, safety or welfare. Therefore, the Application conflicts with the Comprehensive Plan.

e. Objective 7.1.8 of the Volusia County Comprehensive Plan authorizes Volusia County to coordinate the provision of potable water service in the unincorporated area so as to ensure the efficient and economical delivery of this service. The Application does not indicate that Farmton has made any attempt to coordinate with Volusia County the provision of potable residential water service and bulk raw water service in the unincorporated area. On the contrary, Article IX of the Application indicates that Farmton has not inquired of any other utilities within the area, who might be able to provide service to its proposed territory. Therefore, the Application conflicts with the Comprehensive Plan

f. Farmton's Application conflicts with other provisions of the Potable Water Sub-Element and other elements of the Volusia County Comprehensive Plan.

26. According to Section 367.045(5)(b), Florida Statutes, the Commission must consider whether issuance of a certificate of authorization is inconsistent

with the local comprehensive plan of a county or municipality, if an objection raising this issue has been timely made. Section 367.045(4), Florida Statutes allows a county or municipality to object on the grounds that issuance of a certificate of authorization would violate established local comprehensive plans pursuant to Sections 163.3161-163.3211, Florida Statutes. Florida Administrative Code Rule 25-30.033(1) requires an application for original water certificate to contain a statement that to the best of the applicant's knowledge, the provision of service will be consistent with the water and wastewater sections of the local comprehensive plan as approved by the Department of Community Affairs, at the time the application is filed. Brevard County has adopted a comprehensive plan, which has been approved by the Department of Community Affairs. The Potable Water Element of the Brevard County Comprehensive Plan is contained in Chapter 6. Although Article XIV of the Application indicates that Farmton's proposed water service is consistent with the water sections of Brevard County's Comprehensive Plan, in reality, the proposal conflicts with the Potable Water Element, as follows:

- a. Policy 3.4 of the Potable Water Element of the Brevard County Comprehensive Plan requires that all newly proposed service areas or service areas regulated by the Commission be reviewed and approved by Brevard County. The Application does not indicate that Farmton's proposed service territory in Brevard County has been reviewed and approved by Brevard County. Therefore, the Application conflicts with the Comprehensive Plan.

b. Policy 3.5 of the Potable Water Element of the Brevard County Comprehensive Plan prohibits any new potable water facilities and services intended to serve future development needs that are not located in the 0-20 year future potable water service area (see Map 1), unless the potable water service area is amended in the Potable Water Element of the Comprehensive Plan or a non-governmental entity is the provider of the potable water facilities, so long as the private potable water service is consistent with the Brevard County Comprehensive Plan. The Application indicates that Farmton proposes to develop new potable residential and bulk raw water facilities and services intended to service future development needs that are not located in Brevard County's future potable water service area map and the Potable Water Element of the Comprehensive Plan has not been amended to accommodate this proposal. Although Farmton is a non-governmental entity, the proposed private potable water service is otherwise inconsistent with Comprehensive Plan because Farmton's proposed service territory has not been reviewed and approved by Brevard County, as required by Policy 3.4 of the Potable Water Element. Therefore, the Application conflicts with the Comprehensive Plan.

c. Farmton's Application conflicts with other provisions of the Potable Water Element and other elements of the Brevard County Comprehensive Plan.

27. According to Section 367.045(5)(a), Florida Statutes, the Application must demonstrate that the original water certificate and initial water tariff is consistent with the public interest. At a minimum, Florida Administrative Code

Rule 25-30.033(1) requires that the Application demonstrate Farmton has the financial and technical ability to provide residential water service and fire protection water service within its service area. The legal description of the proposed service area includes the railroad right-of-way on which the City is planning to develop the Area IV wellfield. Farmton has not demonstrated a technical ability to provide residential water service and fire protection water service within the railroad right-of-way because it does not own the property, residences are not likely to be developed on the right-of-way and once the City acquires the property from the East Coast Railway, it will provide the fire protection water service needs of this property.

28. According to Section 367.045(5)(a), Florida Statutes, the Application must demonstrate that the original water certificate and initial water tariff is consistent with the public interests. At a minimum, Florida Administrative Code Rule 25-30.033(1) requires evidence in the form of a warranty deed or a copy of a long-term agreement which provides for continued use of the land. The only documentation provided in the Application is an unsigned draft Lease Agreement, which is attached as Exhibit C. This draft agreement indicates that an affiliated company, the Miami Corporation, owns all the property encompassed by the proposed service territory, but there is no proof in the form of warranty deeds or similar instruments supporting this claim. Additionally, since the agreement is draft and unsigned, the Commission does not have any assurances that that an agreement will in fact be executed and, even if one is signed, that it will have the same terms and conditions as the draft agreement. This is

particularly significant in the instant case, since the royalty payment provision in the lease agreement represents a significant component of the residential and bulk raw water rates. For example, the Engineering Report calculated the residential and bulk raw water rates assuming a royalty payment of 10¢ per thousand gallons of water sold. The rates would be substantially different should the actual lease agreement require a higher royalty payment such as \$1 a thousand gallons. Without a signed agreement, the Commission has no assurances that Farmton will have sufficient legal control over the land, where the existing and proposed utility facilities will be located and that the financial impact of any such ownership on the water rates will be as stated in the Engineering Report.

29. According to Section 367.045(5)(a), Florida Statutes, the Application must demonstrate that the original water certificate and initial water tariff is consistent with the public interests. At a minimum, Florida Administrative Code Rule 25-30.033(1) requires a sample water tariff containing all rates, classifications, charges, rules and regulations. A proposed initial water tariff is attached to the Application as Exhibit F. However, this tariff is internally inconsistent and insufficient for its intended purpose. For example, Original Sheet No. 3.0 indicates that the territory served is limited to Volusia and Brevard Counties. However, Original Sheet No. 4.0 indicates that the communities served by all three rate schedules (residential, fire protection and bulk raw water) are located in Seminole, Volusia and Brevard Counties.

30. According to Section 367.045(5)(a), Florida Statutes, the Application must demonstrate that the original water certificate and initial water tariff is consistent with the public interests. At a minimum, Florida Administrative Code Rule 25-30.033(1) requires an accurate description of the territory to be served, using township, range and section references. The legal description of the proposed service territory is found in Exhibit H to the Application. However, this description is inconsistent with the legal description included as part of the Mailed Notice and Published Notice. The legal description included in the notices of application contains a statement indicating that, "The application is intended to include only those lands owned by Miami Corporation." However, the legal description included as part of the Application does not contain any such statement. The accuracy of the legal description contained in the Application depends on whether the proposed service territory is limited to lands owned by Miami Corporation, since the legal description specifically includes land not owned by the Miami Corporation in Township 21 South, Range 34 East and Township 21 South, Range 33 East in Brevard County, Florida.

31. According to Section 367.045(5)(a), Florida Statutes, the Application must demonstrate that the original water certificate and initial water tariff is consistent with the public interests. At a minimum, Florida Administrative Code Rule 25-30.033(1) requires a detailed financial statement (balance sheet and income statement) of the financial condition of the applicant, that shows all assets and liabilities of every kind and character. The income statement shall be for the preceding year or fiscal year. If the applicant has not operated for a full

year, then the income statement shall be for a lesser period. The Application fails to provide the necessary balance sheet and income statements for Farmton, including any description of the Farmton's assets and liabilities. Instead, according to Article XXIII of the Application, there is no detailed balance sheet or statement of financial condition or operating statement available for Farmton because it has not yet received the first dollar of revenue from the sale of water. However, Farmton has allegedly been in existence since February 26, 2002 and the receipt of revenue from the sale of water is not a stated precondition to compliance with this rule. If Farmton currently does not have any assets, liabilities income or expenses, then the Application should so indicate.

32. According to Section 367.045(5)(a), Florida Statutes, the Application must demonstrate that the original water certificate and initial water tariff is consistent with the public interests. At a minimum, Florida Administrative Code Rule 25-30.033(1) requires identification of all entities the applicant is relying on to provide funding, an explanation of the manner and amount of such funding, which shall include the entity's balance sheet and income statement and copies of any financial agreements with the applicant. While the Application identifies Farmton Management, LLC as the entity Farmton is relying on to provide funding and provides a copy of its recent balance sheet, it fails to explain the manner and amount of such funding. Additionally, the Application does not include Farmton Management, LLC's income statement nor does it include copies of any financial agreements between the two entities.

33. According to Section 367.045(5)(a), Florida Statutes, the Application must demonstrate that the original water certificate and initial water tariff is consistent with the public interests. At a minimum, Florida Administrative Code Rule 25-30.033(1) requires a cost study including customer growth projections supporting the proposed rates, charges and service availability charges. While the Engineering Report purports to provide a cost study addressing the items specified in the rule, the report is woefully inadequate. Therefore, for all intents and purposes, this provision has not been satisfied.

34. According to Section 367.045(5)(a), Florida Statutes, the Application must demonstrate that the original water certificate and initial water tariff is consistent with the public interests. At a minimum, Florida Administrative Code Rule 25-30.033(1) requires a schedule showing the projected cost of the proposed system by uniform system of accounts and the related capacity of each system in ERCs and gallons per day. While the Engineering Report purports to provide the requisite schedule, it is woefully inadequate. Therefore, for all intents and purposes this provision has not been satisfied.

35. According to Section 367.045(5)(a), Florida Statutes, the Application must demonstrate that the original water certificate and initial water tariff is consistent with the public interests. At a minimum, Florida Administrative Code Rule 25-30.033(1) requires a schedule showing the projected operating expenses of the proposed system by uniform system of account numbers, when 80 percent of the design capacity of the system is being utilized. While the Engineering Report purports to provide the requisite schedule, it is woefully in-



adequate. Therefore, for all intents and purposes, this provision has not been satisfied.

36. According to Section 367.045(5)(a), Florida Statutes, the Application must demonstrate that the original water certificate and initial water tariff is consistent with the public interests. At a minimum, Florida Administrative Code Rule 25-30.033(1) requires a schedule showing the projected capital structure including the methods of financing the construction and operation of the utility. While the Engineering Report purports to provide the requisite schedule, it is woefully inadequate. Therefore, for all intents and purposes, this provision has not been satisfied.

37. According to Section 367.045(5)(a), Florida Statutes, the Application must demonstrate that the original water certificate and initial water tariff is consistent with the public interests. At a minimum, the application must comply with the requirements of Florida Administrative Code Rule 25-30.033. The Application fails to comply with those requirements in other areas beyond those specifically identified herein.

38. Florida Administrative Code Rule 25-30.030(2) requires that notice of Farmton's Application contain a complete and accurate legal description of the proposed service territory. The Mailed Notice and the Published Notice contain the statement "The application is intended to include only those lands owned by Miami Corporation." The City understands the legal description provided by Farmton as part of the Application includes lands not owned by the Miami Corporation. For example, legal description includes the railroad right-of-way in

Sections 4 and 5, Township 20 South, Range 34 owned by the Florida East Coast Railway on which the City plans to develop its Area IV wellfield. The City further understands the Miami Corporation does not own land in Township 21 South, Range 34 East and Township 21 South, Range 33 East in Brevard County, Florida, which are included in their entirety in the legal description of the proposed service territory. In summary, the legal description of the proposed service territory is so deficient and defective as to make it impossible for a reasonable person to determine the exact boundaries of the proposed service territory, which is the primary purpose of the notice requirements in Rule 25-30.030(2).

39. Florida Administrative Rule 25-030(4) requires that the notice of application for certificate of authorization include:

A statement that any objections to the application must be filed with the Director, Division of Commission Clerk and Administrative Services, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0870, not later than 30 days after the last day that the notice was mailed or published, whichever is later.

The Mailed Notice prepared and distributed by Farmton in the instant case contains the following statement:

Any objection to the said application must be made in writing and filed with the Director, Division of the Commission Clerk and Administrative Services, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, within thirty (30) days from the date of this notice.

Clearly, the Mailed Notice omits any mention of the fact that the deadline for filing an objection to the Application is 30 days after the last day that the notice was mailed or published, whichever is later. By this omission, the Mailed

Notice suggests the deadline for filing an objection is 30 days from the date the notice was mailed and not the later of the mailing date or the publication date. This is a material omission in that Section 367.045(3), Florida Statutes and Florida Administrative Code Rule 25-30.031, both indicate that the deadline for filing an objection is 30 days after the last day that the notice is mailed or published, whichever is later.

40. Florida Administrative Code Rule 25-30.030(2) requires Farmton to provide notice by mailing and publication in the counties, where the service area will be located and within one mile of the service area boundary. Florida Administrative Code Rule 25-30.030(7) requires notice to be published at least once in a newspaper of general circulation in this area within 7 days of filing. In the instant case, Farmton's proposed service area is located in Volusia and Brevard Counties and within one mile of Seminole County. Consequently, Farmton was required to publish notice of the Application in a newspaper of general circulation in each of those three counties within 7 days of the filing date. The City understands the Application was filed with Commission on December 20, 2002, but the Published Notice did not run in a newspaper of general circulation in Seminole and Volusia Counties until December 28 and 29, respectively. Therefore, Farmton did not comply with Rule 25-30.030(7), insofar as notice of application was not published in the specified area within 7 days of filing.

WHEREFORE, the City respectfully requests that an administrative hearing be conducted pursuant to Sections 120.569, 120.57 and 367.045(4), Florida Statutes in or near the proposed service territory, that Farmton's Application be denied and that the City be granted such other relief as deemed appropriate.

Respectfully submitted,

de la PARTE & GILBERT, P.A.



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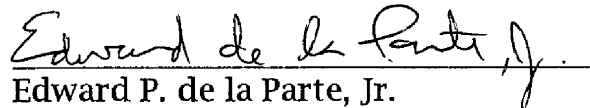
Telephone: (813) 229-2775

Telefacsimile: (813) 229-2712

Counsel for Petitioner,  
City of Titusville, Florida

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by U.S. Mail on F. Marshall Deterding, Esq., Rose, Sundstrom & Bentley, LLP, 2548 Blairstone Pines Drive, Tallahassee, Florida 32301 on this 22nd day of January, 2003.



Edward P. de la Parte, Jr.