

ORIGINAL

REQUEST TO ESTABLISH DOCKET
(PLEASE TYPE)

Date JULY 29, 1999

Docket No. 990990-WIS

1. Division Name/Staff Name WAW / BRADY *Pb B.B. [Signature]*

2. OPR WAW / BRADY

3. OCR LEG / [Signature]

4. Suggested Docket Title Application for transfer of water and wastewater facilities in St. Lucie County from Holiday Pines Service Corp. to St. Lucie County and cancellation of Certificates Nos. 553-W and 483-S.

5. Suggested Docket Mailing List (attach separate sheet if necessary)

- A. Provide NAMES ONLY for regulated companies or ACRONYMS ONLY regulated industries, as shown in Rule 25-22.104, F.A.C.
- B. Provide COMPLETE name and address for all others. (Match representatives to clients.)

1. Parties and their representatives (if any)

Thomas J. Brown, President

Danial S. McIntyre, Esquire

Holiday Pines Service Corp.

County Attorney - St. Lucie County

2300 Virginia Avenue - 3rd Floor Administrative Complex

Ft. Pierce, FL 34982

(561) 462-1420

2. Interested Persons and their representatives (if any)

| | |
|-------|-------|
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |
| _____ | _____ |

6. Check one:

Documentation is attached.

Documentation will be provided with recommendation.

I:\PSC\RAR\WP\ESTDKT.

PSC/RAR 10 (Revised 01/96)

DOCUMENT NUMBER-DATE

09007 JUL 29 99

FPSC-RECORDS/REPORTING

HOLIDAY PINES SERVICE CORPORATION

6105 Memorial Highway * Suite C * Tampa, Florida 33615
(813) 880-0618 * FAX (813) 880-9856

July 19, 1999

Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0870

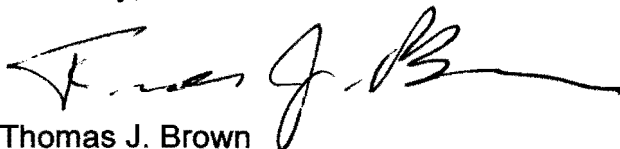
Re: Application for Transfer of Water and Wastewater Facilities
of Holiday Pines Service Corp. to St. Lucie County, FL

Gentlemen:

Enclosed is the application for transfer of water and wastewater facilities from Holiday Pines Service Corp. to St. Lucie County that has been signed and notarized. Also enclosed for your records is a copy of the transfer agreement dated June 8, 1999.

If you have any questions, please feel free to call our office.

Sincerely,



Thomas J. Brown
President

TJB/krw
Enclosures

RECEIVED

JUL 21 1999

Florida Public Service Commission
Division of Water and Wastewater

RECEIVED
JUL 21 8 42 AM '99
COMMISSION
HALL ROOM

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

| | | |
|---|---|-------------------------|
| In Re: Application for Transfer of |) | Docket No. _____ |
| Water and Wastewater Facilities of |) | Filed: _____ |
| Holiday Pines Service Corp. to St. Lucie |) | |
| County, Florida, and Request for |) | |
| Cancellation of Certificates Nos. -W |) | |
| and -S |) | |

**APPLICATION FOR AUTHORITY TO TRANSFER TO
GOVERNMENTAL AUTHORITY THE WATER AND
WASTEWATER FACILITIES OF HOLIDAY PINES SERVICE
CORP. TO ST. LUCIE COUNTY, FLORIDA, AND REQUEST FOR
CANCELLATION OF CERTIFICATES NOS. -W AND -S**

Holiday Pines Service Corp. ("Utility") makes Application for Authority to Transfer all of its water and wastewater facilities operated under Water Certificate No. 078-W and Wastewater Certificate No. 067-2 located in St. Lucie County, Florida, to St. Lucie County, Florida, ("County"), pursuant to Section 367.071, Florida Statutes, and submits the following.

1. Pursuant to Florida Administrative Code Section 25-30.037(4), Utility sets forth the following required information:

(a) The name and address of the Utility and its authorized representative are:

Thomas J. Brown, President
 Holiday Pines Service Corp.
 6105 Memorial Highway, Suite C
 Tampa, FL 33615-4557
 1-800-341-8023

- (b) The name and address of the County and its authorized representative are:

Daniel S. McIntyre, Esq.
County Attorney
St. Lucie County, Florida
2300 Virginia Avenue
3rd Floor Administrative Complex
Ft. Pierce, FL 34982
1-561-462-1420

(c) A copy of the contract transferring the Utility assets to the County is attached.

- (d) Section 25-037(4)(d), FAC, is not applicable.

(e) The County obtained from the Utility, the most recent available income and expense statement, balance sheet, statement of rate base for regulatory purposes, and contribution-in-aid-of-construction.

- (f) The Closing of the acquisition took place on July 8, 1999.

(g) The customer deposits and interest thereon are being transferred to the County at closing, and the County is taking responsibility for the disposition of such deposits and interest.

(h) Any outstanding regulatory assessment fees, fines or refunds (of which none are outstanding) will remain the responsibility of the Utility after closing of the acquisition by the County.

2. Copies of notices and other documents in this proceeding directed to St. Lucie County would be served on Dan McIntyre.

WHEREFORE, Holiday Pines Service Corp. files this Application and respectfully requests the Commission to approve this Application for Authority to Transfer, submitted this 15 day of July, 1999.

I, Thomas J. Brown, President of Holiday Pines Service Corp. do solemnly swear or affirm that the facts stated in the foregoing application and all exhibits attached thereto are true and correct and that said statements of fact thereto constitute a complete statement of the matter to which it relates.

Holiday Pines Service Corp.

[Handwritten Signature]
By: Thomas J. Brown, Its President

STATE OF FLORIDA)
) SS:
COUNTY OF Hillsborough

The foregoing instrument was acknowledged before me this 15th day of July, 1999, by Thomas J. Brown, as President of Holiday Pines Service Corp., on behalf of the company. The affiant is personally known or produced identification (type of identification produced _____).

[Handwritten Signature]
Notary Public
KATHLEEN R. WOLFE
Print Name
Notary Public, State of Florida
My Commission expires: _____

 Kathleen R. Wolfe
Commission # CO 807433
Expires Mar. 28, 2003
Bonded Thru
Atlantic Bonding Co., Inc.

C99.06-444

**HOLIDAY PINES SERVICE CORP. UTILITY SYSTEM ASSET
TRANSFER AGREEMENT**

By and Between

St. Lucie County, Florida

and

Holiday Pines Service Corp.

Dated June 8, 1999

**HOLIDAY PINES SERVICE CORP. UTILITY SYSTEM ASSET
TRANSFER AGREEMENT**

THIS AGREEMENT, is made and entered into as of this 8th day of June, 1999, (the "Effective Date"), by and between St. Lucie County, a political subdivision of the State of Florida (the "County"), and Holiday Pines Service Corp., a Florida corporation, ("HPSC").

WITNESSETH:

WHEREAS, HPSC owns and operates a water and wastewater utility system which provides service to portions of St. Lucie County, Florida pursuant to a certificate of authorization granted by the Florida Public Service Commission; and

WHEREAS, the County has the power and authority to provide utility service within the boundaries of the County; and

WHEREAS, the County held a public hearing pursuant to Section 125.3401, Florida Statutes, on the proposed purchase and sale of the HPSC water and wastewater utility assets and has made a determination that such a purchase and sale is in the public interest; and

WHEREAS, HPSC has informed the County that it will not sell its water and wastewater utility assets to the County except under threat of eminent domain, and accordingly, the County has threatened to acquire the Utility System from HPSC by exercise of the County's power of eminent domain, and this acquisition is deemed to be had in lieu of condemnation.

NOW, THEREFORE, in consideration of the mutual promises, covenants, representations and agreements contained herein, and other good and valuable consideration

exchanged between the parties, the parties to this Agreement do undertake, promise and agree for themselves, their permitted successors and assigns as follows:

**ARTICLE I
DEFINITIONS AND CONSTRUCTION**

SECTION 1.01. DEFINITIONS. As used in this Agreement, the following terms shall have the meanings as defined herein unless the context requires otherwise:

“Agreement” means this Holiday Pines Service Corp. Water and Wastewater Utility System Asset Transfer Agreement, including any amendments and supplements hereto executed and delivered in accordance with the terms hereof.

“Commission” means the County Commission of St. Lucie County, Florida.

“Easements” means all existing rights, privileges, easements, licenses, prescriptive rights, rights-of-ways, and other rights to use public and private roads, highways, streets, railroads and other areas owned or used by HPSC in connection with the construction, reconstruction, installation, expansion, maintenance and operation of its water and wastewater utility system or the Purchased Assets.

“Equivalent Residential Connection” or “ERC” means for water, a customer with an average water consumption equivalent to a single family residential customer utilizing an average of two hundred fifty gallons per day (250 gpd); and for wastewater, a customer with an average wastewater usage equivalent to a single family residential customer creating an average of eight percent (80%) of two hundred fifty gallons per day (250 gpd), in accordance with the County’s current utility extension policy.

“Excluded Assets” means those assets, business properties, rights, obligations or liabilities, both tangible and intangible, of HPSC, including all bank accounts, income tax escrow

accounts and such other assets described in Appendix A hereto, which shall not be and are not to be sold, conveyed, or transferred to or assumed by the County pursuant to this Agreement.

“HPSC” means the Holiday Pines Service Corp., a Florida corporation, and its successors and assigns.

“Purchased Assets” means all of the water and wastewater utility assets owned by HPSC, less the Excluded Assets, plus those certain parcels of land set forth in Appendix C titled in the name of Holiday Pines, Inc.

“Permitted Exceptions” means those title exceptions described in Appendix B hereto.

“Territory” means that geographical land area set forth in HPSC’s Public Service Commission certificated service area.

“County” means St. Lucie County, Florida.

“Transaction Costs” means the costs, fees and expenses incurred by the County in connection with the Agreement and the issuance of bonds or the use of any other financing alternative contemplated in Section 4.03 hereof, including but not limited to (A) rating agency and other financing fees; (B) the fees and disbursements of bond counsel; (C) the fees and disbursements of the County’s financial advisor; (D) the fees and disbursements of the County’s consulting engineers; (E) the fees and disbursements of the County’s water and wastewater counsel and consultants; (F) the costs of preparing or printing the bonds and the documentation supporting issuance of the bonds; (G) the fees payable in respect of any municipal bond insurance policy if one is obtained; (H) the fees payable in respect to any instruments required to meet the County’s bond reserve fund requirements; (I) the fees and costs to prepare an Official Statement for the issuance of bonds if one is obtained; and (I) any other costs of a similar nature

incurred in connection with issuance of the bonds. Any transaction costs in addition to these sums shall be borne by the County, including any additional cost not specifically set forth herein.

“Utility System” means the water supply, treatment, transmission and distribution system and the wastewater treatment, disposal, collection and force main system of HPSC which provides services pursuant to all certificate(s) of authorization granted to HPSC by the Florida Public Service Commission.

SECTION 1.02. CONSTRUCTION AND INTERPRETATION.

(A) Words that indicate a singular number shall include the plural in each case and vice versa, and words that import a person shall include firms and corporations.

(B) The terms “herein,” “hereunder,” “hereby,” “hereof,” and any similar terms, shall refer to this Agreement; the term “heretofore” shall mean before the date of execution of this Agreement; and the term “hereafter” shall mean on or after the initial date of execution of this Agreement.

(C) Words that reference only one gender shall include all genders.

(D) This Agreement shall be construed as resulting from joint negotiation and authorship. No part of this Agreement shall be construed as the product of any one of the parties hereto.

SECTION 1.03. INCORPORATION. The appendices hereto and each of the documents referred to therein are incorporated and made a part hereof in their entirety by reference.

SECTION 1.04. SECTION HEADINGS. Any headings preceding the texts of the several Articles, Sections or Appendices in this Agreement and any table of contents or marginal notes appended to copies hereof, shall be solely for convenience of reference and shall neither constitute a part of this Agreement nor affect its meaning, construction or effect.

**ARTICLE II
REPRESENTATIONS**

SECTION 2.01. REPRESENTATIONS OF THE COUNTY. The County makes the following representations, which shall survive closing:

(A) The County is duly organized and validly existing as a County under the laws of the State of Florida.

(B) The County has all of the requisite power and authority to enter into this Agreement, perform its obligations under this Agreement and complete the transactions contemplated by this Agreement.

(C) The County has fulfilled and complied with all of the legal requirements applicable to the transactions contemplated by this Agreement, including without limitation the provisions of Section 125.3401, Florida Statutes, relative to the purchase of a water and wastewater utility by a County. The execution and delivery of the Agreement by the County, the County's performance of its obligations under the Agreement, and the completion of the transactions contemplated under the Agreement do not violate any applicable laws, or other legal restrictions or agreements. All necessary action on the part of the County to authorize the execution and delivery of the Agreement, the County's performance of its obligations under the Agreement and completion of the transactions contemplated under the Agreement have been taken.

(D) To the best of its knowledge and belief after due inquiry, the County is not in default under any provisions of the laws of the State of Florida material to the performance of its obligations under this Agreement. The Commission has duly authorized the execution and delivery of this Agreement, and this Agreement constitutes a valid and legally binding obligation of the County, enforceable against the County in accordance with its terms, except to the extent

that the enforceability hereof may be limited by any applicable bankruptcy, insolvency, reorganization or other similar laws affecting creditors' rights generally, or by the exercise of judicial discretion of a court of competent jurisdiction in accordance with general principles of equity.

(E) There is no action, suit, investigation, or proceeding pending or, other than those matters set forth in Section 2.02(D), to the County's knowledge and belief, threatened against or affecting the County, at law or in equity or before any federal, state, municipal, or other governmental department, commission, board, bureau, agency or instrumentality, wherein any decision, ruling or finding would adversely affect the transactions contemplated hereby or which in any way would adversely affect the validity of this Agreement or any other agreement or instrument to which the County is a party and which is used or contemplated for use in the consummation of the transactions contemplated hereby.

(F) The County has not dealt with any broker, salesman or finder in connection with the transactions contemplated herein, and no sales commissions or finder's fees are due or payable as a result hereof. HPSC and the County each agrees to indemnify and hold the other harmless against any claim or demand made by any broker or agent claiming to have dealt or consulted with them in this transaction.

SECTION 2.02. REPRESENTATIONS OF HPSC. HPSC makes the following representations, which shall survive any closing:

(A) HPSC is a corporation duly organized, validly existing and in good standing in the State of Florida, authorized to do business in the State, and has all of the requisite corporate power and authority to enter into and fully perform this Agreement. The Purchased Assets represent all of the assets of HPSC used in the operation of the Utility System.

(B) The Shareholder of HPSC is Thomas J. Brown. The shareholder of HPSC has approved and authorized HPSC to enter into and consummate the transaction set forth in the Agreement.

(C) All necessary corporate action on the part of HPSC relating to the direction and authorization of HPSC's execution, delivery and performance of this Agreement has been duly taken, and this Agreement is a valid and legally binding obligation of HPSC, enforceable against HPSC, in accordance with its terms, except to the extent that the enforceability thereof may be limited by any applicable bankruptcy, insolvency, reorganization or other similar laws affecting creditors' rights generally, or by the exercise of judicial discretion of a court of competent jurisdiction in accordance with the general principles of equity.

(D) There is no action, suit, investigation, or proceeding pending or, to HPSC's knowledge and belief, threatened against or affecting HPSC at law or in equity or before any federal, state, municipal, or other governmental department, commission, board, bureau, agency or instrumentality, wherein any decision, ruling or finding would adversely affect the transactions contemplated hereby or which in any way would adversely affect the validity of this Agreement or any other agreement or instrument to which HPSC is a party which is used or contemplated for use in the consummation of the transactions contemplated hereby.

(E) To the best of HPSC's knowledge and belief and after due inquiry, neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated, nor compliance with the terms and provisions of this Agreement and the instruments required of HPSC under the Agreement will violate the provisions of any applicable law or any applicable order or regulation of any governmental authority having jurisdiction over HPSC and will not conflict with or result in a material breach of any terms, conditions or

provisions of any agreement or instrument to which HPSC is now a party, or constitute a default thereunder.

(F) HPSC has good and marketable title to the Purchased Assets and, at closing, shall have the power and authority to deliver sole and exclusive title to and possession of the Purchased Assets to the County free and clear of all encumbrances or security interests, subject only to the Permitted Exceptions.

(G) HPSC has not dealt with any broker, salesman or finder in connection with the transactions contemplated herein, and no sales commissions or finders' fees are due or payable as a result hereof. HPSC and the County each agrees to indemnify and hold the other harmless against any claim or demand made by any broker or agent claiming to have dealt or consulted with them in this transaction.

(H) The Real Property identified in Appendix C hereof represents all real property owned by HPSC or used in the operation of the Utility System and the Purchased Assets.

(I) To the best of HPSC's knowledge and belief, the Easements identified in Appendix D hereto represent all of the Easements necessary for use in connection with the maintenance and operation of the Utility System and the Purchased Assets.

(I) HPSC possesses an enforceable easement interest in the Easements shown on Appendix D hereto, and none of the easement interests prohibit assignment or require the grantor's or current fee owner's consent thereto.

(K) No present possessory interest in any real or personal property owned, used or controlled by HPSC has ever automatically terminated or reverted to the grantor thereof as a result of any failure to continuously use such property for water or wastewater purposes; nor is HPSC aware of any claim, whether actual or threatened, of any such reversion.

(L) Appendix E, attached hereto, is a schedule of all current or active permits, applications or other documents, together with effective dates and any expiration dates, which authorize the operation of the Utility System's water and wastewater facilities issued by all applicable governmental authorities. HPSC warrants that, except as set forth on Appendix E, all of the Utility System's facilities are legally permitted, and that all required renewals of permits have been timely and legally applied for.

(M) Appendix F, attached hereto, is a schedule of all of the equipment, vehicles, tools, parts, laboratory equipment, computer equipment, software, and other personal property used by HPSC in connection with the operation of the Utility System.

(N) Appendix G, attached hereto, is a schedule of all of the operating and vendor contracts of HPSC affecting the Utility System, together with any other agreements or leases affecting the Utility System, except developer agreements as set forth on Appendix H.

(O) Appendix H, attached hereto, is a schedule of all executory agreements, sometimes referred to as developer agreements, entered into by HPSC or its predecessors, and owners or developers of real property for the provision of water and wastewater utility services through the Utility System.

(P) Appendix I, attached hereto, is a schedule, with respect to all executory agreements under which HPSC as the owner of the Utility System has any continuing or outstanding water or wastewater service obligations as of May 1, 1999, which shows the total number of (1) contractual connections; (2) contractual connections paid for and not yet connected; (3) contractual connections not yet paid for and not yet connected; and (4) any contractual connections for which HPSC has collected or expects to begin collecting a periodic minimum or base facility charge prior to closing.

(Q) From and after the Effective Date of this Agreement, HPSC will not, without the prior written consent of the County, dispose of or encumber any of the Purchased Assets, with the exception of non-material transactions occurring in the ordinary course of HPSC's business.

(R) From and after the Effective Date of this Agreement, there will be no material depletion of the Purchased Assets, nor any adverse material change in the condition of the Purchased Assets, and the Utility System and all of the Purchased Assets will be properly maintained within the custom and usage of the industry up until and through closing.

(S) HPSC has not been cited nor notified, and is not, after due inquiry, aware of any violation of any governmental rule, regulation, permitting condition, or other governmental requirement of any type or nature applicable to the ownership, maintenance, construction or operation of the Utility System, nor is HPSC aware of any conditions which by reason of the passing of time or the giving of notice by the appropriate governmental agency would constitute such a violation.

(T) To the best of HPSC's knowledge and belief, the Real Property and Easements included in the Purchased Assets are in compliance with, and HPSC has not violated, in connection with its ownership, use, maintenance, or operation of the Utility System, 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, and the Resource Conservation and Recovery Act. HPSC has not authorized the placing or depositing of hazardous substances on the Real Property and Easements except, if at all, in accordance with applicable law, and HPSC has no actual knowledge of any

hazardous substance having been, or currently being, placed or deposited on said Real Property or Easements except in a lawful manner.

(U) There are no facts actually known to HPSC materially affecting the physical condition of the Utility System or Purchased Assets which are not readily observable or which have not been disclosed or provided to the County in connection with this Agreement or otherwise. County has completed its due diligence and agrees to purchase the assets in an "as is" condition.

(V) HPSC is in sole and exclusive possession of the Purchased Assets and HPSC at Closing shall deliver sole and exclusive possession of the Purchased Assets to the County.

(W) The information provided to the County by HPSC in conjunction with the Agreement, including the Appendices to this Agreement, are true and correct and do not omit any material fact necessary to make the information provided by HPSC not misleading to the County to the best of HPSC's knowledge, with the exception of the Excluded Assets.

ARTICLE III PURCHASE AND SALE OF ASSETS

SECTION 3.01. PURCHASE AND SALE COVENANT. At closing, the County shall purchase and HPSC shall sell and convey the Purchased Assets to the County upon the terms and subject to the conditions set forth in this Agreement.

SECTION 3.02. PURCHASED ASSETS.

(A) The Purchased Assets, exclusive of the Excluded Assets, shall include those assets, business properties, and rights both tangible and intangible, that HPSC owns or uses in the operation of the Utility System, or any interest in which it has or hereafter acquires, relating thereto, including, but not limited to the following:

(1) The Real Property and interests, whether recorded in the public records or not, in real property owned, used or controlled by HPSC.

(2) All water treatment plants, wells, transmission and distribution lines and mains, wastewater treatment plants, disposal facilities, collection lines and force mains, and pumping facilities of every kind and description whatsoever including without limitation, all trade fixtures, leasehold improvements, pumps, generators, controls, tanks, distribution or transmission pipes or facilities, valves, meters, service connections, and all other physical facilities and property installations used in the operation of the Utility System, together with an assignment of all existing and assignable third party warranties that relate to completed or in progress construction.

(3) All equipment, owned or leased vehicles, tools, parts, laboratory equipment, and other personal property owned or used by HPSC in connection with the operation of the Utility System, as set forth more particularly in Appendix M.

(4) All Easements used by HPSC in connection with the operation of the Utility System, as set forth more particularly in Appendix D.

(5) Except as noted in Appendix A, all current customer records and supplier lists, as-built surveys, record information and water, wastewater and reuse plans, plats, engineering and other drawings, designs, blueprints, plans and specifications, and operating manuals, calculations, and studies, and all other information controlled by or in the possession of HPSC that relates to the description and operation of the Utility System, inclusive of all pertinent computers, computer records and the lawful use of all computer software which is used in the operation of the Utility System for billing or customer record keeping purposes, all agencies for the supply of water; all water rights, flowage

rights and riparian rights, and all consents, grants, licenses, privileges and uses necessary to construct, maintain and operate plants and systems for the procuring, treatment, distribution, and transmissions of water to the customers of the Utility System, and the collection, transmission, treatment and disposal of wastewater from the customers of the Utility System; and all telephone numbers, post office boxes and FCC licenses. HPSC shall provide the County with the computers, software, and data used in the operation of the Utility System and will exert its best efforts to provide, or cause to be provided, all computer records within its possession and control and to cooperate with the County in the transfer of such data to the County's computer systems.

(6) All necessary transferable regulatory approvals subject to all conditions, limitations or restrictions contained therein; and all existing permits and other governmental authorizations and transferable approvals of any kind necessary to operate and maintain the Utility System according to all governmental requirements.

(B) The Purchased Assets shall be conveyed by HPSC to the County subject to the Permitted Exceptions, but otherwise free and clear of all liens or encumbrances.

(C) The Purchased Assets do not and shall not include the Excluded Assets.

SECTION 3.03. PURCHASE PRICE AND CONSIDERATION FOR TRANSFER.

(A). The initial purchase price and consideration for the transfer shall be Four Million Eight Hundred Thousand Dollars (\$4,800,000.00), subject to the terms, adjustments and prorations as provided herein, and shall be payable by wire transfer at closing.

(B). The additional, contingent purchase price and consideration for the transfer shall be as follows:

(1) From and after the closing, and for a period of seventeen (17) years following the date of closing, the County shall make future payments (“Future Payments”) for existing excess capacity in HPSC’s water and wastewater plants. Said amount of existing capacity has been agreed upon by the parties as equal to four hundred (400) equivalent residential connections (“ERCs”) of water capacity and four hundred (400) ERCs of wastewater capacity.

(2) Within ninety (90) days after the end of each County fiscal year, the County shall provide to HPSC an accounting of all water and wastewater ERCs actually connected to the Utility System since the date of the last accounting. For each water ERC identified in the annual accounting, the County shall pay to HPSC the amount of One Thousand Five Hundred Sixty-Four Dollars (\$1,564), and for each wastewater ERC identified in the annual accounting, the County shall pay to HPSC the amount of One Thousand Three Hundred Eleven Dollars (\$1,311).

(3) Upon delivery of the annual accounting, the County shall pay to HPSC the amount set forth in the annual accounting. The total amount of Future Payments ever to be paid by the County to HPSC shall be up to, but shall never exceed, the maximum sum of One Million One Hundred Fifty Thousand Dollars (\$1,150,000), exclusive of the setoffs for the Credit Developer Agreements.

(4) Upon expiration of the seventeen (17) year Futures Payments period, if HPSC has not yet been paid the full Future Payments, the County shall have no further obligation to HPSC with respect to Future Payments, whether or not HPSC has received the entire One Million One Hundred Fifty Thousand Dollars (\$1,150,000) in Future Payments.

**ARTICLE IV
CONDITIONS PRECEDENT TO CLOSING**

SECTION 4.01. ENGINEERING DUE DILIGENCE. The County has had the opportunity to obtain at its expense a due diligence investigation of the Utility System and the Purchased Assets. HPSC shall reasonably and timely cooperate with the County in its additional due diligence investigation up to the time of closing. The County is acquiring the Purchased Assets in "As Is" condition.

SECTION 4.02 . ISSUANCE OF BONDS. The County intends to finance the Purchase Price by the issuance of Triple A rated and credit enhanced insured revenue bonds payable solely from the net revenues of the HPSC Utility System, in a principal amount to fund the payment of the Purchase Price, after adjustments and prorations as provided herein, and make payment of the Transaction Costs at closing. The County's obligation to close the transactions contemplated in this Agreement shall be and is expressly conditioned upon its ability to issue such bonds at an average interest rate to maturity of five and a quarter percent (5.25%) or less. In the event the County, in its sole discretion, determines after diligent efforts that such bonds cannot be sold on or prior to the date of closing, each of the County and HPSC shall have the option of either (1) extending the closing for a period not exceeding thirty (30) days; (2) renegotiating the Purchase Price based upon the prevailing interest rates and bond market at the time of closing; or (3) canceling this Agreement by written notice to the other party and thereupon the County and HPSC shall be released by one another of all further obligations hereunder.

SECTION 4.03. OPERATIONS AND MANAGEMENT CONTRACT.

The County intends to enter into an operations and management contract with a qualified utility operations and management entity to operate and manage the utility assets acquired

pursuant to the terms of this Agreement. The County's obligation to close the transactions contemplated in this Agreement shall be and is expressly conditioned upon its ability to secure a written operations and management contract on terms acceptable to the County in its sole discretion on or before ten (10) days prior to the date of closing. In the event the County has not entered into an acceptable operations and management contract on or before ten (10) days prior to the date of closing, each of the County and HPSC shall have the right to cancel this Agreement by providing written notice to the other party, and thereupon the County and HPSC shall be released by one another of all further obligations hereunder.

SECTION 4 .04 . ENVIRONMENTAL ASSESSMENT.

(A) The County shall have the right to obtain an environmental assessment of the Real Property and Easements to be conveyed hereunder. The environmental assessment shall be in general accordance with the scope and limitations of the American Society for Testing and Materials Designation: E 1527-94 (Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process). Any such environmental assessment, together with a written declaration from an environmental consultant shall verify that the Real Property, Easements and other facilities to be conveyed hereunder are in compliance with all applicable state and federal environmental laws, and that the facilities, and property within one hundred (100) feet, surrounding the facilities are free of unlawful contamination and, if necessary, provide an itemized estimate of all costs associated with bringing the subject Real Property, Easements and facilities into compliance and the response cost for clean-up, removal and remediation.

(B) The environmental assessment is expected to be completed by the date of closing. The receipt of an environmental assessment shall be a condition precedent to closing, unless waived in writing by the County.

(C) If the environmental consultant's estimate of the aggregate costs associated with bringing the subject Real Property and facilities into compliance and the response costs for clean-up, removal, and remediation are in excess of Ten Thousand Dollars (\$10,000) combined, the excess of which Ten Thousand Dollars (\$10,000) HPSC determines not to pay, then the County shall have the option of: (1) accepting the property as it then is; or (2) canceling this Agreement by written notice to HPSC; and thereupon the County and HPSC shall be released by one another of all further obligations hereunder. If such costs are less than or equal to Ten Thousand Dollars (\$10,000), then the County may not cancel the Agreement pursuant to this condition.

SECTION 4.05. SURVEY. The County intends to order a survey of some or all of the Real Property and Easements being insured by the title insurance policies hereunder. Adverse matters disclosed by such a survey may be resolved by HPSC so that such matters may be removed as an exclusion to coverage on the title insurance commitment, at HPSC's expense (such expense to cure must be agreed upon by the County and such agreed upon expense shall be escrowed at the time of closing as a deduction from the Purchase Price.) If HPSC elects not to resolve such adverse matters at the time of the closing, the County shall have the option of either (1) accepting the property without regard to such adverse matters, or (2) canceling this Agreement by written notice to HPSC, and thereupon the County and HPSC shall be released by one another of all further obligations hereunder. Any escrow monies agreed upon by the County and HPSC shall be deposited with the Clerk of the County in an interest bearing account, to be used to reimburse the County for all actual and verifiable costs experienced by the County in connection with removing any defects within one year of the closing date, the remainder, if any, being returned to HPSC at the end of that year and any excess costs shall be paid by HPSC when

finally determined by the County; provided however, that the County shall not be entitled to reimbursement for such funds or interest earned thereon, until one hundred eighty (180) days after closing hereunder. This provision shall allow HPSC six (6) months after closing to minimize costs to cure such defects with its own resources.

SECTION 4.06. TITLE VERIFICATION.

(A) Within ten (10) days after entering into this Agreement, the County shall order a commitment for an ALTA form owner's title insurance policy. Time permitting, the title insurance commitment shall be delivered to the County, with a copy to HPSC not less than fifteen (15) days prior to the closing as provided for in Section 5.09(A) hereof. Subject to subsection (E) of this section, any encumbrances or defects in title must be removed from said commitment prior to closing and the subsequent title insurance policy issued free and clear of encumbrances, title defects, materialman's liens or other adverse matters, created or potentially created by HPSC with the exception of (1) taxes for the current year which are not yet due and payable, (2) the Permitted Exceptions, and (3) any encumbrance of or created by the County, including any instruments evidencing debt executed by the County at closing.

(B) The estate or interests to be insured by any title insurance policy shall consist of all Real Property.

(C) At closing, the owner's title insurance policy shall show marketable title to the insured estate or interests vested in the County. All charges for the issuance of the owner's title insurance commitment shall be part of the Transaction Costs.

(D) The County shall select a title insurer willing to issue the owner's title insurance policy in an amount determined by the County, for a premium which shall not exceed the minimum rate promulgated by the Florida Insurance Commissioner.

(E) Marketable title shall be determined according to applicable Title Standards adopted by authority of The Florida Bar and in accordance with law. The County shall have ten (10) days from receiving the title commitment and copies of all exceptions listed to examine it. If title is found defective or the title commitment reflects title exceptions other than those shown on the schedule attached hereto as Appendix B, the County shall within the ten (10) day period from receiving the title commitment, notify HPSC in writing specifying the defects. If the defects render the title unmarketable, HPSC may pursue removing the defects, so that such matters may be removed as an exclusion to coverage on the title insurance commitment, at HPSC's expense (such expense to remove such matters must be agreed upon by the County and such agreed upon expense shall be escrowed at the time of closing as a deduction from the Purchase Price.) If HPSC is unable or elects not to resolve such adverse matters at the closing, the County shall have the option of either (1) accepting the property and the escrow funds without regard to such adverse matters, or (2) canceling this Agreement by written notice to HPSC, and thereupon the County and HPSC shall be released by one another of all further obligations hereunder. Any escrow monies agreed upon by the County and HPSC shall be deposited with the Clerk of the County in an interest bearing account, to be used to reimburse the County for all actual and verifiable costs experienced by the County in connection with removing any defects within one year of the closing date, the remainder if any being returned to HPSC at the end of that year and costs in excess of the escrowed amount shall be paid by HPSC to the County when finally determined; provided however, that the County shall not be entitled to reimbursement for such funds or interest earned thereon, until one hundred eighty (180) days after closing hereunder. This provision shall allow HPSC six (6) months after closing to minimize costs to cure such defects with its own resources.

(F) Within five (5) days after entering into this Agreement, the County shall order a search of the Official Records of St. Lucie County, Florida and the records of the Secretary of State for uniform commercial code financing statements evidencing a secured interest in the Purchased Assets. Such search shall be part of the Transaction Costs. Time permitting, the results of such a search shall be delivered to the County, with a copy to HPSC not less than fifteen (15) days prior to closing. Any secured interests in the Purchased Assets must be paid off, released or terminated at HPSC's expense, or funds necessary to do so must be escrowed at the time of closing as a deduction from the Purchase Price. In the event all secured interests in the Purchased Assets are not paid off, released or terminated at or prior to closing (or sufficient funds therefor placed in escrow), the County shall have the option of either (1) accepting the property subject to such secured interests or (2) canceling this Agreement, thereupon the County and HPSC shall be released by one another of all further obligations hereunder.

SECTION 4.07. TRANSFER OF PERMITS. Within five (5) days after the execution of this Agreement, the County and HPSC shall commence all requisite action to apply for and cause the transfer of the utility permits and governmental approvals relating to the Utility System as of the date of closing, including cancellation of the Florida Public Service Commission certificates, and including operation of the Utility System, but not limited to the procedures referenced in Rule 62-4.120, Florida Administrative Code, 40 C.F.R. § 122.63(d) (1980) and 47 C.F.R. § 73 (1980). The County shall use all reasonable efforts to obtain the transfer of such permits and approvals. HPSC shall timely cooperate and provide all reasonably necessary assistance in this endeavor. Upon transfer, the County shall assume all obligations under the permits and governmental approvals necessary for the continued operation of the Utility System.

**ARTICLE V
CLOSING PROCEDURES**

SECTION 5.01. CLOSING DATE AND PLACE.

It is anticipated that the transactions contemplated by this Agreement will be closed on a mutually agreed upon date on or before July 15, 1999, or else the Agreement will be terminated. The date and time for closing shall be as recommended by the Bond Underwriters for the County. The date may be extended by the parties for a period of up to thirty (30) days upon the mutual written agreement of the parties. The closing shall be held at the offices of the County, or other location designated by the County.

SECTION 5.02. DOCUMENTS FOR THE CLOSING.

(A) HPSC shall furnish at closing a certificate reaffirming HPSC's representations and warranties hereunder; and HPSC shall furnish a non-foreign affidavit, a no-lien affidavit, a "gap" affidavit, a corporate incumbency certificate, a corporate good standing certificate from the State of Florida, a corporate resolution authorizing the execution of the Agreement, the warranty deed, and the bill of sale. HPSC shall also furnish at closing any necessary assignments, estoppel letters, releases, satisfactions, terminations and any corrective instruments as well as enter into a transfer and assignment agreement, as well as provide the certificates of title to all owned vehicles transferred to the County. HPSC shall also cause to be furnished at closing a non-foreign affidavit, a no-lien affidavit, a "gap" affidavit, and a warranty deed with respect to those certain parcels of real estate set forth in Appendix C and titled in the name of Holiday Pines, Inc.

(B) The County shall furnish at closing the closing statement, a certificate reaffirming the County's representations and warranties.

(C) From time to time after closing, each party hereto shall, upon request of the other, execute, acknowledge and deliver, or shall cause to be executed, acknowledged and delivered, all such further acts, deeds, assignments, transfers or other documentation for (1) confirming or correcting title in the name of the County or perfecting undisputed possession by the County of any or all of the Purchased Assets, including the establishment of record of utility easements for all water and wastewater utility facilities which are a part of the Utility System, or (2) otherwise fulfilling the obligations of the parties hereunder.

SECTION 5.03. RECORDING FEES AND DOCUMENTARY TAXES.

(A) Recording fees to record the deed and any other instruments necessary to deliver marketable title to the County shall be part of the Transaction Costs.

(B) The Purchased Assets are being purchased by the County for public purposes in lieu of eminent domain and therefore this transaction should be immune from documentary stamp tax, in accordance with the ruling in Department of Revenue v. Orange County, 620 So. 2d 991 (Fla 1993). If, however, this transaction is subsequently deemed taxable, the County and HPSC shall divide equally the cost of the documentary stamps to be affixed to any deed or other instruments of conveyance. The purchase price and consideration being given by the County hereunder constitutes the total consideration to be paid or given by the County in connection with the acquisition of the Purchased Assets and any consequences or impacts incurred by HPSC in connection therewith, including, without limitation, any severance damages, loss of business damages or impacts or costs or taxes to HPSC or any person or entity affiliated with HPSC.

SECTION 5.04. PROPERTY TAXES. HPSC shall be required to escrow with the St. Lucie County Tax Collector prorated taxes on the Real Property in accordance with section 196.295, Florida Statutes.

SECTION 5.05. ACCOUNTS RECEIVABLE AND CUSTOMER DEPOSITS.

(A) HPSC shall furnish to the County, at least ten (10) days prior to closing, a listing of its accounts receivable and customer deposits, by customer and individual amount and estimated unbilled revenue through the date of closing. HPSC shall assign to the County at closing the accounts receivable and all rights of collection therefor, together with the liabilities of customer deposits, in accordance with the following terms. At the closing, the County shall reimburse HPSC for the excess of the sum of outstanding accounts receivable over customer deposits at the time of closing that are not more than sixty (60) days in arrears plus 98% of all unbilled revenue for water and sewer services through the date of closing over the total amount of customer deposits including interest thereon. Should the total customer deposits including interest exceed the sum of outstanding accounts receivable and unbilled revenue, then HPSC shall reimburse the County at closing for any excess amount. Unbilled revenues shall be based upon the actual billings for the month of April and shall be prorated through the date of closing based on the number of days that have elapsed since the last billing period. All amounts received by HPSC through the date of closing for outstanding accounts receivable which were collected by HPSC subsequent to the date HPSC provided the County with the list of outstanding accounts receivable, shall be credited to the County at the closing. After the closing, HPSC shall endorse checks received for outstanding accounts receivable and post-closing billings which are payable to HPSC in favor of the County and promptly deliver such checks to the County. After closing, HPSC authorizes the County to endorse or deposit checks received and payable to HPSC with respect to water and wastewater service rendered to the utility's customers.

SECTION 5.06. CONNECTION CHARGES.

(A) Sums collected by HPSC in the ordinary course of business for connection charges, including capacity and deferred standby fees for which service has been actually furnished through physical connection to the Utility System prior to the closing date, shall remain HPSC's sole and separate property with no claim of the County.

(B) All sums collected from and after the date of closing relative to the use of, or connection to, the Utility System shall be paid to the County, with no claim of HPSC therefor.

(C) From and after the Effective Date, HPSC shall not enter into any agreement, without prior written consent of the County, which would obligate the County to provide service upon closing to any customer who is not physically connected to the Utility System prior to closing. The County shall not unreasonably withhold its consent provided such agreement does not provide for payment of any charges, rates or fees, other than refundable inspection or application fees, prior to physical connection to the Utility System.

SECTION 5.07. PROFESSIONAL FEES; COSTS.

(A) Each party shall be responsible for securing its own counsel for representation relative to the negotiation of this Agreement, and all other matters associated with performance, cancellation or closing hereunder; unless otherwise specified herein, and each party shall be responsible for the payment of the fees of its own attorneys, bankers, engineers, accountants, and other professional advisors or consultants in connection therewith.

(B) In any litigation arising out of this Agreement, each side in such litigation shall bear its own attorney's fees and costs.

(C) The County shall be responsible for all Transaction Costs.

SECTION 5.08. RISK OF LOSS. At all times prior to and through the day of closing, HPSC shall maintain adequate fire and extended insurance coverage for the cost of any repairs to the Purchased Assets that may be required by casualty damage. The risk of loss during the said period of time shall fall upon HPSC. The risk of loss shall pass to the County at closing.

SECTION 5.09. PROCEEDS OF SALE; CLOSING PROCEDURE.

(A) In order to secure title insurance coverage against the existence of adverse matters recorded during the period of time between the effective date of the title insurance commitment and the date of recording of the documents creating the estate to be insured, HPSC and the County agree that the closing agent for the closing may also be the title insurer, or the title insurer's agent, selected by the County to issue the owner's title insurance policy insuring the Real Property.

(B) HPSC shall effect the transfer of the Purchased Assets to the County at the closing. The following documents shall be in final form, together with any exhibits or appendices thereto:

- (1) Statutory Warranty deeds, with warranties of title for the conveyance of all Real Property to be conveyed hereunder, including by Holiday Pines, Inc.;
- (2) Conveyance instruments for all Easements;
- (3) A transfer and assignment agreement covering all other interests in the Purchased Assets, together with a general assignment of all contracts, agreements, permits and approvals as provided for herein;
- (4) Bill of Sale or other documents of assignment and transfer, including vehicle certificates of title, if any, with warranties of title to all Purchased Assets;
- (5) A Florida Department of Revenue Form DR-219 completed in a manner satisfactory to the County for both HPSC and Holiday Pines, Inc.

(6) Any affidavits, certificates, estoppel certificates, corrective instruments, releases, satisfactions or terminations necessary to close; and

(7) The original or a certified copy of all permits, governmental authorizations and approvals.

(C) The disbursement of proceeds shall be at the direction of the title insurer, or its agent (in accordance with a closing and disbursement statement executed by both parties), in order to secure coverage against adverse matters or defects in title which are recorded during the period of time between the effective date of the title insurance commitment and the date of recording of the document creating the estate or interest to be insured.

(D) Within ninety (90) days after closing, upon written request by the County, HPSC shall reimburse the County or pay a prorated portion of any charge, fee or rate for services furnished to the Utility System through the date of closing for water, wastewater, power, telephone, solid waste collection, pest control, sludge hauling or general maintenance and reconcile any accounts receivables, customer deposits or unexpended application fees or other charges not otherwise considered or accounted for at the time of closing. Within 90 days after closing, upon written request by HPSC the County shall reimburse HPSC or pay a prorata portion of any charge, fee or rate for services furnished to the Utility System subsequent to the date of closing for water, wastewater, power, telephone, solid waste collection, pest control, sludge hauling or general maintenance and reconcile any accounts receivables, customer deposits or unexpended application fees or other charges not otherwise considered or accounted for at the time of closing. Such post-closing reimbursement and reconciliation process may be extended by either party for thirty (30) days upon written notice to the other party.

**ARTICLE VI
GENERAL PROVISIONS**

SECTION 6.01. RIGHT TO ENTER. Prior to closing, the County, and its consultants and invitees shall have the right, at any reasonable time with prior notice to HPSC, to enter upon HPSC's property to inspect the Utility System and the Purchased Assets, to familiarize itself with day-to-day operations, to review the operational practices of HPSC, and to ensure compliance with any and all federal, state and local regulatory requirements.

SECTION 6.02. CONDUCT BETWEEN EXECUTION AND CLOSING.

(A) Upon the execution of this Agreement, HPSC shall continue to provide water and wastewater service to its current customers in the ordinary and usual manner.

(B) HPSC shall prudently maintain the Utility System to ensure its proper operation through closing.

SECTION 6.03. TIME. Time periods specified in this Agreement shall expire at midnight on the date stated unless the parties agree in writing to a different date or time. Any time period provided for herein which ends on Saturday, Sunday or a legal holiday shall extend to midnight on the next business day.

SECTION 6.04. APPLICABLE LAW; JURISDICTION AND VENUE.

(A) This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

(B) The parties to this Agreement expressly consent to the jurisdiction of and agree to suit in any court of general jurisdiction in the State of Florida, whether state, local or federal, and further agree that all federal, state and local venue shall lie in St. Lucie County, Florida.

SECTION 6.05. FAILURE OF PERFORMANCE.

(A) A breach of this Agreement shall mean a material failure to comply with any of the provisions of this Agreement. If any party breaches any obligation herein, then, upon receipt of written notice by the non-breaching party, the breaching party shall proceed diligently and in good faith to take all reasonable actions to cure such breach and shall continue to do so until such breach is cured.

(B) Unless otherwise provided herein, the parties to this Agreement may proceed at law or in equity to enforce their rights under this Agreement.

SECTION 6.06. NOTICE.

(A) All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when hand delivered, facsimile transmitted (with proof of receipt and a hard copy to follow by mail) or mailed by registered or certified mail, postage prepaid, to the parties at the following addresses:

To County: Daniel S. McIntyre, Esq.
County Attorney
St. Lucie County, Florida
2300 Virginia Avenue
3rd Floor Administrative Complex
Ft. Pierce, FL 34982

with a copy to: Greenberg Traurig, P.A.
777 South Flagler Drive, Suite 300 E
West Palm Beach, Florida 33401
Attn: Phillip C. Gildan, Esquire
Fax: 561-655-6222
Phone: 561-650-7967

To HPSC: Thomas J. Brown, President
Holiday Pines Service Corp.
6105 Memorial Highway, Suite C
Tampa, FL 33615-4557

(B) Any written notice given to one person in subsection (A) of this section shall also be copied and provided to all other persons identified in subsection (A).

(C) The parties may, by notice in writing given to the others, designate any future or different addresses to which the subsequent notices, certificates or other communications shall be sent. Any notice shall be deemed given on the date such notice is delivered by hand or by facsimile transmission or five (5) days after the date mailed (certified mail, return receipt requested).

SECTION 6.07. ASSIGNMENT.

Except as expressly provided for herein, neither HPSC nor the County shall have the power or authority to assign this Agreement or any of their rights, duties or obligations hereunder to a third party, and this Agreement shall be construed as solely for the benefit of the County and HPSC and their successors by law, and no claim or cause of action shall accrue to or for the benefit of any other party by reason hereof.

SECTION 6.08. AMENDMENTS AND WAIVERS. No amendment, supplement, modification or waiver of this Agreement shall be binding unless executed in writing by both parties hereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provision of this Agreement, whether or not similar, unless otherwise expressly provided.

SECTION 6.09. ENTIRE AGREEMENT. This Agreement is the entire agreement between the parties and supersedes all prior and contemporaneous agreements, understandings,

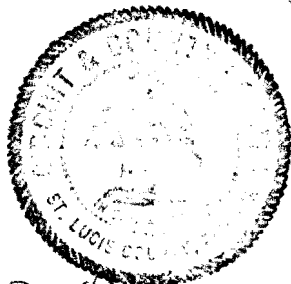
negotiations and discussions of the parties, whether oral or written, pertaining to the subject matter hereof, and there are no warranties, representations or other agreements between the parties in connection with the subject matter hereof, except as specifically set forth herein. Upon execution by both parties, the County shall provide HPSC three complete certified copies of this Agreement, together with copies of all appendices hereto.

IN WITNESS WHEREOF, the County and HPSC have caused this Agreement to be duly executed and entered into on the date first above written.

ST. LUCIE COUNTY, FLORIDA

BY: Paula A. Jones,
its CHAIRMAN, BOARD OF COUNTY
COMMISSIONERS

[Signature]
Clerk of St. Lucie County



HOLIDAY PINES SERVICE CORP., a Florida Corporation

BY: [Signature]
its Pres

ATTEST:
[Signature]
its Secretary

APPROVED AS TO FORM
AND LEGAL COUNSEL:
[Signature]
COUNTY ATTORNEY