

GEORGE HENSLEY, JR., MAYOR

COUNCIL:

JOHN GRIFFIN, PRESIDENT
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THE CITY OF SEBRING

UTILITIES DEPARTMENT

321 N. MANGO STREET
SEBRING, FL 33870
(863) 471-5112
(863) 471-5148(FAX)

DISTRIBUTION
09 OCT -9 1:00 PM
KATHY HALEY, CMC
CITY CLERK/TREASURER
SCOTT NOETHLICH
CITY ADMINISTRATOR
MARTY ROEPSTORFF
UTILITIES DIRECTOR

October 6, 2009

Office of Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

RECEIVED-FPSC
09 OCT -9 AM 9:59
COMMISSION
CLERK

090471-SU

Dear Sirs;

On June 29, 2009, the Tenth Judicial Circuit Court appointed the City of Sebring as the Receiver of the Landmark sanitary sewer system. This Court action also approved the pending sale of the Landmark system to the City of Sebring. The City is currently working to interconnect the Landmark system to the City's wastewater collections system. Once the interconnection is complete (approximately 90 days), the City will close on the purchase of the Landmark sanitary sewer system.

Please find enclosed a completed Application for Transfer to Governmental Authority for the Landmark Utilities Inc wastewater system.

Please let me know if you have any questions or need additional information.

Sincerely,



Bob Boggus
Administrative Coordinator

COM _____
ECR 2
GCL 1
OPC 1
RCP _____
SSC _____
SGA _____
ADM _____
CLK None

DOCUMENT NUMBER-DATE
10412 OCT -9 8
FPSC-COMMISSION CLERK

APPLICATION FOR TRANSFER TO GOVERNMENTAL AUTHORITY

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

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

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

PART I APPLICANT INFORMATION

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

Landmark Utilities, Inc.

Name of utility

(863) 441-3004 () N/A

Phone No. Fax No.

733 Lake Blue Drive

Office street address

Lake Placid FL 33852

City State Zip Code

N.A.

Mailing address if different from street address

N.A.

Internet address if applicable

DOCUMENT NUMBER-DATE
10412 OCT-98
FPSC-COMMISSION CLERK

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

David Plank	(863) 441-3004	
Name	Phone No.	
733 Lake Blue Drive		
Street address		
Lake Placid	FL	33852
City	State	Zip Code

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

City of Sebring		
Name of utility		
(863) 471-5100	(863) 471-5142	
Phone No.	Fax No.	
368 South Commerce Avenue		
Office street address		
Sebring	FL	33870
City	State	Zip Code
N.A.		
Mailing address if different from street address		
www.mysebring.com		
Internet address if applicable		

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

Bob Boggus, Administrative Coordinator	(863) 471-5112 Ext. 221	
Name	Phone No.	
321 North Mango Street		
Street address		
Sebring	FL	33870
City	State	Zip Code

PART II FINANCIAL INFORMATION

- A) Exhibit 1 - A copy of the contract pursuant to Rules 25-30.037(4)(c) and (d), Florida Administrative Code.
 - B) Exhibit N/A - A statement regarding the disposition of customer deposits and the accumulated interest thereon.
 - C) Exhibit N/A - A statement regarding the disposition of any outstanding regulatory assessment fees, fines or refunds owed.
 - D) Exhibit N/A - A statement that the buyer (governmental authority) obtained from the utility or the Commission the utility's most recent available income and expense statement, balance sheet and statement of rate base for regulatory purposes and contributions-in-aid-of-construction.
 - E) Indicate the date on which the buyer proposes to take official action to acquire the utility: June 29, 2009
-

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

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

PART III CERTIFICATION

A) **TERRITORY DESCRIPTION**

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

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

B) **TERRITORY MAPS**

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

C) **TARIFF SHEETS**


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

PART IV AFFIDAVIT

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

BY: *Bob Boggus*
Applicant's Signature
Bob Boggus
Applicant's Name (Typed)
Administrative Coordinator
Applicant's Title *

Subscribed and sworn to before me this 5th day of October, 2009 by Bob Boggus who is personally known to me P.K. or produced identification _____.
(Type of Identification Produced)

Ruth Napier
Notary Public's Signature


Print, Type or Stamp Commissioned
Name of Notary Public

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

Exhibit 1

IN THE TENTH JUDICIAL CIRCUIT COURT
IN AND FOR HIGHLANDS COUNTY, FLORIDA

HIGHLANDS COUNTY, a political subdivision of
the State of Florida,

Plaintiff,

vs.

Case No.: 09-766-GCS

LANDMARK UTILITIES, INC. d/b/a
Thunderbird Hills Wastewater Treatment Plant,

Defendant.

_____ /

ORDER APPOINTING RECEIVER
AND AUTHORIZING SALE

This matter having come before the Court upon the Petition of Highlands County, and the Court after hearing the advice and recommendations of Counsel, and being fully advised in the premises, hereby finds:

Defendant Landmark Utilities, Inc. formerly known as Landmark Enterprises, Inc., operates a Wastewater Treatment Plant known as the Thunderbird Hills Wastewater Treatment Plant within the jurisdictional boundaries of Highlands County, pursuant to the provisions of Chapter 367, Florida Statutes. At the time of this action, that Wastewater Treatment Plant is operating without a Department of Environmental Protection Operating Permit. On or about April 23, 2008, Defendant Landmark Utilities, Inc., formally filed a Notice of Abandonment for the Wastewater Treatment Plant, pursuant to Section 367.165, Florida Statutes.

The City Council of the City of Sebring has taken formal action to accept appointment of the City of Sebring as Receiver for the Wastewater Treatment System of Defendant Landmark Utilities, Inc. and has entered into a contract to purchase the Wastewater Treatment System

contingent upon certain matters. Copies of the contract and addenda are attached hereto as Composite Exhibit "A."

SECTION 1. APPOINTMENT OF RECEIVER AND TERM. The City of Sebring is hereby appointed to act as Receiver for Defendant's Wastewater Treatment System (hereinafter referred to as the Wastewater Treatment System). The Receiver has party status and shall be entitled to receive copies of all pleadings, orders or other documents subsequently filed in this matter. The term of the receivership shall begin on the date of the Order and shall continue until such time as the Receiver sells or otherwise disposes of the property of the Wastewater Treatment System, and connects the Wastewater Treatment System, and/or the customers receiving service from the Wastewater Treatment System, to a regional or central wastewater utility, pursuant to paragraphs (9), (10), and (11) of this Order. Upon termination and expiration of the receivership as provided herein, the Receiver shall be released from all further obligations to operate and maintain the Thunderbird Hills Wastewater Treatment Plant.

SECTION 2. SURRENDER OF PROPERTY, ASSETS, DOCUMENTS, AND FACILITIES. Unless specifically authorized by subsequent order of this Court, the Defendant shall not sell, transfer, or dispose of any of the records, properties, assets, or liabilities of Landmark Utilities, Inc., except to produce, turn over, and surrender those records, properties, assets, and liabilities to the Receiver as directed in this Section 2. On or before June 1, 2009, the Defendant shall: (1) turn over and produce to the Receiver all customer account records, contracts, agreements, correspondence, legal pleadings, business records, easements, and any other documents related to the Wastewater Treatment System, including the Thunderbird Hills Wastewater Treatment Plant, to include the property, assets and liabilities associated therewith in order that the Receiver may operate and maintain the Wastewater Treatment System, and (2)

surrender control of all real and personal property to the Receiver. Upon entry of this Order, the Defendant shall turn over and produce all bank accounts, bank account records, customer deposits, cash, and accounts receivable balances to the Receiver. If the Defendant fails to deliver all documents, property, assets, and access to the facilities and lands such that the Receiver can operate the Wastewater Treatment System, the Receiver may, at its option, elect to refuse to act as Receiver. In such event, Highlands County shall, upon written notice of such refusal, proceed to have a replacement receiver appointed by this Court.

SECTION 3. RECEIVER'S POWERS. Once the documents from the Wastewater Treatment System and the real and personal property associated therewith are surrendered to the Receiver in accordance with Section 2. above, the Receiver shall send written notice of receipt thereof to this Court, shall indicate its acceptance of appointment as Receiver, and shall commence operating the Thunderbird Hills Wastewater Treatment Plant until such time as provided for in Section 1. and continue the operation and maintenance of utility service to the customers of the Wastewater Treatment System. In order to effectively carry out its responsibilities under this Order, the Receiver shall have the following powers and authority:

(1) to provide and maintain sewer service, including permitting new connections to the Wastewater Treatment System, in the service area as described in any Certificate of Service, issued by the Florida Public Service Commission or for as long as the Public Service Commission Certificate may apply;

(2) to make extensions, expansions, repairs, replacements, and improvements to the Wastewater Treatment System as necessary;

(3) to fix and collect rates, fees, charges, and deposits for all services provided by the Wastewater Treatment System and the Receiver in accordance with applicable state law

(including, without limitation, the right to a fair rate of return on any such rates, fees, and charges);

(4) to borrow or advance money, and to pledge or encumber the facilities, assets and revenues of the Wastewater Treatment System for the repayment thereof;

(5) to enter into contracts with any public agency or any private entity providing for or relating to the operation and maintenance of the Wastewater Treatment System or the connection of the customers to any other public or private sewer system;

(6) to accept any gifts, grants, or contributions in kind in connection with the management, operation, and maintenance of the Wastewater Treatment System;

(7) to retain and pay the fees, costs, and salaries of accountants, architects, engineers, attorneys, employees, and other professional consultants as necessary or desirable in the management, operation, or maintenance of the Wastewater Treatment System and to ensure compliance with all the provisions of the Order for the rates, fees, and charges authorized under this Section 3;

(8) to pay from the revenues collected from the customers of the Wastewater Treatment System, all necessary and reasonable operating expenses (including payment on debt secured by the facilities, assets, and revenues of the Wastewater Treatment System and the costs and expenses contemplated in this Section 3) in a manner designed to continue the efficient, effective, and environmentally sound operation of the Wastewater Treatment System, to include the trucking of excess sewage flows to prevent drainfield leaching;

(9) to connect the customers of the Wastewater Treatment System to the City of Sebring System or any other public or private sewer system with adequate sewer service capacity

to accept the customers of the Wastewater Treatment System in accordance with and subject to applicable requirements and payment of fees to said public or private sewer system;

(10) upon connection as provided in paragraph (9) of this Section 3, the Receiver, with written approval from this Court, may discontinue the operation of the Thunderbird Hills Wastewater Treatment Plant and dispose of all lands, facilities, assets, and revenues to satisfy all outstanding obligations of the Wastewater Treatment System. The Receiver shall give due notice to all creditors and customers of the Wastewater Treatment System of its Receivership, and prior to any disposal of the facilities;

(11) close on the contract with the City of Sebring attached hereto if the contingencies set forth therein have been satisfied;

(12) to sue or be sued, to implead or be impleaded, to complain and defend in any court, and to seek legal or equitable relief in accordance with applicable federal, state and local laws;

(13) to apply for and obtain all necessary federal, state, and local governmental permits, certificates, licenses, or other approvals in order to operate and maintain the Wastewater Treatment System; and

(14) to perform generally any other lawful acts necessary or desirable to the express powers and authority granted and imposed herein.

SECTION 4. CONTINUING JURISDICTION AND APPROVAL OF SALE. This Court shall retain jurisdiction in this cause to enter such orders or take any such action as it deems appropriate. The Court hereby approves the contract for sale of the Wastewater Treatment System to the City of Sebring as shown on Composite Exhibit "A", and authorizes the closing of the sale pursuant to the contract. Upon closing of the sale of the Wastewater

Treatment System to the City of Sebring pursuant to that contract and connection of the Wastewater Treatment System, and/or the customers receiving service from the Wastewater Treatment System, to a regional or central wastewater utility, pursuant to paragraphs (9) and (10) of Section 3 of this Order, this Order shall terminate and expire, and this matter shall be closed. The Receiver shall file notification of the sale with this Court no later than ten (10) business days following the date of any such sale. Should the sale to the City of Sebring not close, the City of Sebring may file a Notice of Resignation of Receiver with this Court and the terms of Section 367.165, Florida Statutes, shall apply.

SECTION 5. IMMUNITY FROM LIABILITY AND VIOLATIONS. As consideration for Receiver assuming the responsibility for the continued operation and maintenance of the Wastewater Treatment System, the Receiver and its agents, employees and contractors are hereby declared to be held harmless and not legally responsible for any or all claims, liability, demands, damages, expenses, fees, fines, penalties, suits, proceedings, actions and fees, including attorneys' fees, that have arisen or may arise out of the past design, construction, operation, and maintenance of the Wastewater Treatment System. This immunity shall include but not be limited to immunity from injury to persons, damage to property or property rights, or violation of any governmental law, rule, regulation, or requirement that may arise from the design, construction, operation, or maintenance of the Wastewater Treatment System or extension thereof to any other regional or central wastewater utility.

SECTION 6. DEFENDANT'S LIABILITY. Defendant shall remain liable to the extent provided by applicable law for any claims, violations, demands, penalties, suits, proceedings, actions or fees occurring prior to the appointment and acceptance by the Receiver.

SECTION 7. RECEIVER'S SEPARATION OF FUNDS.

Receiver is hereby directed by this Court to maintain a separate account and records for the management of the Wastewater Treatment System. Additionally, this Court hereby directs that the revenues from the Wastewater Treatment System are to be considered the revenues of the Receivership, and not the revenues of the Defendant. Any revenues of the Receivership not expended during the term of the Receivership shall be transferred to the ultimate purchaser of the System, not to the Defendant.

SECTION 8. RECEIVER'S OBLIGATIONS FOR OPERATION.

The Receiver in this cause is hereby directed to operate the Wastewater Treatment System until the Wastewater Treatment System is disposed of as provided in this Order. The Wastewater Treatment System shall be operated by the Receiver in such a manner so as to provide efficient, effective, and environmentally sound continuous service to the customers of the Wastewater Treatment System during the term of the Receivership. In carrying out its responsibilities under this Order, the Receiver is not obligated to expend funds other than revenues of the Receivership and other funds received by the Receiver pursuant to Section 3 of this Order.

Ordered this 29, day of June, 2009.

/s/ OLIN W. SHINHOLSER

Olin W. Shinholser, Circuit Judge

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Order Appointing Receiver and Sale has been furnished by U.S. mail, postage paid this 29 day of June, 2009, to:

J. Ross Macbeth, Esq.
Attorney for Highlands County
2543 US 27 South
Sebring, FL 33870

Martin S. Friedman, Esq.
Rose, Sundstrom & Bentley, LLP
2180 W. State Road 434, Suite 2118
Longwood, FL 32779

Robert S. Swaine, Esq.
Swaine & Harris, P.A.
425 South Commerce Avenue
Sebring, FL 33870



Judicial Assistant

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