

AGENDA ITEM SUMMARY

COUNCIL MEETING DATE: 07/08/13

AGENDA ITEM #: **6.A.6** Placid Lake Utilities Contract

PLACED ON AGENDA BY: Town Attorney

PROJECT COST: 2,600,000

ATTORNEY REVIEW: YES

STAFF REVIEW: NA

RECOMMENDED ACTIONS: Approve contract for Mayor's signature

SUMMARY:

See attached contract

RECEIVED-FPSC
12 JUL 29 AM 8:50
COMMISSION
CLERK

ATTACHMENTS:

Contract

**AGREEMENT BETWEEN THE TOWN OF LAKE PLACID
AND PLACID LAKES UTILITY INC, FOR THE SALE AND PURCHASE OF THE
PLACID LAKES WATER TREATMENT AND DISTRIBUTION SYSTEM AND THE
PLACID LAKES WASTEWATER COLLECTION AND TREATMENT SYSTEM**

THIS AGREEMENT is made and entered into by and between PLACID LAKES UTILITY INC, a Florida corporation, (called "Seller") and the TOWN OF LAKE PLACID, a Florida municipal corporation (herein called "Purchaser").

WITNESSETH:

WHEREAS, Seller owns and operates a wastewater collection and treatment system, and a franchise to do so in the unincorporated area of Highlands County known generally as Placid Lakes (herein collectively called the "**Placid Lakes Wastewater System**"); and

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WHEREAS, Seller owns and operates a system to produce, treat and distribute potable water and a franchise to do so in the unincorporated area of Highlands County known generally as Placid Lakes (herein collectively called the "**Placid Lakes Water System**"); and

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WHEREAS, Seller desires to sell the Placid Lakes Water System and Placid Lakes Wastewater System (herein collectively the "**Placid Lakes Utility Systems**") to Purchaser in accordance with the terms and conditions set forth herein; and

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WHEREAS, Purchaser desires to purchase the **Placid Lakes Utility Systems** in accordance with the terms and conditions set forth herein,

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NOW THEREFORE, THE PARTIES in consideration of the valuable payments and mutual covenants, representations and warranties set forth herein, contract and agree as follows:

1. **SALE AND PURCHASE OF THE SYSTEMS.** Seller agrees to sell, transfer and convey to Purchaser and Purchaser agrees to purchase from Seller the Placid Lakes Utility Systems which shall contain the following assets:

A. **Real Property-Wastewater Plant (Schedule A).** The real property and the improvements thereon (specifically including the wastewater treatment plant) described on **Schedule A** attached hereto and incorporated herein and referred to as the "Wastewater Plant".

B. **Wastewater Collection System (Schedule B).** All of the lines, lift stations, pumps, mains, manholes, force mains, gravity mains today used in the Placid Lakes Wastewater System, together with permits (in the case of public rights of way), easements or fee title (in the case of private lands) for each. **Schedule B** shall include a map showing the location of all lines and lift stations used by the Placid Lakes Wastewater System.

C. **Real Property-Water Production Facilities (Schedule C).** The real property, tanks, pumps, wells, water treatment and distribution facilities and all other improvements thereon as described on **Schedule C**, attached hereto and incorporated herein and referred to as the "Water Plant & Wells".

D. **Water Distribution System (Schedule D).** All of the mains, sub mains, lines, pumps, valves, and other things used in the Placid Lakes Water System to produce, treat and distribute potable water described on **Schedule D**, attached hereto and incorporated herein and referred to as the "Water Plant & Wells".

E. **Territory.** Seller's water and wastewater territory according to the Florida Public Service Commission and referred to as the "Territory", including the Seller's right to serve customers within and beyond Seller's Territory.

F. **Permits.** All permits reasonably needed or required to operate the Placid Lakes Water System and Placid Lakes Wastewater System. All said permits are listed on **Schedule E**, attached and incorporated.

G. **Personal Property (Schedule F).** All personal property currently used by the Seller to operate, or associated with the Placid Lakes Utility Systems, including all system design documents, plans, blue prints, "as built" documents, tools, parts, backhoe, golf cart, customer accounts, customer deposits, billing system, office furniture, spare parts and equipment, all as set out on **Schedule F**, attached and incorporated. Except as specifically mentioned herein, cash and other accounts are not included.

The property and permits described in paragraphs 1A-1G constitute the Placid Lakes Utility Systems.

2. **CONSIDERATION FOR SALE AND PURCHASE.** The agreed monetary consideration for the sale and purchase of the Placid Lakes Utility Systems is Purchaser's payment to Seller at closing of Two Million Six Hundred Thousand US Dollars (\$2,600,000.00).

3. **DEPOSIT.** A Deposit in the amount of five thousand dollars (\$5,000.00) is to be held in escrow by Sheehan & Celaya, P.A., 300 Dal Hall Blvd, Lake Placid, Florida.

4. **EFFECTIVE DATE.** This Contract becomes effective upon its execution by Seller and John Holbrook, Mayor of the Town of Lake Placid (the "Effective Date").

5. **CUSTOMER DEPOSITS, RECORDS, ACCOUNTS RECEIVABLE AND REVENUE.** Seller shall transfer all customer accounts, deposits, records, accounts receivable and unbilled revenue due to Purchaser at closing. Seller shall provide 30 days before closing every customer's name, address and account information. The Seller shall provide a sworn statement at closing showing all customer accounts, deposits, and accounts receivable as of closing. Payments received by Seller after closing shall be immediately forwarded to the Purchaser.

6. **WATER LINES, SEWAGE COLLECTION LINES, LIFT STATIONS.**

Within 90 days after effective date, Seller shall at Seller's expense, deliver:

A. **Lift Stations.** Good and sufficient surveys and legal descriptions of the land under and around all lift stations (showing the location of the lift station and related improvements), including the land reasonably needed to access each respective lift station for operation and maintenance (generally an area 20 feet in diameter around each Lift Station). Schedule B begins that listing, but is not complete.

B. **Lines In Rights-Of-Way.** Seller represents that to the best of its knowledge, there are no permits regarding wastewater collection lines or water distribution lines within the public right of way. Copies of all existing permits for all water distribution lines and wastewater collection lines within public rights-of-way will be provided to Purchaser within 30 days of the effective date.

C. **Lines On Private Property.** Seller represents that to the best of its knowledge wastewater collection lines and water distribution lines are situated within public rights of way. To the extent not, seller shall provide good and sufficient surveys, legal descriptions and easements (at least 10 feet wide along the respective line and to the public right of way) locating all water distribution lines and wastewater collection lines which are not located within public right-of-way.

Unless the Purchaser, within 30 days of receipt, objects to the legal descriptions provided under paragraphs 6A through 6C., the same shall be deemed good and sufficient.

The Surveys shall locate the lift stations, sewage collection lines and water distribution lines not located in public right-of-ways.

This provision does not apply to the customer owned service lines between the customer's home or establishment and a Seller owned water line or sewage collection line.

7. **TITLE ISSUES.** Seller shall deliver at the Seller's expense and within 30 days of the surveys and legal descriptions being deemed good and sufficient, a title insurance commitment in the amount of the sales price on the real property (fee and easements) listed in **Schedules A, B, C & D** (the plants, lift stations and easements), being conveyed by Seller to Purchaser insuring good and marketable title thereto with all standard exceptions deleted. Purchaser shall have 10 business days thereafter to examine the commitment and notify Seller, in writing, if title is not acceptable and specifying the defects.

A. **Water Plant, Wastewater Plant and Lift Station Title.** Acceptable title for the Water Plant, Wastewater Plant and Lift Station parcels shall be a good and merchantable fee simple unencumbered title, subject only to taxes not due and payable, governmental regulation, and the developer's deed restrictions shown on **exhibit**, which the seller represents do not prohibit the construction, presence or operation of the utilities as presently configured (hereinafter the "Deed Restrictions").

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B. Lift Station Easement Title. Acceptable title for Lift Station easement parcels shall be a good and merchantable title to the respective easement, vesting in the purchaser an interest paramount to all other fee and easement claims (but subject to the Deed Restrictions) so that the easement may be used for the purpose set out in this Contract.

C. Wastewater Collection Line Easements and Water Line Easements Title (this does not apply to lines within public rights of way). Acceptable title for wastewater collection line easements and water line easements shall be a good and merchantable title to the respective easement, vesting in the purchaser an interest paramount to all other fee and easement claims (but subject to the Deed Restrictions) so that the easement may be used for the purpose set out in this Contract.

D. Cure. If title to the parcel or easement is not acceptable (within the standards above) or if the lines or lift stations are not within the respective parcel or easement Seller shall have 30 days from the receipt of the notice of defects in which to cure or remove the same, at its expense. If Seller fails to cure or remove the defect within such period, or as extended by agreement, Purchaser may waive the defects and proceed with the purchase; or withdraw from the transaction, and receive a refund of the deposit.

8. **CLOSING.** Provided that all contingencies have been met (and none of the times in this contract shortened), this transaction shall be closed at 11 A.M., on the ____ day of ____ 2013. Seller shall operate the Placid Lakes Utility Systems for its account in a competent and professional manner (to the same standard as operated since 1 January 2012) until closing. Closing shall take place at the offices of Sheehan & Celaya, P.A., 300 Dal Hall Boulevard, Lake Placid, Florida, or at such other place mutually agreeable to the parties.

A. At closing, Seller shall deliver the following:

(1) **Parts and Equipment.** An executed Bill of Sale with full warranties conveying the Placid Lakes Utility Systems and all of its constituent parts, equipment and spare parts to Purchaser "AS IS" free and clear of all liens (the "AS IS" provision applies to the condition of the item, and not to title or liens);

(2) **Accounts.** Proper assignment (with current estoppel information) of all contracts, accounts receivable, tariffs, licenses, territory and permits together with any necessary third party consents;

(3) **Privately owned Lift Stations.** Conveyance by warranty deed to or warranted easements for all lift stations not in the public right-of-way.

(4) **Other owned Lift Stations.** Proper conveyance of easements and permits for all lifts stations in the public right-of-way.

(5) **Collection Lines.** Proper conveyance of all collection lines and the permits for each within the public right-of-way.

(6) **Plant and Land.** An executed Warranty Deed and Easements conveying to Purchaser the real property and easements described upon Schedules A through C and upon which the Wastewater Treatment Plant and Water Plant and Wells and various collection and distribution systems (and related facilities) are located;

(7) **Closing Statement.** An acceptable signed Seller's Closing Statement;

(8) **Estoppel.** An estoppel letter from the lender or lenders regarding Seller's existing debt, if any, setting forth the amount required to be paid as of closing for Seller to be able to convey the Placid Lakes Utility Systems free and clear of all liens;

(9) **Deposits.** An executed assignment of all of Seller's customer deposits, and transfer of or credit for each of said deposits;

(10) **Customer Records.** All current customer records.

B. At closing Purchaser shall deliver the following:

(1) An acceptable signed Purchaser's Closing Statement; and

(2) Funds representing the net cash due at closing, less any agreed adjustments.

9. **REPRESENTATIONS AND WARRANTIES OF SELLER.** Seller hereby represents and warrants the following regarding the Placid Lakes Utility Systems to and for the benefit of the Purchaser:

A. **Litigation.** There are no actions, suits or proceedings pending against Seller, with respect to the Placid Lakes Utility Systems or, to Seller's best knowledge, threatened against or affecting Seller or Placid Lakes Utility Systems before any court or administrative body or agency having jurisdiction over Seller or the Placid Lakes Utility Systems.

B. **Title to Assets.** All elements and parts of the Placid Lakes Utility Systems (including elements reasonably needed to operate the Placid Lakes Utility Systems) are listed in Schedules A-F). Seller has good and marketable title to the Placid Lakes Utility Systems (the assets described on Schedules A-F), and can deliver them free and clear of any liens and claims at closing (according to the terms of this Contract). To the best of Seller's knowledge, all collection lines are either: 1) within public rights of

way and properly permitted by the agency having jurisdiction; or 2) within the bounds of a duly recorded easement and not subject to other encumbrances.

C. **Permits.** To the best of Seller's knowledge, the items listed on Schedule "E" attached hereto comprise all of the governmental permits, franchises and licenses required to carry on the operation of the Placid Lakes Utility Systems. True and correct copies of such permits, franchises and licenses have been or will be delivered to the Purchaser and Seller will transfer the permits, franchises and licenses concerning the Placid Lakes Utility Systems to the Purchaser at closing. To the best of Seller's knowledge, there are no outstanding permit violations. Permit violations will be cured by Seller prior to closing. Should Seller fail to cure any permit violations, Purchaser may either waive the defect and proceed with the purchase, or withdraw from the transaction and receive a refund of the deposit.

E. **Environmental Matters.** There is no civil, criminal or administrative action, suit, demand, claim, hearing, notice of violation, investigation or proceeding pending or, to the best knowledge of Seller, threatened against Seller or relating to Placid Lakes Utility Systems.

F. **Compliance with Laws and Regulations.** Regarding the Placid Lakes Utility Systems, the Seller, to its best knowledge, has not violated or failed to comply with any applicable statute, law, ordinance or regulation of any governmental agency and Seller has not received any notice asserting that such violation or failure of compliance has occurred that has not been corrected.

G. **Representations True at Closing.** All representations and warranties set forth in this Agreement shall be true and correct as of the closing date just as if such representations and warranties were made as of and at that date.

H. **Exclusive Offer.** Upon Seller's execution of this agreement, this agreement will constitute an exclusive offer to sell the Placid Lakes Utility Systems to Purchaser and Seller shall not thereafter negotiate to sell the Placid Lakes Utility Systems to any other entity while this contract is pending.

I. **Authority.** Upon satisfaction of the contingency in paragraph 26, below, Seller represents that Seller has the legal authority to enter into this agreement and have obtained such shareholder consents as are necessary and the authority to transfer the Placid Lakes Utility Systems to Purchaser.

10. **REPRESENTATIONS AND WARRANTIES OF PURCHASER.** The Purchaser represents and warrants to the Seller as follows:

A. **Litigation.** There are no actions, suits, or proceedings pending against the Purchaser or, to the Purchaser's best knowledge, threatened against or affecting the Purchaser before any court or administrative body or agency having

jurisdiction over the Purchaser, which might materially adversely affect the ability of the Purchaser to perform its obligations under this Agreement.

B. Representations True at Closing. All representations and warranties set forth in this Agreement shall be true and correct as of the closing date, just as if such representation and warranties were made as of and at that date.

11. **COMPLIANCE.**

A. The parties shall comply with Section 367.071(4)(a), Florida Statutes. Seller shall provide Purchaser (within 10 days of the effective date of this contract) the most recent available income and expense statement, balance sheet, and statement of rate base for regulatory purposes and contributions-in-aid-of-construction of the Placid Lakes Utility Systems.

B. While the sale of facilities, in whole or part, to a governmental authority shall be approved by the PSC as a matter of right, Purchaser shall file an application for approval of this sale with the PSC in a timely manner.

C. Seller shall be responsible for all regulatory assessment fees prior to the date of closing.

12. **COVENANTS OF SELLER.** Seller covenants and agrees that, between the time of execution of this Agreement and the closing, Seller shall operate the Placid Lakes Utility Systems diligently in the same manner as heretofore and will not make or institute any changes in its method of management or operation unless required by the Florida Department of Environmental Protection to do so and Seller shall not:

A. Sell, transfer, lease or otherwise dispose of any asset relating to the Placid Lakes Utility Systems;

B. Collect any prepayment for sewer services to be provided by Purchaser after closing;

C. Waive or permit the loss of any substantial right relating to the Placid Lakes Utility Systems; or

D. Collect any user fee, capacity fee or system development charge for connection to the Placid Lakes Utility Systems without Purchaser's written consent, which consent will not be unreasonably withheld, and provided that any such connection fee so collected will be applied in reduction of the cash due to Purchaser at closing.

13. **NOTICES.** All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed given when delivered in person or mailed by certified or registered mail, postage prepaid, return receipt requested and addressed as follows:

Seller:

Laura Elowsky, President
Placid Lakes Utility Inc
410 Washington Blvd., N.W.
Lake Placid, FL 33852

Purchaser:

TOWN OF LAKE PLACID
Attention: Gary V. Freeman
311 West Interlake Boulevard
Lake Placid, FL 33852

copy to:

Timothy J. Sheehan, Esquire
Sheehan & Celaya, PA
300 Dal Hall Blvd.
Lake Placid, FL 33852

copy to:

Bert J. Harris, III, Town Attorney
Swaine & Harris, P.A.
401 Dal Hall Blvd.
Lake Placid, FL 33870

14. **GOVERNING LAW.** This Agreement shall be governed by the laws of the State of Florida. The venue for purposes of litigation shall be Highlands County, Florida.

15. **ATTORNEY'S FEES.** In any action brought by either party for the enforcement of the obligations of the other party, the prevailing party shall be entitled to recover reasonable attorney's fees, paralegal fees, court and other costs, whether incurred before or at trial, on appeal, in bankruptcy or in post judgment collections, from the losing party.

16. **SURVIVAL OF CLOSING.** Seller's representations shall survive closing and shall remain enforceable for a period of 4 years from and after the closing.

17. **CAPTIONS.** The captions and headings used in this Agreement are for convenience only and do not affect, limit or amplify the terms and provisions hereof.

18. **DRAFTING.** The parties each acknowledge that they have had equal and ample participation in the drafting of this Agreement, and that it should not be construed against either as the drafter.

19. **ENTIRETY OF AGREEMENT.** This Agreement contains the entire agreement between the parties. No representations, inducements, promises or agreement, oral or otherwise, which are not embodied herein shall be of any force or effect.

20. **MULTIPLE ORIGINALS AND FACSIMILE.** This Agreement is executed in multiple copies, each of which shall be deemed an original. Facsimile signature (or signature transmitted by email) will be considered valid.

21. **TERMINATION BY PURCHASER.** This Agreement may be terminated by Purchaser without cause at any time before closing without cause. Upon such termination,

Purchaser's deposit shall be paid to Seller as liquidated damages, and all parties shall be released from this contract.

22. **TERMINATION BY SELLER; SELLER'S DEFAULT.** This Agreement may be terminated by Seller only upon the Purchaser's default. In the event Purchaser defaults under this contract, the Seller's sole remedy shall be Termination of this contract. Prior to such termination by Seller, Seller shall give Purchaser written notice of Purchaser's alleged default. Purchaser shall be given 30 days to cure the default and continue under the contract. Upon such termination by Purchaser's default, Purchaser's deposit shall be paid to the Seller.

If Seller defaults under this contract, the Purchaser may bring an action for specific performance or damages, at Purchaser's option.

23. **NEGOTIATIONS, OFFER, REVOCATION AND ACCEPTANCE.** This Contract is executed by John Holbrook, Mayor of the Town of Lake Placid subject to and conditioned upon its review and acceptance by the Lake Placid Town Council. This Contract may only be accepted by the Lake Placid Town Council. This Contract will terminate automatically and the deposit shall be refunded to the Town, unless it is accepted by the Lake Placid Town Council on or before _____ 2013.

Seller signs as an irrevocable offer to sell upon the foregoing terms. This offer to sell is not revocable until after _____ 2013. Unless accepted by Purchaser, or extended in writing by Seller, the Seller's offer to sell is revoked on _____ 2013. This offer becomes a binding contract if accepted by a majority vote of the Lake Placid Town Council (as evidenced by signatures of the Mayor and Clerk) on or before _____ 2013.

24. **CONTINGENCY FOR TOWN BORROWING.** This Contract is contingent upon the Town of Lake Placid obtaining a tax exempt bond or revenue certificate (upon terms acceptable to the Town), loan from the State Revolving Fund, or other loan to fund this purchase. The Town will use its best efforts to promptly seek financing. If the Town is unable for any reason to obtain financing on or before 31 January 2014, then and in that event, this contract may be terminated, the deposit refunded to the Town, and all parties shall be relieved of their obligations hereunder.

25. **INSPECTIONS.** Purchaser shall be allowed full and complete access to all parts of the Placid Lakes Utility Systems books, records, plants for the purpose of conducting tests and inspections at its expense. Purchaser shall repair in a good and workman like manner all damage caused by such tests.

26. **CONTINGENCY FOR SELLER'S AUTHORITY.** This Contract is contingent upon the approval of shareholders and directors of the Lake Placid Holding Company, Inc., a Florida Corporation. This contract may be terminated upon the option of either party if such consent is not obtained within 45 days from effective date.

EXECUTED by Seller on the _____ day of July 2013.

Two Witnesses as to Seller:

Placid Lakes Utility Inc, a Florida corporation

(Printed Name)

By: _____
Laura Elowsky, as its President

(Printed Name)

Attest:
By: _____
Peggy Ann Brewer, as its Secretary

[Corporate Seal]

EXECUTED BY MAYOR JOHN M. HOLBROOK on the _____ day of July 2013.

John M. Holbrook, Mayor of the Town
of Lake Placid, Florida

Ratified and approved by the Lake Placid Town Council this _____ day of _____ 2013.

Two Witnesses as to Purchaser:

TOWN OF LAKE PLACID, a Florida
municipal corporation

(Printed Name)

By: _____
John M. Holbrook, Mayor

(Printed Name)

Attest: _____
McQueen Small, Town Clerk