RESOLUTION

of the
ORANGE COUNTY BOARD OF COUNTY COMMISSIONERS

Relating to
THE SALE TO THE CITY OF APOPKA OF CERTAIN WATER & WASTEWATER ASSETS LOCATED IN NORTHWEST ORANGE COUNTY.

Resolution No. 2006-M-21

WHEREAS, the County owns and operates a potable water production, treatment, storage, transmission, and distribution system in Orange County, Florida (herein collectively referred to as the “Water System”); and

WHEREAS, the County owns and operates a sanitary wastewater collection, treatment and effluent disposal system in Orange County, Florida (herein collectively referred to as the “Wastewater System”) and the Wastewater System and the Water System are also referred to as the “Utility Systems”; and

WHEREAS, the City has in place that certain City of Apopka/Zellwood-Station Co-op, Inc. Water, Wastewater and Reclaimed Water Agreement (Zellwood Service Area Agreement), together with wholesale agreements to provide water, wastewater and reclaimed water to the Zellwood Station Cooperative, Inc., (collectively referred to as the “Zellwood Station Agreements”); and

WHEREAS, the County and the City of Apopka (hereinafter the “City”) entered into a City of Apopka/Orange County Amended & Restated Water, Wastewater and Reclaimed Water Territorial Agreement on or about October 26, 2004 (the “Territorial Agreement”) for the northwest area of Orange County; and

WHEREAS, the County and City agreed in such Territorial Agreement that the City would purchase from the County certain assets of the Water System and Wastewater System referred to as the “Specified County Facilities” and identified in “Exhibit 1” attached hereto and incorporated herein by reference; and

WHEREAS, the Zellwood Station Agreements are included in the Specified County Facilities to be acquired and served by the City pursuant to that certain City of Apopka/Orange County Water & Wastewater Systems Asset Purchase & Sale Agreement (the “Asset Sale Agreement”) currently before the County for approval; and

WHEREAS, the County duly noticed and conducted a public hearing pursuant to Section 125.3401, Florida Statutes on the sale of such Specified County Facilities to the City and has authorized the sale of such facilities by the County; and
WHEREAS, the County has examined the assets to be sold to the City pursuant to the Asset Sale Agreement, has examined the existing financial structure of the Utility Systems, has examined 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 sale of the Utility Systems to the City is in the public interest; and

WHEREAS, the sale of such Utilities Systems is subject to the requirements of Section 710 of Orange County Resolution No. 92-B-06 (the “Bond Resolution”), as supplemented and amended, securing the County’s Water Utilities System Revenue Refunding Bonds, Series 1998 and the County now intends by adoption of this Resolution to comply with such requirements.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ORANGE COUNTY:

Section 1. The Board of County Commissioners (the “Board”) has reviewed and considered the conditions of sale by the County to the City of Apopka and the Specified County Facilities described above and described on Exhibit “1” of this Resolution. The Board has also reviewed and considered the written findings of the Director of Utilities attached as Exhibit “2” of this Resolution determining that one or more of the conditions for sale of utility system assets as set forth in Section 710 of the Bond Resolution have been met and the County hereby adopts, approves and concurs in such written findings set forth in Exhibit “2”.

Section 2. This Resolution shall take effect immediately upon its adoption.

THIS RESOLUTION IS ADOPTED THIS 21st DAY OF MARCH, 2006.

ORANGE COUNTY, FLORIDA
By: Board of County Commissioners

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

By: Deputy Clerk
MEMORANDUM

TO: Allona Stapleton, Clerk to the Board of County

THROUGH: Cathy Weintz, Agenda Development Coordinator

FROM: Robert D. Guthrie, Sr. Assistant County Attorney

RE: Utilities Consent Agenda Item H.1., Board of County Commissioners Meeting on March 21, 2006/Apopka/Zellwood Documents

DATE: March 16, 2006

Attached please find, as composite exhibit 1, referenced in Section 3.9 of the City of Apopka/Orange County Water and Wastewater Systems Asset Purchase and Sale Agreement, which is on the Board’s agenda for March 21, 2006, as Consent Item H.1. The composite exhibit 1 contains the following three agreements:


Should you have any questions, please do not hesitate to contact me.

Attachments: Two copies of the three agreements listed above, as composite Exhibit 1.

S:\RGuthrie\AGRCNT\Apopka Zellwood Assignment\Memo to Clk on Apopka docs for BCC agenda.wpd
CITY OF APOPKA/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 ___________ 2005, between the CITY OF APOPKA, a Florida municipal corporation (hereinafter referred to as the "CITY"), and ZELLWOOD STATION CO-OP, INC. (hereinafter referred to as the "CO-OP").

WHEREAS, CITY operates and maintains a publicly owned water reclamation facility (hereinafter called the “Facility”) produces 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 87 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 CITY will provide available reclaimed water to the CO-OP at a Connection Point designated on Exhibit “A-1” as “Connection Point”;

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 Apopka City Council for the class of customers for which CO-OP qualified or which CO-OP has elected to offer service.

WHEREAS, for the term of this Agreement, CITY shall be the exclusive provider of potable water and wastewater treatment to the CO-OP, and CITY and CO-OP agree that this provision constitutes a part of the consideration from CO-OP to CITY under the separate Water, Wastewater and Reclaimed Water Service Area Agreement.

NOW, THEREFORE, in consideration of the commitment of the CITY 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, and based on the foregoing premises, the parties agree to the following terms and conditions:

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. **TERM OF THE AGREEMENT**

   The CITY 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 CITY. This Agreement shall be effective on the date of first delivery of reclaimed water and for a term of ten (10) years. The term of this agreement shall be renewed automatically from year to year beyond the initial term unless terminated by the CO-OP or CITY by written notice not less than 180 days in advance of the term renewal. Connection point is defined as discharge pipe to the holding lined pond located along the east side of the CO-OP property approximately 3,000 feet north of Yothers Road.

3. **RATE AND PAYMENT**
   
   a. When such reclaimed water is available, the CITY shall deliver the reclaimed water to the CO-OP pursuant to CITY standards. The CO-OP will be invoiced for reclaimed water provided by the CITY at the then-applicable rate charged to that category of reclaimed water customers into which the CO-OP falls in the applicable reclaimed water rate resolution adopted by the Apopka City Council. The CO-OP and the CITY agree that the reclaimed water rates charged to the CO-OP by the CITY will automatically change when the Apopka City Council amends the rates applicable to the category of user in which CO-OP fits.

   b. Payment must be made to CITY as shown on the bill.

   c. The CITY shall install a meter assembly at the connection point between the CITY’s and CO-OP’s pond. Compensation for reclaimed water consumption will be paid to the CITY based on the appropriate meter size and in accordance with the meter charge schedule approved by the Apopka City Council.

4. **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.

5. **USE OF RECLAIMED WATER; CO-OP’S SYSTEM**

   a. The CO-OP shall use reclaimed water delivered by the CITY for golf course irrigation. CO-OP shall immediately notify CITY of its intent to change the use of the reclaimed water delivered to it by written notice describing, in detail, acceptable to the CITY, how said reclaimed water shall be used. CITY 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 CITY, Florida Department of
Environmental Protection ("FDEP"), the applicable Water Management District, the CO-OP’s Operating Practices Outlined in Exhibit “B”, 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 CITY.

b. The CO-OP agrees to install or modify distribution systems, construct lined pond and pumping facility 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 Golf Course Exhibit A-1. 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, 7, and 8 of this Agreement. The CO-OP will connect to the Connection Point at no cost to the CITY. The meter assembly to be installed at the Connection Point shall be located in an easement provided by the CO-OP to the CITY at a geographic location acceptable to the CITY but within twenty (20) feet of the Facility’s boundary. Said easement area shall be of sufficient size to allow CITY to read, maintain, and replace said meter assembly. The CITY 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 CITY 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 wastewater distribution 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 CITY, the FDEP, and/or any other governmental agency requiring such monitoring.
6. WATER QUALITY

a. The CITY 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.

7. VOLUME OF WATER; DELIVERY SCHEDULE

a. The CO-OP agrees that the reclaimed water furnished from the CITY’S facility pursuant to the provisions of this Agreement shall be the primary source of water per CUP schedule used by the CO-OP for irrigation of the golf course. The CO-OP’s golf course anticipated annual average irrigation demand is approximately 700,000 gallons per day. The CITY agrees to provide a volume of reclaimed water at least equivalent to an average of 150,000 gallons per day. The CITY reserves the right to limit the flow, subject to the above minimum daily average over a period of 30 days. If sufficient reclaimed water is not available due to lack of production at the CITY’S plant, the CO-OP shall have the full right to supplement irrigation flow.

b. CO-OP shall have the right and responsibility of controlling the flow of reclaimed water into its property on "as needed" basis and to store such water in CO-OP’S holding ponds for irrigation purposes. The CITY also acknowledges and agrees that the CO-OP shall have the full right and authority, subject to proper permitting by the appropriate regulatory agencies, to utilize the lake systems, wells or other resources of the CO-OP, as additional water sources for irrigation purposes on their golf course area.

c. The CITY shall install the turnout and all appurtenances thereto at its expense along with a flow meter at the Connection Point so that the volume of water delivered to the pond can be monitored. The CO-OP agrees to provide necessary easements in a form agreeable to CITY for the construction, operation and maintenance of any required CITY piping and appurtenances and the meter assembly at the Connection Point.

d. The CITY shall begin delivering reclaimed water on such date as mutually agreed upon between the parties.

8. 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 CITY. During certain adverse conditions, the CITY may restrict or curtail the delivery 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 CITY. CITY 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 CITY 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 CITY, in writing, in advance of their intent to curtail, disrupt, interrupt or limit the acceptance of reclaimed water. If advance notice to the CITY is not practical, then the CO-OP shall provide oral notice to the CITY within twenty-four (24) hours after exercising this right.

9. 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 CITY, 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.

10. TERMINATION OR ASSIGNMENT

a. CITY shall have the right to transfer all or any part of the treatment, transmission or its distribution facilities to another Party. CITY 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 CITY as a material breach entitling the CITY to terminate the Agreement.

c. The CITY 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 (1 1/2%) 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.

11. DISCLAIMER OF REPRESENTATIONS AND WARRANTIES

The CITY does not represent or warrant that the volume or quality of reclaimed water delivered will increase the productivity of the Property. Furthermore, CITY 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 6 and volume of water described in Paragraph 7.

12. 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.
2126 Spillman Drive
Zellwood, Florida 32798-9799

COPY TO:

Thomas A. Cloud, Esquire
GrayRobinson, P.A.
301 East Pine Street, Suite 1400
Orlando, Florida 32801

CITY:

Mayor
City of Apopka
P.O. Box 1229
Apopka, Florida 32704-1229
WITH A
COPY TO:

Chief Administrative Officer
City of Apopka
P.O. Box 1229
Apopka, Florida 32704-1229

13. INSPECTION

The CITY 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.

14. 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.

15. 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 CITY’s right to collect the sums described in Paragraph 3 of this Agreement, if this right to collect such sums is declared unenforceable, then CITY’s obligations to deliver reclaimed water may be unilaterally terminated by CITY.

16. 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.

17. 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.
18. INDEMNITY

The CITY 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 CITY, FDEP and other governmental or regulatory agencies having regulatory jurisdiction over the Property, and the operating practices set forth in Exhibit "B" attached.

19. 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.

20. 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 - Operating Practices

21. 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.

22. 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.
CITY OF APOPKA

By: __________________________
    John Land
    Mayor

Date: _________________________

ATTEST:

By: __________________________
    City 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 the City of Apopka who is personally known to me [ ] or has produced __________________________ as identification.

______________________________
NOTARY PUBLIC

Print Name:_____________________
My Commission expires:__________

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

Map depicting the CO-OP’s golf course area for reclaimed water irrigation and its surroundings.

To be prepared by the CO-OP.

Need Exhibit A-1
EXHIBIT "A-2"
Property Legal Description

Legal description of the CO-OP’s golf course area to be used for reclaimed water irrigation.

To be prepared by the CO-OP.
EXHIBIT "B"
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 or any other potable water source be on the property as a backup system, the owner of the well shall separate the reclaimed system from the groundwater (the well) or potable water system by installing a backflow prevention device in accordance with all state, local and CITY regulations.

4. A buffer as required by FDEP, the CITY 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 property in accordance with the rules and regulations, as they exist now and as they may be amended or implemented in the future, of the CITY, FDEP, the applicable water management district, and other governmental or regulatory agencies having jurisdiction.
03/16/2006

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 CITY’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 CITY, 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.
CITY OF APOPKA/
ZELLWOOD STATION CO-OP INC.
WATER, WASTEWATER AND RECLAIMED WATER SERVICE
AREA AGREEMENT

THIS AGREEMENT, made and entered into by and between the CITY OF APOPKA, a
Florida municipal corporation, (hereafter CITY), and ZELLWOOD STATION CO-OP, INC., a
Florida Corporation, (hereafter CO-OP).

RECITALS

WHEREAS, CO-OP owns and operates a potable water system and a sanitary wastewater
collection and treatment system in Orange County, Florida (hereinafter referred to collectively as
the Utility System); and

WHEREAS, CITY proposes a sanitary pump station, to service potable water via 1-inch
service and meter connected to Zellwood Station water service. The CITY will credit CO-OP for
the water it uses through the 1-inch service once every 3-months.

WHEREAS, CO-OP proposes to sell to the CITY the right to serve the CO-OP service
area defined herein through wholesale water, wastewater and reclaimed water agreements (the
"Wholesale Agreements"); and

WHEREAS, CO-OP is willing to convey to the CITY or its assigns, the right to provide
wholesale water, wastewater or reclaimed water services to the CO-OP pursuant to the
Wholesale Agreements; and

WHEREAS, the CITY has the power and authority to acquire the service area and to
provide wholesale potable water, wastewater and reclaimed water services within its respective
service area, and the CO-OP has the power and authority to sell the service area and enter into
the Wholesale Agreements; and

WHEREAS, the CO-OP intends to be the retail water and wastewater provider of the
wholesale water and wastewater services received from CITY or its assigns pursuant to the
Wholesale Agreements; 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, 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 A; and

WHEREAS, the CITY and CO-OP have agreed that CITY shall be the wholesale service provider for water, wastewater and reclaimed water ("Wholesale Service Provider") for the geographic area that includes the CO-OP service area; and

WHEREAS, CITY or its assigns 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 Wholesale Agreements; and

WHEREAS, this Agreement is contingent upon execution by COUNTY and CITY of valid and acceptable Water and Wastewater Asset Purchase and Sale Agreement; and

WHEREAS, Orange County, a political subdivision of the State of Florida and a charter county (hereinafter "COUNTY") and CITY have negotiated agreements relating to land use planning and public utility service delivery in the northwest part of Orange County, including the Co-Op Service Area; and

WHEREAS, CITY has agreed to acquire from COUNTY the Specified County Facilities located in the northwest part of Orange County that includes the Co-Op Service Area; and

WHEREAS, the CO-OP is aware of this relationship between COUNTY and Apopka, and CO-OP recognizes that CITY will be the Wholesale Service Provider to the CO-OP service area; and

WHEREAS, the CITY shall not acquire the wastewater treatment plant or water well production and treatment facilities, which shall remain the property of the CO-OP; and

WHEREAS, the City shall acquire such real property from the CO-OP for a lift station which shall be owned, operated and maintained by the CITY; and

WHEREAS, CO-OP agrees that it shall not operate or allow others to operate or maintain the wastewater treatment plant or the potable water production and treatment facilities for the Co-Op Service Area defined in this Agreement after wholesale services under the Wholesale Agreements has commenced, and CO-OP shall be responsible for regulatory compliance with regard to abandonment or removal of CO-OP’s wastewater treatment plant and accompanying facilities and the potable water well facilities.

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. DEFINITIONS. The following words and phrases shall have the following meanings in this Agreement:

**Actual Water Service Date:** Thirty (30) days following the Acquisition Date agreed to by CO-OP and the CITY when wholesale service by CITY can begin in Co-Op Service Area following interconnections of CO-OP’s water distribution lines to CITY’s water facilities.

**Actual Wastewater Service Date:** On or before one hundred eighty (180) days following the Acquisition Date agreed to by the CO-OP and the CITY when the wholesale service by CITY can begin in Co-Op Service Area following interconnections of CO-OP’s wastewater transmission lines to CITY’s wastewater facilities.

**Acquisition Date:** The date on which the CO-OP and the CITY agree to that Wholesale Service Provider will provide service to the Co-Op Service Area. Also called “closing date”. Thereafter, interconnection of the CO-OP’s Service Area systems to the CITY’s facilities will occur, leading to establishment of the Actual Water Service Date and Actual Wastewater Service Date.

**Assets:** The CO-OP service area conveyed by CO-OP to CITY under this Agreement and any easements or other interests in real property acquired by CITY or its assigns pursuant to this Agreement.

**CITY:** The City of Apopka.

**COUNTY:** Orange County, a political subdivision of the State of Florida.

**CO-OP:** The Zellwood Station Co-Op, Inc., a Florida corporation.

**Co-Op Service Area:** The specific area to be provided wholesale water, wastewater and reclaimed water service by CITY under this Agreement, which service area is being transferred by CO-OP to CITY. CO-OP and CITY specifically agree that CITY shall not be required to serve pursuant to the terms of this Agreement outside of Co-Op Service Area.

**Capital Charges or Connection Charges:** Those fees charged, by whatever name, such as impact fees, capital facility charges or capital charges, imposed by CITY by ordinance or other adopted procedure, imposed as a prerequisite or a condition to connect to CITY water, wastewater or reclaimed water facilities.
Utility System: The water, wastewater and reclaimed water transmission lines and facilities currently owned and operated by the Co-Op which services the Co-Op Service Area.


Wholesale Service Provider: The CITY agrees to provide wholesale water, wastewater and reclaimed water service to the CO-OP within the Co-Op Service Area for a finite number of customers (defined by Equivalent Residential Units “ERUs”) within a specified and limited geographic area, the Co-Op Service Area.

SECTION 3. ACQUISITION AND CONVEYANCE OF EXCLUSIVE RIGHT TO SERVE CO-OP SERVICE AREA (“ACQUIRED ASSETS”). The CO-OP, pursuant to the facts in the Recitals above, agrees to sell and the CITY agrees to buy the exclusive right to serve to the Co-OP service area. This right shall not include any cash derived from the monthly retail rates of the CO-OP received by the CO-OP, except as set forth in this Agreement.

SECTION 4. ACQUIRED ASSETS. On the Acquisition Date, as defined below, CO-OP shall sell, assign, transfer, convey and deliver to CITY, and CITY shall purchase, accept and pay for all of the rights to be the exclusive wholesale water, wastewater and reclaimed water service provider in the Co-op Service Area. The CITY is only agreeing to serve the area described herein as the Co-Op Service Area and only to the extent of the Equivalent Residential Units (ERUs) described in Section 17 hereof, and any customers outside of the Co-Op Service Area shall not be served by the CITY under this Agreement, and can only be served under conditions for such established by the CITY in CITY’s ordinances or other applicable regulations. Title and interest in and to the following property and assets shall also be conveyed to the CITY:

4.1 Real Property. The only interests in real property to be conveyed by CO-OP to the CITY shall be sufficient easements or other interests in real estate to allow for wholesale service delivery by the CITY to install connection points, turn-ins, valves, meters, lift stations or other facilities reasonably necessary and of a size as determined in the sole discretion of the CITY. All such easements or interests in real estate shall be conveyed to CITY in a form deemed appropriate by CITY, and service by CITY is specifically authorized upon the conveyance by CO-OP to CITY or Wholesale Service Provider of said easements or interest in real estate. Conveyance of any interest in real estate shall be free and clear of any claims by third parties and shall be conveyed subject to the title standards set forth in Exhibit “AE”, attached hereto and by this reference made a part hereof. Conveyance by CO-OP of lift station site(s) acceptable to CITY is a required prerequisite to delivery of water, wastewater and reclaimed water service by CITY to CO-OP.
4.2 Certificates, Permits, and Approvals.

a. CO-OP shall be responsible upon interconnection of CO-OP retail customer potable water and wastewater transmission lines to the system of the CITY to disconnect, demobilize, demolish or otherwise comply with state or federal regulatory, and City Code provisions relating to ceasing all potable water use of wells #1 and #2 and water treatment facilities and the wastewater treatment plant, 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. CO-OP agrees that the CITY shall have no responsibility for closing, capping or sealing wells or for demobilizing or demolishing the water and wastewater treatment plants or related facilities. At the direction of CITY, CO-OP shall close, cap and seal wells #1 and #2 in accordance with state and local law within one hundred eighty (180) days of closing this transaction.

b. 560,000 gpd (gallons per day) for potable water use and 150,000 gpd for augmentation of reclaimed water for the golf course already allocated in the current CITY CUP.

4.3 Specifically 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 CITY as part of the Acquired Assets.

a. Potable Water Wells/Treatment Facilities and real property upon which the facilities are located.

b. Wastewater Treatment Plant and real property upon which the facilities are located.

c. Water distribution and transmission facilities, except for necessary easements to effect interconnection of the CITY.

d. Wastewater collection, pumping and transmission facilities, except for necessary easements in the vicinity of the CITY's wastewater system.

e. CO-OP retail customer service potable water distribution and wastewater collection lines.

f. Any obligation or right CO-OP may have to serve customers or areas outside of or beyond the Co-Op Service Area set forth in this Agreement.
g. CO-OP’s cash and CO-OP’s bank accounts.

h. 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.

i. Customer deposits.

SECTION 5. SERVICE AREA ACQUISITION PRICE AND PAYMENT. The Parties have agreed on a purchase price for Exclusive Right to Service Co-Op Service Area through a negotiating process. The Service Area acquisition price agreed upon is neither the highest nor the lowest amount that could be considered as a fair market value of the Service Area according to the terms and conditions of this agreement. Such agreement has been reached in order to make the acquisition of the Service Area attainable by the CITY while providing the CO-OP the opportunity to carry through its commitments to its customers. The parties agree that the total Service Area acquisition price shall not exceed $690,000.

a. The acquisition of the right to serve the Service Area will result in a commitment by the CITY to provide water, wastewater and reclaimed water wholesale service to the CO-OP for the CO-OP Service Area and a commitment by the CO-OP to acquire wholesale water, wastewater and reclaimed water services exclusively from the CITY as a wholesale customer by separate agreements.

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 CITY’s water wholesale rate, and wastewater wholesale rate as provided in a separate wholesale agreement attached hereto as Exhibit “E” and by this reference made a part hereof.

d. CO-OP agrees to and understands CITY’s reclaimed water wholesale rate and conditions of use as provided in a separate reclaimed water agreement attached hereto as Exhibit “E” and by this reference made a part hereof.

SECTION 6. REPRESENTATIONS AND WARRANTIES OF CO-OP. The CO-OP represents and warrants to CITY 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 Acquired 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 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 right of CITY to be the provider pursuant to the Wholesale Agreements, any interest in real property conveyed to CITY 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.

The CO-OP agrees and warrants that it shall have a continuing duty to disclose up to and including the Service Area Acquisition 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 the rights of the CITY under this Agreement.

6.4 Leases. None of the Service Area Assets are subject to any interest of any lesser or lessee.

6.5 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. For events occurring prior to closing, CO-OP shall resolve any such violations. After the closing, CITY shall be responsible for only those such violations occurring within the wholesale service area attributable to action of CITY.

6.6 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 Service Area. This is a continuing obligation upon CO-OP to disclose to CITY notices of any violations through the date of closing of this transaction.

6.7 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 misleading. Should the CO-OP become aware that any of the representations or warranties of CITY provided for herein are, or may reasonably be, materially untrue or incorrect, CO-OP will promptly advise the CITY of same, in writing, specifying in reasonable detail the reasons why the CO-OP believes such representations or warranties of CITY are, or may reasonably be, untrue or incorrect.
6.8 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.

6.9 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 CITY a certificate to such effect.

6.10 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.

6.11 No CERCLA Violations. The real property interests being conveyed to CITY have complied with, and the CO-OP has not violated, in connection with the ownership, use, maintenance, or operation of any interest in real property conveyed to CITY, 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 Acquired 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.

6.12 No Clean Water Act (CWA) Violations. The real property portion of the Acquired 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 Acquired Assets, applicable environmental, federal, state, county, or local laws relating to pollution or protection of the environment, including, but not limited to, the Clean Water Act. The CO-OP has not authorized the discharge of any pollutant by any person except as in compliance with the act’s permit requirements, effluent limitations and other environmental provisions of the CWA.

6.13 Agreements for Utility Services Not Addressed Herein. The CO-OP affirms that no agreements are in existence which would obligate the CITY to grant free service or reduced service charges, or preclude the CITY from charging capital charges for new retail rate customers within the Co-Op Service Area. The CO-OP understands and agrees that CITY will not be obligated to close this Agreement if any such assigned agreements are found to be in existence.
6.14 Assurances Required. CO-OP has provided all documents and information requested in furtherance of this Agreement to the CITY in relation to the Co-Op Service Areas that are available or can be reasonably available to CO-OP.

6.15. Third Party Claims for Free or Reduced Fee Service. Notwithstanding anything to the contrary, the parties agree to conclude this transaction so long as CO-OP (1) uses its best efforts to obtain releases of any such capacity commitments, (2) indemnifies the CITY or Wholesale Service Provider from any costs, damages, lost capital charges, or other related financial damages that may arise from any such capacity commitments, (3) provides adequate security through a non-transferable corporate performance bond and recorded covenant for special assessments to pay for and indemnify the CITY or Wholesale Service Provider from any such costs, damages, lost capital charges, or other related financial damages that may arise form any such capacity commitments, and (4) pay the costs to and be responsible for the legal defense of any such claims against the CITY or Wholesale Service Provider. To the extent the CO-OP can obtain a release of any such capacity commitments, CO-OP shall be released from its responsibilities hereunder only as related to such release of capacity commitment. The obligations imposed upon and assumed by the CO-OP, pursuant to this section relating to the claims for free service or service at a reduced capital charge, shall survive the closing of this transaction.

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

7.1 Authority for Agreement. The CITY or its assigns has the authority and power to execute and deliver this Agreement. The CITY has held all of the necessary public hearings to authorize the CITY’s exercise of its option to acquire the CO-OP’s service area as a wholesale provider.

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

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

SECTION 8. ADDITIONAL CONDUCT PENDING CLOSING. The CITY or its assigns 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 CITY or its assigns 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 CITY in obtaining all such necessary governmental approvals as may be required to close this transaction and transfer permits to the CITY.

SECTION 9. THIRD-PARTY AGREEMENTS; PRE-PAID CONNECT COSTS. At the time of closing, the parties covenant and agree that the following adjustments shall be made:

9.1 CO-OP represents that it does not hold any Connection Charges, as hereinafter defined, heretofore paid to CO-OP for the Co-op Service Area 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 “A”, providing for reservation of capacity, extension of services or facilities, or free service or reduced service charges, then the CO-OP shall terminate all such agreements and commitments prior to closing. Should the CO-OP fail to terminate any such agreements, the CITY understands and agreed that the CITY will not accept or recognize any obligations to honor the amount of any prepaid or discounted connections, or free or reduced service charges, 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 “D”. Any such obligations for free and reduced fee services shall be and remain an obligation of the CO-OP. Nothing contained in this Agreement shall be construed to require the CITY or its assigns 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 CITY’s current or future service allocation or extension rules. CO-OP agrees to indemnify and hold CITY harmless from any claims, actions, expenses or damages, including costs and attorney’s fees at trial and appeal, which the CITY incurs as a result of any agreements for free or reduced service located outside of the CO-OP’s service area. The provisions of this paragraph shall survive the closing of this Agreement.

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

9.3 All real property or easements conveyed to the CITY or its assigns shall be free and clear of any special assessments or municipal liens, if any, as of the date of closing, and any existing liens will be paid by CO-OP.

9.4 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.

9.5 All documentary stamps, if required, on conveyance documents required by this Agreement shall be paid by CO-OP.

SECTION 10. POST CLOSING INDEMNITIES.
10.1 The CO-OP shall provide all customer service functions in the service area utilizing potable water distribution and wastewater transmission lines to customers inside of the connection point of the CITY. The CO-OP shall defend, indemnify and hold the CITY, its assigns, representatives, 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 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, (3) any FPSC rate case proceeding related to the Utility Systems, (4) the operation of the CO-OP retained potable water distribution and the wastewater transmission lines on the CO-OP side of the connection points, and for customer service functions, and (5) after closing, indemnifying CITY for any customers who connect to CO-OP's lines if those CITY customers have not paid CITY's capital facility charges or retail customer charges.

10.2 In addition, CO-OP shall defend, indemnify and hold harmless the CITY, 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 "A" (the Co-op Service Area).

10.3 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 CITY 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. The provisions of this paragraph shall survive closing or the termination of this Agreement.

SECTION 11. SERVICE AREA ACQUISITION DATE. The place of execution of documents transferring the Service Area 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 November 30, 2005 (the "Service Area Acquisition Date"). Notwithstanding
anything to the contrary, the execution of the Service Area transfer documents for this transaction shall take place upon the delivery of the Service Area Acquisition 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 Service Area Acquisition 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 Service Area Acquisition Date, unless mutually agreed in writing by the parties, or extended by provision of this Agreement. The obligation of the CITY to close this transaction shall be contingent upon: (1) sale of County Specified Facilities by COUNTY to the CITY as outlined in that certain City of Apopka/Orange County Water & Wastewater Systems Asset Purchase & Sale Agreement; (2) the Wholesale Agreements; and (3) interconnection of the CITY and the CO-OP potable water and wastewater treatment systems.

SECTION 12. TRANSFER DOCUMENTS AND PROCEDURES.

12.1 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 CITY no later than fourteen (14) days prior to closing, but shall be executed on the Closing Date:

(a) Instruments of conveyance, in appropriate recordable form, of all the Easements as described on Exhibit "B" conveying to the CITY 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

(b) Executed Wholesale Water and Wholesale Wastewater and Reclaimed Water Agreements acceptable to CO-OP and CITY. (Exhibit "E"); and

(c) General assignment to and assumption by the CITY of the interests in the specified Property, together with a general assignment of all permits and approvals as provided for and in the manner specified in this Agreement; and

(d) 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 real property interests; and

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

(g) A corporate officer’s certificate confirming that the CO-OP’s warranties hereunder are true and correct as of the Closing Date; and

(h) Evidence of insurance and an original executed certification and warranty to the CITY as contemplated by subsection 6.138.1(c) hereof; and

(i) Such other instruments and documents, in form approved by the CITY’s counsel as may be reasonably required in order to properly serve the Service Area or interests in real property acquired by the CITY; 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.

12.2 Deliverables from the CITY. Upon the Closing Date and the completion of the interconnection of the CO-OP to the CITY system, the CITY shall pay the Service Area Acquisition Price by delivering a warrant to the CO-OP in the amount due CO-OP as provided in Section 5 of this Agreement, subject to the prorations and adjustments and the creation of the escrows as necessary and agreed to by the parties. A certified copy of a resolution of the CITY approving this transaction, if not previously delivered to CO-OP 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. CITY 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 CITY; (b) the appropriate City Officer’s Certificate confirming that the warranties of CITY 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 CITY’s counsel, in order to properly serve the Service Area or interests in real property acquired by the CITY, provided that none of such documents shall result in any additional liability on the part of CITY not otherwise provided for in this Agreement.

SECTION 13. RESPONSIBILITY FOR PROFESSIONAL FEES AND COSTS. Except for the responsibilities of certain fees provided elsewhere in this agreement, 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.

SECTION 14. PUBLIC SERVICE COMMISSION APPROVAL. CO-OP shall be responsible for and apply for approval by the FPSC for transfer of the Service Area Acquisition Assets from CO-OP to the CITY and any consent from FPSC for the CO-OP service area to be
served by the Wholesale Agreements. It is agreed that CITY 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 modification of CO-OP service area along with the Certificate Modification(s) shall be promptly provided to CITY by CO-OP, upon CO-OP's receipt of said Orders.

SECTION 15. COMMISSIONS. The CO-OP and the CITY warrant to the other that the transaction contemplated by this Agreement is a direct, private transaction between the CO-OP and the CITY without the use of a broker or commissioned agent.

SECTION 16. 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 17. WHOLESALE SERVICE AREA—MAXIMUM SERVICE CAPACITY.

17.1 Maximum Utility Service. The CITY and the CO-OP agree that the CITY (or its assigns) shall only provide wholesale utility service to the CO-OP Service Area specified herein. The wholesale service shall be provided to a fixed number of customers based upon equivalent residential units ("ERU's"), without payment of capital facility, impact fees or connection charges ("Connection Charges"). Those properties eligible for connection to the CO-OP's system and entitled to service pursuant to the Wholesale Agreements without payment of Connection Charges are limited to those listed on Exhibit "D", attached hereto and incorporated in this Agreement. CITY and CO-OP agree that the properties listed on Exhibit "D" include a finite number of eligible additional connections consisting of certain undeveloped residential lots which were part of the Zellwood Station Cooperative approved Planned Development. The CITY and the CO-OP acknowledge and agree that said eligible additional connections shall be accepted and served by the CITY pursuant to the Wholesale Agreements. Only those parcels described on Exhibit "D" and contained within the Co-Op Service Area are entitled to wholesale service pursuant to the Wholesale Agreements. Any additional customers and customers outside of the Co-Op Service Area shall pay Connection Charges and retail service charges. The CO-OP represents and warrants that there are no other such lots within its service area entitled to service. Parcels not listed on Exhibit "D" shall be required to become retail customers of the CITY and pay retail rates and pay Connection Charges as a condition of receiving utility service. Except as provided in Subsection 6.16 hereof, the CO-OP understands and agrees that CITY will not be obligated to close this Agreement or to continue wholesale utility service if any current or future obligations impose upon the CITY a duty or obligation to grant free service or charge reduced service charges to other than those customers described in Exhibit "D", or preclude the CITY from charging Connection Charges or treating customers (other than those set forth in Exhibit "D") as new retail rate customers.
17.2 Additional Connections to CO-OP Service Lines Prohibited. If any individual or entity not specified on Exhibit "D" connects to CO-OP’s Service Area potable water or wastewater lines without paying to CITY Connection Charges and allowing CITY to set retail connection meters for any such customers, then CO-OP shall be required to pay to CITY or its assigns any and all Connection Charges and retail rate charges for any such customers. If CO-OP allows or suffers any such connection, CO-OP agrees that CO-OP will either pay to CITY any Connection Charges due pursuant to the wholesale utility service provider’s ordinances or rules and regulations, and CO-OP shall pay retail rates within ten (10) days of any such connection or retail service charge due dates, or CITY shall terminate the Wholesale Utility Service Agreements for which unapproved connections occurred. This provision shall survive the closing of this Agreement. As an alternative to termination of wholesale service to CO-OP, CO-OP may post a bond or surety to cover unauthorized connections as outlined in Subsection 6.16 hereof.

17.3 Payment of Connection Charges. Payment of Connection Charges will be required from all future retail utility customers (i.e., all customers not depicted on Exhibit “D”) in accordance with existing and future City Ordinances, including all customers located outside of the CO-OP service area.

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

SECTION 18. 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.
2126 Spillman Drive
Zellwood, FL 32798-9799

WITH A COPY TO:

Thomas A.Cloud, Esquire
GrayRobinson, P.A.
301 East Pine Street, Suite 1400
Orlando, Florida 32801
CITY:

Mayor
City of Apopka
P.O. Box 1229
Apopka, FL 32704-1229

WITH A COPY TO:

Chief Administrative Officer
City of Apopka
P.O. Box 1229
Apopka, FL 32704-1229

COUNTY:

Director of Utilities
Orange County Utilities Department
9150 Curry Ford Road
Orlando, FL 32825

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 19. 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 both parties.

SECTION 20. AMENDMENT. Amendments to and waivers to the provisions of this Agreement shall be made by the parties only in writing by formal amendment.

SECTION 21. 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 22. 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 CITY and the CO-OP.

SECTION 23. TIME OF THE ESSENCE. Time is hereby declared of the essence in the performance of each and every provision of this Agreement.

SECTION 24. APPLICABLE LAW. This Agreement shall be construed, controlled, and interpreted according to the laws of the State of Florida.

SECTION 25. CORROBORATION OF PAYMENTS AFTER CLOSING. In each instance in which either the CO-OP or the CITY 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 26. 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 27. SURVIVAL OF AGREEMENTS. All representations and warranties of the parties set forth in this Agreement shall survive the Closing.

SECTION 28. CONTINGENCIES. The CO-OP and the CITY agree and understand that this Agreement is contingent upon the happening of certain events relating to that certain agreement entitled “City of Apopka/Orange County Amended and Restated Water, Wastewater, and Reclaimed Water Territorial Agreement” (hereinafter called the “Territorial Agreement”) approved by the COUNTY’s governing board on October 26, 2004, between the CITY and the COUNTY relating to the acquisition of the County utility service area and facilities in a specified area of northwest Orange County. The geographic area to be acquired by CITY from COUNTY under the Territorial Agreement includes the Zellwood Station Co-Op Service Area. The CO-OP and CITY agree and recognize that this Agreement is contingent upon:

a. Valid, executed Wholesale Agreements for Water and for Wastewater and Reclaimed Water acceptable to the CITY and CO-OP, but which shall not deviate from the financial and delivery terms contained Wholesale Water and Wastewater Agreement and Reclaimed Water Agreement (Exhibit “E”);
b. Acquisition of said County utility service area and facilities by City pursuant to the Territorial Agreement. Interconnection of the City of Apopka wastewater system and City Water System with the CO-OP retail system to achieve the Actual Water Service Date and Actual Wastewater Service Date.

Should any of these contingencies fail for any reason, this Agreement shall be null and void.

SECTION 29. MISCELLANEOUS.

29.1 Assignment. CO-OP may not assign its rights, duties or obligations under this Agreement to the Zellwood Station Community Association, but may not assign or transfer its duties under Subsection 6.16 to any other person, firm or corporation.

29.2 Equal Interpretation. 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.

29.3 Severability and Interpretation. Except for the provisions of Sections 5, 17 and 28 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.

29.4 Attorneys Fees. 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.

SECTION 30. LISTING OF EXHIBITS.

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

a. Co-Op's Service Area Acquired Assets
b. Real Property
c. Governmental Requirements and Permits
d. Non-Connected Parcels with Pre-Paid Capital Charges
e. Apopka/Zellwood Station Co-Op Inc., Wholesale Agreements
f. Real Estate Standards

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.
03/16/2006

CITY OF APOPKA

By: ________________________________
   John Land
   Mayor

DATE: ________________________________

ATTEST: By: ________________________________
         City Clerk, City of Apopka

Signed, sealed and delivered in the presence of:

ZELLWOOD STATION CO-OP, INC.

Attest: ________________________________  By: ________________________________
Print Name: ________________________________  Print Name: ________________________________
Title: ________________________________  Title: ________________________________
[CORPORATE SEAL]  Date: ________________________________

STATE OF FLORIDA
COUNTY OF ORANGE
The foregoing instrument was acknowledged before me this ___ day of ____________, 200__, by ________________________________, as ______________________ and attested to by ________________________________ as ______________________ of CITY OF APOPKA, who are personally known to me or produced ________________________________ as identification.

Notary Public

Print Name
STATE OF FLORIDA  
COUNTY OF ORANGE  
The foregoing instrument was acknowledged before me this ___ day of ____________, 200__, 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)
Certified service area, including the 190 developed and platted lots and Rolling Hills Church property, less the Silvestri properties.

The "Deleted Service Area" of the Co-Op’s prior territory is shown in Exhibit H, which includes the Silvestri Property, and Zellwood Holdings Property.

Prepared by CO-OP
EXHIBIT B

Real Property

Insert Map(s) and Legal Descriptions to show:

For example:

Easements or other interest in real property to be transferred to the City fee simple.

Prepared By CO-OP
EXHIBIT C

Governmental Requirements and Permits

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

a. CUP Permit

Prepared by CO-OP
EXHIBIT D

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
EXHIBIT E

Wholesale Agreements

The following executed wholesale agreements:

1. City of Apopka / Zellwood Station Co-Op, Inc. Agreement for the Delivery and Use of Reclaimed Water; and

2. City of Apopka / Zellwood Station Co-Op, Inc. Wholesale Potable Water and Wastewater Agreement.
EXHIBIT F

REAL ESTATE TITLE CONVEYANCE STANDARDS

Easements and Other Rights.

All rights, privileges, easements, licenses, prescriptive rights, rights-of-ways, and rights to use public and private roads, highways, streets, and other areas owned and/or used by the CO-OP in connection with the Acquired Assets (collectively referred to as the “Easements”). The Easements are more particularly described in Exhibit B 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 CITY.

For areas or Easements critical to the Acquired 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 this Exhibit.

CO-OP will prepare all necessary easement documents to close this Transaction. The CO-OP is responsible for all recording fees.

CO-OP shall provide Easements to CITY in recordable form necessary to serve all customer within the boundaries of the CO-OP service area shown on Exhibit A. As a condition that survives the closing, Easements required by CITY to interconnect the Utility Systems to CITY water and wastewater system facilities located outside of the CO-OP service area, shall be granted by CO-OP in a form acceptable to CITY.

CO-OP acknowledges that CO-OP is obligated to provide Easements in order to provide for interconnection with the systems of the CITY as water, wastewater and reclaimed water provider, including location of sufficient size to install and maintain pipes, valves, meters, lift stations and other facilities. The Easement area shall be of a size determined as necessary and appropriate in the sole and exclusive discretion of the CITY.

As to Easement 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 CITY in the amount of the purchase price from a title insurance company licensed in Florida and reasonably acceptable to the CITY. The CO-OP shall convey a marketable title subject only to the title exceptions set forth below.
Exceptions to Title. The Commitment shall show the CO-OP to be vested with fee simple title to the Property shown on Exhibit A, and vested with valid Easement interests for the Easements described on Exhibit A, subject to the following (the “Permitted Exceptions”):

a. Ad valorem real estate taxes and assessments for the year 2004 and subsequent years; and

b. 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

c. 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

d. 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.

Good and Marketable Title. Subject to the Permitted Exceptions, the CO-OP has good and marketable title to the interests in real property conveyed to CITY. Notwithstanding anything contained herein to the contrary, should any of the Easements 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 Utility Systems 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 Utility Systems marketable, including perfecting title in the CITY by eminent domain and CITY agrees to cooperate and assist CO-OP including using CITY’s power of eminent domain, all at the sole cost of CO-OP. The CO-OP shall transfer, convey and assign to the CITY at closing an enforceable easement interest for each of the Easements so that the present use of the easement parcels may be continued by the CITY for the services to be provided to the Acquired Assets. Any Easements conveyed to the CITY shall not be subordinate to any superior interests, which could result in the CITY 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 CITY all of its easement interests in the Property. Following the Closing (should it occur), should any person claiming an interest in properties where easements or any portion of the plants or other facilities that comprise the Utility Systems are located assert a right or bring a legal action that dispossesses the CITY from use of the facilities conveyed to CITY hereunder in the manner contemplated by this Agreement, then, upon notice thereof from CITY, CO-OP will commence and thereafter diligently pursue whatever action is appropriate or necessary, at CO-OP’s expense, to obtain for the CITY 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 CITY. In the event that the CO-OP fails to timely cure or correct the title deficiencies, the CITY may do so and CO-OP shall indemnify the CITY for all costs reasonably required to cure or correct such title deficiencies.

**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 interests in real property, 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 Utility Systems except for non-exclusive easements, and CO-OP at Closing shall deliver possession and control of the Acquired Assets to the CITY.

**Status of Title.** The CITY shall have fourteen (14) days from receipt of the Title Commitment within which to examine same. If the CITY 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 CITY shall, within five (5) days thereafter, notify the CO-OP in writing specifying the defect(s), provided that if the CITY 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 CITY 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 CITY 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 CITY to the CO-OP, in writing, as contemplated in this Agreement, within the time herein prescribed.

**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 CITY so that the survey exception may be deleted.
CITY OF APOPKA/ZELLWOOD STATION CO-OP, INC.
WHOLESALE POTABLE WATER AND WASTEWATER AGREEMENT

CITY OF APOPKA/ZELLWOOD STATION CO-OP, INC., WHOLESAL
WATER AND WASTEWATER AGREEMENT (hereinafter called the Agreement) is made and
tered into on the ______ day of ________________, 2005, by and between THE CITY
OF APOPKA, a Florida municipal corporation, (hereinafter referred to as "CITY"), 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 CITY has purchased from the CO-OP, pursuant to a separate,
independent Water, Wastewater and Reclaimed Water Service Area Agreement, the exclusive
right to provide wholesale water and wastewater services; 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 connection by the CO-OP to the CITY, the CO-OP will become a
wholesale potable water and wholesale wastewater customer of the CITY; and

WHEREAS, this Agreement is being negotiated to provide the parties certainty with
regard to availability of water and wastewater services on a wholesale basis to the CO-OP from
the CITY and the certainty of a wholesale customer for the CITY pursuant to the terms of this
Agreement; and

WHEREAS, for the term of this Agreement, CITY shall be the exclusive provider of
potable water and wastewater treatment to the CO-OP, and CITY and CO-OP agree that this
 provision constitutes a part of the consideration from CO-OP to CITY under the separate Water,
Wastewater and Reclaimed Water Service Area Agreement.

WHEREAS, this Agreement will be contingent upon the execution of the City of
Apopka/Orange County Water and Wastewater Systems Asset Purchase and Sale Agreement
(hereinafter the "Purchase Agreement") and execution of the City of Apopka/Zellwood Station
Co-Op Water, Wastewater and Reclaimed Water Service Area Agreement (hereinafter the
"Service 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 CITY will:

   (a) Specify the relationship between the CO-OP and the CITY whereby CO-OP agrees that CITY, for the term of this Agreement, will be the exclusive wholesale 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 CITY’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 CITY 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 CITY’s Water Facilities or a mutually agreed point where the CO-OP’s Wastewater Collection System meets the CITY’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 CITY.

   (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.

(f) **CITY’s Capital Charges** shall mean the water Capital Charge established by the CITY and the wastewater Capital Charge established by the CITY.

(g) **CUP** shall mean the CITY’s Consumptive Use Permit issued by the St. Johns River Water Management District.

(h) **ERU** shall mean Equivalent Residential Unit as defined in the CITY’s Ordinances. One ERU is equal to a flow of 300 GPD Annual Average Daily Flow.

(i) **Fire Flow Condition** shall mean flow of 952 gallons per minute (GPM) at the Connection Point.

(j) **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.

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

(d) The CO-OP shall be responsible for the installation and maintenance of Water Distribution System and Wastewater Collection System located 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.

(e) Master Meter Assemblies shall be the property of the CITY and shall not be disturbed or utilized by the CO-OP. Upon installation, the metering equipment shall be the property of the CITY, and the CITY shall be responsible for the operation, maintenance, and replacement of the meter. The CITY shall read the meter for billing purposes. The water and wastewater metering equipment shall meet the CITY’s standards and be manufactured by one of the CITY’s approved manufacturers for utilities materials. Flow meters shall have an accuracy of 1% when measuring flows between 5% and 100% of the rated maximum flow velocities of the meter. The water meter shall meet the latest standards of the American Water Works Association (AWWA) for compound fire service master meters or AWWA standard C703. The wastewater meter shall be magnetic flow meter type. The CO-OP may request an accuracy test by the CITY without charge once during any twelve (12) month period. Testing accuracy must meet the specifications of AWWA M-6 “Meter Selection, Installation, Testing and Maintenance.” The CO-OP may witness the test. Additional testing may be requested by the CO-OP at the CITY’s established cost for such tests. Copies of the test results will be provided to the CO-OP within thirty (30) days of the test. There will be no charge for tests that discover an inaccurate meter. If an inaccurate meter is found, as defined by the AWWA, bill adjustments will be made for one-half (1/2) of the preceding period since the last accuracy test, but in no case shall the preceding period exceed twelve (12) months.


(a) The CITY 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 CITY will provide an Annual Average Daily Flow of potable water not to exceed the annual allocation approved in CO-OP’s secondary user CUP for use by
the CO-OP within its service area for retail resale purposes. The CO-OP service area is depicted on Exhibit A. This flow will be allocated for 1,006 existing mobile homes, 190 future mobile homes, sales office, club house, maintenance barn, church and other connected customers as of April, 2003. The maximum flow to be provided by the CITY during one calendar year at the Connection Point(s) shall not exceed 560,000 GPD. The CITY will provide a minimum pressure of 58 PSI at the Connection Point. Under Fire Flow Conditions, the CITY will provide up to 450,000 GDP plus an additional 952 GPM with a minimum pressure of 35 PSI at the Connection Point.

(b) CITY shall have no operation or maintenance responsibility for the Water Distribution System 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 CITY’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 CITY’s CUP compliance limits. This includes, but shall not be limited to compliance with the CITY’s Water Conservation Ordinance and CO-OP shall be required to install and maintain individual meters at every retail customer connection to the CO-OP’s Water Distribution System for the purpose of monthly billing on the basis of individual use and to require potable water conservation.

(d) The CITY 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 exceed 560,000 gpd. Further, notwithstanding the provisions in section 5(f), if the St. Johns River Water Management District reduces the CUP allocation to the CITY, for the CO-OP service area, or reduces the CO-OP’s secondary permit allocation, the CITY shall have the right at any time during this agreement, to adjust the CO-OP’s allocation proportionately.

(e) The initial Connection Points 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 CITY. CITY agrees to pay the cost of installation of the initial Connection Points’ Master Meter Assemblies and the CO-OP shall dedicate easements sufficient to allow the CITY to read, maintain, and replace said assemblies, as necessary. The requesting party, upon mutual agreement, shall pay for the cost associated with any subsequent Connection Points and Master Meter Assemblies.
(f) The CO-OP's existing retail customers located within CO-OP's service area set forth in Exhibit A, have been exempt from paying the CITY's Capital Charge. These exempt units are allocated for 1006 active mobile homes, a clubhouse, sales office, church, maintenance barn and other connected customers as of April, 2003. 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.

(g) All parcels, not included in the CO-OP’s Service Area, as shown on Exhibit A, shall be retail customers of the CITY and be subject to all CITY ordinances, rates and resolutions, including but not limited, to paying water Capital Charges to the CITY.

(h) For those customers within the CO-OP’s Service Area, the CITY agrees to provide Wholesale Potable Water Service to the CO-OP, and the CO-OP agrees to pay the CITY a Wholesale Potable Water Service rate for the potable water provided by the CITY under the terms of this Agreement. Such wholesale rate initially shall be $1.37 per thousand gallons, so long as the volume delivered to the CO-OP does not exceed one-twelfth (1/12) of 560,000 gpd, commencing at the beginning of the Service Term. If such allocation is exceeded in any month, then the rate described below in Section 5(i) shall apply. The wholesale rate shall increase annually at the same percentage, if any, which the CITY’s retail rate increases for other potable water customers in the CITY’s Service Area during the current year of the Service Term.

(i) The CO-OP agrees to take all necessary steps to not exceed its allocation of 560,000 gpd. However, if the allocation is exceeded, the CO-OP agrees to pay the CITY a wholesale conservation rate for monthly flows exceeding one-twelfth (1/12) of the annual allocation approved in CO-OP’s initial secondary user CUP. The initial wholesale conservation rate shall be $2.27 per thousand gallons commencing at the beginning of the Service Term. In addition, CO-OP agrees to pay annually the sum of $.43 per thousand gallons for volume exceeding for the calendar year 560,000 gpd. These wholesale conservation rates shall increase annually at the same percentage, if any, which the CITY’s retail rate increases for other potable water customers in the CITY’s Service Area during the current year of the Service Term.

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

(a) The CITY 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 (Exhibit A). The CO-OP shall deliver the wastewater flow to the Connection Point(s) with adequate pressure to reach the CITY’s treatment facilities. This flow corresponds to the 817.732 ERUs of 1006 existing mobile homes, 190 future mobile homes, sales office, club house, maintenance barn, church and other connected customers.

(b) CITY shall have no operation or maintenance responsibility for the Wastewater Collection System 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 CITY. CITY agrees to pay the cost of installation of the initial Master Meter Assembly(s) and CO-OP shall dedicate to the CITY easement(s) sufficient to allow the CITY to read, maintain, and replace said assembly(s), as necessary. For future additional meters or Connection Points, the requesting party shall pay for the cost associated with any subsequent Connection Points and Master Meter Assemblies.

(d) The CO-OP’s existing retail customers located within CO-OP’s service area set forth in Exhibit A, have been exempt from paying the CITY’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. This totals 817.732 ERUs exempt from Wastewater Capital Charges. 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 CITY shall be paid by the CO-OP Capital Charges for the flow exceeding the 245,400 GPD allocated to the CO-OP. The Capital Charges will only be assessed once each calendar year based on the CO-OP’S annual water flow. The CO-OP shall only pay for the amount in excess of the sum of 245,400 GPD plus any amount for which they have already paid Capital Charges.
(e) All land parcels, not included in the CO-OP’s Service Area, shall be retail customers of the CITY and be subject to all CITY ordinances, rates and resolutions, including but not limited to paying wastewater Capital Charges to the CITY.

(f) For those customers within the CO-OP’s Service Area, the CITY agrees to provide Wholesale Wastewater Service to the CO-OP, and the CO-OP agrees to pay the CITY a Wholesale Wastewater rate for the wastewater taken by the CITY 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 CITY’s retail rate increases for other wastewater customers in the CITY’s Service Area during the current year of the Service Term.

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

7. CITY’s Retail Service Area.

(a) The CITY and the CO-OP agree that the CO-OP shall not serve any customers outside of CO-OP’s Service Area. The CITY and the CO-OP agree that all development outside the CO-OP’s Service Area, as depicted on Exhibit A, which is eventually to be served by the CITY, shall be subject to all CITY’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 CITY.

8. Service Term of the Agreement. The initial service term for Wholesale Potable Water and Wastewater Services provided by the CITY 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 CITY 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) CITY has the obligation to provide Wholesale Potable Water Service and Wholesale Wastewater Service, as defined in this agreement to the CO-OP. Should the CITY 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 CITY’s agreement to provide services is contingent upon the obligation of the CO-OP to pay the CITY the sums established herein. In the event the CO-OP fails to pay the potable water or wastewater charges, the CITY’s remedies are cumulative and may be exercised individually or in combination with additional remedies outline herein.

(b) CO-OP has the obligation to pay for wholesale water and wastewater services provided by CITY to CO-OP pursuant to this Agreement. In addition, CO-OP has the obligation 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 CITY terminating this Agreement.

(c) As an additional remedy of CITY, 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 CITY 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 CITY from the CO-OP. In addition, the CITY 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 CITY, in addition to all other rights and remedies which CITY may have under applicable law and this Agreement, may at CITY’s option, and upon written notice to the CO-OP, request, and CO-OP hereby agrees, promptly upon request of the CITY to assign to the CITY 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 CITY 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 CITY is fully paid for all past-due sums. CITY may exercise this power more than once, as necessary, to secure CITY’s entitlement to payment for services provided by CO-OP. In the event of an assignment to the CITY 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
CITY, 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 CITY exercises its rights under this Agreement, any sums charged (less a 25 percent service charge to cover CITY's costs of assuming the customer service function) shall be credited to sums then due from the CO-OP to the CITY, including sums that accrue during the term that the CITY has undertaken assignment of the proceeds and collection of sums due from CO-OP to customers.

(2) In the event of dissolution of the CO-OP or other unforseen event preventing the CO-OP from upholding its obligations under this Agreement, the CITY is required to exercise its right to an assignment of the customer's rights under this section. The CITY reserves the right to seek appointment of a receiver to undertake the obligations of collection of sums due to the CITY pursuant to this Agreement.

(3) In addition to or as an alternative to the other means of collection specified herein, the CITY reserves the right to establish a lien on assets of the CO-OP, pursuant to CITY Code and State law, as the means to collect sums past due from the CO-OP to the CITY pursuant to this Agreement in the event that sums remain unpaid for ninety (90) days or longer. The CO-OP is obligated to pay the CITY's rates out of rates, fees, and assessments it collects from its members. If the CO-OP fails to satisfy the debt owed, hereunder, the CO-OP agrees it will establish an additional assessment payable directly to the CITY against all affected property pursuant to Chapters 718, 719, and 723, Florida Statutes, to pay the debt hereunder, and this assessment shall be dedicated solely to payment of the debt hereunder.

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. Assignability of This Agreement.

(a) Upon written notice to CO-OP, CITY may assign all or any part of CITY's rights and obligations under this Agreement to another party, who shall be exclusively responsible for all applicable terms and conditions of this Agreement.
(b) Pursuant to Subsection 6.16 of the City of Apopka / Zellwood Station Co-Op Inc. Water, Wastewater and Reclaimed Waster Service Area Agreement (to which this Agreement is included as Exhibit C), CO-OP may, upon 90 days prior written notice, assign its rights, duties and obligations to the Zellwood Station Community Association. The CO-OP may not assign or transfer its duties to any other person, firm or corporation.


(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
2126 Spillman Drive
Zellwood, Florida 32798-9799

COPY TO: Thomas A. Cloud, Esquire
GrayRobinson, P.A.
301 East Pine Street, Suite 1400
Orlando, Florida 32801

CITY: Mayor
City of Apopka
P.O. Box 1229
Apopka, FL 32704-1229

COPY TO: Chief Administrative Officer
City of Apopka
P.O. Box 1229
Apopka, FL 32704-1229

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.
03/16/2006

(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 CITY shall be by notifying CITY Utilities Dispatch at 407-703-1757. Emergency telephone notice to the CO-OP shall be by calling 407-884-0150. Both parties shall notify the other as soon as they are aware that the above numbers will change or have changed.

12. 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.

13. Agreement Binding Upon Successors. All provisions contained in this Agreement shall be binding upon, inure to the benefit of, and be enforceable by, CO-OP, or its permitted assigned Zellwood Station Community Association, and the CITY to the same extent as if each successor and assign were names as a party hereto.

14. 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.

15. 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.

16. CO-OP Not an Agency of the CITY. The CO-OP intends to exist as a separate independent utility, purchasing wholesale potable water and wastewater services from the CITY. This Agreement does not intend to make the CO-OP an agency, employee or contractor of the CITY, but rather an independent service provider, where the CITY is the supplier of certain Wholesale Potable Water and Wastewater Services specified in this Agreement.

17. Insurance and Indemnification.

(a) During the duration of this Agreement, CO-OP and CITY shall each provide and maintain insurance coverage of such types and in such amounts as may
be deemed necessary by each party. Such insurance shall include at a minimum statutory workers’ compensation and employers’ liability, business automobile liability, and commercial general liability coverage. The parties acknowledge that the CITY enjoys sovereign immunity and is self-insured in compliance with Florida Statutes Section 768.28. The CO-OP shall maintain general liability insurance with a minimum limit of $2,000,000 per occurrence 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. The CO-OP shall maintain on file with the CITY current certificates evidencing its minimum required insurance on forms acceptable to the CITY, verifying that no material change or cancellation of the insurance shall be effective without thirty (30) days prior written notice to the CITY. Failure by CO-OP to maintain said insurance coverage shall be a basis for CITY to immediately terminate the Agreement.

(b) Each party to this agreement shall be responsible for personal injury and property damage attributable to the negligent acts or omissions of that party and its officials and employees or arising out of or resulting from that party's negligent performance under this agreement, and agrees to defend, indemnify, and hold harmless the other party, its officials and employees from all claims, actions, losses, suits, judgments, fines, liabilities, costs and expenses in connection therewith. However, nothing contained in this agreement shall constitute a waiver by CITY of its sovereign immunity or the provisions of Florida Statutes Section 768.28.

18. Sewer Use Requirements.

(a) CO-OP agrees to comply in all regards with the pretreatment standards contained in the applicable City Ordinances, and to comply with state and federal law requirements with regard to pretreatment standards for wastewater flows to public wastewater treatment facilities.

(b) The CO-OP specifically agrees that it will not accept or introduce hazardous materials into its wastewater and transport same to the CITY. The CO-OP specifically agrees to indemnify and hold the CITY 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 CITY. 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 CITY in the event such materials are inadvertently introduced into the CITY’s Water or Wastewater Facilities.

(c) The CITY is under an obligation imposed by the state and federal authorities to establish local limits for industrial discharges into CITY’s collection system. In recognition of this obligation upon the CITY, 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 CITY of any such industrial users, and CITY 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 CITY access to all records compiled as part of the CO-OP’s pretreatment program activities. The CO-OP shall provide CITY 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 CITY the power inspect the Water Collection System and Wastewater Distribution System 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 this section. However, the CITY retains primary responsibility for enforcing pretreatment standards and requirements against industrial users located within the CO-OP service area. The CITY may enforce CITY’s pretreatment ordinance standards whether CO-OP acts or not pursuant to this section.

19. **Force Majeure.** Neither the CITY nor the CO-OP shall be liable to the other for any failure to perform under this Agreement, except for payments due hereunder, to the extent such performance is prevented by an act of God, war, riots, natural catastrophe, or other event beyond the control of the non-performing party and which could not have been avoided or overcome by the exercise of due diligence; provided that the party claiming the excuse from performance has (a) promptly notified the other party of the occurrence and its estimated duration, (b) promptly remedied or mitigated the effect of the occurrence to the extent possible, and (c) resumed performance as soon as possible.

**IN WITNESS WHEREOF,** the parties hereto have set their hands and have executed this Agreement as of the date and year first written above.
03/16/2006

ZELLWOOD STATION CO-OP, INC.
By: __________________________________________
Print Name: __________________________________
Title: _________________________________________

Attest:
By: __________________________________________
Print Name: _________________________________
Title: _________________________________________

CITY OF APOPKA
By: __________________________________________
    John Land
    Mayor

ATTEST:
By: __________________________________________
    City Clerk

STATE OF FLORIDA
COUNTY OF ORANGE
The foregoing instrument was acknowledged before me this ___ day of ____________, 200___, by ______________________, as ___________ and attested to by
________________________ as ____________________ of CITY OF APOPKA, who are
personally known to me or produced ______________________ as identification.

__________________________________________
Notary Public

__________________________________________
Print Name

My Commission Expires:

__________________________________________
(AFFIX NOTARY STAMP)
03/16/2006

STATE OF FLORIDA
COUNTY OF ORANGE
The foregoing instrument was acknowledged before me this ___ day of __________, 200__, 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)
03/16/2006

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 190 developed and platted lots without mobile homes. It should exclude the undeveloped parcels within Zellwood Station, as this land will be retail customers of the CITY.

To be prepared by CO-OP.
03/16/2006

Exhibit B
Initial Connection Points

This exhibit consists of detail with the proposed locations of the water Connection Point and the wastewater Connection Point.

To be prepared by OCU.

Need attachment
Exhibit C

City of Apopka / Zellwood Station Co-Op Inc.

Water, Wastewater and Reclaimed Water Service Area Agreement
January 24, 2006

TO: George Hart, Jr., Manager
Real Estate Management Division

FROM: Michael L. Chandler, Director
Utilities Department

SUBJECT: Surplus Property Declaration – City of Apopka/Orange County Water & Wastewater Systems Asset Purchase & Sale Agreement

The above referenced agreement will transfer to the City of Apopka, specific County facilities consisting of the Water System and the Wastewater System located within the Orange County North Service Area.

The Water System: Consists of potable water production, treatment, and distribution facilities and associated real property listed below.

Two water supply facilities for production, treatment, storage and distribution of potable water:

Plymouth Regional WSF – 1717 Plymouth Sorrento Road
Parcel ID 36-20-27-0000-00-102 (approximately 10.0582 acres)
Utility easements recorded in O.R. 4176 Page 3456 (0.4277 acres), O.R. 4176 Page 3525 (0.0689 acres) and O.R. 4190 Page 218 (0.4785 acres)

Mount Plymouth Lakes WSF – 300 Prevo Drive
Parcel ID 09-20-28-0000-00-24 (approximately 1.259 acres) and Parcel ID 09-20-0000-00-27 (approximately 5.79 acres)
Access and utility easement O.R. 4021 Page 478

The Wastewater System: Consist of the sanitary wastewater collection, treatment and effluent disposal system listed below.

Plymouth Hills WWTP – 3251 Harry Street
Parcel ID 36-20-27-7189-01-200
Legal Description: Lot 19 less the West 60 feet, and Lots 20, 21, 22, 23, 24 Block A, Plymouth Hills subdivision as recorded in Plat Book 3, Page 64 of the public records of Orange County, Florida.

I have reviewed the documents related to the disposal of this surplus Orange County property. In accordance with the Water Utilities System Revenue Bonds Resolution 92-B-06, Article VIII, Section 710, Sale or Other Disposition of the Water Utilities System, I have determined that this property is not necessary for the operation of the Water Utilities System. Additionally, no utility easements are required for this site.
Therefore, please proceed with the disposal of the above referenced parcel for sale or transfer. The proceeds from the sale or transfer should be deposited in Revenue Account No. 4420-038-1300-6410 of the Water Utilities System.

Thank you for your assistance in this matter.

c: Daniel Allen, Deputy Director
   Ron Nielsen, Manager, Utilities Fiscal & Administrative Support Division
   Rick Wilson, Manager, Utilities Engineering Division
   Jacqueline Torbert, Manager, Water Division
   Ray Hanson, Manager, Wastewater Division
   Ann Caswell, Assistant Manager, Real Estate Management