

REQUEST TO ESTABLISH DOCKET

(Please type or print. File original *plus* 1 copy with CLK.)

RECEIVED FPSC
 12 OCT 25 PM 3:00
 COMMISSION
 CLERK

Date:	10/25/2012	Docket No.:	120271-WS
1. From Division / Staff:	Division Of Accounting & Finance <i>ALM</i>		
2. OPR:	Division Of Accounting & Finance		
3. OCR:	Office Of General Counsel		
4. Suggested Docket Title:	Application for transfer of water and wastewater facilities of Damon Utilities, Inc. to the City of Avon Park in Highlands County, and request of cancellations of Certificate Nos. 499-W and 433-S		
5. Program/Module/Submodule Assignment:	B1e, B1f		
6. Suggested Docket Mail List.			
a. Provide NAMES/ACRONYMS, if registered company.		<input type="checkbox"/> Provided as an Attachment	
Company Code, if applicable:	Parties (include address, if different from MCD):	Representatives (name and address):	
WS551	Same as MCD	Lisa Davis, Manager (address same as MCD)	
b. Provide COMPLETE NAME AND ADDRESS for all others. (match representatives to companies)			
Company Code, if applicable:	Interested persons, if any, (include address, if different from MCD):	Representatives (name and address):	
7. Check one:	<input checked="" type="checkbox"/> Supporting Documentation Attached		<input type="checkbox"/> To be provided with Recommendation
Comments: Please establish a docket number and incorporate the Utility's application for transfer to governmental authority in the docket file.			

COM _____
 AFD _____
 APA _____
 ECO _____
 ENG _____
 GCL _____
 IDM _____
 TEL _____
 CLK NG

DOCUMENT NUMBER-DATE
07285 OCT 25 09

Avy Smith

From: Avy Smith
Sent: Wednesday, October 24, 2012 11:47 AM
To: Bart Fletcher
Cc: Andrew Maurey
Subject: RE: Attachments for transfer

Tracking: **Recipient** **Read**
Bart Fletcher Read: 10/24/2012 12:17 PM
Andrew Maurey

I will begin working on this shortly.

Thanks,
Avy

From: Bart Fletcher
Sent: Wednesday, October 24, 2012 11:22 AM
To: Avy Smith
Subject: FW: Attachments for transfer

From: Damon Utilities [mailto:damonutilities@embarqmail.com]
Sent: Wednesday, October 24, 2012 11:39 AM
To: Bart Fletcher
Cc: Andrew Maurey
Subject: Attachments for transfer

Mr. Mowery,
I am sending to both you and Bart, with the hope that it will get to you.
Lisa Davis

Damon Utilities, Inc.
47 Lake Damon Drive
Avon Park, Florida 33825-8902
Telephone (863) 453-0773
Fax # (863) 453-7269
damonutilities@embarqmail.com

FAX COVER SHEET

To: Andrew Maurey

Company: FPSC

Date: 10/24/12

Department: Div of Acc't/Finance

Time:

Fax #: 850/413-6466

Pages: 6
(Including Cover)

From: Lisa Davis

Mr. Maurey

I understand Bart is under the weather,
so I am sending this to you. Please check
you email for Contract (26 pages)

Let me know you received all, and
if anything further is needed, Closing
date is 10/29/12 Thank you.

APPLICATION FOR TRANSFER TO GOVERNMENTAL AUTHORITY

(Pursuant to Section 367.071(4)(a), Florida Statutes)

**TO: Office of Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850**

The undersigned hereby makes application for the approval of the transfer of
(all or part) of the facilities operated under Water Certificate No. 499W and/or
Wastewater Certificate No. 433S located in Highlands County, Florida,
and submits the following:

PART I APPLICANT INFORMATION

A) The full name (as it appears on the certificate), address and telephone number of
the seller (utility):

Damon Utilities, Inc.
Name of utility

(863) 453-0773 Phone No. (863) 453-7269 Fax No.

47 W Lake Damon Dr
Office street address

Avon Park City FL State 33825 Zip Code

Mailing address if different from street address

Internet address if applicable

B) The name, address and telephone number of a representative of the utility to contact concerning this application:

Lisa Davis ()
 Name Phone No.
Same as A
 Street address

 City State Zip Code

C) The full name, address and telephone number of the governmental authority:

City of Avon Park
 Name of utility
(863) ()
 Phone No. Fax No.
110 E Main St
 Office street address
Avon Park FL 33825
 City State Zip Code

Mailing address if different from street address

Internet address if applicable

D) The name, address and telephone number of a representative of the governmental authority to contact concerning this application:

Julian Deleon, City Manager
 Name Phone No.
110 E Main St
 Street address
Avon Park FL 33825
 City State Zip Code

PART II FINANCIAL INFORMATION

- A) Exhibit A - A copy of the contract pursuant to Rules 25-30.037(4)(c) and (d), Florida Administrative Code.
- B) Exhibit _____ - A statement regarding the disposition of customer deposits and the accumulated interest thereon. N/A
- C) Exhibit _____ - A statement regarding the disposition of any outstanding regulatory assessment fees, fines or refunds owed.
- D) Exhibit Resolution 12-16 statement that the buyer (governmental authority) obtained from the utility or the Commission the utility's most recent available income and expense statement, balance sheet and statement of rate base for regulatory purposes and contributions-in-aid-of-construction.
- E) Indicate the date on which the buyer proposes to take official action to acquire the utility:

Oct 29, 2012

If only a portion of the utility's facilities is being transferred, a revised territory description and map of the utility's remaining territory must be provided, as discussed in PART III, below.

IF THE UTILITY'S ENTIRE FACILITIES ARE BEING TRANSFERRED, PLEASE DISREGARD PART III OF THIS APPLICATION FORM.

PART III CERTIFICATION**A) TERRITORY DESCRIPTION**

Exhibit _____ - An accurate description of the utility's revised territory. If the water and wastewater territory is different, provide separate descriptions.

Note: Use the Survey of Public Lands method (township, range, section, and quarter section), if possible, or a metes and bounds description. Give the subdivision or project name. The description should NOT refer to land grants or plat books, but may use geographic boundaries (i.e., road right-of-ways, railroads, rivers, creeks, etc). The object is to make the description as brief, but as accurate as possible.

B) TERRITORY MAPS

Exhibit _____ - One copy of an official county tax assessment map or other map showing township, range and section with a scale such as 1"=200' or 1"=400' on which the remaining territory is plotted by use of metes and bounds or quarter sections and with a defined reference point of beginning. If the water and wastewater territory is different, provide separate maps.

C) TARIFF SHEETS

Exhibit _____ - The original and two copies of tariff sheet(s) revised to show correct service territory. Please refer to Rules 25-9.009 and 25-9.010, Florida Administrative Code, regarding page numbering of tariff sheets before preparing the tariff revisions. (Pages 11-12.) Sample tariff sheets are attached. (Pages 13-16.)

PART IV AFFIDAVIT

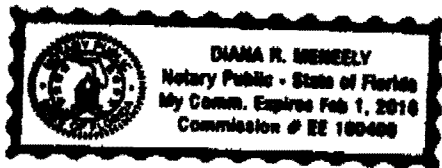
I rodneyA Davis (applicant) do solemnly swear or affirm that the facts stated in the forgoing application and all exhibits attached thereto are true and correct and that said statements of fact thereto constitutes a complete statement of the matter to which it relates.

BY: *Rodney A. Davis*
Applicant's Signature
Rodney A. Davis
Applicant's Name (Typed)

Majority stockholder, Sec/Treas
Applicant's Title *

Subscribed and sworn to before me this 22ND day of October, 2012 by Rodney A. Davis who is personally known to me or produced identification _____.
(Type of Identification Produced)

Diana R. Meneely
Notary Public's Signature



Diana R. Meneely
Print, Type or Stamp / Commissioned
Name of Notary Public

* If applicant is a corporation, the affidavit must be made by the president or other officer authorized by the by-laws of the corporation to act for it. If applicant is a partnership or association, a member of the organization authorized to make such affidavit shall execute same.

**THIS INSTRUMENT PREPARED BY
AND SHOULD BE RETURNED TO:**

Gerald T. Buhr
Gerald T. Buhr, P.A.
1015 Wyndham Lakes Drive
Odessa, FL 33556
(863) 508-7055

For Recording Purposes Only

**ASSET PURCHASE AGREEMENT BETWEEN
DAMON UTILITIES, INC., RIVER GREENS SOUTH GOLF COURSE, INC., AND J.A.
HARSTINE, INDIVIDUALLY, AND RODNEY A. DAVIS, INDIVIDUALLY AND AS
TRUSTEE OF THE RODNEY A. DAVIS REVOCABLE TRUST AS AMENDED AND
RESTATED ON DECEMBER 7, 2000,
AND THE CITY OF AVON PARK, FLORIDA**

This Agreement ("Agreement") dated this _____ day of March, 2012, is by and between DAMON UTILITIES, INC., a Florida corporation ("Damon"), its successors and assigns, RIVER GREENS SOUTH GOLF COURSE, INC., a Florida corporation ("River Greens"), its successors and assigns, and J.A. HARSTINE, individually, and RODNEY A. DAVIS, individually and as Trustee of the RODNEY A. DAVIS TRUST AS AMENDED AND RESTATED ON DECEMBER 7, 2000 ("Davis & Harstine"), having their collective principal offices at 47 W. Lake Damon Drive, Avon Park, FL 33826, (hereinafter separately and collectively referred to as the "Seller"), and the CITY OF AVON PARK, FLORIDA, having its office at 110 E. Main Street, Avon Park, Florida 33825, Highlands County, State of Florida, (hereinafter referred to as the "City").

WITNESSETH

WHEREAS, River Greens is the owner of a potable water treatment plant; Davis and Harstine are the owners of a wastewater treatment plant; and Damon is the owner of the equipment, transmission and distribution lines, and all other equipment and matters associated with the provision of potable water, and wastewater collection treatment and disposal (collectively the "Purchased Assets", as such term is hereinafter defined), in Highlands County, Florida, which serves utility customers more fully described on **Exhibit 1**, (the "Territory"); and

WHEREAS the City is engaged in water and wastewater utility service within and surrounding this area and is or may be authorized to be in the business of furnishing potable water and wastewater utility services to areas in or adjacent to the Territory. The City desires to acquire, and the Seller desires to sell the Purchased Assets and all rights and privileges associated with such systems and service to the Seller's utility customers, subject to the terms and conditions of this Agreement.

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

ARTICLE I - REPRESENTATIONS AND WARRANTIES BY THE SELLER

The Seller represents and warrants that:

1.1 The statements in the preamble above are true and correct.

1.2 Damon and River Greens are corporations duly incorporated, validly existing, and in good standing under the laws of the State of Florida. Damon's Articles of Incorporation contain charter powers authorizing it to operate and maintain a water and wastewater utility system. River Greens' Articles of Incorporation contain charter powers authorizing it to own a potable water treatment plant.

1.3 The Seller is, and at the Closing (as hereinafter defined) will be, the owner of the Purchased Assets with good and marketable title, free and clear of all liens and encumbrances.

1.4. Damon currently holds valid Certificates of Public Convenience and Necessity (the "Certificates") issued by the Florida Public Service Commission (hereinafter referred to as the "PSC") and will transfer and extinguish the Certificates as required by Section 367.071(4)(a), Florida Statutes. The City shall have authorization for the setting and approval of the rates, rules and regulations for water and wastewater service within the Territory following Closing.

1.5 Attached hereto as composite **Exhibit 2** is a detailed list of the real and personal property as part of the Purchased Assets, more particularly described in Section 2.1 hereinbelow, of the Seller to be acquired by the City pursuant to this Agreement, showing all their respective installation or construction costs. All engineering plans and specifications for the Purchased Assets have been organized and will be transferred to the City with all other records. The Purchased Assets expressly exclude cash on hand and accounts receivable. Although the rights and

privileges such as the right to serve the customers, permits, approvals, easements, etc, are part of the Purchased Assets, they shall not be specifically described in **Exhibit 2**, but are discussed in this Agreement.

1.6 Attached hereto as **Exhibit 3** is a list, signed by the Seller, and briefly describing, as of the date of this Agreement, the following:

a. All pending or threatened action at law, suits in equity or administrative proceedings relating to the Purchased Assets;

b. All contracts or obligations of any nature between the Seller and any other party and among Damon, River Greens, Davis and/or Harstine, including, without limitation, all developer agreements relating to the utility or any other obligation against the present or future capacity of the Purchased Assets whatsoever; and

c. All real estate, easements and rights and/or privileges associated with the utility owned by the Seller to be transferred hereunder; all licenses, prescriptive rights, rights-of-way and rights to use public and private roads, highways, canals, streets and other areas owned or used by the Seller for the construction, operation and maintenance of the Purchased Assets.

1.7 A current survey and legal description of the parcels of land underlying the lift stations, water treatment plant, and the wastewater treatment plant and separately describing easements for all other Purchased Assets and those necessary for connection of the City's existing collection system to a future master lift station located at or near the site of the present wastewater treatment plant, as well as ingress and egress to the future master lift station. Such survey and legal descriptions shall be attached hereto as **Exhibit 4**. Due to common ownership of the land parcels and the utility system, several transmission lines exist that are not documented by any existing easement, primarily located in the golf course area. Seller agrees to assist City in locating the transmission lines, and City agrees to have the location of the transmission lines documented through survey prepared by the City at City's sole expense. Seller further agrees to prepare and grant easements for the transmission lines to the City based on City's surveys.

1.8 All the Purchased Assets are, or at Closing will be, wholly within lawful easements or rights-of-way delineated in **Exhibit 4**, or on real property to be transferred by the appropriate and respective Seller to the City at Closing by the Water Treatment Property ("WTP") Deed and the Wastewater Treatment Property ("WWTP") Deed (as hereinafter defined).

1.9 Except as indicated in **Exhibit 3**, there are no pending or threatened actions at law or suits in equity relating to or which could in any way encumber the Purchased Assets, or any pending or threatened proceedings before the PSC or any other governmental agency.

1.10 Except as indicated in **Exhibit 3**, there are no contracts or obligations of any nature between the Seller or among Damon. River Greens, Davis and/or Harstine and any other party relating to the Purchased Assets or obligations to provide future new connections.

1.11 Neither the Seller nor any entity or individual affiliated with the Seller has executed any agreement with any purchasers of lots within the Territory, or any other parties, whereunder such purchasers or other parties have acquired any right to connect to the Purchased Assets or any interest in the Purchased Assets used or to be used in rendering service to them.

1.12 The Purchased Assets are capable of rendering water and wastewater utility service in the ordinary course of business in compliance with all federal, state and local rules and regulations including but not limited to all rules and regulations related to environmental protection or regulation.

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

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

1.15 Damon has obtained all permits required, or has submitted applications for such permits in a timely manner, under applicable Environmental Laws necessary for the operation of its business as presently conducted as of the date of this Agreement. "Environmental Law" means any federal, state, or local statute, regulation, or ordinance, relating to the protection of human health or the environment in effect as of the Closing Date and includes, but is not limited to, The Florida Air and Water Pollution Control Act (Chapter 403, Florida Statutes), the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA")(42 U.S.C. §9601, et. seq.), the Resource Conservation and Recovery Act (42 U.S.C. §6901 et. seq.), the Clean Water Act (33 U.S.C. §1251, et. seq.), the Toxic Substances Control Act (15 U.S.C. §2602, et. seq.),

and the Safe Drinking Water Act (42 U.S.C. §300f, et. seq.), as such have been amended as of the Closing.

1.16 The Seller is unaware, after diligent inquiry, of any unlawful discharges or contamination in violation of Environmental Laws onto real property, easements or rights of way to be deeded to the City, or of any flaw, inadequacy or malfunction in the wastewater treatment plant or effluent disposal facilities that could cause or create contamination in violation of Environmental Laws, or other unlawful discharges, permit violations, regulatory downgrading or modifications to the presently permitted discharges of the water and/or wastewater treatment plants, or regulatory enforcement against the City after Closing. Such representation and warranty includes demands on such facilities including existing flows, as well as any additional connections committed to by the Seller and listed in **Exhibit 4**.

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

1.18 The City shall assume no liabilities of the Seller. The City shall assume no obligations of the Seller other than those specifically described in this Agreement.

1.19 Damon represents to the City that it has collected no deposits from the customers, or shall transfer all such deposits to the City at Closing; and otherwise has no obligations for any form of refunds to customers that have not been completed prior to execution of this Agreement.

1.20 Damon has maintained through Closing, all inventories of supplies and spare parts as it has maintained in the normal course of operations by the Seller, and has not removed or transferred any supplies or spare parts except as used in the normal course of operations.

1.21 Damon covenants that the City shall be the sole provider of water and wastewater service within the Seller's PSC certificated territory described in **Exhibit 1**, and that it does not serve any customers outside of that Territory.

1.22 Seller represents that neither the WTP site nor the WWTP site are subject to any restrictive covenant or other encumbrance.

1.23 These representations and warranties shall survive this Agreement, the Closing and transfer of title. The Seller, jointly and severally, agrees to indemnify the City, its successors and assigns, and hold it harmless against any loss, damage, liability, expense or cost, accruing or resulting from any misrepresentation or breach of any representation, or warranty or agreement made or to be performed by the Seller under this Agreement or from any misrepresentation in, or material omission from, any certificate or other documents furnished or to be furnished to the City by the Seller.

ARTICLE II – THE PURCHASED ASSETS

2.1 Except as specifically excluded below, the Seller agrees to sell, and the City agrees to purchase, all assets and rights necessary and/or used by the Seller for collection and transmission of water and wastewater from all of its customers, the transmission systems necessary to pump such wastewater to a wastewater treatment plant, and all water treatment plant, as well as all pumping and transmissions systems to distribute the water to the individual water meters, including the meters themselves, and all necessary appurtenances including without limitation the hydrants, valves, wells and raw water transmission facilities, (collectively, the “Purchased Assets”). Although not included in **Exhibit 2**, the Purchased Assets include all the rights, tangible or intangible, of a water and wastewater utility to serve all customers served by the Seller, including without limitation, those in the area described in **Exhibit 1** to the exclusion of all other water and wastewater utilities, as well as any permits, approvals, easements and rights-of-way agreements, of any kind necessary and prudent to operate a water and wastewater utility, held or used by the Seller. The Seller shall list such other tangible Purchased Assets in **Exhibit 2**, and shall include any and all spare parts and inventory. Current assets of the Seller specifically excluded from the Purchased Assets under this Agreement are listed in **Exhibit 5**.

2.2 The permitted withdrawals of the Seller’s wells are 0.125 MGD. The permitted discharge from the wastewater treatment plant and effluent disposal facilities is 0.05 MGD. The water treatment plant total combined capacity output is 0.125 MGD. The City agrees to provide (4) additional single family connections by the Seller listed in **Exhibit 4** as “Future Connections” but only to the extent that those connections occur before February, 2030.

2.3 The Seller shall transfer by the WTP Deed and the WWTP Deed, free and clear of all liens and encumbrances, all real property described above underlying the water and wastewater treatment plants, and all pumping stations, in a size and description as provided in the surveys attached as **Exhibit 4**.

2.4 Damon shall apply to the PSC, with the City's diligent cooperation, for the transfer of the Seller's Certificate and all other similar rights to provide utility service in the Territory or elsewhere in Highlands County, as provided in Sections 180.301 and 367.071, Florida Statutes. Receipt by the PSC of the complete transfer application is a condition precedent to Closing.

2.5 The Seller shall transfer to the City any and all permits and permissions of any type whatsoever, utilized or necessary to provide utility service as contemplated herein.

2.6 In exchange for the Purchased Assets, the Seller's representations and warranties, and all other promises and covenants provided herein, the City agrees to pay a purchase price of Two Hundred and Fifty Thousand Dollars (US \$250,000.00) (the "Purchase Price") payable at the Closing upon completion of all conditions precedent.

2.7 The City acquires the Purchased Assets only, and acquires absolutely none of the Seller's debts or liabilities of any kind, nor any of the Seller's obligations of any kind other than the obligation to provide water and wastewater utility service to the customers connected to the Seller's utility system on the date of Closing pursuant to the City's lawful ordinances and resolutions.

ARTICLE III - CLOSING; PREPARATION AND PURCHASE PRICE

3.1 Preparation for Closing.

a. i. The City shall have up to one hundred eighty (180) days from the date of execution of this Agreement to perform any and all due diligence necessary to satisfy the City in the sole and unfettered discretion of the City's City Council, whether to complete the purchase and close as provided herein. In the event that the City Council votes to terminate this Agreement within that due diligence period for any reason whatsoever, this Agreement and all rights and obligations of the parties shall then terminate, and neither party shall have a claim against the other of any kind whatsoever. In the event that the City Council votes that it is satisfied and the due diligence period shall terminate, or it terminates by passage of the time required, the parties shall prepare all documents and actions necessary for Closing.

ii. The City shall have up to an additional one hundred eighty (180) days from the expiration of the initial due diligence period for the sole purpose of obtaining any and all necessary permits issued to the City for operation of the WTP and WWTP

utility systems. Notwithstanding the additional due diligence period to obtain any necessary permits for operation, the City covenants and agrees to use diligence in the permit application process and to proceed with all due haste to obtain necessary permits upon execution of this Agreement.

b. The Seller shall have the following actions and documents completed in order to effectuate the transaction described herein (the "Closing"):

i. complete easements in a form approved by the City, **Exhibit 6**, for all mains and other facilities up to and including water meters or water, and the individual customer property lines for sewer, with unfettered ingress and egress rights along all public and private roads as necessary or convenient for access to the Purchased Assets for all utility uses, including the right to install stormwater and reclaimed water facilities in the future, and warranty deeds, including the WTP Deed and the WWTP Deed, for water and wastewater treatment facilities and pump/lift stations as shown on composite **Exhibit 7**, as well as any other real property wherein the Purchased Assets exist now, or property owned by the Seller where utility facilities reasonably need to be extended in the future, or where the City reasonably requires right of easement or ingress and egress for the City's services; and

ii. such good and sufficient warranty deeds, including the WTP Deed and the WWTP Deed, bills of sale with covenants of warranty, and sufficient instruments of sale, in form and substance reasonably satisfactory to the City's counsel, as shall be required to vest in the City good, indefeasible and marketable title to all of the Purchased Assets and related real estate used or to be used for the service of water and wastewater system customers, free and clear of liens and encumbrances of every nature, which shall be evidenced by a title commitment to insure marketable title to the City; and

iii. all of the files, documents, papers, agreements, books of account, customer lists, original cost invoices, engineering drawings, and records possessed by the Seller pertaining to the wastewater utility business conducted by the Seller in the property, other than its minute books and stock records, and any other records reasonably needed by the Seller; and

iv. all orders, permits, licenses or certificates issued or granted to the Seller by any governmental authority in connection with any authorization related to the construction, operation or maintenance of its Purchased Assets or the conduct of its water and wastewater utility business in any manner, including without limitation water and wastewater treatment plant operations, utility facility installations, and groundwater withdrawals; and

v. an opinion of Counsel for the Seller, dated as of the Closing, that upon the execution of this Agreement and delivery to the City of the Bill of Sale and other documentation of transfer of the Purchased Assets, that the Seller has lawfully and properly transferred such Purchased Assets and the City will then have good and marketable title to the Purchased Assets, free and clear of all liens and encumbrances; and

vi. Transfer documents for all easements and rights of way, etc.

3.2 Closing. The Closing shall take place at the offices of John K. McClure, P.A., 211 S. Ridgewood Dr., Sebring, Florida 33870, counsel for Seller, at a date and time mutually agreeable after completion of all preparation and prerequisites to Closing described herein, but no later than 30 days following the expiration of the due diligence period.

3.3 Purchase Price. At Closing, the City shall provide the Seller a City check in the amount as provided in a mutually agreeable settlement statement showing the Purchase Price, as adjusted. The City does not assume any liabilities associated with the previous ownership.

3.4 Easements. The Seller agrees to grant the easements over the property deemed necessary or prudent by the City, in a form as provided in **Exhibit 6**, and provide such executed easement grants at or prior to the Closing.

3.5 The Closing Costs. The Closing costs shall be allocated as follows:

- a. the Seller shall pay for title insurance;
- b. the City shall pay for surveys; and
- c. the City shall pay for recording the deeds including the WWTP Deed;
- d. the Seller shall pay for recording easements and other documents;
- e. the Seller shall pay for documentary stamps.

ARTICLE IV – WASTEWATER TREATMENT PLANT AND PROPERTY

4.1 Within five (5) years of the Closing, the City agrees to abandon the use of the existing wastewater treatment plant and the underlying real property. However, the City will not abandon the easements granted herein. The warranty deed for the real property underlying the existing wastewater treatment plant (the "WWTP Deed") shall be in the form of **Exhibit 8**. The WWTP Deed shall provide that upon the City's

abandonment of the wastewater treatment plant, which shall occur no later than five (5) years from the Closing, the real property shall revert to the Seller. The City's abandonment shall be evidenced by a Declaration of Abandonment of the Wastewater Treatment Facilities filed in the Public Records of Highlands County, Florida, at which time the real property and all improvements not removed by the City shall automatically revert to the Seller, subject to the covenants contained in this Agreement, in their AS-IS, WHERE IS condition.

4.2 As part of the abandonment, the City agrees to decommission the wastewater treatment plant through receipt of a decommissioning permit with DEP.

4.3 As part of the abandonment, the City shall remove all supplies, inventory, parts and unattached equipment, and shall be allowed to remove all other equipment the City deems to have commercial value and if, in the City's sole judgment, it deems such removal to be prudent. The City shall not be obligated to remove any structures or improvements to the wastewater treatment plant transferred by the Seller to the City through the WWTP Deed.

4.4 The City agrees to mow the WWTP site, during its period of ownership, in a good and workmanlike manner every two (2) weeks during the period of time when the grass growth so warrants and to keep the WWTP area in a reasonably aesthetically pleasing condition.

ARTICLE V – WATER TREATMENT PLANT AND PROPERTY

5.1 There are two (2) wells four inches (4") in diameter located on the WTP site. These wells require no permitting by the applicable water management district. Both wells are included as part of the conveyance by the WTP Deed.

5.2 A golf cart path is currently located on the WTP site. The City agrees to relocate the cart path outside of the boundaries of the WTP site to a location and of such materials as are akin to that currently in existence and otherwise suitable to Seller.

5.3 Seller agrees that another entity owned and controlled by Seller will mow and maintain the WTP site in conjunction with maintenance of the golf course.

ARTICLE VI – GENERAL

6.1 Upon purchase of the Purchased Assets of the Seller, the City agrees to supply all of the Seller's customers presently served by the Purchased Assets with customary water and wastewater utility service in accordance with the City's ordinances, resolutions, policies and procedures. The parties expressly agree that this sale is not subject to any condition of annexation by the City of any property served by the utilities sold pursuant to this Agreement.

6.2 In the event that any sod must be removed by the City pursuant to any repair, maintenance, or other activity, the City agrees to replace the sod with like-kind grass, specifically Bermuda sod, in all areas in which such sod is utilized.

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

6.4 Any notice to be given shall be in writing and shall be sent by hand delivery, certified mail, return receipt requested, FedEx, Express Mail, UPS, or DHL, to the party being noticed at the following addresses, and shall be deemed delivered upon mailing:

AS TO THE CITY: City Manager
City of Avon Park
110 East Main Street
Avon Park, Florida 33825

COPY TO: Gerald Buhr, City Attorney
Gerald T. Buhr, P.A.
1015 Wyndham Lakes Drive
Odessa, FL 33556

AS TO THE SELLER: Damon Utilities Inc
47 W Lake Damon Dr
Avon Park, FL 33825

COPY TO: John K. McClure, Esq.
211 S. Ridgewood Dr.
Sebring, FL 33870

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

6.6 The terms and conditions in this Agreement are the product of mutual draftsmanship by all parties, each being represented by counsel, and any ambiguities in this Agreement or any documentation prepared pursuant to it shall not be construed against any of the parties because of authorship. The parties acknowledge that all the terms of this Agreement were negotiated at arms' length, and that each party, being represented by counsel, is acting to protect its own interest.

6.7 This Agreement is for the sole benefit of the parties hereto, and no right of action shall accrue upon or by reason hereof, to or for the benefit of any third party. Nothing in this Agreement either express or implied is intended or shall be construed to confer upon or give any person, corporation or governmental entity, other than the parties hereto any right, remedy or claim under or by reason of this Agreement or any provisions or conditions hereof, and all of the provisions, representations, covenants and conditions herein contained shall inure to the sole benefit of and shall be binding upon the parties hereto and their respective heirs, representatives, successors and assigns.

6.8 In the event of any action to enforce the terms of this Agreement, the prevailing party shall be entitled to recover actual and reasonable attorneys' fees, paralegals' fees, and costs incurred, whether the same be incurred in a pre-litigation negotiation, litigation at the trial level, or upon appeal.

6.9 This Agreement supersedes all previous agreements or representations, either verbal or written, heretofore in effect among the parties made with respect to the matters herein contained, and when duly executed constitutes the entire Agreement among the parties. No additions, alterations or variations of the terms of this Agreement shall be valid nor provisions of this Agreement be deemed waived by any party, unless such additions, alterations, variations or waivers are expressed in writing and duly signed.

6.10 This Agreement shall be governed by the laws of the State of Florida. Venue for any legal action shall be in state court in Highlands County, Florida. The parties waive any right to try the case in federal court and the right to trial by jury.

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

SELLER

Signed, sealed and delivered before these witnesses:

(Signed)

(Printed)

(Signed)

(Printed)

DAMON UTILITIES, INC.

By: _____
Printed: _____
Its: _____

Signed, sealed and delivered before these witnesses:

(Signed)

(Printed)

(Signed)

(Printed)

RIVER GREENS SOUTH GOLF COURSE, INC.

By: _____
Printed: _____
Its: _____

Signed, sealed and delivered before these witnesses:

(Signed)

(Printed)

(Signed)

(Printed)

J.A. Harstine, Individually

Asset Purchase Agreement Between Damon Utilities, Inc., and the City of Avon Park

Signed, sealed and delivered before these witnesses:

(Signed) _____
(Printed) _____
(Signed) _____
(Printed) _____

Rodney A. Davis, Individually and as Trustee
Of the Rodney A. Davis Revocable Trust as
Amended and Restated on December 7, 2000

STATE OF FLORIDA
COUNTY OF HIGHLANDS

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by _____, as _____ of **Damon Utilities, Inc.**, a Florida corporation. He is personally known _____ OR Produced Identification _____. Type of Identification Produced: _____.

My commission expires: _____

Signature of Notary: _____

STATE OF FLORIDA
COUNTY OF HIGHLANDS

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by _____, as _____ of **River Greens South Golf Course, Inc.**, a Florida corporation. He is personally known _____ OR Produced Identification _____. Type of Identification Produced: _____.

My commission expires: _____

Signature of Notary: _____

STATE OF FLORIDA
COUNTY OF HIGHLANDS

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by **J.A. Harstine**. He is personally known _____ OR Produced Identification _____. Type of Identification Produced: _____.

My commission expires: _____

Signature of Notary: _____

STATE OF FLORIDA
COUNTY OF HIGHLANDS

The foregoing instrument was acknowledged before me this ____ day of _____, 2012, by **Rodney A. Davis, individually and as Trustee of the Rodney A. Davis Revocable Trust as Amended and Restated on December 7, 2000.** He is personally known _____ OR Produced Identification _____. Type of Identification Produced: _____.

My commission expires: _____

Signature of Notary: _____

CITY

[SEAL]

CITY OF AVON PARK, FLORIDA,

ATTEST: _____
Cheryl Tietjen , City Clerk

By: _____
Sharon Schuler, Mayor

APPROVED AS TO FORM:

Gerald T. Buhr, City Attorney

EXHIBIT 1

DAMON UTILITIES, INC. TERRITORY



EXHIBIT 2

**A DETAILED LIST OF THE REAL PROPERTY AND MAJOR
COMPONENTS OF THE PERSONAL PROPERTY OF THE PURCHASED
ASSETS TO BE ACQUIRED BY THE CITY**

1. Customer Database
2. Water Treatment Facility
3. Water distribution system
4. Meters
5. Wastewater Treatment Facility
6. Lift Station #1
7. Lift Station #2
8. Lift Station #3
9. Gravity Sewer System
10. Force main

EXHIBIT 3

**LIST OF ISSUES THAT COULD AFFECT THE CITY'S
OWNERSHIP OF THE PURCHASED ASSETS**

The seller knows of no issues.

EXHIBIT 4

**SURVEYS AND LEGAL DESCRIPTIONS OF THE PURCHASED
ASSETS**

The City has been provided with the system record drawings, which contains all known easements.

EXHIBIT 5

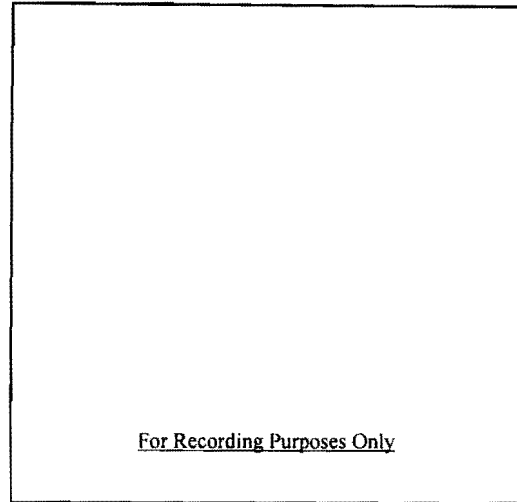
ASSETS OF THE SELLER EXCLUDED FROM SALE

None

EXHIBIT 6

**THIS INSTRUMENT PREPARED BY
AND SHOULD BE RETURNED TO:**

Gerald T. Buhr
Gerald T. Buhr, P.A.
1015 Wyndham Lakes Drive
Odessa, FL 33556
(863) 508-7055



GRANT OF EASEMENT

THIS GRANT OF EASEMENT, made this ___ day of _____, 20__, By, _____, whose address is _____, its successors and assigns, hereinafter referred to as "Grantor," and to the **CITY OF AVON PARK**, a Florida Municipality located at 110 East Main Street, Avon Park, FL 33825, its successors and assigns, hereinafter referred to as "Grantee".

WITNESSETH

That the said Grantor, for and in consideration of ten and 00/100 dollars (\$10.00), and other good and valuable consideration to it in hand paid and received by the Grantee, the receipt and sufficiency of which is hereby acknowledged, has granted, bargained, sold and conveyed, and by this instrument does hereby grant, bargain, sell and convey to Grantee, a utility easement ("Easement"), in perpetuity, for all reasonable potable water, reclaimed water, drainage, and wastewater utility uses including, but not limited to, the right of ingress and egress thereto, the construction, installation, operation, maintenance, repair, extension, enlargement, reconnection, alteration and replacement of water, wastewater, drainage and reclaimed water facilities and appurtenances, including, without limitation, the right to reconstruct, improve, extend, add to, change the size of, or remove water, wastewater, drainage and reclaimed utility facilities and appurtenances, including without limitation, mains, lines, services, meter boxes (including valves), fittings, hydrants and appurtenances, and all sewer force mains, gravity lines, manholes, laterals (including valves), service lines, lift stations, and related facilities, as well as the right to extend water, wastewater, drainage or reclaimed water mains, lines and related facilities to serve any person, or other entity over, in, through and under the following described real property ("Easement Area"):

See Legal Description Attached as Exhibit "A"

In areas where Grantee does not use the surface of the Easement Area, the Grantor retains, reserves, and shall maintain and continue to enjoy the use of the Easement Area. Such Grantor uses shall include any and all purposes not prohibited herein, or uses which do not interfere with Grantee's present or reasonable future use of the subject Easement. Such rights shall include Grantor's right to grant easements for the furnishing of utility services other than potable or reclaimed water service or wastewater service, or to grant rights of way to government. Provided, however, that every such grant of easements or rights of way to others shall be on the express condition that the grantee therein shall not impair or interfere with the use, occupation and enjoyment of the Easement Area by Grantee herein, nor require the Grantee herein to move, replace, adjust, alter or modify any of its facilities, and that the grantee therein shall be liable to the Grantee herein for any injury or damage by the grantee therein to any facilities of Grantee herein by that grantee's activities in the Easement Area. Should Grantor, or its successors or assigns change the grade above Grantee's installed facilities, or perform any construction on the surface of the

Asset Purchase Agreement Between Damon Utilities, Inc., and the City of Avon Park

Easement Area which is permitted hereunder, which change in grade and or construction interferes with or requires the lowering, relocation and/or protection of Grantee's installed facilities (such protection to include but not be limited to the construction of a vault to protect the pipes), such lowering, relocation and/or protection shall be performed at the sole cost and expense of Grantor, its successors or assigns. Also provided that Grantor shall maintain the surface of the Easement Area such that it does not cause or create any public nuisances or dangerous conditions, nor violate any laws or covenants.

No structure or improvement shall be constructed in the Easement Area by Grantor other than standard sidewalks, driveways or streets, including without limitation, a prohibition of boundary walls, fences, buildings, or any other form of structure not specifically allowed herein. Also prohibited as Grantor use are cement or asphalt parking areas (other than standard-sized driveways or streets), sidewalks wider than five (5) feet, any form of cement slab other than the standard sized streets, driveways or sidewalks allowed herein. Also prohibited are trees and bushes, or any vegetation other than grass.

Provided further that, if at any time in the future any portion of any cement or asphalt driveways, streets or sidewalks allowed herein, or areas sodded with cultivated grasses, shall be destroyed or damaged by Grantee as a result of Grantee's activities within the foregoing described Easement Area, Grantee's sole obligation under this Easement is to restore the surface of the Easement Area according to standard industry practices for such repairs, except that such obligation shall be limited to the replacement of dirt to previous grade, cultivated sod replacement, and repair or replacement of the standard sidewalks, streets or driveways that are allowed herein. Grantee shall have no obligation to repair or replace sidewalks, streets or driveways constructed of, or containing materials other than asphalt or cement. Grantee shall also have no obligation to replace or repair any form of ornamentation in allowed sidewalks, streets or driveways. Except for grassed areas containing common cultivated sod, Grantee's sole obligation for replacement of grass shall be to spread common grass seed.

Grantor warrants that it owns the aforesaid described real property free and clear of any liens, encumbrances, or covenants which would impair the Grantee's ownership, use or enjoyment of the Easement granted herein; that Grantor has the authority to grant this Easement, and hereby binds itself, its successors and assigns, to warrant and forever defend the above described Easement and the rights herein conferred against any person or legal entity whomsoever.

IN WITNESS WHEREOF, the said Grantor has caused these presents to be signed in its name by its duly authorized and proper officers, under authority duly vested in them by said corporation, and its corporate seal to be affixed, attested by its secretary, the day and year above written.

DATED this _____ day of _____, 20__.

(Corporation name here in caps)

Witnesses Signature

Witnesses Printed Name

Witnesses Signature

Witnesses Printed Name

By: _____

Its: _____

**STATE OF FLORIDA
COUNTY OF HIGHLANDS**

I HEREBY CERTIFY that on this _____ day of _____, 200__, before me, an officer duly qualified

Asset Purchase Agreement Between Damon Utilities, Inc., and the City of Avon Park

to take acknowledgments, personally appeared _____, as _____ of _____ a Florida corporation to me know or who produced _____ as identification and who executed the foregoing instrument and acknowledged before me that he executed the same.

WITNESSETH my hand and official seal in the state and county named above.

Notary Public, State of Florida

(Seal)

Signature: _____

Printed name: _____

Commission No. _____

My Commission Expires: _____

EXHIBIT "A"
EASEMENT AREA

EXHIBIT 7

**DRAWINGS OF EASEMENTS NECESSARY FOR THE PURCHASED
ASSETS TO BE EXECUTED BY THE SELLER**

**It is understood that the City will identify any additional needed easements
which will be required during the due diligence period.**

EXHIBIT 8

WWTP PROPERTY DEED

Legal Description

CASA DEL LAGO CONDO
PER OR 940 PG 366
SEWER PLANT/MAINT AREA

RESOLUTION 12-16

A RESOLUTION OF THE CITY OF AVON PARK, FLORIDA, FINDING AFTER REVIEW OF INFORMATION REQUIRED UNDER CHAPTERS 180 & 367, FLORIDA STATUTES, THAT THE PURCHASE OF DAMON UTILITIES, INC., IS IN THE PUBLIC INTEREST; PROVIDING FOR CONFLICTS; PROVIDING FOR SEVERABILITY; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Council has reviewed information provided by the City Manager, and decided to pursue review of the assets of Damon Utilities Owned by Damon Utilities, Inc., River Greens South Golf Course, Inc., and J. A. Harstine, individually, and Rodney A. Davis, individually and as a trustee of the Rodney A. Davis Revocable Trust (hereinafter "Utility"), and has directed the City Manager to proceed with due diligence review of the Utility; and,

WHEREAS, pursuant to Florida Statutes, the City must obtain from the Utility and review certain information about the Utility's assets and business as part of analysis of the due diligence review of the proposed purchase of the Utility: and,

WHEREAS, Council has reviewed that required information as provided by the City Manager and

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF AVON PARK, FLORIDA in a public meeting assembled September 24, 2012, as follows:

Section 1. Information Reviewed by City Council as Prerequisite to Purchase of the Utility.

In determining if the purchase, sale, or wastewater facility privatization contract is in the public interest, the municipality has considered the following information contained in the Staff Report attached hereto as Exhibit "A":

- (1) The most recent available income and expense statement for the Utility;
- (2) The most recent available balance sheet for the utility, listing assets and liabilities and clearly showing the amount of contributions-in-aid-of-construction and the accumulated depreciation thereon;
- (3) A statement of the existing rate base of the Utility for regulatory purposes;

- (4) The physical condition of the Utility facilities being purchased;
- (5) The reasonableness of the purchase contract price and terms;
- (6) The impacts of the purchase contract on Utility customers, both positive and negative;
- (7)(a) Any additional investment required and the ability and willingness of the City to make that investment;
- (8) The alternatives to the purchase contract, and the potential impact on Utility customers if the purchase is not made; and
- (9)(a) The ability of the City to provide and maintain high-quality and cost-effective Utility service.

Section 2. Purchase is in the Public Interest

(1) The City Manager, who also oversees the Public Works Department as a professional engineer, has more than adequate experience in water, sewer, or wastewater reuse utility operation, and has prior individual experience in operating water, wastewater and reuse utilities. Furthermore, the City has more than an adequate number of licensed operators experienced in operating utilities to properly operate, provide customer service, and plan for the future needs of the Utility. The City's staff has reviewed the equipment and the economics of the proposed purchase over an extensive due diligence period, and has determined that the price is fair and the City has adequate financial resources to complete the purchase at the price proposed, plus additional future investments necessary for future abandonment of the wastewater treatment plant as well as repairs and replacements necessary for any minimal or inadequate portions of the system as discovered by the City Manager, subject to finalizing such purchase after further due diligence.

(2) Therefore, the City Council does hereby find and declare that the purchase of the Utility pursuant to the Purchase Agreement attached as Exhibit "B" is in the public interest.

Section 3. Severability.

Should any section or provision of this Resolution or any portion thereof, the deletion of which would not adversely affect (in the general sense) the remainder, be declared by a court of competent jurisdiction to be invalid, such decision shall not affect the validity of the remainder, as a whole or any part thereof, other than the part declared to be invalid.

Section 4. Effective Date.

This Resolution shall become effective upon passage by the Council.

The vote was: _____ Yeas _____ Nays _____ Absent

IN WITNESS WHEREOF, the City of Avon Park, Florida, has duly adopted this Resolution and caused it to be executed by the officers below on this _____ day of _____, 2012.

(Seal)

ATTEST:

CITY OF AVON PARK, FLORIDA

By: _____

Cheryl Tietjen, City Clerk

By: _____

Sharon Schuler, Mayor

APPROVED AS TO FORM:

Gerald Buhr, City Attorney

EXHIBIT A
STAFF REPORT ON PUBLIC INTEREST FACTORS

EXHIBIT B
PURCHASE AGREEMENT