

# Sunshine Utilities

10230 E. Hwy. 25 · Belleview, FL 34420-5531  
Office (352) 347-8228 · Fax (352) 347-6915

September 7, 2010

Ann Cole, Commission Clerk  
Florida Public Service Commission  
2540 Shumard Oak Blvd.  
Tallahassee, FL 32399-0850

RECEIVED CENTER  
10 SEP 13 AM 7:11  
RECEIVED-FPSC  
10 SEP 13 AM 8:35  
COMMISSION  
CLERK

**RE: Docket No. 100377-WU, Application for transfer of water facilities to Marion County, and amendment of Certificate No. 363-W, by Sunshine Utilities of Central Florida, Inc.**

Dear Ms. Cole:

Please find the corrections to the deficiencies in the above mentioned docket.

## Deficiencies

1. Please find attached a copy of the Original Agreement.
2. A copy of Sunshine Utilities 2009 Annual Report was delivered to Todd Petrie, Assistant Director of Marion County Utilities.
3. Marion County officially assumed responsibility on August 2, 2010. That is the day that we read the customers meters for their final bill.
4. All customer deposits and interest have been refunded to customers on August 11, 2010.
5. All RAF's that are due on the Lake View Hills subdivision will be included in our next payment for the period on July-December 2010.

If you have any question concerning the above information , please feel free to contact me at (352)347-8228 or E-mail me at [SunshineUtl@aol.com](mailto:SunshineUtl@aol.com).

Thank you,



Dewaine Christmas  
Manager

dc/ Enclosures

DOCUMENT NUMBER DATE  
07623 SEP 13 e  
FPSC-COMMISSIONER

Return to: Marion County Utilities  
1219 S. Pine Ave  
Ocala, FL 34471

DAVID R. ELLSPERMANN, CLERK OF COURT MARION COUNTY

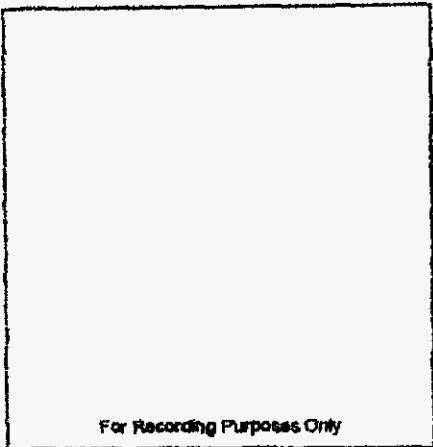
DATE: 05/11/2010 10:40:02 AM

FILE #: 2010042283 OR BK 05356 PGS 0637-0667

RECORDING FEES 266.00

THIS INSTRUMENT PREPARED BY  
AND SHOULD BE RETURNED TO:

Thomas A. Cloud, Esq.  
GRAYROBINSON, P.A.  
301 East Pine Street, Suite 1400  
Post Office Box 3068  
Orlando, FL 32802-3068  
(407) 843-8880



**MARION COUNTY/SUNSHINE UTILITIES OF  
CENTRAL FLORIDA, INC.  
WATER SYSTEM  
ASSET PURCHASE & SALE AGREEMENT**

**CONTRACT NO. 10- 02**

THIS AGREEMENT, is made and entered into this 20<sup>th</sup> day of April, 2010 (the "Effective Date"), by and between **MARION COUNTY**, a political subdivision of the State of Florida (hereafter "COUNTY"), and **SUNSHINE UTILITIES OF CENTRAL FLORIDA, INC.**, a Florida corporation (hereafter "SELLER").

**RECITALS**

1. SELLER owns and operates a potable water production, treatment, storage, transmission, and distribution system in Marion County, Florida, known as the Lakeview Hills Water System (hereafter the "Water System").

2. The Water System (hereafter also referred to as the "Utility System") operates under Certificate of Authorization (the "Certificate") issued by the Florida Public Service Commission (the "Commission"), which authorizes SELLER to provide water service to certain territories in Marion County, Florida.

3226765v1 (executed copy)  
# 3041537 v5

BOOK NUMBER DATE

07623 SEP 13 2010

3. Pursuant to its governmental powers under Chapter 125, Florida Statutes, and other applicable laws, the COUNTY is authorized to preserve and enhance present advantages, encourage the most appropriate use of land, water and resources, consistent with public interest, facilitate adequate and efficient provision of water and sewerage facilities, and conserve, develop, utilize, and protect natural resources within its jurisdiction.

4. The SELLER is willing to sell the Utility System to the COUNTY, and the COUNTY is willing to purchase the Utility System from the SELLER.

5. The COUNTY has the power and authority to acquire the Utility System and to operate the Utility System in order to provide potable water infrastructure and service within Marion County, and the SELLER has the power and authority to sell the Utility System.

6. Pursuant to Section 125.3401, Florida Statutes, the COUNTY has examined the SELLER's Water System Assets, has examined its existing financial structure, has examined the long-range needs and goals of the COUNTY relative to the provision of water service to its present and future citizens, and has determined that the acquisition of the Utility System is in the public interest. The COUNTY has also examined those documents specified in Section 367.071(4)(a), Florida Statutes.

7. The parties have negotiated in good faith and are empowered to be bound by the terms and conditions set forth in this Agreement.

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

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

**SECTION 2. PURCHASE AND SALE OF WATER SYSTEM ASSETS.** The SELLER, pursuant to the circumstances noted in the Recitals above, agrees to sell and the COUNTY agrees to buy the Utility System, consisting of all personal property used or held for use in connection with the Utility System, hereinafter referred to as the "Purchased Assets" or the "Water System Assets."

**SECTION 3. PURCHASED ASSETS.** On the Closing Date, as defined below, SELLER shall sell, assign, transfer, convey and deliver to COUNTY, and COUNTY shall purchase, accept and pay for all of the right, title and interest, in and to the following property and assets:

**3.1 Easements and Other Rights.** All rights, privileges, easements, licenses, prescriptive rights, rights-of-ways, and rights to use public and private roads, highways, streets, and other areas owned and/or used by the SELLER in connection with the construction, reconstruction, installation, maintenance and operation of the Utility System and the Purchased Assets (collectively referred to as the "Easements"). The Easements are located in recorded plats and dedicated public rights-of-way and are being conveyed to the COUNTY.

**3.2 Water Distribution Lines.** The following assets owned by the SELLER and used or held for use in connection with the Utility System, as more specifically described in **Exhibit "1"** hereof, including all water transmission, distribution, and other water facilities of every kind and description whatsoever including without limitation, all trade fixtures, leasehold improvements, controls, collection and transmission pipes or facilities, valves, meters, service connections, and all other water service connections, and all other water physical facilities and property installations in use in connection with the operation of the Utility System by the SELLER. The parties hereto agree that the COUNTY is buying the physical assets of the SELLER in an "as is" and "where is" condition without relying upon any warranty or representation from the SELLER regarding the physical condition of the Purchased Assets or condition of any of the improvements constructed thereon. The COUNTY has made its own investigations of the Purchased Assets and is relying solely upon these investigations in making the purchase described in this Agreement.

**3.3 Temporary Well License.** SELLER agrees and acknowledges that COUNTY will require use of the well located on the lands described in **Exhibit "2"** attached to and incorporated in this Agreement. Therefore, SELLER hereby grants to COUNTY a temporary license right to use the well and appurtenant equipment to supply potable water to those customers of the Water System beginning on the Effective Date of this Agreement and terminating upon the earlier of (1) one (1) year after the Effective Date, or (2) upon completion of construction by the COUNTY of a water pipeline and connection to provide water service to the customers of the Water System. In the event such water pipeline construction and connection to provide water service to the customers of the Water System is not accomplished within one (1) year of the Effective Date of this Agreement, SELLER agrees and acknowledges the COUNTY may thereafter use the well and appurtenant equipment to supply potable water to those customers of the Water System for an additional period not to exceed one (1) year. During any such additional one (1) year period, the COUNTY agrees to pay SELLER an amount equal to THREE HUNDRED AND NO/100 DOLLARS (\$300.00) per month for its use of the well and appurtenant equipment, which amount shall be due and payable to SELLER upon the first (1<sup>st</sup>) day of each month.

**3.4 Equipment.** All equipment, tools, parts, laboratory equipment, office equipment and other personal property owned by the SELLER and utilized by the

SELLER exclusively in connection with the operation of the Utility System. Such equipment as exists is so minor that no inventory thereof is required.

**3.5 Customer Records and Supplier Lists; Plans and Specifications.** All current customer records and supplier lists, as-built surveys and water plans, plats, engineering and other drawings, designs, blueprints, plans and specifications, any and all reproducible documents, mylars, sepias, and other original documents used or held for use with the Utility System, accounting and customer records and all other information and business records in the possession of the SELLER that relate to the operation of the Utility System. The SELLER may make copies of its books, plans and records, at its expense, before transferring the original or copies of the books, plans and records to the COUNTY. These documents shall include any such documents related to work-in-progress, if any. A listing of the as-built engineering plans is attached to and incorporated in this Agreement as **Exhibit "3."**

**3.6 Certificates, Permits, and Approvals.** Subject to all necessary regulatory approvals and to all conditions, limitations or restrictions contained therein, all existing original certificates, permits, and other governmental authorizations and approvals of any kind in the possession of SELLER necessary to operate and maintain the Utility System in accordance with all governmental requirements, more specifically described in **Exhibit "4,"** attached to and incorporated in this Agreement. Certificated Service Area maps and legal descriptions accurately reflecting those service areas currently certificated by the FPSC related to the Utility System are attached to and incorporated in this Agreement as **Exhibit "5."** The COUNTY agrees to execute necessary forms required by governmental agencies to transfer and to assume SELLER's future obligations under said permits and approvals. These certificates, permits, and approvals shall include, but not be limited to, the St. Johns River Water Management District ("SJRWMD") consumptive use or water use permits, the FPSC certificate, and any such certificates, permits, and approvals related to work-in-progress, if any, and shall be transferred and delivered to the COUNTY at SELLER's expense.

**3.7 Excluded Assets.** The following assets of SELLER regarding the Utility System shall not be included in the assets conveyed to COUNTY as part of the Purchased Assets:

- (1) SELLER's cash and SELLER's bank account;
- (2) Federal, State or Local Tax or other deposits maintained by SELLER with any governmental authority for SELLER's use and benefit;
- (3) Vehicles or other equipment which are not utilized by SELLER exclusively in the operation and maintenance of the Utility System; and

(4) All furniture, fixtures, office equipment, general business records and other assets of SELLER not located on the site of the Utility System or which are not held for the exclusive use or benefit of the Utility System.

(5) That certain real property more particularly described as Lot 1, Block C, as shown on that certain plat of Lakeview Hills, according to the plat thereof recorded in Plat Book W, Page 28, Public Records of Marion County, Florida, Parcel Identification No. 45030-003-01 (the "Utility Property"), shall not be included in the assets conveyed to the COUNTY hereunder and shall be retained by SELLER.

**SECTION 4. PURCHASE PRICE AND PAYMENT.** The parties hereto have agreed upon a purchase price through a substantial and complicated negotiating process. The Purchase Price agreed upon is neither the highest, nor the lowest, amount that could be justified as a fair value of the Utility System according to the terms and conditions of this Agreement. Such Agreement has been reached in order to make the acquisition of the Purchased Assets attainable by the COUNTY with a view that the COUNTY will carry through the written commitments of the SELLER to its consumers, and that the COUNTY will attempt to operate the system in as efficient manner as possible, subsequent to the closing.

**4.1** The COUNTY hereby agrees to pay to the SELLER at closing a total Purchase Price in the amount of EIGHTY SIX THOUSAND EIGHT HUNDRED AND NO/100 DOLLARS (\$86,800.00), which amount equals ONE THOUSAND FOUR HUNDRED AND NO/100 DOLLARS (\$1,400.00) for each of the sixty two (62) connections within the Utility System Certificated Service Area shown on **Exhibit "5"** attached to and incorporated in this Agreement. Said Purchase Price shall be paid at closing in federal or other immediately available funds by wire transfer.

**4.2** Although stated elsewhere in this Agreement, it is specifically agreed by and among the parties hereto, that the COUNTY shall not and at closing will not purchase or assume any of the liabilities or outstanding obligations of the Utility Systems and the SELLER shall remain responsible for same, including payment or satisfaction of its outstanding debts, obligations, and responsibilities, except as otherwise herein provided.

**4.3** In the event SELLER, in accordance with all necessary regulatory approvals, divides the Utility Property into two (2) or more residential lots (individually, a "Lot"), each time a new owner of a Lot or occupant of any residence, building or unit construct thereon pays the COUNTY its water capital charge as defined in the COUNTY's then current rate resolution to receive retail water service from the COUNTY, the COUNTY shall pay to SELLER an amount equal to ONE THOUSAND EIGHT HUNDRED EIGHTY SEVEN AND NO/100 DOLLARS (\$1,887.00) for each residential connection not to exceed a total of two (2) connections. If any such

connection does not occur within seven (7) years of the date of this Agreement, the COUNTY's agreement to pay hereunder shall expire.

**4.4** As part of the consideration for the purchase and sale of the Water System, the COUNTY agrees to extend a water pipeline to replace the well and provide potable water to the customers of the Water System, as more particularly set forth in Section 3.3 of this Agreement. The point of connection is depicted on **Exhibit "6"** attached to and incorporated in this Agreement.

**SECTION 5. REPRESENTATIONS AND WARRANTIES OF SELLER.** The SELLER represents and warrants to COUNTY that:

**5.1 Organization, Standing And Power.** The SELLER is a corporation, duly organized, validly existing, and in good standing under the laws of the State of Florida. The SELLER has all requisite power and authority to own and lease its properties being conveyed hereunder and the Utility System, and to conduct its businesses related thereto as it is currently being conducted.

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

**5.3 Good and Marketable Title.** The SELLER has good and marketable title to the Purchased Assets.

**5.4 No Liens or Encumbrances.** Except as otherwise specifically set forth in this Agreement or as may be released at or prior to the Closing Date, there are no mortgages, liens, claims or encumbrances of any type or nature upon or against the Purchased Assets including, but not limited to, mortgages, financing statements, or security instruments filed under the Uniform Commercial Code either in the County where the Utility System is located or with the Secretary of State. SELLER is in exclusive ownership, possession, and control of the Purchased Assets except for non-exclusive easements and SELLER at closing shall deliver possession and control of the Purchased Assets to the COUNTY.

**5.5 Litigation.** There are no actions, suits, or proceedings at law or in equity, pending against the SELLER before any federal, state, municipal or other court, administrative or governmental agency or instrumentality, domestic or foreign, which affect the Utility System or any of the Purchased Assets or the SELLER's right and ability to make and perform this Agreement; nor is the SELLER aware of any facts which to its knowledge are likely to result in any such action, suit or proceeding. The SELLER is not aware and has not been notified that it is in default with respect to any

permit, approval order or decree of any court or of any administrative or governmental agency or instrumentality affecting the Utility System or any of the Purchased Assets. The SELLER agrees and warrants that it shall have a continuing duty to disclose up to and including the Closing Date the existence and nature of all pending judicial or administrative suits, actions, proceedings, and orders which in any way relate to the operation of the Utility System.

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

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

**5.8 No Record Violations.** The SELLER is not aware and has not been notified of any restrictions or conditions of record which would adversely affect the use of the Utility System or Easements as described in **Exhibit "1"** and **Exhibit "2."**

**5.9 Absence of Changes.** After the date of the execution of this Agreement, the SELLER shall not permit any change in its condition of properties, assets, liabilities, business or operations other than changes in the ordinary course of business which are not, either in any case or in the aggregate, materially adverse to the operation of the Utility System.

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

**5.11 Survival of Covenants.** SELLER agrees that its representation and warranties set forth herein are true and correct as of the date of the execution hereof shall be true and correct at the time of the Closing Date, and shall survive the Closing Date for two (2) years thereafter, except that SELLER's covenants related to title to the Purchased Assets shall not expire.

**5.12 FIRPTA.** The SELLER is not a "foreign person" within the meaning of the United States tax laws and to which reference is made in Section 1445 (b) (2) of the Internal Revenue Code. On the Closing Date, the SELLER shall deliver to the COUNTY a certificate to such effect.



**5.13 All Necessary Governmental Permits and Approvals.** As of the Closing Date, the SELLER warrants that it shall transfer to the COUNTY all necessary governmental permits and approvals such that the COUNTY can operate the Utility System.

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

**5.15 No CERCLA Violations.** The SELLER has not violated, except as disclosed by the environmental audits, in connection with the ownership, use, maintenance, or operation of the Purchased Assets, applicable environmental, federal, state, county, or local laws relating to pollution or protection of the environment, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, the Resource Conservation and Recovery Act, or the Toxic Substance Control Act ("Environmental Laws"). SELLER has not authorized the placing or depositing of hazardous substances on the real property containing any of the Purchased Assets except, if at all, in accordance with the applicable Environmental Laws, and SELLER has no actual knowledge of any hazardous substance having been, or currently being, placed or deposited on the premises except in accordance with such Laws.

**5.16 No Agreements.** The SELLER has not entered into any agreements related to providing service to customers or potential customers within the service area conveyed to COUNTY by this Agreement.

**5.17 No Construction.** There is no construction work in progress on the Utility System.

**5.18 All Documents.** SELLER has provided all documents and information requested in furtherance of this Agreement by COUNTY in relation to the Utility System and Purchased Assets which are available or can be reasonably available to SELLER.

**SECTION 6. CONDUCT PENDING CLOSING.** The SELLER covenants that pending the closing:

**6.1 Business Conduct.** Except as otherwise consented to in writing by COUNTY, whose consent shall not be unreasonably withheld, delayed or

conditioned, for the period beginning on the date of execution of this Agreement and ending on the Closing Date, SELLER shall:

(1) operate the Utility System in, and only in, the usual, regular and ordinary course and nevertheless comply with all applicable governmental requirements and law;

(2) maintain all of the Utility System's material structures, equipment, permits and other tangible personal property in good repair, order and condition, except for depletion, depreciation, ordinary wear and tear and damage by unavoidable casualty;

(3) keep in full force and effect insurance comparable in amount and scope of coverage to insurance now carried by it for the Utility System;

(4) perform in all material respects all of its obligations under agreements, contracts and instruments relating to or affecting the Utility System's properties, assets and operation;

(5) subject to available administrative remedies pursuant to Chapter 120, Florida Statutes, or any administrative judicial procedures or proceedings applicable to particular permits, comply in all material respect with all statutes, laws, ordinances, rules and regulations applicable to it and to the operation of the Utility System;

(6) promptly advise the COUNTY, in writing, of any material change which adversely affects the operation of the Utility System;

(7) not enter into any transaction, including without limitation, the purchase, sale or exchange of property the value of which exceeds \$5,000.00, which relates to the Utility System, except in furtherance of this Agreement with the SELLER, or the rendering of any service to SELLER except in the ordinary course of and pursuant to the reasonable requirements of the business of SELLER;

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

(9) seek and obtain any necessary permit extension or renewal so that said permits are valid, extended, or seeking extension as of the Closing Date.

**6.2 Risk of Loss.** The SELLER shall bear the risk of loss, damage or destruction of the Purchased Assets by fire or other casualty prior to and including the Closing Date. If any portion of the Purchased Assets is damaged by fire, act of God or other casualty before the Closing Date, the COUNTY shall have the option of (1) taking the Purchase Assets as is, without reduction in price, together with the SELLER's assignment to the COUNTY of all rights under its insurance policies and all of the insurance proceeds, if any; or (2) taking the Purchased Assets, as is, with a reduction in price, mutually agreed to by SELLER and COUNTY, based upon a percentage allocation of the Purchase Price derived by comparing the net book value of the Purchased Assets destroyed to the net book value of the Utility System and the SELLER shall maintain all rights under its insurance policies and to all of the insurance proceeds; or (3) canceling this Agreement in which event the Parties hereto shall be released from all further obligations to each other.

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

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

**6.5 Examination and Inspection.** The SELLER will permit reasonable examination by the COUNTY'S authorized representatives of all existing contractual obligations, physical systems, assets, real estate, rights-of-way, easements and inventories which are utilized by the SELLER in connection with the Utility System. No such examination by the COUNTY's authorized representatives shall interfere with the SELLER's operations of the Utility System or the day to day operations of the SELLER's personnel. The SELLER shall make these assets and records available for examination by the COUNTY's authorized representatives at reasonable times and upon prior written notice (not less than forty-eight (48) hours in advance) from the COUNTY. Such facilities will be properly maintained by the SELLER within the custom and usage of the water industry in Florida until the Closing Date.

**6.6 Wells.** SELLER agrees that no more wells shall be constructed and any existing well shall be operated solely for irrigation purposes within the Utility System Certificated Service Area shown on Exhibit "5" attached to and incorporated in this Agreement, subject to the provisions set forth in Section 3.3 of this Agreement. SELLER agrees no existing well shall be operated for domestic, commercial, or industrial purposes.

**SECTION 7. REPRESENTATIONS AND WARRANTIES OF COUNTY.** The COUNTY represents and warrants to the SELLER, as follows:

**7.1 Organization, Standing and Power of COUNTY.** The COUNTY is a political subdivision of the State of Florida duly created and validly existing under the laws of the State of Florida and has all requisite power and authority to enter into this Agreement, to own and lease real and personal property, and to carry out and perform the terms and provisions of this Agreement.

**7.2 Authority for Agreement.** The COUNTY has the authority and power to execute and deliver this Agreement and to carry out its obligations hereunder. The COUNTY has held all of the necessary public hearings to authorize the COUNTY's exercise of its option to purchase the Utility System and obtained the documents required by Section 367.071(4)(a), Florida Statutes. This Agreement has been duly authorized by all action required to be taken by the COUNTY, has been duly executed and delivered by the COUNTY, and constitutes a valid and legally binding obligation of the COUNTY, enforceable in accordance with its terms.

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

**7.4 Litigation.** There are no actions, suits, or proceedings at law or in equity, pending against the COUNTY before any federal, state, municipal or other court, administrative or governmental agency or instrumentality, domestic or foreign, which affect the COUNTY's ability to enter into and perform this Agreement. The COUNTY shall have the continuing duty to disclose up to and including the Closing Date the existence and nature of all pending judicial or administrative suits, actions, proceedings, and orders which in any way relate to its ability to perform its obligations under the Agreement.

**7.5 Performance of Closing Conditions.** The COUNTY shall perform all of the conditions to closing which should be performed by the COUNTY prior to the Closing Date as provided herein.

**7.6 Survival of Covenants.** COUNTY agrees that its representation and warranties set forth herein are true and correct as of the date of the execution

hereof, shall be true and correct at the time of the Closing Date, and shall survive the Closing Date.

**7.7 Delivery of Resolution.** *If it has not already done so, COUNTY will deliver to SELLER a certified copy of a resolution of the Board approving the COUNTY's execution and performance of this Agreement with five (5) business days of COUNTY's execution hereof.*

**7.8 No Conflicts.** *The execution, delivery and performance of this Agreement will not violate any provision of law, order of any court or agency of government, the charter of the COUNTY, or any administrative regulation or decree, or any provision of the Constitution or the laws of the State of Florida relating to the COUNTY or its affairs or any ordinance, resolution, agreement, indenture, lease, or other instrument to which the COUNTY is a party, subject or by which it is bound.*

**7.9 Police Power.** *Subject to the police power of the COUNTY and its ability to charge its prevailing capital charges, COUNTY shall after closing fulfill the SELLER's obligations to furnish water service as of the Closing Date as set forth in this Agreement.*

**7.10 COUNTY Actions.** *The COUNTY shall take no action inconsistent with its express obligations under the terms and conditions of this Agreement.*

**7.11 Inspections.** *All inspections of the Utility System by COUNTY or its representatives performed pursuant to this Agreement shall not materially interfere with the operation of the Utility System or the day-to-day activities of the SELLER's personnel, and COUNTY agrees to indemnify and hold SELLER harmless from any third party claims, actions, expenses, or damages, including costs and attorney's fees at trial and appeal, which the SELLER incurs (for personal injury or property damage) as a direct result of the inspection of the Utility System by the COUNTY, its agents, contractors, representatives and/or employees.*

**SECTION 8. ADDITIONAL CONDUCT PENDING CLOSING.** *The COUNTY and the SELLER covenant with each other that pending the closing on this transaction, neither shall obstruct, hinder or interfere in the operation of the Utility System by the SELLER or with the processing and consideration by governmental agencies of any applications or petitions filed by the SELLER or COUNTY that are related to the Utility System. SELLER shall execute all necessary documents to assist in securing necessary governmental approval(s) for the renewal, expanded use, and transfer of said permit, and shall use its best efforts to assist the COUNTY in obtaining all such necessary governmental approvals. Prior to closing, neither the COUNTY, nor any of COUNTY's representatives, consultants, employees or agents shall file any application or petition with any governmental agency having jurisdiction over the Utility System.*

**SECTION 9. ADJUSTMENTS AND PRORATIONS; CLOSING COSTS.** At the time of closing, the parties covenant and agree that the following adjustments shall be made:

**9.1** All rates, fees, and charges for water service through the Closing Date shall be the property of the SELLER. The SELLER shall include a written notice to each customer that the Utility Systems are being transferred to the COUNTY. All rates, fees, and charges for water service after the Closing Date shall be the property of the COUNTY. Unbilled revenues at the Closing Date shall be prorated between the SELLER and COUNTY based upon the prior month's unbilled revenues. Subject to state law, COUNTY agrees to disconnect service from any customer who fails to pay SELLER amounts owed SELLER through the Closing Date upon notification to COUNTY by SELLER that such amounts are sixty (60) days past due.

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

**9.3** SELLER shall retain all Connection Charges, as hereinafter defined, heretofore paid to SELLER. SELLER has entered into no agreements or commitments with developers or customers providing for the extension of services or facilities with regard to the Utility System. COUNTY shall be entitled to receive all Connection Charges paid after the Closing Date. The term Connection Charges shall mean connection, plant capacity, main extension, allowance for funds prudently invested ("AFPI") charges and/or capital charges ("Connection Charges").

**9.4** All adjustments and prorations shall be calculated as of 11:59 p.m. of the Closing Date.

**9.5** All costs of recording any releases, satisfactions or corrective instruments, if any, shall be paid by SELLER.

**9.6** Certified, confirmed or ratified special assessments or municipal liens prorated as of the Closing Date, will be paid by SELLER.

**9.7** Any taxes on gross receipts or regulatory assessment fees incurred as of the Closing Date shall be paid by SELLER.

**9.8** All bills for other services, materials and supplies rendered in connection with the operation of the Utility System prior to closing shall be paid by SELLER.

**9.9 INDEMNITIES.** Except as otherwise provided for in this Agreement, the SELLER shall indemnify and hold the COUNTY, its representative agents and employees harmless from and against any and all claims, liability, demands, damages, surcharges, refunds, expenses, fees, fines, penalties, suits, proceedings, actions and fees, including damage to property or property rights that may arise from or are related to third party claims arising from or related to acts, errors, or omissions of the SELLER, its agents, employees, servants, licensees, invitees, or contractors or by any person under the control or direction of the SELLER arising out of (1) its operation, maintenance, or management of the Utility System up to and including the Closing Date, (2) any local, state, or federal enforcement case that may be later filed after the Closing Date related to alleged or actual violations of local, state or federal laws, rules, ordinances, policies, or requirements that occurred prior to or on the Closing Date, or (3) any FPSC rate case proceeding related to the Utility System. The COUNTY shall indemnify and hold the SELLER, its representative agents and employees harmless from and against any and all third party claims, liability, demands, damages, surcharges, refunds, expenses, fees, fines, penalties, suits, proceedings, actions and fees, including damage to property or property rights that may arise from or which are related to the acts, errors, or omissions of the COUNTY, its agents, employees, servants, licensees, invitees, or contractors or by any person under the control or direction of the COUNTY arising out of (1) its operation, maintenance, or management of the Utility System subsequent to the Closing Date, (2) any other local, state, or federal enforcement case that may be later filed after the Closing Date related to alleged or actual violations of local, state or federal laws, rules, ordinances, policies, or requirements that occurred subsequent to the Closing Date, related to the Utility System. Except for issues related to SELLER's obligations to deliver title to the Purchased Assets, the indemnities provided hereunder shall expire two (2) years after the Closing Date.

**SECTION 10. CLOSING.** The place of closing shall be in Ocala, Marion County, Florida at the COUNTY's administration building and such closing shall occur on or before May 4, 2010 (the "Closing Date"). Notwithstanding anything to the contrary, the closing of this transaction shall take place upon the delivery of the Purchase Price to the SELLER in the manner and on the date provided for in this Agreement. The parties agree that the closing of this transaction on or before May 4, 2010, was a material part of the negotiations and absent such agreement this transaction would not have taken place. Accordingly, the closing of this transaction shall not be extended beyond the Closing Date. The COUNTY shall assume responsibility for operation of the Water System no later than June 1, 2010.

**SECTION 11. CLOSING DOCUMENTS AND PROCEDURES.**

**11.1 Deliveries from SELLER.** The following documents shall be delivered by the SELLER to the COUNTY no later than the Closing Date, but shall be executed on the Closing Date:

(1) Instruments of conveyance, in appropriate recordable form, of all the Easements as described in Exhibit "1" conveying to the COUNTY all of its right, title and interest in all such property, together with all utility improvements thereto, and warranting that such easement rights and rights to use dedicated rights-of-way are or shall be made pursuant to this Agreement, free and clear of all liens, security interests, encumbrances, leasehold interests, charges or options, covenants or restrictions;

(2) General assignment to and assumption by the COUNTY of all permits and approvals;

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

(4) Copies of all business records sold to the COUNTY hereby (originals thereof to be delivered at closing);

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

(6) Standard no-lien affidavit in a form reasonably required by the title Company as to realty and personality insuring against any liens, claims or encumbrances upon the Purchased Assets;

(7) A "non-foreign" affidavit or certificate pursuant to Section 1445 of the Internal Revenue Code;

(8) Such other affidavits and acknowledgments as the title company shall reasonably request in order to cause the title company to issue the policy evidencing marketable title as contemplated herein;

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

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



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

**SECTION 12. RESPONSIBILITY FOR PROFESSIONAL FEES AND COSTS.**

Each party hereto shall be responsible for its own attorneys' fees, engineering fees, accounting fees and other costs in connection with the preparation and execution of this Agreement, the closing of the transaction contemplated herein and in connection with all judicial and administrative proceedings related to the acquisition of the Utility System.

**SECTION 13. PUBLIC SERVICE COMMISSION APPROVAL.**

SELLER shall apply for approval by the Florida Public Service Commission for transfer of the Purchased Assets from SELLER to COUNTY. SELLER agrees to pay all fees and costs incurred by SELLER incident to such dealings with the Florida Public Service Commission. It is agreed that COUNTY shall apply every reasonable effort to cooperate with SELLER to obtain approval from the Florida Public Service Commission and will render all reasonable assistance to SELLER necessary to obtain such approval. Copies of the Order(s) of the Commission acknowledging sale of the Utility Systems to the COUNTY shall be promptly provided to the COUNTY, upon SELLER's receipt thereof.

**SECTION 14. COMMISSIONS.**

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

**SECTION 15. FURTHER ASSURANCES.** Each of the parties hereto agrees that, from time to time, upon the reasonable request of the other party and at the expense of the requesting party, without further consideration, it shall execute and deliver to the requesting party any and all further instruments, affidavits, conveyances and transfers as may be reasonably required to carry out the provisions of this Agreement.

**[THE REMAINDER OF THIS PAGE LEFT INTENTIONALLY BLANK]**

**SECTION 16. NOTICES; PROPER FORM.** Any notices required or allowed to be delivered hereunder shall be in writing and may either be (1) hand delivered, (2) sent by recognized overnight courier (such as Federal Express) or (3) mailed by certified or registered mail, return receipt requested, in a postage prepaid envelope, and addressed to a party at the address set forth opposite the party's name below, or at such other address as the party shall have specified by written notice to the other party delivered in accordance herewith:

COUNTY: Marion County  
601 S.E. 25<sup>th</sup> Avenue  
Ocala, Florida 34471-2690  
Attention: COUNTY Administrator

with a copy to: Thomas A. Cloud, Esq.  
GrayRobinson, P.A.  
301 East Pine Street, Suite 1400  
Orlando, Florida 32801

SELLER: SUNSHINE UTILITIES OF CENTRAL  
FLORIDA, INC.  
10230 East Highway 25  
Belleview, Florida 34420  
Attention: James Hodges

Notices personally delivered by hand or sent by overnight courier shall be deemed given on the date of delivery and notices mailed in accordance with the foregoing shall be deemed given three (30) days after deposit in the U.S. mail.

**SECTION 17. ENTIRE AGREEMENT.** This instrument constitutes the entire Agreement between the parties and supersedes all previous discussions, understandings, and agreements between the parties relating to the subject matter of this Agreement. This Agreement may not be changed, altered or modified except by an instrument in writing signed by the party against whom enforcement of such change would be sought.

**SECTION 18. AMENDMENT.** Amendments to and waivers to the provisions of this Agreement shall be made by the parties only in writing by formal amendment.

**SECTION 19. DISCLAIMER OF THIRD PARTY BENEFICIARIES.** This Agreement is solely for the benefit of the formal parties herein, and no right or cause of action shall accrue upon or by reason hereof, to or for the benefit of any third party not a formal party hereto.

**SECTION 20. BINDING EFFECT.** All of the provisions of this Agreement shall be binding upon and inure to the benefit of and be enforceable by the legal representatives, successors and nominees of the COUNTY and the SELLER.

**SECTION 21. TIME OF THE ESSENCE.** Time is hereby declared of the essence in the performance of each and every provision of this Agreement.

**SECTION 22. APPLICABLE LAW.** This Agreement shall be construed, controlled, and interpreted according to the laws of the State of Florida.

**SECTION 23. CORROBORATION OF PAYMENTS AFTER CLOSING.** In each instance in which either the SELLER or the COUNTY is to receive money from another party after the Closing Date pursuant to the provisions of this Agreement, the party who is entitled to receive the money under the terms of this Agreement shall have the right to inspect, at its own expense, those books and records of the other party as may be necessary to corroborate the accuracy of the amount of money received by the party, within thirty (30) days of receipt of payment. In the event the party making the inspection discovers an error in payment, the party making the payment shall promptly transfer the difference in payment to the party who is entitled to payment; provided, however, that to the extent that the error in payment is ten percent (10%) or more, then the party making payment shall, in addition to paying the shortfall, reimburse to the party making the inspection the reasonable costs of the inspection.

**SECTION 24. RADON GAS.** RADON IS A NATURALLY OCCURRING RADIOACTIVE GAS THAT, WHEN IT HAS ACCUMULATED IN A BUILDING IN SUFFICIENT QUANTITIES, MAY PRESENT HEALTH RISKS TO PERSONS WHO ARE EXPOSED TO IT OVER TIME. LEVELS OF RADON THAT EXCEED FEDERAL AND STATE GUIDELINES HAVE BEEN FOUND IN BUILDINGS IN FLORIDA. ADDITIONAL INFORMATION REGARDING RADON AND RADON TESTING MAY BE OBTAINED FROM YOUR COUNTY PUBLIC HEALTH UNIT.

**SECTION 25. DEFENSE OF ACTIONS OR CLAIMS.**

**25.1** Each party who is or may be entitled to indemnity under the provisions of this Agreement (the "Indemnitee") shall promptly notify the other party who is or may be required to provide indemnity under the provisions of this Agreement, as applicable (the "Indemnitor"), of any lawsuit or claim against such Indemnitee which it has reasonable cause to believe would entitle it to indemnification under such Section of this Agreement. Failure of such Indemnitee to promptly notify the Indemnitor of any such action or claim shall constitute a defense by Indemnitor against its obligation to indemnify the Indemnitee under this Agreement with regard to such claim or action, if such failure to provide such prompt notification reasonably prejudices the defense or other successful resolution of such action or claim by Indemnitor.

**25.2** Upon receipt of such prompt notification of such claim or action, the Indemnitor shall be entitled, in its absolute discretion, to select legal counsel; to assume at its expense the defense of any such action or claim, including the prosecution of any applicable cross-claims or counter claims; to direct the manner in which such defense shall be conducted; and to determine the terms of settlement of, any such suit or claim against Indemnitee, provided that no such resolution awarding relief other than money damages against the Indemnitee may be agreed to without the consent of the Indemnitee, which consent shall not be unreasonably withheld, delayed or conditioned by Indemnitee. Indemnitee shall provide its full cooperation and assistance to Indemnitor with regard to the defense of such claim or action against Indemnitee, as afore-described, as reasonably requested by Indemnitor.

**25.3** If the defendants in or to any such action or claim include both the Indemnitee and the Indemnitor and the Indemnitee reasonably concludes that there are valid legal defenses available to the Indemnitee which are different from or additional to the legal defenses being raised by the Indemnitor, and which, after written notice thereof being given to the Indemnitor by the Indemnitee, are not being asserted by the Indemnitor on behalf of the Indemnitee regarding such action or claim, the Indemnitee shall have the right to select separate counsel to assert such additional legal defenses in such action on behalf of such Indemnitee; provided such legal defenses which Indemnitee desires to assert are not reasonably inconsistent with, contrary to or would otherwise prejudice the defenses which the Indemnitor is asserting on behalf of the Indemnitee. The Indemnitee shall take no action with regard to such claim or action which is inconsistent with or may reasonably prejudice the defenses, cross-claims or counter claims being asserted by Indemnitor on behalf of Indemnitee.

**25.4** If an Indemnitor elects to assume and does assume, the defense of any such suit or claim, it shall not be liable for any legal expenses incurred by the Indemnitee with respect to such matter and if the Indemnitee, after due notice to the Indemnitor of the existence of valid defenses not being employed by the Indemnitor as afore-described, employs separate counsel in connection with the assertion of such legal defenses not being raised by the Indemnitor on behalf of the Indemnitee and the Indemnitee is, in fact, ultimately successful in the assertion of those legal defenses that the Indemnitor refused to assert after due notification by the Indemnitee.

**25.5** If the Indemnitor, after receipt of such prompt notification of such claim or action, does not assume the defense of any such suit or claim, it shall thereafter be barred from disputing the nature and amount of the damages ultimately incurred or determined to have been incurred by the Indemnitee in settling or litigating the action or claim.

**SECTION 26. MISCELLANEOUS.**

**28.1** All of the parties to this Agreement have participated fully in the negotiation and preparation hereof, and, accordingly, this Agreement shall not be more strictly construed against any one of the parties hereto.

Except for the provisions of the Purchase Price and Payment Section hereof, in the event any term or provision of this Agreement be determined by appropriate judicial authority to be illegal or otherwise invalid, such provision shall be given its nearest legal meaning or be construed as deleted as such authority determines, and the remainder of this Agreement shall be construed to be in full force and effect.

**28.3** In the event of any litigation between the parties under this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and court costs at all trial and appellate levels.

**28.4** In construing this Agreement, the singular shall be held to include the plural, the plural shall be held to include the singular, the use of any gender shall be held to include every other and all genders, and captions and paragraph headings shall be disregarded.

**[SIGNATURE PAGES TO FOLLOW]**

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

SIGNED, SEALED, AND DELIVERED IN THE PRESENCE OF:

SUNSHINE UTILITIES OF CENTRAL FLORIDA, INC., a corporation

x [Signature] Name: Dawnina Christmas

BY: [Signature] Print Name: James H. Hodges As Its: President

x [Signature] Name: James Hodges Jr

DATE: 3/30/10

[CORPORATE SEAL]

STATE OF FLORIDA COUNTY OF Manatee

The foregoing instrument was acknowledged before me this 30 day of March, 2010, by James H. Hodges, as President of SUNSHINE UTILITIES OF CENTRAL FLORIDA, INC., a corporation authorized to do business in the State of Florida, on behalf of the corporation.

[Signature] Signature of Notary Public JANE M. ROP (Print Notary Name)

AFFIX NOTARY STAMP

My Commission Expires: Commission No.: [ ] Personally known, or [ ] Produced identification Type of Identification Produced



JANE M. ROP MY COMMISSION # DD 807798 EXPIRES: August 25, 2012



JANE M. ROP MY COMMISSION # DD 807798 EXPIRES: August 25, 2012

ATTEST

  
 David R. Ellermann, Clerk


BOARD OF COUNTY COMMISSIONERS OF MARION COUNTY, FLORIDA

BY:   
 Barbara Fitos, County Chair

Date: April 20, 2010

FOR THE USE AND RELIANCE OF MARION COUNTY ONLY. APPROVED AS TO FORM

April 5 2010

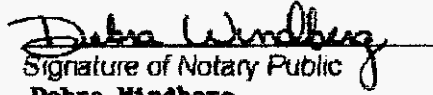
  
 Thomas A. Cloud, Esquire  
 Special Utility Counsel

STATE OF FLORIDA  
COUNTY OF MARION

The foregoing instrument was acknowledged before me this 20th day of April, 2010, by Barbara Fitos, Chair of the Board of County Commissioners, known to me to be the person described in and who executed the foregoing.



DEBRA WINDBERG  
Commission DD 655393  
Expires March 26, 2011  
Remember They Pay Insurance 888-888-7098

  
 Signature of Notary Public  
**Debra Windberg**  
 (Print Notary Name)

My Commission Expires: March 26, 2011  
Commission No.: DD655393

AFFIX NOTARY STAMP

Personally known, or  
 Produced Identification  
 Type of Identification Produced

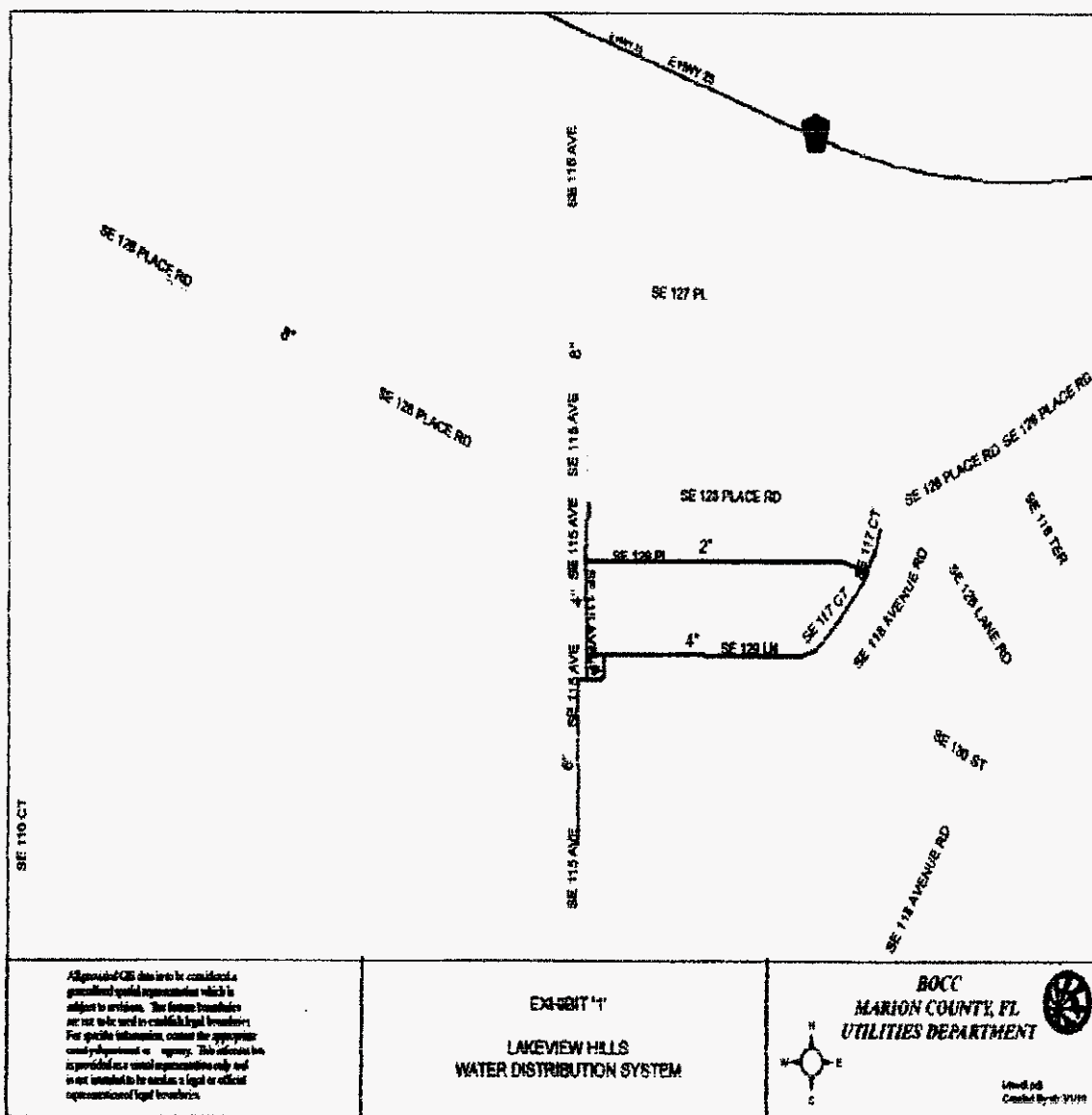


**SCHEDULE OF EXHIBITS**

| <b><u>EXHIBIT NO.</u></b> | <b><u>TITLE</u></b>                                       |
|---------------------------|---|
| 1.                        | Water Distribution Lines                                  |
| 2.                        | Well  |
| 3.                        | Engineering Plans   |
| 4.                        | All Permits, Certifications, Authorizations and Approvals |
| 5.                        | FPSC Service Area Maps                                    |
| 6.                        | Points of Connection                                      |

**EXHIBIT "1"**

**WATER DISTRIBUTION LINES**



All provided GIS data are to be considered a generalized spatial representation which is subject to revision. The shown boundaries are not to be used to establish legal boundaries. For specific information, contact the appropriate county department or agency. This information is provided as a visual representation only and is not intended to be used as a legal or official representation of legal boundaries.

**EXHIBIT "1"**  
**LAKEVIEW HILLS**  
**WATER DISTRIBUTION SYSTEM**



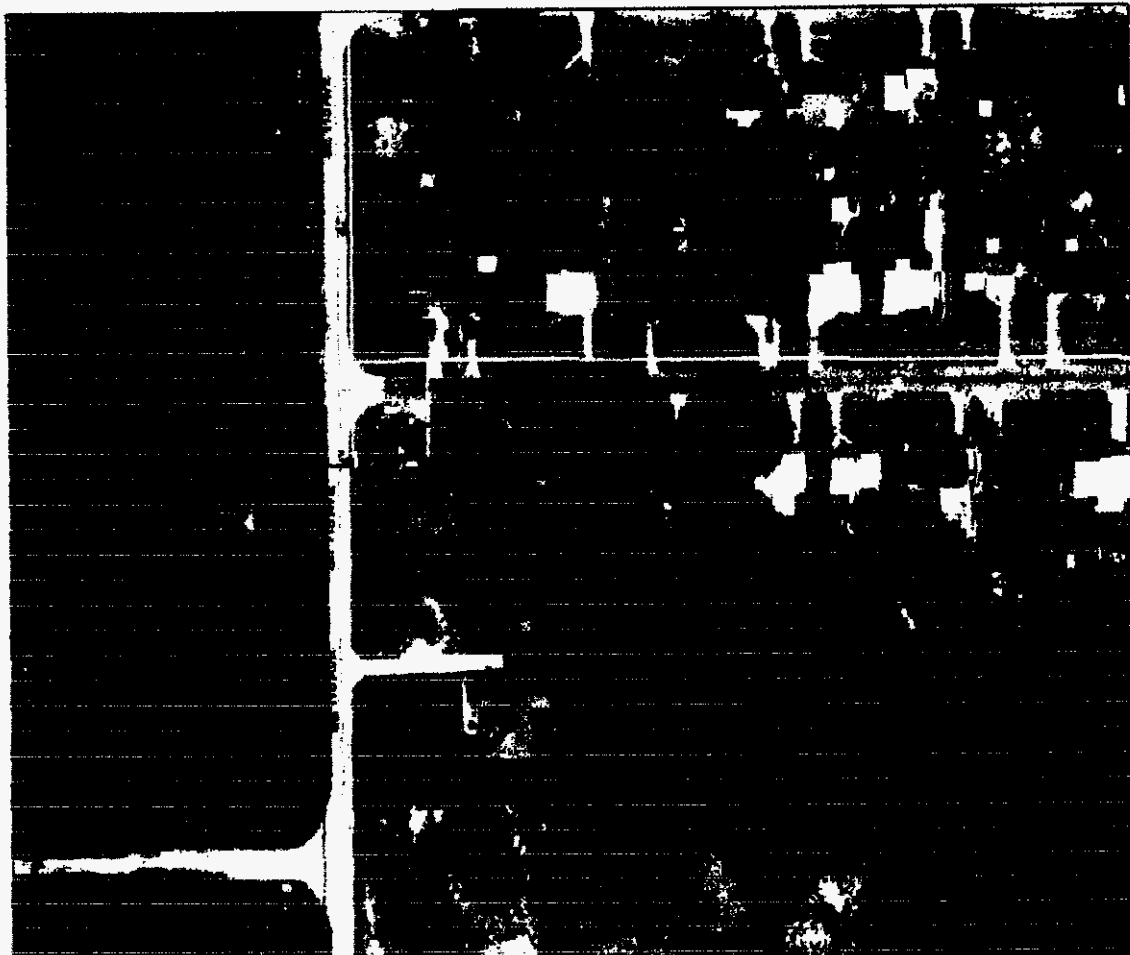
**BOCC**  
**MARION COUNTY, FL.**  
**UTILITIES DEPARTMENT**



1/10/11 JLB  
 Created By: JLV

**EXHIBIT "2"**


**WELL**




*All provided GIS data is not considered a guaranteed spatial representation which is subject to errors. The shape boundaries are not to be used to establish legal boundaries. For specific information, contact the appropriate county department or agency. This information is provided as a visual representation only and is not intended to be used as a legal or official representation of legal boundaries.*

**EXHIBIT "2"**  
**LAKEVIEW HILLS**  
**WTPWELL SITE**

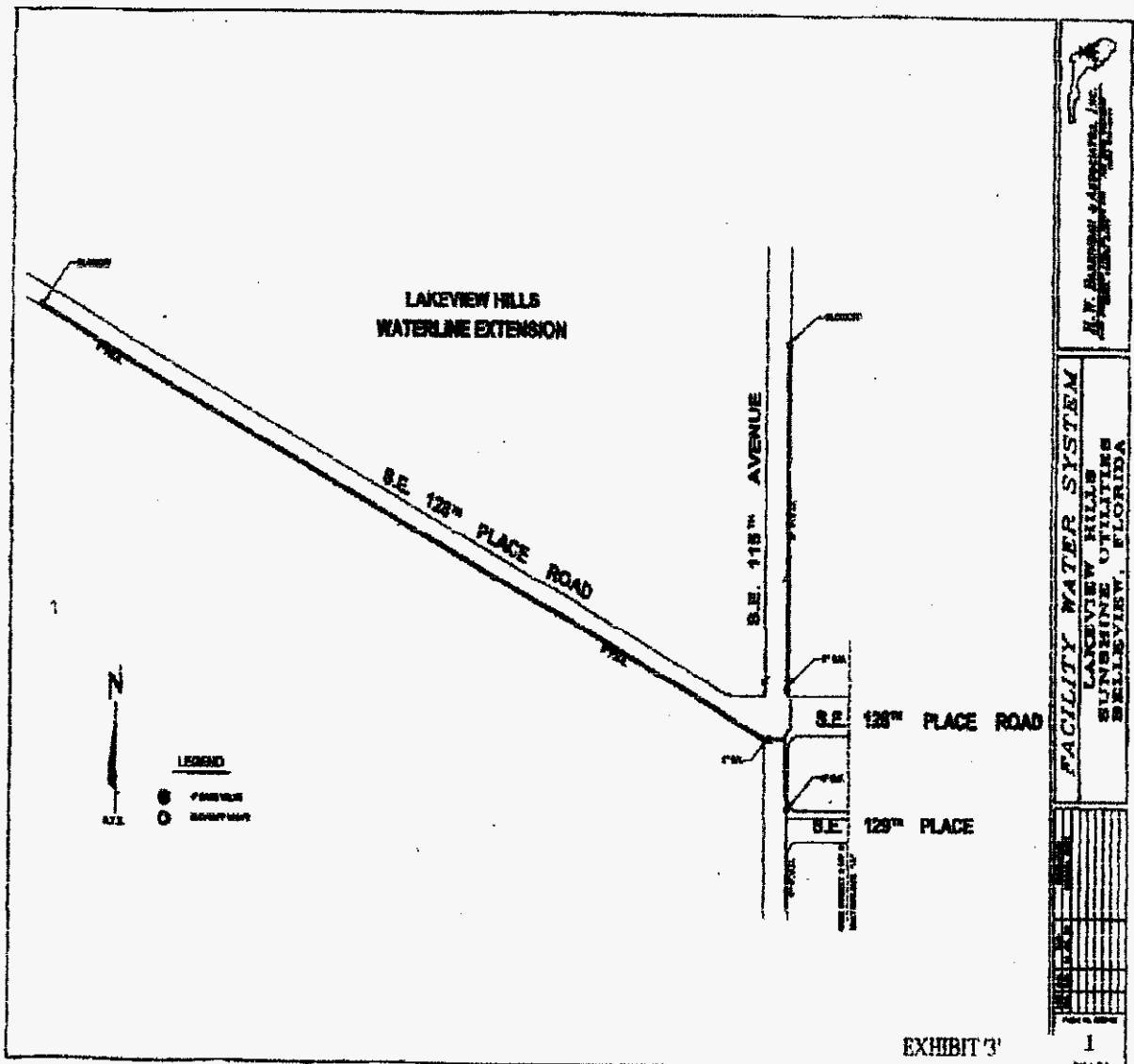
**BOCC**  
**MARION COUNTY, FL**  
**UTILITIES DEPARTMENT**



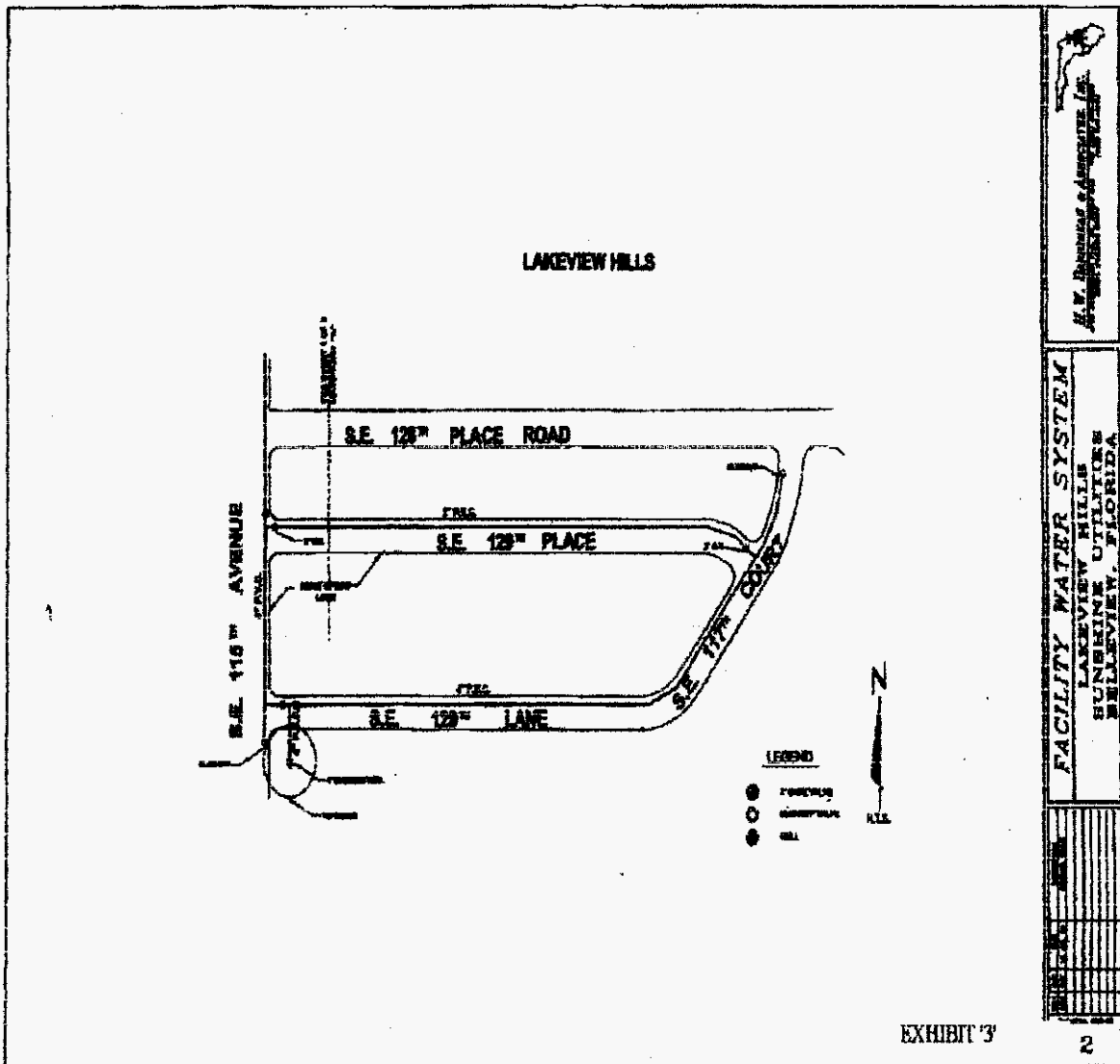
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**EXHIBIT "3"**  
**ENGINEERING PLANS**



**EXHIBIT "3" CONT'D**



**EXHIBIT "4"**

**ALL PERMITS, CERTIFICATIONS, AUTHORIZATIONS AND APPROVALS**

St. Johns Water Management District – Consumptive Use Permit Number : 2993

State of Florida, Public Service Commission – Docket Number : 880907-WU

Florida Department of Environmental Protection – Public Water System ID Number :  
3424687

**EXHIBIT "5"**

**FPSC SERVICE AREA MAPS**

