

**FIRST AMENDMENT
TO
WINTER GARDEN AGREEMENT FOR THE
DELIVERY AND USE OF RECLAIMED WATER**

THIS FIRST AMENDMENT TO WINTER GARDEN AGREEMENT FOR THE DELIVERY AND USE OF RECLAIMED WATER (the “First Amendment”) is made and entered into as of the date of last execution below, by and between **CITY OF ORLANDO**, a municipal corporation organized and existing under the laws of the State of Florida, whose address is 400 South Orange Avenue, Orlando, Florida 32801 (“Orlando”) and **ORANGE COUNTY, FLORIDA**, a charter county and political subdivision of the State of Florida, whose address is 201 South Rosalind Avenue, Orlando, Florida 32801 (“County”) (Orlando and County are referred to jointly herein as “Suppliers”), and the **CITY OF WINTER GARDEN**, a municipal corporation organized and existing under the laws of the State of Florida, whose address is 300 West Plant Street, Winter Garden, Florida 34787 (“Winter Garden”). Suppliers and Winter Garden may also hereinafter be referred to individually as a “Party” or collectively as the “Parties.”

RECITALS

WHEREAS, Suppliers and Winter Garden entered into that certain Winter Garden Agreement for the Delivery and Use of Reclaimed Water (the “Wholesale Reclaimed Water Agreement”) effective January 6, 2009, pursuant to which the Suppliers agreed to provide, and Winter Garden agreed to accept, wholesale reclaimed water service; and

WHEREAS, the Wholesale Reclaimed Water Agreement provides, *inter alia*, for Suppliers to deliver and Winter Garden to use an average annual amount of reclaimed water; and

WHEREAS, the Wholesale Reclaimed Water Agreement provides, *inter alia*, for Suppliers to install a turnout and all appurtenances including a flow meter at each point(s) of connection, the costs and expenses for which Winter Garden is to reimburse Suppliers, all of which has occurred and been paid; and

WHEREAS, the Wholesale Reclaimed Water Agreement provides, *inter alia*, that Winter Garden may need to convey easements to Suppliers for all turnouts, all of which has occurred; and

WHEREAS, Winter Garden has installed or modified its transmission systems to connect to the Suppliers' system and provided and completed all appropriate back flow prevention devices and extensions, to Suppliers' satisfaction, all as contemplated by the Wholesale Reclaimed Water Agreement; and

WHEREAS, as described in that proposed Sale and Purchase Agreement for Reclaimed Water Distribution System Assets and Easements (the "Purchase Agreement"), to be executed simultaneously with this First Amendment, Suppliers and Winter Garden anticipate the conveyance to Winter Garden of approximately one and one half (1.5) miles of Suppliers' reclaimed water pipe, attendant facilities, and utility easements to allow Winter Garden to become the retail supplier of reclaimed water to, among others, Stoneybrook West Golf Club, LLC, as the successor to Stoneybrook Joint Venture, a Florida general partnership ("Stoneybrook"); and;

WHEREAS, Suppliers intend to continue to provide Reclaimed Water to Stoneybrook pursuant to the "Application for Reclaimed Water Service, Water Conserv II System" dated

April 23, 2014 (the “Stoneybrook Customer Application”) until Winter Garden initiates Reclaimed Water service to Stoneybrook; and

WHEREAS, Suppliers and Winter Garden agree that Winter Garden shall add Stoneybrook as a customer and commence supplying Reclaimed Water to Stoneybrook upon completion of its Reclaimed Water storage facility or on or before the fifth anniversary of the Effective Date of the Purchase Agreement, which ever first occurs; and

WHEREAS, Winter Garden, by adding Stoneybrook as a customer, will have the effect of increasing the average annual amount of reclaimed water provided by Suppliers and accepted by Winter Garden under the Wholesale Reclaimed Water Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which the Parties hereby acknowledge, Orlando, County, and Winter Garden hereby agree as follows:

SECTION 1. RECITALS INCORPORATED. The recitals hereof are true and correct, are material provisions of this First Amendment, and are incorporated herein by reference and made a part of this First Amendment.

SECTION 2. VOLUME OF WATER. Subsections 6(a) and 6(c) of the Wholesale Reclaimed Water Agreement are amended as follows:

“6) (a) Suppliers will deliver, and Winter Garden shall accept and use, Reclaimed Water in the amount of 2.353 Million Gallons per Day based on an annual average daily flow (AADF), subject to the limitations described in Section 7. Winter Garden agrees to limit the maximum daily peak flow to four (4) million gallons. The delivery volume may be revised by Winter Garden through its City Manager and approved in writing by the Orange County Utilities Director and the City of Orlando Public Works Director. Winter Garden shall not request more reclaimed water than can be beneficially used for any purpose permitted by the Florida Department of Environmental Protection.”

“6) (c) Winter Garden acknowledges that the suppliers, through the execution of this Agreement, are committing to provide Reclaimed Water to

Winter Garden in the amounts provided in this Agreement in lieu of beneficially using the Reclaimed Water in another location. As such, Winter Garden commits that the Reclaimed Water provided under this Agreement shall be the only source of irrigation water allowed to be used by its customers, except in cases where supplemental water may be needed to meet peak demands or Reclaimed Water is not available as described in Section 7. In these circumstances, Winter Garden may provide an alternative source of water for irrigation, but only for the period of time that Reclaimed Water is not available or is limited in supply. Notwithstanding Suppliers obligation to deliver Reclaimed Water at the volume set forth herein, during the time that Suppliers retain Stoneybrook, as a customer, Suppliers may reduce the volume of Reclaimed Water delivered to Winter Garden in an amount up to the volume delivered to Stoneybrook.”

SECTION 3. EXHIBITS RESCINDED. Exhibits “A” and “B” to the Wholesale Reclaimed Water Agreement are hereby rescinded in their entirety.

SECTION 4. METERING AND BILLING. This Section and Subsections are hereby inserted into the Wholesale Reclaimed Water Agreement:

(a) **METERING.** The wholesale metering equipment described as turnout 8T10, has been installed, calibrated and accepted by Suppliers, the wholesale metering equipment shall remain the property of Suppliers, and Suppliers shall be responsible for the operation, maintenance, calibration and replacement of the meter. The metering equipment at turnout 8T-07 (Stoneybrook) will remain the property of the Suppliers, and Suppliers shall be responsible for the operation, maintenance, calibration and replacement of the meter, until such time as Winter Garden provides reclaimed water to Stoneybrook, pursuant to the Purchase Agreement, and turnout 8T-07 becomes the property of Winter Garden, excluding the radio equipment. Thereafter, Winter Garden shall be responsible for the operation, maintenance, calibration, replacement and reading of turnout 8T-07. Suppliers shall read the wholesale meter(s) for billing purposes. The wholesale metering equipment is of standard make and type, installed at a readily accessible location and shall continue to record flow with an error not to exceed plus or minus two percent (2%) of full scale reading for billing purposes. Suppliers shall

inspect the wholesale meter(s) at least annually for accuracy and if needed, re-calibrate the meter(s). If the wholesale meter(s) is found to be in error exceeding two percent (2%) of true accuracy, it shall be recalibrated at Supplier's sole cost and to the satisfaction of the Parties. If the wholesale meter(s) is found to be inaccurate, a bill adjustment will be made to the flow-based component of the charge. The billing adjustment shall be based upon the difference between the inaccurate reading and the average flow for the twelve (12) month period that preceded the inaccuracy. In no case shall the period for which adjustments are sought exceed twelve (12) months. Individual customer metering shall be the responsibility of Winter Garden. The customer metering equipment shall remain the property of Winter Garden, and Winter Garden shall be responsible for the operation, maintenance, calibration and replacement of the meters. Winter Garden shall read the individual customer meters for billing purposes.

(b) BILLING. Winter Garden agrees to pay monthly invoices generated by Orange County for all Reclaimed Water used by Winter Garden. Said charge shall include Orange County's fixed monthly charge and the volume charge based upon and applied to the metered volume of Reclaimed Water, used by Winter Garden on a monthly basis. The Suppliers may cease delivery of Reclaimed Water to Winter Garden if any invoice is not paid in full within thirty (30) days of the date of invoice. Reclaimed Water service will be reinstated upon full payment of the invoice and any additional charges incurred. All Orange County standard billing procedures and charges, approved by the Orange County Board of County Commissioners shall apply. Bills will be sent to:

Assistant City Manager – Public Services
City of Winter Garden
300 West Plant Street
Winter Garden, Florida 34787

(c) By entering into this Agreement, Winter Garden grants a license to Suppliers sufficient to provide Suppliers reasonable access to the wholesale metering equipment. The license can only be terminated by amending or terminating this Wholesale Reclaimed Water Agreement or as otherwise may be agreed to, in writing, by the Parties.

SECTION 5. MISCELLANEOUS CHANGES. The following subsections of the Wholesale Reclaimed Water Agreement are modified:

- a. The phrase “shown in Exhibit ‘A’” in subsection 10(a) is replaced with the phrase “provided in Section 6”;
- b. Section 11 is modified by changing the address of Winter Garden to:

City Manager
City of Winter Garden
300 West Plant Street
Winter Garden, Florida 34787

With a copy to:

Director of Public Services
City of Winter Garden
300 West Plant Street
Winter Garden, Florida 34787

SECTION 6. EFFECTIVE DATE. The Effective Date of this First Amendment shall be the date on which the Closing has occurred under the Purchase Agreement.

SECTION 7. AGREEMENT IN FULL FORCE. Except as expressly modified herein, the Wholesale Reclaimed Water Agreement remains intact, unchanged, and in full force and effect. All capitalized words and phrases in this First Amendment have the same meaning given them in the Wholesale Reclaimed Water Agreement.

IN WITNESS WHEREOF, Orlando, County, and Winter Garden have below caused this First Amendment to be executed in manner and form and by persons and/or officers thereunto duly authorized.

ORANGE COUNTY, FLORIDA

By: Board of County Commissioners

BY: _____
Teresa Jacobs, Mayor

DATE: _____

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

By: _____
Deputy Clerk

Attest:

CITY OF ORLANDO, FLORIDA

Alana C. Brenner, City Clerk

Mayor Buddy Dyer

APPROVED AS TO FORM AND
LEGALITY for use and reliance by
the City of Orlando, Florida, only.

Assistant City Attorney

_____, 2015

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this ____ day of _____,
2015, by _____ and _____, as the
_____ and City Clerk of the City of Orlando, Florida, and who have
acknowledged that they executed the same on behalf of the City of Orlando, Florida and that
each was authorized to do so. Each is personally known to me or has produced
_____ as identification.

In witness whereof, I have hereunto set my hand and official seal.

Signature of Notary Public - State of Florida

Print, Type, or Stamp
Commissioned Name of Notary Public

My Commission Expires

CITY OF WINTER GARDEN, FLORIDA

By: _____

Mayor

(SEAL)

Print Name: _____

Date: _____

ATTEST:

Kathy Golden, City Clerk

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this ____ day of _____, 2015, by _____ and _____, as the _____ and City Clerk of the City of Winter Garden, Florida, and who have acknowledged that they executed the same on behalf of the City of Winter Garden and that each was authorized to do so. Each is personally known to me or has produced _____ as identification.

In witness whereof, I have hereunto set my hand and official seal.

Notary Public Signature

(Name typed, printed or stamped)

Notary Public, State of _____

Commission No.: _____

My Commission Expires: _____