

ORIGINAL

GRAY, HARRIS & ROBINSON, P.A.
SUITE 1400
301 EAST PINE STREET (32801)
P O BOX 3068
ORLANDO, FLORIDA 32802-3068
TEL 407-843-8880
FAX 407-244-5690
WEB grayharris.com

GRAYHARRIS
ATTORNEYS AT LAW

WRITER'S DIRECT DIAL
407-244-5648

E-MAIL ADDRESS
cbrowder@grayharris.com

May 24, 2002

Blanca S. Bayó, Director
Division of Records and Reporting
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0870

Re: Docket No.: 010492-WS
Second Motion for Extension of Revised MFR Filing Date by Zellwood
Station Co-Op, Inc.

Dear Ms. Bayó:

Enclosed please find the original and seven (7) copies of Zellwood Station Co-Op Inc.'s Second Motion for Extension of Revised MFR Filing Date submitted for filing on May 24, 2002.

Sincerely,



W. Christopher Browder

GRAY, HARRIS & ROBINSON, P.A.

WCB:gcj
Enclosure

cc: All individuals on docketing service list

- AUS _____
- CAF _____
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- OPC _____
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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Application for Rate
Increase in Orange County
By Zellwood Co-Op, Inc.

Docket No. 010492-WS
Submitted for Filing: May 24, 2002

**SECOND MOTION FOR EXTENSION OF REVISED MFR FILING DATE
BY ZELLWOOD STATION CO-OP, INC.**

Zellwood Station Co-Op, Inc. (hereafter "Zellwood"), by and through its undersigned attorney, hereby files this request for a second extension of the Revised MFR filing date in the above Docket from June 3, 2002 to October 1, 2002, and in support thereof states the following:

1. June 3, 2002 MFR Filing Date Will Not Permit Time to Finalize the Sale of the Zellwood System to Orange County and Consummate the Bulk Water Deal. By Order No. PSC-02-0339-PCO-WS, dated May 14, 2002, this Commission granted Zellwood an extension of the MFR filing date in this docket from March 4, 2002 to June 3, 2002. This extension was granted in part to allow Zellwood to finalize the proposed deal with Orange County regarding the sale by Zellwood of its water plant facilities to Orange County and concurrent bulk water and wastewater supply arrangement. While negotiations have gone well, they have taken more time than originally expected due to the detailed nature of the terms and conditions of the transaction. Zellwood produced a draft of the Asset Purchase and Sale Agreement to Orange County by letter from the undersigned counsel for Zellwood dated January 22, 2002. A copy of that letter which is attached as Exhibit "A" hereto. After a lengthy period of review, the County transmitted a revised draft of the Asset Purchase and Sale Agreement by letter dated April 18, 2002. A copy of the April 18, 2002, revised Asset Purchase and Sale Agreement draft is attached hereto as Exhibit "B". By letter dated May 15, 2002, the County then produced a draft Wholesale Water and Wastewater Agreement and a draft Reclaimed Water Delivery Agreement for Zellwood's review. A copy of the County's May 15, 2002, transmittal letter is attached hereto as

DOCUMENT NUMBER - DATE

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FPSC-COMMISSION CLERK

Exhibit "C" and copies of the draft Wholesale Water and Wastewater Agreement and Reclaimed Water Delivery Agreement are attached hereto as Exhibits "D" and "E", respectively.

2. Progress on Finalizing Deal Terms Continues. Representatives of Orange County and the Board of Directors of Zellwood met during the week of May 22, 2002, and made significant progress at narrowing the outstanding issues in the draft agreements. All indications are that the deal will go forward. To require Zellwood to file Revised MFR documents, which in a short period would become defunct, would be a waste of rate payer's money and Zellwood's personnel resources. It is currently anticipated that the transaction documents can be finalized and the closing on the purchase of Zellwood's water system by Orange County can be accomplished by October 1, 2002.

3. Retail Customers are Protected. In the event that the Commission grants this motion, Zellwood's retail customers continue to be protected as Zellwood has in place during the pendency of this Docket the security required pursuant to Commission Order No. PSC-01-2471-PCO-WS which will assure that funds are available for any refund which may be ordered by the Commission to the retail customers of Zellwood in the event that the deal with Orange County does not close and the revised MFR's result in a refund from Zellwood.

4. Waiver of Time Period for Rate Approval. Zellwood will continue to temporarily waive the 8-month statutory deadline for the Commission to approve the requested rates as set forth in Section 367.081, Florida Statutes, until such time as new hearing dates are established for the docket.

5. Parties Do Not Object to Extension of Dates. Zellwood has contacted all parties of record and none have expressed any objection to the Commission granting the extension of time requested by Zellwood in this Motion.

WHEREFORE, Zellwood requests that the Commission grant an extension of the June 3, 2002 filing date for the Revised MFR to October 1, 2002.



Thomas A. Cloud, Esquire
W. Christopher Browder, Esquire
Gray, Harris & Robinson, P.A.
301 East Pine Street, Suite 1400
Orlando, Florida 32802-3068
Ph. (407) 843-8880
Fax: (407) 244-5690
Attorneys for Zellwood Station Co-Op, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and exact copy of the above and foregoing has been furnished by U.S. Mail to the following parties of record this 24th day of May, 2002.

Jennifer Brubaker, Esquire
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Stephen C. Burgess
Office of Public Counsel
C/o The Florida Legislature
111 West Madison Street, Room 812
Tallahassee, Florida 32399-1400



Thomas A. Cloud, Esquire
W. Christopher Browder, Esquire
Gray, Harris & Robinson, P.A.
301 East Pine Street, Suite 1400
Orlando, Florida 32802-3068
Ph. (407) 843-8880
Fax: (407) 244-5690
Attorneys for Zellwood Station Co-Op, Inc.

GRAY, HARRIS & ROBINSON

PROFESSIONAL ASSOCIATION

ATTORNEYS AT LAW

SUITE 1400

301 EAST PINE STREET

POST OFFICE BOX 3068

ORLANDO, FLORIDA 32802 - 3068

TELEPHONE 407-843-8880

FAX 407-244-5690

WEBSITE: www.ghrlaw.com

WRITER'S DIRECT DIAL

407-244-5624

Thomas A. Cloud

E - MAIL ADDRESS

January 22, 2002

Our File No: 40195-1

VIA HAND DELIVERY

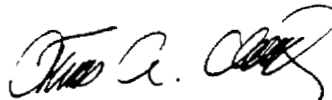
Jack Martin
Orange County Utilities
109 East Church St., 4th Floor
Orlando, Florida 32801

Re: Suggested Changes to Zellwood Purchase & Sale Agreement

Dear Jack:

I understand that the County will be meeting internally today on the Zellwood Purchase & Sale Agreement. I received some comments from my clients a couple weeks ago regarding clarifications in the Agreement. I have prepared a redrafted highlighted Agreement showing those changes based on their input. I wanted to forward these to you at the same time I was forwarding the changes to my client in the hopes of moving the process along. If you or any of County staff have any questions, don't hesitate to call me.

Sincerely yours,



Thomas A. Cloud, Esquire

GRAY, HARRIS & ROBINSON, P.A.

TAC/jg

Enclosure

- cc: Mike Chandler (w/ enclosure)
- Ron Nielsen (w/ enclosure)
- Dan Allen (w/ enclosure)
- Bob Howe (w/ enclosure)
- Julian Coto (w/ enclosure)



DRAFT
APRIL 18, 2002
REC'D FROM
ORANGE COUNTY

**ORANGE COUNTY/
ZELLWOOD STATION, CO-OP, INC.
WATER & WASTEWATER SYSTEMS
ASSET PURCHASE & SALE AGREEMENT**

THIS AGREEMENT, made and entered into by and between ORANGE COUNTY, a political subdivision of the State of Florida and a charter county, (hereafter COUNTY), and ZELLWOOD STATION, CO-OP, INC., a Florida Corporation, (hereafter CO-OP).

RECITALS

WHEREAS, CO-OP owns and operates a potable water production, treatment, storage, transmission, pumping, and distribution system in Orange County, Florida (hereinafter referred to collectively as the Water System); and

WHEREAS, CO-OP owns and operates a sanitary wastewater collection, treatment, pumping, and Rapid Infiltration Basin(s) (RIBs) effluent disposal system in Orange County, Florida, (hereinafter referred to as the Wastewater System); and

WHEREAS, the Water System and the Wastewater System (hereinafter collectively called the Utility Systems) operate under Certificates of Authorization (the Certificates) issued by the Florida Public Service Commission (the FPSC) as indicated on **Exhibit A**, which authorize CO-OP to provide water and wastewater service to certain territories in Orange County, Florida; and

WHEREAS, pursuant to its governmental powers under Chapters 125 and 153, *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; and

WHEREAS, CO-OP is willing to sell to the COUNTY its water production and treatment facilities and its wastewater treatment and RIBs disposal facilities together with associated real and personal property and easements (collectively called the Purchased Assets), and the COUNTY is willing to purchase the Purchased Assets from the CO-OP; and

WHEREAS, the COUNTY has the power and authority to acquire the Purchased Assets and to operate the Purchased Assets in order to provide potable water and wastewater services within Orange County, and the CO-OP has the power and authority to sell the Purchased Assets; and

WHEREAS, pursuant to Section 125.3401, *Florida Statutes*, the COUNTY has examined the CO-OP's Purchased Assets, its existing financial structure, the long-range needs and goals of the COUNTY relative to the provision of water and wastewater service to its present and future citizens, and has determined that the acquisition of the Purchased Assets is in the public interest; and

WHEREAS, the parties have negotiated in good faith and are empowered to be bound by the terms and conditions set forth in this Agreement; and

WHEREAS, COUNTY proposes to acquire by purchase and own the Purchased Assets; and

WHEREAS, CO-OP is retaining the water distribution and wastewater collection systems and will provide retail water and wastewater service to its customers in the CO-OP service area depicted in **Exhibit B**; and

WHEREAS, COUNTY is willing to provide wholesale water and wastewater service to the CO-OP, and the CO-OP is willing to purchase said services subject to the terms and conditions entered into by separate agreement; and

WHEREAS, this transaction is contingent upon and subject to the approval of this document and the Wholesale Potable Water and Wastewater Agreement and the Agreement for the Delivery and Use of Reclaimed Water by the Orange County Board of County Commissioners (the Board) and CO-OP Board of Directors; and

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 THE PURCHASED ASSETS. The CO-OP, pursuant to the circumstances noted in the Recitals above, agrees to sell and the COUNTY agrees to buy the Purchased Assets, consisting of all real, personal and mixed property used or held for use in connection with the Purchased Assets. The Purchased Assets shall not include any cash derived from the monthly rates of the CO-OP received by the CO-OP, except as set forth in this Agreement.

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

3.1 Real Property. All real property and interests in real property (the Property), owned by the CO-OP, as described in **Exhibit C** hereof, whereupon water production wells, storage, treatment facilities, high service pumps, along with the wastewater treatment facilities and RIBs and all other areas where other water and wastewater service facilities are located.

3.2 Easements and Other Rights.

- a. 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 CO-OP in connection with the construction, reconstruction, installation, maintenance and operation of the Purchased Assets (collectively referred to as the "Easements"). The Easements are more particularly described in **Exhibit D** hereof, provided that, such easements located or shown in recorded plats and rights to locate lines in dedicated public rights-of-way are not included in this Exhibit but any interest of CO-OP in said Easements are nevertheless being conveyed to the COUNTY.

For areas or easements containing Purchased Assets critical to the operation of the Purchased Assets where title is not marketable, if any, CO-OP agrees to provide good and marketable title or render the title good and marketable prior to closing pursuant to Section 6.3 hereof.

- b. CO-OP will prepare all necessary documents to close this Transaction. The CO-OP is responsible for all recording fees.
- c. CO-OP shall provide easements to COUNTY in recordable form that serve well sites, the water and wastewater plants and all customer within the boundaries of the CO-OP service area shown on **Exhibit B**. As a condition that survives the closing, easements required by COUNTY to interconnect Purchased Assets to COUNTY water and wastewater system facilities located outside of the Co-Op service area, shall be granted by CO-OP in a form acceptable to COUNTY.

3.3 Plant and Other Facilities. CO-OP conveys and County purchases the following assets owned by the CO-OP and used or held for use in connection with the Purchased Assets, as more specifically described in **Exhibit E** hereof, including all water production wells, treatment plant, storage, treatment facilities, high service pumps along with the wastewater treatment facilities, and RIBs of every kind and description whatsoever.

3.4 Equipment. CO-OP conveys and County purchases the Inventory of all equipment, tools, parts, laboratory equipment, office equipment and other personal property owned by the CO-OP and located on the Property and/or utilized by the CO-OP exclusively in connection with the operation of the Purchased Assets, including but not limited to those items more particularly described in **Exhibit F** hereof.

3.5 Certificates, Permits, and Approvals.

- a. CO-OP conveys and COUNTY purchases the Purchased Assets, subject to all necessary regulatory approvals and to all conditions, limitations or restrictions contained therein, all existing original certificates (other than the Certificates of Authority issued by the Public Service Commission,

which will be canceled or modified by operation of law), permits, and other governmental authorizations and approvals of any kind in the possession of CO-OP necessary to operate and maintain the Purchased Assets in accordance with all governmental requirements, more specifically described in **Exhibit G**, attached to and incorporated in this Agreement. Such certificates, permits and approvals represent approved capacities for the Purchased Assets. 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 A**. CO-OP is retaining its FPSC certificates, but shall amend said certificates to delete the service area described in **Exhibit H** attached to and incorporated in this agreement.

- b. At the closing, the COUNTY agrees to execute necessary forms required by governmental agencies to transfer and to assume CO-OP's future obligations under said permits and approvals for the Purchased Assets. These certificates, permits, and approvals shall include any such certificates, permits, and approvals related to work-in-progress, if any.
- c. It shall be a condition of COUNTY closing this transaction that the St. Johns River Water Management District (the "District") provide written assurance to the COUNTY that the CO-OP's Consumptive Use Permit (CUP) Permit No. 2-095-0231NRM2 shall be modified to transfer the groundwater allocations set forth in the CO-OP CUP Permit for the production of potable water to the County's existing Water CUP/Permit as an addition to the COUNTY CUP(s), without modification of other COUNTY CUP provisions. CO-OP agrees it shall not seek a modification of this permit after the execution of this agreement without the express, written permission of the County. The CO-OP agrees to provide the District written notice of this transaction pursuant to Rule 40C-1.612 and Rule 40C-2.351, Florida Administrative Code. This Agreement is contingent upon the successful transference of the CO-OP's CUP allocations to the COUNTY CUP as described above.

3.6 Customer Deposits. Since CO-OP will continue to serve those customers in the service area depicted on **Exhibit B**, CO-OP will retain Customer Deposits.

3.7 Excluded Assets. The following Utility System assets owned by the CO-OP regarding the Utility System shall not be included in the assets conveyed to the COUNTY as part of the Purchased Assets.

- a. Water distribution and transmission facilities
- b. Wastewater collection, pumping and transmission facilities
- c. CO-OP's cash and CO-OP's bank accounts.
- d. Federal, State or Local Tax or other deposits (including customer deposits) maintained by CO-OP with any governmental authority or private vendor for CO-OP's use and benefit; and

- e. Customer deposits.

SECTION 4. PURCHASE PRICE AND PAYMENT. The Parties have agreed on a purchase price for Purchased Assets through a negotiating process. The purchase price agreed upon is neither the highest nor the lowest amount that could be considered as a fair market value of the Purchased Assets 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 while providing the CO-OP the opportunity to carry through its commitments to its customers. The parties agree that the total purchase price is \$ 390,000.00 and Purchased Assets shall be conveyed to COUNTY free from all debts, liens, and encumbrances.

- a. The acquisition of the Purchased Assets will result in a commitment by the COUNTY to provide water and wastewater wholesale service to the CO-OP and a commitment by the CO-OP to acquire wholesale water and wastewater services exclusively from the COUNTY as a wholesale customer by separate agreement.
- b. CO-OP agrees to maintain and operate direct customer services, including collections, pumping, distribution systems, and billing.
- c. CO-OP agrees to and understands COUNTY's water wholesale rate and wastewater wholesale rate as provided in a separate wholesale agreement.
- d. CO-OP agrees to and understands COUNTY's reclaimed water wholesale rate and conditions of use as provided in a separate reclaimed water agreement.

SECTION 5. TITLE EVIDENCE. As to real property interests conveyed in this Agreement, CO-OP shall cause to be issued, at the expense of the CO-OP, a title commitment for an owner's ALTA Form B Marketability Policy in favor of the COUNTY in the amount of the purchase price from a title insurance company licensed in Florida and reasonably acceptable to the COUNTY. The CO-OP shall convey a marketable title subject only to the title exceptions set forth below.

5.1 Exceptions to Title. The Commitment shall show the CO-OP to be vested with fee simple title to the Property shown on **Exhibit C**, and vested with valid easement interests for the easements described on **Exhibit D**, subject to the following (the "Permitted Exceptions"):

- a. Ad valorem real estate taxes and assessments for the year 2002 and subsequent years; and
- b. Restrictions set out in the recorded plats of subdivisions covered by the Utility Systems; and
- c. Easements for utilities and drainage set out in such recorded plats of subdivisions; provided, however, that none of the restrictions or easements

set out in such recorded plats of subdivisions shall prevent, hinder or restrict the present use of the Property; and

- d. Restrictions of record (except liens, encumbrances, or mortgages) that do not impair, restrict, or inhibit the present use of or improvement to the property as permitted by applicable zoning and land use regulations presently in effect and that are not coupled with a forfeiture or reversionary provision; and
- e. All local, state and federal laws, ordinances, and governmental regulations, including, but not limited to, all applicable building, zoning, land use and environmental ordinances, regulations, restrictions, prohibitions and other requirements, none of which will prevent or hinder the present use of the Property and Easements.

5.2 Status of Title. The COUNTY shall have fourteen (14) days from receipt of the Title Commitment within which to examine same. If the COUNTY finds title, as shown on the Commitment, to be defective (i.e., matters which render title unmarketable in accordance with the title standards adopted by the Florida Bar and are not Permitted Exceptions), the COUNTY shall, within five (5) days thereafter, notify the CO-OP in writing specifying the defect(s), provided that if the COUNTY fails to give the CO-OP written notice of defect(s) on or before said nineteen (19) day period, the defects shown in the Commitment shall, anything in this Agreement notwithstanding, be deemed to be waived as title objections to closing this transaction, and the CO-OP shall be under no obligation whatsoever to take any corrective action with respect to same nor to warrant title to same in its statutory warranty deed of conveyance. If the COUNTY has given the CO-OP timely written notice of defect(s) and the defect(s) render the title other than as required by this Agreement, the CO-OP shall use its reasonable efforts to cause such defects to be cured by the Closing Date, which may be extended by CO-OP for a period of up to one hundred eighty (180) days to cure any such defects. In the event that defects are timely raised and the CO-OP, after exercising all reasonable efforts, cannot clear same prior to the Closing Date, then, in that event, the COUNTY shall have the right to purchase the Property and Easements in its then existing condition of title, or to rescind and terminate this Agreement without liability by either party to the other. Notice of such election shall be given by the COUNTY to the CO-OP, in writing, as contemplated in this Agreement, within the time herein prescribed.

5.3 Deletion of Standard Exceptions. CO-OP will execute at or prior to Closing, in favor of the title insurance company, the standard form mechanic's lien affidavit and "Gap" affidavit to allow the title company to delete all standard exceptions addressed by such affidavits. Prior to Closing, the surveys shall be updated as reasonably requested by the Title Company or COUNTY so that the survey exception may be deleted.

SECTION 6. REPRESENTATIONS AND WARRANTIES OF CO-OP. The CO-OP represents and warrants to COUNTY that:

6.1 Organization, Standing And Power. The CO-OP is a corporation, duly organized, validly existing, and in good standing under the laws of the State of Florida. The CO-

OP has all requisite power and authority to own and sell its properties being conveyed here under as the Purchased Assets, and to conduct its businesses related thereto as it is currently being conducted.

6.2 Authority for Agreement. The CO-OP 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 CO-OP, has been duly executed and delivered by the CO-OP, and constitutes a valid and binding obligation of the CO-OP, enforceable in accordance with its terms.

6.3 Good and Marketable Title. Subject to the Permitted Exceptions, the CO-OP has good and marketable title to the Purchased Assets. Notwithstanding anything contained herein to the contrary, should any of the Easements for Purchased Assets facilities located outside of dedicated easements or public rights of way not be held and deliverable by CO-OP subject to the permitted exceptions requirements as set forth in Section 5.1 hereof, CO-OP shall fulfill its obligations as set forth in this paragraph. CO-OP shall furnish marketable title to the easements. For any area that contains infrastructure or facilities that are associated with the operation of the Purchased Assets and where the title to the foregoing Easements is not marketable, then before Closing, CO-OP agrees to take whatever action necessary, at CO-OP's expense, to render the title to any such area containing Purchased Assets marketable, including perfecting title in the COUNTY by eminent domain and COUNTY agrees to cooperate and assist CO-OP including using COUNTY's power of eminent domain, all at the sole cost of CO-OP. The CO-OP shall transfer, convey and assign to the COUNTY at closing an enforceable easement interest for each of the easements or areas containing Purchased Assets so that the present use of the easement parcels may be continued by the COUNTY for the operation of the Purchased Assets. Any easements conveyed to the COUNTY shall not be subordinate to any superior interests, which could result in the COUNTY losing the right to use the easement parcel for utility purposes. Any such superior interests shall be deemed a title defect under Section 5.2 hereof and shall be cured by CO-OP. At Closing, the CO-OP shall assign to the COUNTY all of its easement interests in the Property. Following the Closing (should it occur), CO-OP further agrees that for a period of three (3) years should any person claiming an interest in properties where easements or any portion of the plants or other facilities that comprise the Purchased Assets are located assert a right or bring a legal action that dispossesses the COUNTY from use of the facilities conveyed to COUNTY hereunder in the manner contemplated by this agreement, then, upon notice thereof from COUNTY, CO-OP will commence and thereafter diligently pursue whatever action is appropriate or necessary, at CO-OP's expense, to obtain for the COUNTY the use and enjoyment of such easements and facilities as provided for in this Agreement. Any such fee simple or easement deficiencies shall be corrected by CO-OP to the satisfaction of the COUNTY. In the event that the CO-OP fails to timely cure or correct the title deficiencies, the COUNTY may do so and CO-OP shall indemnify the COUNTY for all costs reasonably required to cure or correct such title deficiencies.

6.4 No Liens or Encumbrances. Except as otherwise specifically set forth in this Agreement or as may be released 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 Property is located or with the Secretary of State. CO-OP is in exclusive ownership, possession, and control of the Purchased Assets except for non-exclusive easements, and CO-OP at Closing shall deliver possession and control of the Purchased Assets to the COUNTY.

6.5 Litigation. There are no actions, suits, or proceedings at law or in equity, pending against the CO-OP before any federal, state, municipal or other court, administrative or governmental agency or instrumentality, domestic or foreign, which affect the Utility Systems or any of the Purchased Assets or the CO-OP's right and ability to make and perform this Agreement; nor is the CO-OP aware of any facts which to its knowledge are likely to result in any such action, suit or proceeding. The CO-OP is not 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 Systems or any of the Purchased Assets.

The CO-OP 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 Systems or Purchased Assets

6.6 Leases. None of the Purchased Assets are subject to any interest of any lesser or lessee.

6.7 No Governmental Violations. The CO-OP 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 Systems. CO-OP shall be responsible for any such violations occurring prior to the closing, even if CO-OP or COUNTY only receives notice after the closing.

6.8 No Record Violations. The CO-OP is not aware and has not been notified of any restrictions or conditions of record, which would adversely affect the use of the Purchased Assets on the Property or Easements as described in Exhibits C and D. This is a continuing obligation upon CO-OP to disclose to COUNTY notices of any violations through the date of closing of this transaction.

6.9 Disclosure. No representation or warranty made by the CO-OP 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 CO-OP become aware that any of the representations or warranties of COUNTY provided for herein are, or may reasonably be, materially untrue or incorrect, CO-OP will promptly advise the COUNTY of same, in writing, specifying in reasonable detail the reasons why the CO-OP believes such representations or warranties of COUNTY are, or may reasonably be, untrue or incorrect.

6.10 Survival of Covenants. CO-OP agrees that its representation and warranties set forth herein are true and correct as of the date of the execution hereof and shall be true and correct at the time of the Closing Date, and shall survive the Closing Date.

6.11 FIRPTA. The CO-OP 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 CO-OP shall deliver to the COUNTY a certificate to such effect.

6.12 All Necessary Governmental Permits and Approvals, and Certifications. As of the Closing Date, the CO-OP warrants that it shall transfer to the COUNTY all necessary governmental permits and approvals such that the COUNTY can operate the Purchased Assets until the expiration of CO-OP's permits, at the volume capacities set forth in **Exhibit I** hereof without exception and without permit condition requiring the COUNTY to pay for capital costs or improvements other than those agreed upon as shown on **Exhibit J**. The duration of such permits upon transfer to the County shall be: Wastewater permit, four (4) years and for the water, nine (9) years, following closing of this transaction. This warranty shall be limited by the assumption that the COUNTY will properly operate the facilities in accordance with the permits. At least thirty (30) days before the closing of this transaction, CO-OP shall provide a signed and sealed certification by a Florida registered and licensed professional engineer with errors and omissions insurance coverage reasonably satisfactory to the County certifying to the COUNTY as to the truth and veracity of the actual capacities of the Purchased Assets as of the Closing Date as set forth in **Exhibit I** hereof. Actual capacities for water and non-reuse wastewater treatment and effluent RIBs disposal facilities shall be based upon the capacities of such facilities, as designed, built, currently operated and capable of being operated, as permitted without modification.

6.13 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 CO-OP, or any indenture, agreement, or other instrument to which the CO-OP is a party, or by which it is bound.

6.14 No CERCLA Violations. The real property portion of the Purchased Assets have complied with, and the CO-OP has not violated, in connection with the ownership, use, maintenance, or operation of the Property or 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"). CO-OP has not authorized the placing or depositing of hazardous substances on the real property portion of the Purchased Assets except, if at all, in accordance with the applicable Environmental Laws, and CO-OP 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.

6.15 Location of Purchased Assets. The Purchased Assets are located on the Property as identified in **Exhibit C** or in Easements described in **Exhibit D**, and the use of such water and wastewater plants, and wells on the Property does not violate any zoning certifications, special exceptions or variances in a manner which would prohibit or materially interfere with the

operation and maintenance of such water and wastewater Plants or any other of the Purchased Assets.

6.16 Record Document Accuracy. The CO-OP hereby represents and warrants to the COUNTY that the Purchased Assets record documents as shown on **Exhibit K** are accurate and correct. In the event that any such system facilities are found not to be in accordance with the record documents in any material respect for a period of five (5) years following closing, the CO-OP shall be wholly liable for any deficiencies of any nature and the costs of all corrective actions required to be taken by the COUNTY to bring the Purchased Assets into compliance with the appropriate record documents.

6.17 Assignment of Certain Agreements. The CO-OP agrees that it shall obtain all necessary assignments, consents, and approvals in order to assign the agreements set forth in **Exhibit L** as referenced in Section 19 hereof. If no such agreements exist, the word "None" shall be listed on **Exhibit L**, and by execution of this Agreement, CO-OP warrants the veracity of such a representation. The CO-OP understands and agrees that COUNTY will not be obligated to close this Agreement if any such assigned agreements impose upon the COUNTY an obligation to grant free service or reduced service charges, or preclude the COUNTY from charging capital charges for new retail rate customers (as shown on the "cross hatch" area of **Exhibit B**). As a condition of COUNTY closing this transaction, CO-OP shall secure at or before closing a document in recordable form indicating any such agreements for free service or reduced service charges or waivers of the obligation of a customer to pay capital charges (except lots as depicted on Exhibit N), are cancelled of record.

6.18 No Construction. There is no construction work in progress on the Property other than that shown in **Exhibit M**, all of which shall be performed by the CO-OP at no cost to the COUNTY, and CO-OP shall provide at closing releases from any private contractor with lien rights under state law as to CO-OP or COUNTY or the assets of the Utility Systems, including the Purchased Assets.

6.19 Assurances Required. CO-OP has provided all documents and information requested in furtherance of this Agreement to COUNTY in relation to the Utility Systems and Purchased Assets which are available or can be reasonably available to CO-OP.

SECTION 7. REPRESENTATIONS AND WARRANTIES OF COUNTY. The COUNTY represents and warrants to the CO-OP, as follows:

7.1 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 Purchased Assets.

7.2 Delivery of Resolution. COUNTY will deliver to CO-OP a certified copy of the resolution of the Board approving the County's execution and performance of this Agreement, within thirty (30) days after adoption of said Resolution by the County.

7.3 Inspections. All inspections of the Utility Systems by COUNTY or its representatives performed pursuant to this Agreement shall not materially interfere with the operation of the Utility Systems or the day-to-day activities of the CO-OP's personnel, and subject to Section 768.28, *Florida Statutes*, COUNTY agrees to indemnify and hold CO-OP harmless from any third party claims, actions, expenses, or damages, including costs and attorney's fees at trial and appeal, which the CO-OP incurs (for personal injury or property damage) as a direct result of the inspection of the Utility Systems pursuant to this Agreement by the COUNTY, its agents, contractors, representatives and/or employees.

7.4 Litigation. There are no actions, suits, or proceedings at law or in equity, pending against COUNTY before any federal, state, municipal or other court, administrative or governmental agency or instrumentality, domestic or foreign, which affect the County's right and ability to make and perform this Agreement; nor is the COUNTY aware of any facts which to its knowledge are likely to result in any such action, suit or proceeding.

SECTION 8. CONDUCT PENDING CLOSING. The CO-OP covenants that pending the closing:

8.1 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, CO-OP shall:

- a. Operate the Utility Systems in, and only in, the usual, regular and ordinary course and nevertheless comply with all applicable governmental requirements and law; and
- b. Maintain all of the Utility Systems 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; and
- c. Keep in full force and effect insurance comparable in amount and scope of coverage to insurance now carried by it for the Utility Systems; and
- d. Perform, in all material respects, all of its obligations under agreement, contracts and instruments relating to or affecting the Utility Systems properties, assets and operation; and
- e. 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 Systems; and

- f. Promptly advise the COUNTY, in writing, of any material change which adversely affects the operation of the Utility Systems; and
- g. Not enter into any transaction, including without limitation, the purchase, sale or exchange of property, the value of which exceeds \$1,000.00, which relates to the Utility Systems, except in furtherance of this Agreement with the CO-OP, or the rendering of any service to CO-OP except in the ordinary course of and pursuant to the reasonable requirements of the business of CO-OP; and
- h. 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 Systems 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.
- i. Absence of Changes. After the date of the execution of this Agreement, the CO-OP shall not:
 - 1. Undergo 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 Systems; and
 - 2. Acquire or dispose of any of the Utility Systems assets or properties of material value (in excess of \$1,000.00) except in the furtherance of this Agreement, except in the ordinary course of business and except with the COUNTY's written consent, which shall not be unreasonably withheld, delayed or conditioned; and
 - 3. Subject to available administrative remedies pursuant to Chapter 120, *Florida Statutes*, or any administrative or judicial procedures or proceedings applicable to particular permits, intentionally fail to comply with all Utility Systems permit requirements; and
 - 4. Fail to seek or obtain any necessary permit extensions or renewals so that said permits are valid, extended or seeking extension as of the Closing Date.

8.2 Risk of Loss. The CO-OP 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, and such damage has not been repaired, or provision made for such repair, by the CO-OP as of the closing date as provided herein, the COUNTY shall have the option of (1) taking the Purchased Assets as is, without reduction in price, together with the CO-OP'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 CO-OP 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 that portion of the Utility Systems and the CO-OP 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.

8.3 No Transfers or Encumbrances. From and after the date of the execution of this Agreement, CO-OP will not, without the prior written consent of the COUNTY, withhold, dispose of, hypothecate, or encumber any of the Purchased Assets, with the exception of any transactions occurring in the ordinary course of CO-OP's business.

8.4 Access to Records. The CO-OP 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 Systems for inspection to assist in acquainting the COUNTY's operating and administrative personnel in the operation of the Utility Systems; provided, however, that no such inspection shall materially interfere with the operation of the Utility Systems or the day to day activities of the CO-OP's personnel.

8.5 Performance of Closing Conditions. The CO-OP shall perform all of the conditions to closing, which should be performed by the CO-OP prior to the Closing Date as provided herein.

8.6 Insurance. Prior to closing, the CO-OP shall maintain adequate "all risk" insurance to cover the full replacement cost of any replacement or repairs to the Purchased Assets that may be required by casualty damage.

8.7 Examination and Inspection. The CO-OP 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 CO-OP in connection with the Utility Systems. No such examination by the COUNTY's authorized representatives shall interfere with the CO-OP's operations of the Utility Systems or the day-to-day operations of the CO-OP's personnel. The CO-OP shall make these assets and records available for examination by the COUNTY's authorized representatives at reasonable times and upon prior written notice from the COUNTY (not less than forty-eight (48) hours in advance). Such facilities will be properly maintained by the CO-OP within the custom and usage of the water and wastewater industry in Florida until the Closing Date.

SECTION 9. ADDITIONAL CONDUCT PENDING CLOSING. The COUNTY and the CO-OP covenant with each other that pending the closing on this transaction, neither shall obstruct, hinder or interfere in the operation of the Utility Systems by the CO-OP or with the

processing and consideration by governmental agencies of any applications or petitions filed by the CO-OP or COUNTY that are related to the Utility Systems. CO-OP 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 as may be required to close this transaction and transfer permits and other assets of the Purchased Assets to the COUNTY.

SECTION 10. ADJUSTMENTS AND PRORATIONS; CLOSING COSTS. At the time of closing, the parties covenant and agree that the following adjustments shall be made:

10.1 Real and personal property taxes for 2002 on all real and personal property which is being conveyed by the CO-OP to the COUNTY shall be prorated as of 11:59 p.m. of the Closing Date and shall be paid by the CO-OP. Since the County is exempt from ad valorem taxes on assets such as the Purchased Assets, the County shall not be charged with proration of any ad valorem taxes.

10.2 The CO-OP 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 CO-OP shall be responsible for, and shall provide to the COUNTY, upon request, evidence of the payment of all such invoices.

10.3 CO-OP represents that it does not hold any Connection Charges, as hereinafter defined, heretofore paid to CO-OP under any agreements for connections not yet made to the Utility Systems prior to the execution of this agreement. If CO-OP has entered into any agreements or commitments with developers or customers outside of the CO-OP service area as shown in **Exhibit B**, providing for reservation of capacity, extension of services or facilities, then the CO-OP shall terminate all such agreements and commitments prior to closing. The COUNTY will not accept or recognize any obligations to honor the amount of any prepaid or discounted connections for customers, properties, dwelling units, or commercial or industrial structures not connected to the Utility Systems prior to the execution of this agreement, with the exception of the properties and capacities specifically noted in **Exhibit N**. Nothing contained in this Agreement shall be construed to require the COUNTY to exercise the police power in the allocation of water and/or wastewater service capacity (hereby deemed to be a governmental function) other than in accordance with the COUNTY's current or future service allocation or extension rules.

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

10.5 All costs of recording any releases, satisfactions or corrective instruments, if any, shall be paid by CO-OP.

10.6 Certified, confirmed or ratified special assessments or municipal liens, if any, prorated as of the date of Closing, will be paid by CO-OP.

10.7 Any taxes on gross receipts, regulatory assessment fees, or gain on sale incurred as of the Date of Closing shall be determined and paid by CO-OP.

10.8 If applicable, rents under any lease agreement assumed by COUNTY hereunder shall be prorated as of the date of Closing.

10.9 The bills for electricity and other utility services for the month in which this Closing shall take place shall be prorated between the parties at Closing and CO-OP and COUNTY shall make arrangements for the appropriate utilities to bill COUNTY for services rendered subsequent to the Closing. The COUNTY shall verify all such accounts.

10.10 All bills for other services, materials and supplies rendered in connection with the operation of the Purchased Assets prior to Closing shall be prorated to the date of closing and shall be paid by CO-OP, and such costs incurred after closing shall be obligations of the COUNTY.

10.11 All documentary stamps, if required, on the deeds of conveyance of Property included in the Purchases Assets shall be paid by CO-OP.

10.12 The cost of recording the deed(s) of conveyance shall be paid by CO-OP.

SECTION 11. INDEMNITIES. Except as otherwise provided for in this Agreement, the CO-OP shall defend, 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 CO-OP, its agents, employees, servants, licensees, invitees, or contractors or by any person under the control or direction of the CO-OP arising out of (1) its ownership, operation, maintenance, or management of the Utility Systems and / or Purchased Assets up to and including 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 prior to or on the Closing Date, or (3) any FPSC rate case proceeding related to the Utility Systems or Purchased Assets. In addition, CO-OP shall defend, indemnify and hold harmless the COUNTY, its representatives, agents, and employees from and against all claims, obligations, administrative orders, suits, actions, proceedings, demands, assessments, judgments, debts, damages, remediation costs, charges and expense, including reasonable attorneys' fees arising out of or resulting from environmental pollution or contamination from hazardous substances that occurred prior to or on the closing date located within the property shown on **Exhibit C**. Nothing herein shall relieve CO-OP of any responsibility or liability prescribed by law for fines, penalties, and damages levied by governmental agencies, and the cost of cleaning up any contamination caused directly or indirectly by CO-OP's activities or facilities that occurred prior to or on the Closing Date; and CO-OP shall promptly reimburse the COUNTY for any legally required closure, investigation, assessment, cleanup, decontamination, remediation, restoration, and monitoring of the property and all off-site ground and surface waters and lands affected thereby, as may be necessary to bring the property and affected off-site waters and lands into full compliance with all applicable federal, state or local statutes, laws, ordinances, codes,

rules, regulations, orders and decrees, and to restore the damaged property to the condition existing prior to the occurrence(s) which caused the damage.

SECTION 12. ENVIRONMENTAL MATTERS.

12.1 The COUNTY has the right to perform environmental audits of the Property including but not limited to a Level I and Level II Environmental Audit, as such terms are generally understood by the environmental consulting industry in the State of Florida. These audits shall be performed at the County's expense. These environmental audits shall include, but not be limited to, appropriate borings, monitoring wells, soil and groundwater samplings, (and COUNTY shall restore the Property to its condition prior to any installation of monitoring wells or borings if COUNTY does not acquire the Property), "sniffer" tests, as well as an appropriate title search in order to determine that the sites are in full compliance with applicable local, state, and federal environmental and occupational health and safety statutes and regulations. After reviewing the environmental audits, the COUNTY may reasonably determine that the lands to be conveyed hereunder are not in full compliance with applicable local, state, and federal environmental and occupational health and safety statutes and regulations. COUNTY shall provide written notice to CO-OP of receipt of environmental audits, which notice shall identify the alleged non-compliance.

12.2 Following such receipt of the environmental audits, CO-OP shall have thirty (30) days to undertake to cure such non-compliance, provided, in no event, shall CO-OP be required as a condition of this contract to undertake any such curative actions which CO-OP reasonably expects will require expenditure of a sum in excess of \$100,000. If, after the environmental cleanup, the Property does not comply with local, state or federal environmental standards, or if an environmental monitoring plan or other activity shifts any cost to the COUNTY, then this Agreement may be terminated upon notice to CO-OP by COUNTY of such unacceptability.

12.3 In the event the anticipated costs to cure exceeds \$100,000, CO-OP shall have the option of (i) undertaking such cure at its cost and expense and closing the sale with COUNTY, or (ii) terminating the Agreement with no further obligation by either party under this Agreement. In the event that an environmental clean-up is undertaken, then the date of the closing shall be extended until fifteen (15) days after the determination that the contamination has been removed by the environmental or engineering consultant overseeing the clean-up, but not longer than two hundred seventy (270) days, or such period as the parties may agree.

SECTION 13. CLOSING. The place of closing shall be in Orange County at the offices of the Orange County Attorney, 201 South Rosalind Avenue, 3rd Floor, Orlando, Florida, and such closing shall occur on or before **TBD** (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 CO-OP in the manner and on the date provided for in this Agreement. The closing of this transaction may be extended beyond the Closing Date in order to allow for the fulfillment of obligations set forth in this Agreement, but in no event beyond thirty (30) days from the Closing Date, unless mutually agreed in writing by the parties, or extended by provision of this Agreement.

SECTION 14. CLOSING DOCUMENTS AND PROCEDURES.

14.1 Deliverables from CO-OP. CO-OP will prepare all necessary documents to close this Transaction. The following documents shall be delivered by the CO-OP to the COUNTY no later than fourteen (14) days prior to closing, but shall be executed on the Closing Date:

- a. Warranty deeds to all of the Property owned by the CO-OP as described on **Exhibit C** conveying to the COUNTY all of the CO-OP's right, title and interest in all such property and warranting that such Property is free and clear of all liens, claims and encumbrances other than Permitted Exceptions, as that term is defined in Subsection 5.1 of this Agreement; and
- b. Instruments of conveyance of all the Easements in appropriate recordable form as described on **Exhibit D** conveying to the COUNTY all of CO-OP's 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 Subsection 6.3 hereof, free and clear of all liens, security interests, encumbrances, leasehold interests, charges or option, covenants or restrictions other than Permitted Exceptions, as that term is defined herein; and
- c. General assignment to and assumption by the COUNTY of all other interests in the Property, together with a general assignment of all Contracts, Agreements, permits and approvals as provided for and in the manner specified in this Agreement; and
- d. Bills of sale or other documents of assignment and transfer, with full warranties of title as specified in this Agreement, to all Water and Wastewater Systems Assets other than those assets covered by Subsections 14.1(2) and 14.1(3) hereof; and
- e. Copies of all business records sold to the COUNTY hereby related to Purchased Assets (originals thereof to be delivered at Closing); and
- f. 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 and the letter required of the CO-OP per Section 6.12 of this Agreement (originals thereof to be delivered at Closing); and

- g. Standard no-lien affidavit in a form reasonably required by the Title company as to realty and personally insuring against any liens, claims or encumbrances upon the Purchased Assets; and
- h. A “non-foreign” affidavit or certificate pursuant to Section 1445 of the *Internal Revenue Code*; and
- i. 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; and
 - j. A corporate officer’s certificate confirming that the CO-OP’s warranties hereunder are true and correct as of the Closing Date; and
- k. Evidence of insurance and an original executed certification and warranty to the COUNTY as contemplated by subsection 6.138.1(c) hereof; and
- l. 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 CO-OP not otherwise provided for in this Agreement; and
- m. All assignments of agreements, permits and governmental approvals to operate the Purchased Assets required by law, rule or regulation to assign the agreements, permits or approvals to COUNTY.
- n. All FPSC documents and certificates (**Exhibit A**); and
- o. All record documents (**Exhibit K**).

14.2 Deliverables from the COUNTY. On the Closing Date, the COUNTY shall pay the Purchase Price by delivering a COUNTY warrant to the CO-OP in the amount due CO-OP as provided in Section 4 of this Agreement, subject to the prorations and adjustments and the creation of the escrows to be created by CO-OP as provided for herein. The COUNTY shall also deliver at the Closing the executed form of an assumption of the agreements, permits or governmental approvals required to operate the Purchased Assets set forth in this Agreement, an assumption of the leases, permits, agreements, approvals and other interests in the Purchased Assets being assigned by the CO-OP, as provided by the CO-OP pursuant to Subsection 14.1 hereof, and a certified copy of a resolution of the COUNTY approving this transaction, if not previously delivered to CO-OP. Said documents shall be executed on the Closing Date. The assignments and assumptions being prepared by the parties may be incorporated into one document (with appropriate exhibits as required) at the convenience and with the concurrence 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) the appropriate 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 CO-OP'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 15. RESPONSIBILITY FOR PROFESSIONAL FEES AND COSTS. Each party hereto shall be responsible for its own attorney's 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 and transfer of the Purchased Assets. Responsibilities of certain fees are contained elsewhere in this Agreement.

SECTION 16. PUBLIC SERVICE COMMISSION APPROVAL. Prior to Closing Date, CO-OP shall apply for approval by the FPSC for transfer of the Purchased Assets from CO-OP to COUNTY, and for modification of the CO-OPs FPSC Certified Service Area to match that in **Exhibit B**. CO-OP agrees to pay all fees and costs incurred by CO-OP incident to such dealings with the FPSC. It is agreed that COUNTY shall apply every reasonable effort to cooperate with CO-OP to obtain approval from the FPSC and will render all reasonable assistance to CO-OP necessary to obtain such approval. Copies of the Orders of the FPSC acknowledging sale of the Purchased Assets to the COUNTY along with the Certificate Modification(s) shall be promptly provided to COUNTY by CO-OP, upon CO-OP's receipt of said Orders.

SECTION 17. COMMISSIONS. The CO-OP and the COUNTY warrant to the other that the transaction contemplated by this Agreement is a direct, private transaction between the CO-OP and the COUNTY without the use of a broker or commissioned agent.

SECTION 18. 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.

SECTION 19. CERTAIN AGREEMENTS.

19.1 Contracts and Agreements. The COUNTY shall take title to the Purchased Assets encumbered only by those developer, service, or wholesale contracts and agreements that are listed on **Exhibit L**, attached to and incorporated in this Agreement (hereafter "Contracts and Agreements") which will be assigned to and assumed by the COUNTY. CO-OP has also supplied the COUNTY with a map series attached to and incorporated in this Agreement as **Exhibit N**, which depicts all lots for which prepaid capacity,

connection or capital charges have been collected in accordance with paragraphs 6.17 and 10.3 of this agreement. The CO-OP represents and warrants that there are no other such lots, within its service area as depicted in **Exhibit N** hereof. The CO-OP understands and agrees that COUNTY will not be obligated to close this Agreement if any such assigned agreements impose upon the COUNTY an obligation to grant free service or reduced service charges, or preclude the COUNTY from charging capital charges for new retail rate customers (as shown on the "cross hatch" area of **Exhibit B**). As a condition of COUNTY closing this transaction, CO-OP shall secure at or before closing a document in recordable form indicating any such agreements for free service or reduced service charges or waivers of the obligation of a customer to pay (except the lots shown on Exhibit N), capital charges are cancelled of record.

19.2 Payment of Capital Charges. Payment of Capital Charges will be required from all future COUNTY retail utility customers in accordance with existing and future County Ordinances, including all customers located outside of the CO-OP service area or in the cross-hatched area within the service area as depicted on **Exhibit B**.

19.3 Other Agreements. Except, as expressly set forth in this Agreement, the COUNTY is not assuming any other agreements to which CO-OP is a party.

SECTION 20. 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, 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:

CO-OP:
Zellwood Station CO-OP, Inc.

COUNTY:
Director of Utilities
Orange County Utilities Department
Suite 400
109 E. Church Street
Orlando, FL 32801-3318

WITH A COPY TO:
County Administrator
Orange County Administration Office, 5th Floor
201 South Rosalind Avenue
Orlando, FL 32801-3547

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 five (5) days after deposit in the U.S. mail.

SECTION 21. 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 22. AMENDMENT. Amendments to and waivers to the provisions of this Agreement shall be made by the parties only in writing by formal amendment.

SECTION 23. 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 24. 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 CO-OP.

SECTION 25. TIME OF THE ESSENCE. Time is hereby declared of the essence in the performance of each and every provision of this Agreement.

SECTION 26. APPLICABLE LAW. This Agreement shall be construed, controlled, and interpreted according to the laws of the State of Florida.

SECTION 27. CORROBORATION OF PAYMENTS AFTER CLOSING. In each instance in which either the CO-OP 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.

SECTION 28. 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 29. DEFENSE OF ACTIONS OR CLAIMS.

29.1 Each party who is or may be entitled to indemnity (the "Indemnitee") under the provisions of this Agreement shall promptly notify the other party who is or may be required to provide indemnity (the "Indemnitor") under the provisions of this Agreement, as applicable, 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, then such Indemnitee by failing to provide notice shall pay all costs and attorneys' fees of Indemnitor incurred from the point in time when notice to other parties from Indemnitee was required and not given to the prejudicial Indemnitor.

29.2 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.

29.3 If the defendants in or to any such action or claim include both the Indemnitee and the Indemnitor and the Indemnitee seeks to assert defenses which are different from or in addition 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.

29.4 If the 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, 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, then Indemnitee shall be eligible for reimbursement of attorneys' fees and costs incurred by Indemnitee in asserting said legal defenses that Indemnitor declined to assert.

29.5 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 30. OPERATIONS, AND MAINTENANCE.

CO-OP will properly maintain and operate all Utility Systems assets not a part of the Purchased Assets.

SECTION 31. SURVIVAL OF AGREEMENTS. All representations and warranties of the parties set forth in this Agreement shall survive the Closing.

SECTION 32. MISCELLANEOUS.

32.1 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.

32.2 Except for the provisions of Sections 3.5, 4 and 14.1(1) 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.

32.3 In the event of any litigation between the parties under this Agreement, each party shall be responsible for their own attorney's fees and court costs at all trial and appellate levels.

32.4 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.

SECTION 33. LISTING OF EXHIBITS.

33.1 Exhibits. The following exhibits form a part of this agreement:

- A. FPSC Documents and Certificates
- B. CO-OP Service Area
- C. Real Property
- D. Easements
- E. Purchased Assets / Plants
- F. Equipment
- G. Governmental Requirements and Permits
- H. Deleted Service Area
- I. Volume Capacities
- J. Capital Costs and Improvements
- K. Record Documents
- L. Assigned Agreements
- M. Construction In Progress
- N. Non-Connected Parcels with Pre-paid Capital Charges

DRAFT

The exhibits shall be attached and become an integral part of the agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year written below their signatures.

ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

By: _____
Richard T. Crotty
County Chairman

DATE: _____

ATTEST: Martha O. Haynie, County Comptroller
As Clerk of the Board of County Commissioners

By: _____
Deputy Clerk

Signed, sealed and delivered in the
presence of:

ZELLWOOD STATION CO-OP, INC.

Attest: _____
Print Name: _____

By: _____
Print Name: _____

Title: _____

Title: _____

[CORPORATE SEAL]

Date: _____

DRAFT
04/18/2002

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this ___ day of _____,
2002, by _____, as _____ and attested to by
_____ as _____ of ZELLWOOD STATION CO-OP,
INC., who are personally known to me or produced _____ as
identification.

Notary Public

Print Name

My Commission Expires:

(AFFIX NOTARY STAMP)

EXHIBIT A

FPSC Documents and Certificates

Insert or attach copies of the exiting FPSC certificated areas and maps.

For example:

1. WTP Site
2. Well Sites
3. WWTP
4. RIBs Site
- Others. . .

Prepared by CO-OP

EXHIBIT B

CO-OP's Service Area

Map and legal description of the CO-OP's service area. This exhibit SHALL NOT include undeveloped parcels.

For example:

- 5. WTP Site
- 6. Well Sites
- 7. WWTP
- 8. RIBs Site
- Others. . .

Prepared by CO-OP

EXHIBIT C

Real Property

Insert Map(s) and Legal Descriptions to show:

For example:

9.WTP Site
10.Well Sites
11.WWTP
12.RIBs Site
Others. . .

Prepared By CO-OP

EXHIBIT D

Easements

Insert maps and legal descriptions of easements:

For example:

1. Raw Water Mains
2. Access to all property necessary for O&M
3. Access for Future tie-ins
4. Access to serve undeveloped areas
5. Others. . .

Prepared by CO-OP

EXHIBIT E

Purchased Assets / Plants

For example, list of assets / plants to be purchased:

1. WTP
2. Wells
3. Raw Water Mains
4. WWTP
5. RIBs
6. Others. . .

Prepared by CO-OP

EXHIBIT F

Equipment

For example, insert equipment list to include:

1. Equipment
2. Tools
3. Personal Property
4. Others. . .

Prepared by CO-OP

EXHIBIT G

Governmental Requirements and Permits

For example, insert list here to include, (if applicable):

1. CUP Permit
2. FDEP Permits
3. Fuel Tank Placards
4. Miscellaneous
5. Others. . .

Prepared by CO-OP

DRAFT
04/18/2002

EXHIBIT "H"

Deleted Service Area

Insert map and legal description of the areas to be deleted from the CO-OP's FPSC certified area. This will include the undeveloped tracks of land in Zellwood Station.

Prepared by CO-OP.

EXHIBIT I

Volume Capacities

For example, insert Volume Capacity Data Table to Include:

1. WTP (in MGD)
2. WWTP (in MGD)
3. Wells (in MGD)
4. High Service Pumps (in GPM)
5. Storage Tank(s) (in gallons)
6. RIBS System (n MGD)
7. Hydro pneumatic tank (in gallons)
8. Compressor(s) (in CFM)
9. Generator(s) (in KVA)
10. Fuel Tank(s) (in gallons)

Prepared by CO-OP's Engineer

DRAFT
04/18/2002

EXHIBIT J

Capital Costs and Improvements

EXHIBIT K

Record Documents

For example, insert list of documents (copies to be submitted under separate cover) to include:

1. Sealed Record Drawings
2. O&M Manuals (Plants)
3. O&M Manuals Equipment and appurtenances
4. Master Plan(s)
5. Permit Applications (if applicable)
6. Others. . .

To be prepared by CO-OP's Engineer

EXHIBIT L

Assigned Agreements

Insert names, dates and brief description of assigned agreements:

To be prepared by the CO-OP.

EXHIBIT M

Construction In Progress

For example, list any projects to include:

1. Description
2. Location on property
3. Cost in dollars
4. Start Date
5. Completion date
6. Others. . .

To be prepared by CO-OP's Engineer

EXHIBIT N

Non-Connected Parcels with Pre-paid Capital Charges

Map showing lots and legal description of the lots. Table showing number of ERUs and ERCs credits of each lot.

This consists of about 190 developed and platted lots, without mobile homes.

For example:

1. Lot number / Description
2. Service connection size
3. Capacity allocated
4. Date assigned
5. Status
6. Estimated date of connection
7. Others. . .

To be prepared by CO-OP

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NOTE: THIS IS A "WORD" DOCUMENT – DO NOT OPEN IN WORDPERFECT.



COUNTY ATTORNEY'S OFFICE
THOMAS J. WILKES, County Attorney
 201 South Rosalind Avenue - 3rd Floor
 Reply To: Post Office Box 1393
 Orlando, Florida 32802-1393
 407-836-7320 • Fax 407-836-5888
 www.onetgov.net

Exhibit "C"

May 15, 2002

Deputy County Attorney:

Jeffrey J. Newton

Senior Assistant County Attorneys

Joseph L. Passiatore

Joel D. Prinsell

Assistant County Attorneys

Linda Brehmer Lanosa

Richard Coaxum, Jr.

Anthony J. Cotter

George L. Dorsett

Wanzo Galloway, Jr.

Gary M. Glassman

Robert D. Guthrie

Charles J. Hawkins, II

John P. Lowndes

Lila I. McHenry

Vivien J. Monaco

James A. Moreland

Marc D. Peltzman

Michele R. Plante

Lynn P. Porter-Carlton

Woody Rodriguez

Legal Administrative Supervisor

James W. Ross, Jr.

Paralegals

Stephanie L. Cross, CLA

John P. Dougherty

Katherine M. Lockett

Via Hand Delivery

Thomas A. Cloud, Esq.
 Gray, Harris & Robinson, P.A.
 P.O. Box 3068
 Orlando, FL 32802-3068

Re: Zellwood Station Co-Op, Inc.(Co-Op) - Wholesale Water and Wastewater Agreement and Reclaimed Water Agreement

Dear Tom:

After numerous staff reviews, attached please find the two referenced agreements for your consideration. A representative of your client, Bill Ferrara, has contacted Teresa Remudo-Fries' office and apparently is anxious to receive these documents so review can begin. Please call me if you have any initial questions or follow-up questions after review by appropriate representatives of your client.

Very truly yours,

Robert D. Guthrie
 Assistant County Attorney

RDG/mjn

cc: Michael Chandler, Director, Orange County Utilities
 Teresa Remudo-Fries, Deputy Director, Orange County Utilities
 Dan Allen, Manager, Utilities Engineering

S:\RGuthrie\CORRESP\cloud ltr on Zellwood2.wpd

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**ORANGE COUNTY/ZELLWOOD STATION CO-OP, INC.
WHOLESALE POTABLE WATER AND WASTEWATER AGREEMENT**

THIS ORANGE COUNTY/ZELLWOOD STATION CO-OP, INC., WHOLESALE POTABLE WATER AND WASTEWATER AGREEMENT (hereinafter called the Agreement) is made and entered into on the _____ day of _____, 2002, by and between **ORANGE COUNTY, FLORIDA**, a political subdivision and charter county of the State of Florida (hereinafter referred to as "County"), and **ZELLWOOD STATION CO-OP, INC.**, a corporation not for profit, organized as a water co-op under the laws of the State of Florida (hereinafter referred to as "Co-Op"), and this Agreement is based on the following premises.

WHEREAS, the County has purchased from the Co-Op, pursuant to a separate, independent Purchase and Sale Agreement, the water facilities for the treatment and supply of potable water; and

WHEREAS, the County has purchased from the Co-Op, pursuant to a separate, independent Purchase and Sale Agreement, the wastewater facilities for the treatment and disposal of domestic wastewater; and

WHEREAS, the Co-Op owns the Water Distribution System and the Wastewater Collection System and will continue to provide retail water and wastewater service including billing and customer service in the area defined as the Co-Op Service Area depicted on **Exhibit A** of this Agreement; and

WHEREAS, following sale of the water and wastewater treatment facilities by the Co-Op to the County, the Co-Op will become a wholesale potable water and wholesale wastewater customer of the County; and

WHEREAS, this Agreement is being negotiated to provide the parties certainty with regard to

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availability of water and wastewater services on a wholesale basis to the Co-Op from the County and the certainty of a wholesale customer for the County pursuant to the terms of this Agreement; and

WHEREAS, for the term of this Agreement, County shall be the exclusive provider of potable water and wastewater treatment to the Co-Op, and County and Co-Op agree that this provision constitutes a part of the consideration from Co-Op to County under the separate Purchase and Sale Agreement.

WHEREAS, this Agreement will be executed at or upon the sale by the Co-Op to the County of the water facilities and the wastewater facilities in accordance with that separate Purchase and Sale Agreement.

NOW, THEREFORE, be it agreed by and between the parties as follows:

1. Recitals True and Correct. Each of the foregoing recitals are acknowledged to be true and correct representations of the facts that support this Agreement.

2. Purpose of the Agreement. The purpose of this Agreement is to memorialize certain terms and conditions under which the Co-Op and the County will:

(a) Specify the relationship between the Co-Op and the County whereby Co-Op agrees that County, for the term of this Agreement, will be the exclusive provider of potable water and wastewater treatment services to Co-Op for its customers in the Service Area depicted on **Exhibit A** attached hereto and by this reference made a part hereof; and

(b) Identify the Connection Points and delineation of responsibilities between the County's facilities and the Co-Op's systems; and

(c) Identify and establish the initial wholesale rates for Wholesale Potable Water Service and Wholesale Wastewater Service from the County to the Co-Op.

3. Definitions. The following definitions shall have the meanings ascribed hereto for the purposes of this Agreement. The relevant definitions are listed in alphabetical order as follows:

(a) *Annual Average Daily Flow* shall mean for potable water flow, the number derived by dividing the total potable water use during the year by 365 days; and for wastewater flow, shall be the number derived by dividing the total wastewater flow during the year by 365 days.

(b) *Connection Point* shall mean a mutually agreed point where the Co-Op's Water Distribution System meets the County's Water Facilities or a mutually agreed point where the Co-Op's Wastewater Collection System meets the County's Wastewater Facilities. Also, a Connection Point constitutes the boundary location where the maintenance and ownership rights are divided between the Co-Op and the County.

(c) *Co-Op's Service Area* shall mean the new certified retail service area for the CO-OP after deleting the undeveloped parcels. This area is described in the map and legal description presented in **Exhibit A**.

(d) *Co-Op's Water Distribution System* shall mean all the water pipes, valves, customer meters and any other appurtenances, owned and maintained by the Co-Op, required for the delivery of potable water from the Connection Point to the Co-Op's retail customers.

(e) *Co-Op's Wastewater Collection System* shall mean all the wastewater gravity pipes, manholes, forcemains, valves, pump stations, and any other structures and appurtenances, owned and maintained by the Co-Op, required to transport wastewater from the Co-Op's retail customers property lines to the Connection Point.

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(f) *County's Capital Charges* shall mean the water Capital Charge established by and the wastewater Capital Charge established by the Orange County Water and Wastewater Capital Charge Ordinances.

(g) *County's Wastewater Facilities* shall mean the wastewater facilities required by the County to transport and treat domestic wastewater from the Connection Point.

(h) *County's Water Facilities* shall mean the potable water facilities required by the County to supply and deliver potable water to the Co-Op at the Connection Point.

(i) *CUP* shall mean the County's Consumptive Use Permit issued by the St. Johns River Water Management District.

(j) *ERC* shall mean Equivalent Residential Connection as defined in the Orange County Water Capital Charge Ordinance. One ERC is equal to a flow of 350 gallons per day (GPD) Annual Average Daily Flow.

(k) *ERU* shall mean Equivalent Residential Unit as defined in the Orange County Water Capital Charge Ordinance. One ERU is equal to a flow of 300 GPD Annual Average Daily Flow.

(l) *Fire Flow Condition* shall mean flow of 780 gallons per minute (GPM) at the connection point.

(m) *Master Meter Assembly* shall mean an above-ground water or wastewater device including piping, valves, meters and other appurtenances built for the purpose of measuring flow.

(n) *Maximum Day Flow* shall mean the flow on that day with the highest water

usage during a calendar year.

(o) *Peak Day Domestic Demand* shall mean the maximum amount of potable water used during any 24-hour period.

4. Co-Op Responsibilities.

(a) Co-Op shall be responsible for billing and providing all customer service, notifications and education services to the Co-Op's retail customers.

(b) Co-Op shall comply with all federal, state and local rules, regulations, statutes or directives of public health and environmental authorities with regard to the operation, maintenance and improvements to the Co-Op's Water Distribution System and to the Co-Op's Wastewater Collection System.

(c) The Co-Op shall install and pay all costs for Master Meter Assemblies and other interconnect devices including backflow preventers, at each water or wastewater Connection Point. All Master Meter Assemblies shall be conveyed to the County and located within either a County right-of-way or a dedicated utility easement large enough for the maintenance and operation of the facilities. Master Meter Assemblies shall have a master water meter or a master wastewater meter depending on the flow being measured. The Co-Op shall dedicate any easement in recordable form acceptable to the County a sufficient area around said Master Meter Assemblies to allow the County to read, service, maintain and replace the Master Meter Assemblies.

(d) The Co-Op shall be responsible for the installation and maintenance of all facilities on the Co-Op side of the Connection Point that may be required to meet federal, state and local environmental and public health requirements assuring water quality, including, but not limited to, such devices as back-flow preventers necessary to avoid the potential for cross-connection and

contamination of the potable water system.

(c) Meter Assemblies shall be the property of the County and shall not be disturbed or utilized by the Co-Op.

5. Wholesale Potable Water Service.

(a) The County agrees to provide and transport to the Connection Point(s) bulk quantities of potable water that has been treated to meet federal and state standards. The County will provide an Annual Average Daily Flow of potable water not to exceed 286,300 GPD for use by the Co-Op within its service area for retail resale purposes. This flow corresponds to 817.732 ERCs for 1,006 existing mobil homes, 190 future mobile homes, sales office, club house, and other connected customers as shown in **Exhibit C**. The Maximum Day Flow to be provided by the County at the Connection Point(s) will not to exceed 450,000 GPD. Under normal operating conditions, the County will provide a minimum pressure of 40 PSI at the connection point. Under Fire Flow Conditions, the County will provide the Maximum Day Flow plus an additional 780 GPM with a minimum pressure of 35 PSI at the Connection Point.

(b) County shall have no operation or maintenance responsibility for any water facilities on the Co-Op's side of the Connection Point(s). The parties acknowledge and agree that the Co-Op shall be responsible for the direct and adequate delivery of potable water from the water Connection Point(s) to its retail customer property lines. The Co-Op shall own, maintain, repair and improve the Co-Op Water Distribution System as needed to provide adequate retail service to the Co-Op's retail customers.

(c) The Co-Op agrees to cooperate with the County's operational measures and to make every operational, billing and educational effort within its control to limit or reduce its retail customer's potable water use as necessary to stay within the County's CUP compliance limits. This

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includes, but shall not be limited to compliance with the County's Water Conservation Ordinance and installing and maintaining individual meters at every retail customer connection to the Co-Ops Water Distribution System for the purpose of monthly billing on the basis of individual use and to require potable water conservation.

(d) The County shall have the right to limit the flow to the Co-Op, through all operational measures within its control, such that the flows to the Co-Op do not cause the County to exceed its maximum daily or maximum annual ground water withdrawals limits stated in the County's CUP.

(e) The initial Connection Point shall be located as defined on **Exhibit B**. Any future Wholesale Potable Water Service Connection Point(s) necessary to serve the Co-Op's customers will be determined based on construction drawings acceptable to the County. Co-Op agrees to pay the cost of installation of Master Meter Assembly(s) and dedicate them to the County in easement(s) sufficient to allow the County to read, maintain, and replace said assembly(s), as necessary.

(f) The existing Co-Op's retail customers have been exempt from paying the County's Capital Charge. These exempt units are allocated 691.002 ERCs for 1006 active mobile homes, a clubhouse, sales office, and maintenance barn. The parties agree that, within the Co-Op's Service Area, there are 190 additional mobile home sites platted and that no water Capital Charges will be due and owing for these customers, provided they develop and connect to the Co-Ops Water Distribution System and that their development needs do not exceed 126.730 ERCs. The total described Co-Op customers exempt from Water Capital Charges shall not exceed 817.732 ERCs. A spreadsheet showing the breakdown of these ERCs is included as **Exhibit C**. As one ERC equals 350 GPD per definition, the 817.732 ERCs equal an exempted flow of 286,300 GPD. Should the water needs of the existing Co-Op Retail Customers increase beyond 286,300 GPD Annual Average

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Daily Flow, the Co-Op shall be pay County Capital Charges for the flow exceeding the 286,300 GPD allocated to the Co-Op.

(g) All parcels, not included in the Co-Op's Service Area, shall be retail customers of the County and be subject to all County ordinances, rates and resolutions, including but not limited, to paying water Capital Charges to the County.

(h) For those customers within the Co-Op's Service Area, the County agrees to provide Wholesale Potable Water Service to the Co-Op, and the Co-Op agrees to pay the County a Wholesale Potable Water Service rate for the potable water provided by the County under the terms of this Agreement. Such wholesale rate initially shall be \$1.37 per thousand gallons, commencing at the beginning of the Service Term. The wholesale rate shall increase annually at the same percentage, if any, which the County's retail rate increases for other potable water customers in Orange County during the current year of the Service Term.

(i) The Co-Op agrees to pay the County a wholesale conservation rate for monthly flows exceeding 8.71 million gallons, which is the prorated monthly portion of the 104.47 million gallons allocated annual capacity for the Co-Op's use in the County's CUP. The initial wholesale conservation rate shall be \$2.27 per thousand galls commencing at the beginning of the Service Term. The wholesale conservation rate shall increase annually at the same percentage, if any, which the County's retail rate increases for other potable water customers in Orange County during the current year of the Service Term.

(j) The County will invoice the Co-Op for all potable water charges on a monthly basis. Payment is due to the County within 30 days of the invoice date.

6. Wholesale Wastewater Service.

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(a) The County agrees to receive, treat and dispose of 245,400 GPD Annual Average Daily Flow of domestic wastewater from customers within the Co-Op's Service Area. The Co-Op shall deliver the wastewater flow to the Connection Point(s) with adequate pressure to reach the County's treatment facilities. This flow corresponds to the 817.732 ERUs of 1006 existing mobile homes, 190 future mobile homes, sales office, club house, and other connected customers, as shown in **Exhibit C**.

(b) County shall have no operation or maintenance responsibility for any wastewater facilities on the Co-Op's side of the Connection Point(s). The Co-Op shall be responsible for the direct collection and transport of Domestic Wastewater from its retail customer property lines to the wastewater Connection Point(s). The Co-Op shall own, maintain, repair and improve the Co-Op's Wastewater Collection System as needed to provide adequate retail service to the Co-Op's retail customers.

(c) The initial Connection Point shall be located as defined on **Exhibit B**. Any future wholesale wastewater service Connection Points necessary to serve the Co-Op's customers will be determined based on construction drawings acceptable to the County. Co-Op agrees to pay the cost of installation of Master Meter Assembly(s) and dedicate them to the County in easement(s) sufficient to allow the County to read, maintain, and replace said assembly(s), as necessary.

(d) The existing Co-Op's retail customers have been exempt from paying the County's Capital Charge. These exempt units are 691.002 ERUs for 1006 active mobile homes, a clubhouse, sales office, and maintenance barn. The parties agree that, within the Co-Op's Service Area, there are 190 additional mobile-home sites platted and that no Capital Charges will be due and owing for these customers, provided they develop and connect to the Co-Op's Wastewater Collection System and that their development needs do not exceed 126.730 ERUs. The total described Co-Op customers exempt from Wastewater Capital Charges shall not exceed 817.732 ERUs. A spreadsheet

showing the breakdown of these ERUs is included as **Exhibit C**. As one ERU equals 300 GPD per definition, the 817.732 ERUs equal an exempted flow of 245,400 GPD. Should the wastewater needs of the existing Co-Op retail customers increase beyond 245,400 GPD Annual Average Daily Flow, the County shall be paid by the Co-Op capital charges for the flow exceeding the 245,400 GPD allocated to the Co-Op.

(e) All land parcels, not included in the Co-Op's Service Area, shall be retail customers of the County and be subject to all County ordinances, rates and resolutions, including but not limited, to paying wastewater Capital Charges to the County.

(f) For those customers within the Co-Op's Service Area, the County agrees to provide Wholesale Wastewater Service to the Co-Op, and the Co-Op agrees to pay the County a Wholesale Wastewater rate for the wastewater taken by the County under the terms of this Agreement. Such wholesale rate initially shall be \$3.35 per thousand gallons, commencing at the beginning of the Service Term. The wholesale rate shall increase at the same percentage, if any, which the County's retail rate increases for other wastewater customers in Orange County during the current year of the Service Term.

(g) The County will invoice the Co-Op for all wastewater charges on a monthly basis. Payment is due to the County within 30 days of the invoice date.

7. County's Retail Service Area.

(a) The County and the Co-Op agree that the Co-Op shall not serve any customers outside of Co-Op's Service Area. The County and the Co-Op agree that all development outside the Co-Op's Service Area, which is eventually served by the County, shall be subject to all County's

ordinances, rates and resolutions, including but not limited to the payment of capital charges and retail rates for water and wastewater service.

(b) Should customers outside the Co-Op's Service Area request that the Co-Op provide water or wastewater service, the Co-Op agrees to refer such customers to the County.

8. Service Term of the Agreement. The initial service term for Wholesale Potable Water and Wastewater Services provided by the County to the Co-Op for those customers within the Co-Op's Service Area, shall be for a period of twenty (20) years, commencing upon the date the County begins delivering services to the Co-Op pursuant to this Agreement. The service term may be renewed thereafter on terms and conditions mutually agreed upon by the parties.

9. Breach of this Agreement and Termination.

(a) County has the obligation to provide Wholesale Potable Water Service and Wholesale Wastewater Service, as defined in this agreement to the Co-Op. Should the County fail to carry out its obligations under this Agreement, the appropriate remedy would be an action for specific performance and declaration of rights between the parties. The County's agreement to provide services is contingent upon the obligation of the Co-Op to pay the County the sums established herein. In the event the Co-Op fails to pay the potable water or wastewater charges, the County's remedies are cumulative and may be exercised individually or in combination with additional remedies outline herein.

(c) Co-Op has the obligation to pay for wholesale water and wastewater services provided by County to Co-Op pursuant to this Agreement. In addition, Co-Op has the obligation

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pursuant to this Agreement and applicable generic law to properly convey or deliver potable water and to properly transport, convey and process through its wastewater lines, and properly deliver wastewater to the Connection Point. Failure of Co-Op to fulfill these and other affirmative obligations imposed upon Co-Op by this Agreement, applicable water or wastewater permits, and generic law shall be a basis for County terminating this Agreement.

(d) As an additional remedy of County, in the event the Co-Op fails to pay the wholesale rates established herein in a timely manner, the Co-Op shall pay to the County a service charge of one and one-half percent (1.5%) per month for each day after the 31st day that payments under this Agreement are not received by the County from the Co-Op. In addition, the County has additional remedies that include any one or more of the following:

(1) For any sums not paid after sixty (60) days of their due dates, the Co-Op agrees that the County, in addition to all other rights and remedies which County may have under applicable law and this Agreement, may at County's option, and upon written notice to the Co-Op, request, and Co-Op hereby agrees, promptly upon request of the County to assign to the County all of the Co-Op's rights to collect charges and to enforce such collection for providing water or wastewater retail service to the Co-Op's customers. This assignment shall be a conditional assignment made solely as security for the payment by the Co-Op of its obligation for Wholesale Potable Water or Wastewater Service supplied by the County pursuant to this Agreement, and Co-Op's resumption of full performance of its obligations under this Agreement shall thereafter render such assignment terminated and of no other force and effect, so long as the County is fully paid for all past-due sums. County may exercise this power more than once, as necessary, to secure County's entitlement to payment for services provided by Co-Op. In the event of an assignment to the County pursuant to this paragraph, it is expressly understood and agreed by the parties hereto that before default occurs in the payment or performance by the Co-Op under this Agreement, and the required notice thereof from the County, that the Co-Op shall have the right to collect such charges from its customers and retain use and enjoyment of same. In the event the County exercises its rights under

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this Agreement, any sums charged (less a 25 percent service charge to cover County's costs of assuming the customer service function) shall be credited to sums then due from the Co-Op to the County, including sums that accrue during the term that the County has undertaken assignment of the proceeds and collection of sums due from Co-Op to customers.

(2) In the event the County is required to exercise its right to an assignment of the customer's rights under this section, the County reserves the right to seek appointment of a receiver to undertake the obligations of collection of sums due to the County pursuant to this Agreement.

(3) In addition to or as an alternative to the other means of collection specified herein, the County reserves the right to establish a lien on other assets of the Co-Op, pursuant to County Code and State law, as the means to collect sums past due from the Co-Op to the County pursuant to this Agreement in the event that sums remain unpaid for ninety (90) days or longer.

(4) Said lien shall be a first lien against the property pursuant to County ordinance and State law. Co-Op shall provide notice to any lender of this right to first lien conferred upon the County.

(d) In the event of a continuing breach of the obligations of this Agreement by one party, the other party may terminate this Agreement on sixty (60) days prior written notice. Certain obligations as specified in this Agreement constitute continuing rights and obligations, and any and all sums due from one party to the other will still remain an obligation that is collectible by any means provided by this Agreement or available at law.

10. Notices.

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(a) All notices, consents, approvals, waivers and elections which any party shall be required or shall desire to make or give under this Agreement shall be in writing and shall be sufficiently made or given (1) when mailed by certified mail, postage prepaid, return receipt requested, (2) by hand delivery to the named individuals representing the party to be notified, or (3) by private parcel delivery services, or facsimile transmission for which receipt is provided to the notifying party. Notices, including notice of change of address, shall be addressed or transmitted to the addresses set forth below or such other address that a party may designate in the manner prescribed herein:

CO-OP _____

Zellwood Station, FL _____

COUNTY: Director
Orange County Utilities
Suite 400
109 East Church Street
Orlando, FL 32801

WITH A
COPY TO: County Administrator
Orange County Administration, 5th Floor
201 South Rosalind Avenue
Orlando, Florida 32801-3547

(b) Notices, consents, approvals, waivers and elections given or made as aforesaid shall be deemed to have been given and received on the date of the mailing, delivery or transmission in accordance with this section.

(c) For emergency situations such as, but not limited to, situations where a boiled water notice is required, or when a violation of drinking water standards occurs or a pressure drop below 20 PSI occurs, both parties are under an affirmative duty to notify the other party of such an

eventuality initially by telephone, and then immediately thereafter in writing by facsimile so that customers may be informed and protective actions may be taken by both parties. The Co-Op shall be responsible for all notifications to its customers. Emergency telephone notice to the County shall be by notifying Orange County Utilities Dispatch at 407-836-2777, with an emergency facsimile of 407-836-_____. Emergency telephone notice to the Co-Op shall be by calling 407-_____, with an emergency facsimile of 407-_____. Both parties shall notify the other as soon as they are aware that the above numbers will change or have changed.

11. Venue and Governing Law. This Agreement shall be governed by, construed under, interpreted and enforced in accordance with the law of the State of Florida. Any legal proceeding of any nature brought to enforce any right or obligation under this Agreement or arising out of any matter pertaining to this Agreement, shall be brought and tried in the Circuit Court of Orange County, Florida. The parties consent and submit to the exclusive jurisdiction of any such court.

12. Agreement Binding Upon Successors. All provisions contained in this Agreement shall be binding upon, inure to the benefit of, and be enforceable by, the respective successors and permitted assigns of the Co-Op and the County to the same extent as if each successor and assign were named as a party hereto.

13. Severability. In the event any part of this Agreement shall be finally determined by a court of law to be illegal or unenforceable for any reason, then that illegal or unenforceable part shall be severed from the Agreement, and the remaining terms shall continue in full force and effect.

14. Entire Agreement. This Agreement constitutes the entire agreement of the parties hereto, and no prior representation, inducement, promise or agreement, oral or written, between the parties not embodied herein shall be of any force and effect.

15. Co-Op Not an Agency of the County. The Co-Op intends to exist as a separate

independent utility, purchasing wholesale potable water and wastewater services from the County. This Agreement does not intend to make the Co-Op an agency, employee or contractor of the County, but rather an independent service provider, where the County is the supplier of certain Wholesale Potable Water and Wastewater Services specified in this Agreement. The Co-Op and the County shall each be responsible for any negligent act of their agents, employees, contractors and officials, and in the event of any claims by third parties, the entity responsible for any such negligent act shall be responsible for any claim founded on such negligence by that party. The parties acknowledge that the County enjoys sovereign immunity and is self-insured. The Co-Op shall maintain insurance related to general liability in a minimum sum of \$ _____ for services related to this Agreement and for the delivery of potable water to its customers and the collection and transport of wastewater from the Co-Op's customers to the Connection Point and the County shall be entitled to thirty (30) days prior notice of cancellation of Co-Op's minimum coverage. Failure by Co-Op to maintain said insurance coverage shall be a basis for County to immediately terminate this Agreement.

16. Sewer Use Requirements.

(a) Co-Op agrees to comply in all regards with the pretreatment standards contained in Chapter 37 of the Orange County Code and to comply with state and federal law requirements with regard to pretreatment standards for wastewater flows to public wastewater treatment facilities. The Co-Op agrees and understands that the County has pending a proposed pretreatment ordinance that will more readily comply with state and federal pretreatment requirements, and that the Co-Op has afforded itself an opportunity to review this ordinance, and agrees that it will and can comply with the requirements of this ordinance, which is a proposed amendment to Chapter 37 of the Orange County Code and creates a new Article XX. The provisions and covenants set forth in this paragraph shall survive the termination of this Agreement.

(b) The Co-Op specifically agrees that it will not accept or introduce hazardous

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materials into its wastewater and transport same to the County. The Co-Op specifically agrees to indemnify and hold the County harmless in the event the Co-Op introduces any such hazardous materials into the wastewater treatment system or delivers it to the Connection Point(s) for treatment by the County. The Co-Op shall be fully responsible for the removal, treatment or proper disposal of any hazardous material introduced into the Co-Op's collection or distribution system, or fully responsible for the costs incurred by the County in the event such materials are inadvertently introduced into the County's Water or Wastewater Facilities.

(d) The County is under an obligation imposed by the state and federal authorities to establish local limits for industrial discharges into County's collection system. In recognition of this obligation upon the County, Co-Op agrees:

- (1) That it is aware of these local limits, and Co-Op agrees that it will comply with said local limits and will not exceed same;
- (2) Co-Op agrees to issue control mechanisms to industrial users located within the Co-Op's service area. Co-Op shall be under a continuing obligation to notify County of any such industrial users, and County shall determine if additional joint control mechanisms are to be issued to Co-Op and any such users;
- (3) The Co-Op agrees to provide the County access to all records compiled as part of the Co-Op's pretreatment program activities. The Co-Op shall provide County with notice of key activities (e.g., enforcement actions and permit issuance) for industrial or other pretreatment users.
- (4) The Co-Op agrees to enter and hereby grants County the power to enter into facilities of industrial users to periodically verify compliance with applicable pretreatment standards and requirements. Co-Op shall

establish procedures and responsibility for conducting inspections and other compliance evaluation activities.

- (5) The Co-Op may enforce pretreatment ordinance requirements on its customers in order to comply with the requirements of subsections (i) and (ii) of this section. However, the County retains primary responsibility for enforcing pretreatment standards and requirements against industrial users located within the Co-Op service area. The County may enforce County's pretreatment ordinance standards whether Co-Op acts or not pursuant to this section.

IN WITNESS WHEREOF, the parties hereto have set their hands and have executed this Agreement as of the date and year first written above.

ZELLWOOD STATION CO-OP, INC.

By: _____

Print Name: _____

Title: _____

Attest:

By: _____

Print Name: _____

Title: _____

ORANGE COUNTY, FLORIDA

By: Board of County Commissioners

By: _____

Richard T. Crotty
County Chairman

ATTEST: Martha O. Haynie, County Comptroller
As Clerk of the Board of County Commissioners

By: _____

Deputy Clerk

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**Exhibit A
Co-Op's Service Area**

Legal Description. This exhibit should show all the existing and future retail areas of the Co-Op, including the inactive 190 mobil-home sites. It should exclude the undeveloped parcels within Zellwood Station, as this land will be retail customers of the County.

To be prepared by OCU.

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Exhibit B

Initial Connection Points

This exhibit consists of two figures with the approximate locations of the water connection point and the wastewater connection point.

To be prepared by OCU.

Exhibit C

ERU/ERC Calculation Spreadsheets

This exhibit consists of a table showing the existing Co-Op's retail customer equivalent residential units and flows expected in accordance with County ordinances as well as those equivalent units for all other parcels exempt from paying Capital Charges when they connect in the future.

To be prepared by OCU.

| Item | Number of Units | ERU/ERC per Unit | ERUs/ERCs | Water Flow (GPD) | Wastewater Flow (GPD) |
|--|------------------------|-------------------------|------------------|-------------------------|------------------------------|
| Active Mobil-Home Sites | 1,006 | 0.667 | 671.002 | 234,900 | 201,300 |
| Other Parcels (Included but not limited to Club House, Maintenance Barn, Sales Office, Church, etc.) | 1 | 20 | 20.000 | 7,000.0 | 6,000.0 |
| Subtotal (Active) | N/A | N/A | 691.002 | 241,900 | 207,300 |
| Future Connections | 190 | 0.667 | 126.730 | 44,400 | 38,100 |
| Grand Total | N/A | N/A | 817.732 | 286,300 | 245,400 |

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ORANGE COUNTY/ZELLWOOD STATION CO-OP, INC.
AGREEMENT FOR THE DELIVERY
AND USE OF RECLAIMED WATER

THIS AGREEMENT is made and entered into on the ___ day of _____ 2002, between **ORANGE COUNTY, FLORIDA**, a charter county and political subdivision of the State of Florida whose address is 201 South Rosalind Avenue, Orlando, Florida 32801-3547, (hereinafter referred to as the "COUNTY "), and **ZELLWOOD STATION CO-OP, INC.** ("hereinafter referred to as the "CO-OP").

WHEREAS, COUNTY operates and maintains a publicly owned water reclamation facility (hereinafter called the "Facility") purchased from the CO-OP under a separate, but related agreement which will in the future produce reclaimed water ("Reclaimed Water") which may be used for productive and beneficial purposes as permitted by the Florida Department of Environmental Protection ("FDEP");

WHEREAS, CO-OP desires to use the Reclaimed Water for golf course irrigation on approximately _____ acres of land which it now owns and which is illustrated in **Exhibit "A-1"** attached hereto and made a part hereof by reference ("the Property"). Attached hereto as **Exhibit "A-2"** is the legal description of the Property;

WHEREAS, the County will provide available reclaimed water to the CO-OP at a Connection Point (**Exhibit "B"**) within 20 feet of the Facility's boundary;

WHEREAS, the CO-OP shall be responsible for transporting and delivering the reclaimed water from the Connection Point to the Property;

WHEREAS, the initial rates applicable to CO-OP shall be those established by Resolution of the Board of County Commissioners for the class of customers for which CO-OP qualified or which CO-OP has elected and the assumption of the parties to this Agreement is CO-OP shall be Wholesale Customer, Interruptible Service with On-Site Storage.

NOW, THEREFORE, in consideration of the commitment of the COUNTY to deliver the Reclaimed Water to CO-OP and the commitment of CO-OP to receive and beneficially use the Reclaimed Water for the purposes set forth in this Agreement, the parties agree to the following terms and conditions:

1. TERM OF THE AGREEMENT

The COUNTY shall deliver to the Connection Point and the CO-OP shall accept and use on the Property reclaimed water as set forth herein, produced by the COUNTY at the Facility. This Agreement shall be effective on the date of first delivery of reclaimed

water and for a term of twenty (20) years. The term of this agreement shall be renewed automatically from year to year beyond the initial twenty-year term as long as the COUNTY owns and operates the facility referenced in this agreement and unless terminated by the CO-OP or COUNTY by written notice not less than 180 days in advance of the term renewal.

2. RATE AND PAYMENT

- a. The COUNTY shall deliver the reclaimed water to the CO-OP pursuant to County standards. The COUNTY may terminate delivery of the reclaimed water for cause with no notice to the CO-OP if any invoice is not paid in full within sixty (60) days of the date of the notice. This price is based upon existing rate resolutions for customers of CO-OP's classification and the Board of County Commissioners reserves the right to change rates charged to customers of CO-OP's classification and in the event that this rate will change in accordance with that rate resolution.
- b. Payment must be made to COUNTY as shown on the bill.
- c. The CO-OP shall install a meter assembly or assemblies at the connection point(s) between the COUNTY's and CO-OP's system. Compensation will be paid to the COUNTY based on the appropriate meter size and in accordance with the meter charge schedule approved by the Orange County Board of County Commissioners. Said meter(s) will be dedicated to the COUNTY upon acceptance together with an easement area at said meter of sufficient size to allow COUNTY to read, maintain, and replace said meter assembly.

3. COVENANT RUNNING WITH THE LAND

Upon execution by both parties, this Agreement shall be binding as a covenant or condition, which shall run with the Property, and shall be binding upon any subsequent owner, successor or assigns of CO-OP.

4. USE OF RECLAIMED WATER; CO-OP'S SYSTEM

- a. The CO-OP shall use reclaimed water delivered by the COUNTY for golf course irrigation. CO-OP shall immediately notify COUNTY of its intent to change the use of the reclaimed water delivered to it by written notice describing, in detail, acceptable to the County, how said reclaimed water shall be used. COUNTY may approve or deny CO-OP's change of use request within 90 days of receipt of CO-OP's written notice. It shall be the CO-OP's responsibility to ensure that any and all such use of the reclaimed water shall be in compliance and consistent with current and future rules and regulations of the COUNTY, Florida Department of

Environmental Protection ("FDEP"), the applicable Water Management District, the CO-OP's Operating Practices Outlined in **Exhibit "C"**, and other governmental or regulatory agencies having jurisdiction over the Property or the use of reclaimed water. In no event will the CO-OP allow the discharge of reclaimed water directly into surface waters of the state of Florida without the prior written authorization from the FDEP and the COUNTY.

- b. The CO-OP agrees to install or modify distribution systems, within the Property, to the extent necessary, to allow the use of reclaimed water as a primary source of irrigation supply within the CO-OP's Property. The CO-OP recognizes by this agreement that the primary purpose of connection and use is the beneficial supplantation of groundwater withdrawal and the resultant benefit to the local aquifer and will therefore avail itself of this source as primary for irrigation purposes. Other sources shall be utilized only as emergency backup and secondary source upon any condition subject to paragraphs 5, 6 and 7 of this Agreement. The CO-OP will connect to the Connection Point at no cost to the COUNTY. The COUNTY shall have the right to review plans for the connection at the 90% completion point and request modifications to said plans. The CO-OP shall provide, in a manner approved by appropriate regulatory agencies, appropriate backflow prevention devices between the distribution system and any wells which are maintained by the CO-OP so that reclaimed water will not be discharged directly into groundwaters of the State of Florida. The CO-OP shall be solely responsible for the ownership, operation, and maintenance of all portions of the distribution system. For the purposes of this Agreement, the "distribution system" is defined as the CO-OP's system of reclaimed water infrastructure built and operated for the purpose of conveying reclaimed water from the COUNTY Connection Point to and within the Property. CO-OP shall agree to implement, maintain and renew any permits, licenses or other programs required by state, regional or federal regulatory agencies to continue or expand the CO-OP's reclaimed water system.
- c. If monitoring is required pursuant to the use of reclaimed water for the Property, the CO-OP is responsible at its expense for collecting, analyzing, and reporting all required information to the COUNTY, the FDEP, and/or any other governmental agency requiring such monitoring.

5. WATER QUALITY

- a. The COUNTY will deliver, to the CO-OP, reclaimed water of a quality consistent with the requirements for "public access" treatment levels described in the rules of the FDEP, Chapters 62-600 through 62-650, Florida Administrative Code.

- b. The CO-OP shall be wholly responsible for the continuing determination of the suitability of use for their purposes. The CO-OP has the right to stop acceptance of the reclaimed water if they deem it not suitable for their purpose based upon objective criteria.

6. VOLUME OF WATER; DELIVERY SCHEDULE

- a. The COUNTY will deliver and the CO-OP shall accept and use a volume of 54.75 million gallons of reclaimed water per year in approximately equal weekly quantities (hereinafter referred to as a "weekly allocation") in accordance with a delivery schedule mutually established by the COUNTY and CO-OP, subject to the limitations described in Paragraph 7 below. Both parties acknowledge that the volume of reclaimed water initially established will be based upon reasonable estimates of Property's demand and effluent availability from the Facility. Reasonable effort will be made by the COUNTY to accommodate the practices and volume requirements of the CO-OP; however, there is no assurance that the COUNTY can meet the CO-OP's future demand. The CO-OP shall install the turnout and all appurtenances thereto at its expense along with a flow meter at the connection point(s) so that the volume of water delivered can be monitored. The CO-OP's distribution system shall be connected to the COUNTY's system as shown on **Exhibit "B"** agreed to by the parties and in a manner satisfactory to and approved by the COUNTY. The CO-OP agrees to provide necessary easements in a form agreeable to COUNTY for the construction, operation and maintenance of any required COUNTY piping and appurtenances and the meter assembly at the Connection Point.
- b. The COUNTY shall begin delivering reclaimed water on such date as mutually agreed upon between the parties.

7. DELIVERY OF RECLAIMED WATER UNDER ADVERSE CONDITIONS

- a. All parties recognize that adverse weather conditions or unforeseen circumstances may necessitate modification of the normal delivery.
- b. All parties also recognize that adverse weather conditions or unforeseen circumstances may result in a need for reclaimed water greater than the volume of water set forth in Paragraph 6. The CO-OP shall have the right to draw additional water, subject to availability of reclaimed water as determined by the COUNTY. During certain adverse conditions, the COUNTY may restrict or curtail the use of reclaimed water by the CO-OP until the adverse conditions have passed. During these periods, system-operating levels may be significantly reduced from normal levels. These reductions may include, but not be limited to, the volume and

pressure of the reclaimed water supplied to CO-OP. During, and after such an event, the supply of reclaimed water may be curtailed or discontinued solely at the discretion of the COUNTY. COUNTY shall notify CO-OP in writing, in advance of their intent to curtail, disrupt, interrupt or limit the delivery of reclaimed water. If advance notice to the CO-OP is not practical then the COUNTY shall provide oral notice to the CO-OP within twenty-four (24) hours after exercising this right.

- c. If the CO-OP's transmission or distribution system fails for reasons or events beyond the CO-OP's control, then acceptance of reclaimed water, under the requirements of this Agreement, may be interrupted or limited in quantity. CO-OP shall notify COUNTY, in writing, in advance of their intent to curtail, disrupt, interrupt or limit the acceptance of reclaimed water. If advance notice to the COUNTY is not practical, then the CO-OP shall provide oral notice to the COUNTY within twenty-four (24) hours after exercising this right.

8. EXCUSE FROM PERFORMANCE BY GOVERNMENTAL ACTS

If for any reason during the term of this Agreement and through no fault of the CO-OP, local, regional, state or federal governments, agencies or courts (other than the parties to this Agreement) shall fail to issue necessary permits, grant necessary approvals, or shall require any change in the operation of the treatment, transmission and distribution systems or the application and use of reclaimed water by the CO-OP, then to the extent that such requirements shall affect the ability of any party to perform any of the terms of this Agreement or significantly increase the cost to the COUNTY, the affected party shall be excused from the performance thereof and a new agreement shall be negotiated, if possible or necessary, by the parties hereto in conformity with such permits, approvals, or requirements.

9. TERMINATION OR ASSIGNMENT

- a. COUNTY shall have the right to transfer all or any part of the treatment, transmission or distribution facilities to another Party. COUNTY may assign all or any part of their rights and obligations under this Agreement to an alternate Party who shall be bound by and accept, and be exclusively responsible for all applicable terms and conditions of this Agreement.
- b. The CO-OP shall have no right to assign this Agreement to any parcel of land not included in the Property, and any attempted assignment shall be void and of no effect or alternatively shall be treated by the COUNTY as a material breach entitling the COUNTY to terminate the Agreement.

- c. The COUNTY may terminate this Agreement for cause, with thirty (30) days prior written notice to the CO-OP, if any invoice is not paid in full within ninety (90) days of the date of the invoice as described above. Any invoice not paid within thirty (30) days shall accrue interest at the rate of one and one-half (1½) percent per month, prorated for any part of a month. The obligation of the CO-OP to pay past due sums shall survive termination of this Agreement.

10. DISCLAIMER OF REPRESENTATIONS AND WARRANTIES

The COUNTY does not represent or warrant that the volume or quality of reclaimed water delivered will increase the productivity of the Property. Furthermore, County will not be responsible for changes to the land or vegetation of any kind due to the distribution of reclaimed water. The CO-OP has secured independent advice on the introduction of reclaimed water upon the Property and shall make an independent judgment as to the water quality described in Paragraph 5 and volume of water described in Paragraph 6.

11. NOTICES

All notices required or authorized under this Agreement shall be given in writing and shall be served by mail on the parties at the addresses listed below:

CO-OP:

Zellwood Station CO-OP, INC.

COUNTY:

Director of Utilities
Orange County Utilities Department
Suite 400
109 East Church Street
Orlando, FL 32801-3318

WITH A
COPY TO:

County Administrator
Orange County Administration Office, 5th Floor
201 South Rosalind Avenue

Orlando, Florida 32801-3547

12. INSPECTION

The COUNTY shall have the right, upon written or oral notice to the CO-OP and when reasonably necessary, to enter upon the lands upon which the CO-OP distribution system is located to review and inspect (1) the CO-OP's operating practices as they relate to this Agreement; and, (2) any backflow prevention devices between the CO-OP's system and any well which is maintained by the CO-OP.

13. DISCLAIMER OF THIRD PARTY BENEFICIARIES

This Agreement is solely for the benefit of the formal parties hereto 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.

14. SEVERABILITY

If any part of this Agreement is found invalid or unenforceable by any court, such invalidity or unenforceability shall not affect the other parts of this Agreement if the rights and obligations of the parties contained herein are not materially prejudiced and if the intentions of the parties can continue to be effectuated; provided specifically however, that it is COUNTY's right to collect the sums described in Paragraph 2 of this Agreement, if this right to collect such sums is declared unenforceable, then COUNTY's obligations to deliver reclaimed water may be unilaterally terminated by COUNTY.

15. NON-WAIVER

The failure of any party to insist upon the other party's compliance with its obligations under this Agreement in any one or more instances shall not operate to release such other parties from their duties to comply with such obligations in all other instances.

16. LAND USE APPROVALS

This Agreement shall not be construed as granting or assuring or indicating any future grant of any land use or zoning approvals, permissions, variances, special exceptions, or rights with respect to the Property.

17. INDEMNITY

The COUNTY shall be indemnified by the CO-OP from any and all claims, demands, actions, suits, proceedings, costs, expenses, damages and liabilities, including attorneys'

fees (and fees on appeal) arising out of, or relating to, the CO-OP's failure to comply with the terms and conditions of this Agreement, as well as failure to utilize the reclaimed water in accordance with the current and future rules and regulations of the COUNTY, FDEP and other governmental or regulatory agencies having regulatory jurisdiction over the Property, and the operating practices set forth in **Exhibit "D C"** attached.

18. APPLICABLE LAW

This Agreement and the provisions contained herein shall be construed, governed by, and interpreted according to the laws of the State of Florida. Any litigation arising out of this Agreement shall be had in the federal or state courts located and lying within Orlando, Orange County, Florida.

19. EXHIBITS

This Agreement incorporates the following exhibits and addenda, which are specifically made a part hereof:

Exhibit A-1 - Property Illustration

Exhibit A-2 - Property Legal Description

Exhibit B - Connection Point

Exhibit C - Operating Practices

20. RECORDING

This Agreement, including the Exhibits thereto, shall be recorded in the Public Records of Orange County, Florida. The CO-OP shall bear the costs of such recording.

21. ENTIRE AGREEMENT

This Agreement constitutes the entire agreement and understanding between the parties and shall supersede and replace any and all prior or contemporaneous representations, negotiations, statements, understandings, or agreements between the parties, whether verbal or written, relating to the matters set forth herein and the execution of this Agreement and are merged into this Agreement. The parties hereto fully understand the terms and conditions of this Agreement, have entered into this Agreement voluntarily and

have received or had the opportunity to receive independent advice and legal counsel. This Agreement has been executed by the authorized representative of each party on the date written above.

ORANGE COUNTY, FLORIDA

By: Board of County Commissioners

By: _____
Richard T. Crotty
County Chairman

Date: _____

ATTEST: Martha O. Haynie, Orange County Comptroller
as Clerk to the Board of County Commissioners

By: _____
Deputy Clerk

Date: _____

ZELLWOOD STATION CO-OP, INC.

Witnesses: Name: _____

Title: _____

Print Name: _____

Print Name _____

Print Name: _____

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument as acknowledged before me this ____ day of _____, 200__, by _____ (name of person) as _____ (type of authority) for Zellwood Station Co-Op, Inc. who is personally known to me [_____] or has produced _____ as identification.

NOTARY PUBLIC

Print Name: _____
My Commission expires: _____

EXHIBIT "A-1"
Property Illustration

EXHIBIT "A-2"
Property Legal Description

EXHIBIT "B"
Connection Point

This Exhibit would be a map with the general location of the Reclaimed Water Connection Point. Generally speaking, the Connection Point will be some place within 20 feet from the boundary of the Z.S. water reclamation facility.

TO BE PREPARED BY OCU.

EXHIBIT "C"

Operating Practices

The intent of this Exhibit is to identify and define practices for the use of reclaimed water, which protect human health and the environment.

1. Appropriate advisory signs shall be posted around the sites utilizing reclaimed water by the CO-OP to designate the nature of the water and its non-potability. The signs shall be posted in accordance with current FDEP rules and regulations. The CO-OP is responsible for obtaining, installing and maintaining and ensuring signs are posted in accordance with applicable rules pertaining to such signage for the life of this Agreement.

2. The CO-OP will also take all reasonable precautions, including signs, labeling, and color-coding to clearly identify reclaimed water systems to prevent inadvertent human consumption. The signs, labeling, and color-coding shall be in accordance with applicable FDEP regulations.

3. No cross-connections shall be made between the reclaimed water system and a potable water system or any well. Should a well be on the property as a backup system there shall be a physical air gap (minimum 2 times pipe diameter) separating the reclaimed system from the groundwater system (the well).

4. A buffer as required by FDEP, the COUNTY and all other applicable agencies shall be maintained between the edge of the wetted area of the reclaimed water irrigation system application site and any existing or approved (but not yet constructed) potable water supply wells.

5. The use of reclaimed water shall be consistent with all FDEP and other applicable regulatory agency rules.

6. The CO-OP shall operate its system such that reclaimed water does not discharge off-site, either directly or through a stormwater drainage system.

7. The CO-OP shall use the reclaimed water and operate its system in accordance with the rules and regulations, as they exist now and as they may be amended or implemented in the future, of the COUNTY, FDEP, the applicable water management district, and other governmental or regulatory agencies having jurisdiction.

8. The CO-OP shall have and maintain a Reduced Pressure Zone (RPZ) Principle back flow preventer at the point of service of the potable water system and is responsible for its inspections and operation according to all applicable federal, state and local Cross Connection Control ordinances and regulations.

9. As a minimum, the CO-OP shall adhere to the following standards. Any changes to applicable FDEP or EPA rules and regulation shall supersede these limitations.

PROTECTION MEASURES

WELLHEAD PROTECTION AREA

The U.S. Environmental Protection Agency (USEPA) defines a wellhead protection area as “surface and subsurface areas surrounding a water well or well field, supplying a public water system, through which contaminants are reasonably likely to move toward and reach such water wells or well fields.”

Studies indicate that the principal source of groundwater recharge in the Zellwood Station area is infiltration precipitation. The principal source of groundwater discharge is groundwater flow through aquifer materials down-gradient of the well field areas in addition to withdrawal for water supply.

By execution of this agreement, CO-OP recognizes County’s commitment to protect all sources of potable water supplies and the need to preclude contamination thereof. CO-OP and any agent, contractor, associate, future owner or partner agree to abide by, uphold and honor all restrictions and provisions of this exhibit in perpetuity.

PROTECTION

CO-OP agrees to abide by all provisions of F.A.C. 62-521 including existing and future subsections as they pertain to Community Water System supply wells.

The CO-OP further recognizes and agrees to the reclaimed water usage measures and restriction as described in F.A.C. 62-610-421.

All planned and future development of areas adjacent to the existing water supply wells shall be in compliance with these provisions.

ENCROACHMENT

No sanitary hazards as defined in FDEP rules shall be permitted nor constructed without appropriate permits, waivers and approval by the County, FDEP, and any other jurisdictional entity. These provisions apply equally to the raw water transmission mains connecting the supply wells to the Water Supply Facility.