

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Application for Transfer of Assets  
Of Exempt Utility and for Amendment of  
Certificate 465-S in Lake County by  
Utilities, Inc. of Florida

Docket No. 20170174-SU

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**NOTICE OF WITHDRAWAL OF CITY OF CLERMONT'S OBJECTION TO  
APPLICATION FOR TRANSFER OF ASSETS OF EXEMPT UTILITY AND FOR  
AMENDMENT OF CERTIFICATE 465-S BY UTILITIES, INC. OF FLORIDA**

Petitioner, the CITY OF CLERMONT, FLORIDA (the "CITY"), by and through its undersigned counsel, hereby files its Notice of Withdrawal of the Objection to the Application for Transfer of Assets of Exempt Utility and for Amendment of Certificate 465-S by UTILITIES, INC. OF FLORIDA filed on September 21, 2017, pursuant to the settlement of the parties as set forth in the attached First Amendment to Settlement Agreement.

Respectfully submitted,

/s/ Amber E. Ashton  
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Attorneys for City of Clermont

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the foregoing document has been furnished by electronic mail and U.S. Mail to Martin S. Friedman, Esq., Friedman & Friedman, P.A., 766 N. Sun Drive, Suite 4030, Lake Mary, FL 32750 (mfriedman@ff-attorneys.com) on this 17<sup>th</sup> day of September, 2018.

/s/ Amber E. Ashton  
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Attorneys for City of Clermont

## **FIRST AMENDMENT TO SETTLEMENT AGREEMENT**

THIS FIRST AMENDMENT TO SETTLEMENT AGREEMENT ("Settlement Agreement") is made and entered into this 13<sup>th</sup> day of ~~August~~<sup>September</sup>, 2018, by and between the City of Clermont (hereinafter the "City"), and Utilities, Inc. of Florida (the "UIF") (hereinafter the City and UIF may individually be referred to as "Party" and cumulatively referred to as the "Parties").

WHEREAS, the Parties previously entered into a Settlement Agreement dated August 26, 2003 (the "Settlement Agreement"), regarding the Parties respective rights to provide certain utility services in Lake County, Florida;

WHEREAS, UIF filed an Application for Transfer of Assets of Exempt Utility and for Amendment of Certificate 465-S in Lake County, with the Florida Public Services Commission, Docket No. 20170174-SU, ("Application") relating to the transfer of wastewater utilities in the neighborhood commonly referred to as Barrington Estates;

WHEREAS, a dispute arose between the City and UIF as to which Party has the right under the Settlement Agreement to provide wastewater utility services in the Barrington Estates neighborhood;

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained in this First Amendment to the Settlement Agreement ("First Amendment"), and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each of the Parties hereto, and in order to consummate the objectives aforementioned, it is hereby agreed as follows:

1. **Meter Reading Credit.** Upon the closing on the purchase of the Barrington wastewater system, UIF shall provide meter reading data to the City for those water customers of UIF that receive wastewater service from the City and that are located within the City's wastewater service area, for a period of five (5) years without charge and at no cost to the City. UIF shall provide meter reading data, pursuant to the Meter Reading Agreement attached hereto as Attachment "A." Notwithstanding any term in the Meter Reading Agreement to the contrary, and consistent with its obligations hereunder, UIF further agrees not to exercise any termination option that may be available for five (5) years following execution of the Meter Reading Agreement absent a material breach of the Meter Reading Agreement by the City.

2. **Withdrawal of Objection.** In exchange for the Meter Reading Credit set forth above and compliance with this First Amendment, the City shall withdrawal its Objection to Application of Transfer of Assets of Exempt Utility and for Amendment of Certificate 465-S by Utilities, Inc. of Florida dated September 21, 2017, within five (5) days of the effective date of this Agreement, and shall take such steps as are reasonably necessary to inform the Florida Public Services Commission that it will not contest the requested transfer.

3. **No Admission of Liability.** This Agreement is entered into by the parties for the purpose of compromising and fully settling the disputes between them. This Agreement does not constitute, and shall not be construed as, an admission by either party of the truth or validity of any claims asserted or contentions advanced by the other party.

4. **Reaverment and Reconfirmation of Settlement Agreement.** Except for this First Amendment, the Settlement Agreement shall remain in full force and effect. Except as modified by this First Amendment, the Settlement Agreement remains a valid and subsisting agreement of the Parties. This Agreement shall not be construed as a waiver of any rights, claims, or interest of the Parties may have under the Settlement Agreement except as set forth herein.

5. **Construction of Agreement.** This Agreement shall be construed as a whole according to its fair meaning and as if both parties jointly prepared it. Any uncertainty or ambiguity in the Agreement shall not be strictly interpreted or construed against either party.

6. **Severability.** The provisions of this Agreement are severable. If any portion, provision, or part of this Agreement is held, determined, or adjudicated to be invalid, unenforceable or void for any reason whatsoever, each such portion, provision or part shall be severed from the remaining portions, provisions or parts of this Agreement and shall not affect the validity or enforceability of any remaining portions, provisions or parts.

7. **No Oral Modification.** This Agreement shall not be altered, amended, or modified by oral representation made before or after the execution of this Agreement. All modifications must be in writing and duly executed by all parties.

8. **Knowing and Voluntary Assent.** The parties acknowledge that this Agreement is executed voluntarily by each of them, without any duress or undue influence on the part of, or on behalf of any of them. The parties further acknowledge that they have had the opportunity for representation in the negotiations for, and in the performance of, this Agreement by counsel of their choice and that they have read this Agreement and/or have had it fully explained to them by their counsel and that they are fully aware of the contents of this Agreement and its legal effect.

9. **Final and Binding Agreement.** The parties acknowledge that this Agreement is a full and final accord and satisfaction and shall be binding upon and inure to the benefit of the parties and their respective heirs, executors, administrators, agents, representatives, successors, and assigns.

10. **Complete Agreement.** This Agreement constitutes a single, integrated, written contract expressing the entire understanding and agreement between the parties, and the terms of the Agreement are contractual and not merely recitals. No other agreement, written or oral, expressed or implied, exists between the parties with respect to the subject matter of this Agreement, and the parties declare and represent that no promise, inducement or other agreement not expressly contained in this Agreement has been made conferring any benefit upon them.

11. **Counterparts and Facsimile Signatures.** This Agreement may be executed in any number of counterparts and with facsimile signatures, and all such counterparts shall be construed together and constitute a single form of this Agreement.

12. **Headings and Captions.** The headings and captions inserted into this Agreement are for convenience only and in no way define, limit or otherwise describe the scope or intent of this Agreement, or any provision hereof, or in any way affect the interpretation of this Agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date set forth below.

City of Clermont

Gail L. Ash

By: Gail L. Ash

Its: Mayor

Utilities, Inc. of Florida

John P. Hoy

By: JOHN P. HOY

Its: PRESIDENT

ATTACHMENT "A"

**AGREEMENT  
BETWEEN THE CITY OF CLERMONT AND UTILITIES, INC. of FLORIDA  
FOR METER-READING SERVICES**

**THIS AGREEMENT** is made and entered into by and between the City of Clermont, (hereinafter "City") and Utilities, Inc. of Florida, a Florida corporation (hereinafter, "Utility").

**RECITALS**

**WHEREAS**, the City provides sanitary sewer-only service for certain customers that receive water service from Utility; and

**WHEREAS**, City and Utility agree that in the interest of efficiency and accuracy, it is in the best interests of each party's respective customers that the parties enter into this agreement to consolidate meter reading activities; and

**WHEREAS**, City and Utility desire to enter into this agreement whereby Utility shall provide water usage information to City for City's use in calculating the cost to charge customers for sanitary sewer services as identified in this agreement.

**NOW, THEREFORE**, in consideration of the foregoing recitals, promises and mutual covenants contained herein, the parties hereto agree as follows:

1. **Recitals.** The foregoing recitals are true and correct and incorporated herein.
2. **Scope of Services.** Utility shall provide meter reading services as more particularly described in Exhibit "A" attached hereto and incorporated herein.
3. **Customers.** Utility shall provide the services described herein for the customer street addresses listed in Exhibit 'A' attached hereto and incorporated herein. City shall have the right to submit additional customer addresses, provided they are located within Utility's service area boundary, at any time during the term of this agreement and upon thirty (30) days prior written notice, whereupon Utility shall provide the described services for each additional customer address.
4. **Compensation.** City agrees to pay Utility to perform the agreed-upon services in the amount as

set forth in Exhibit "B" attached hereto and incorporated herein. The parties do further agree:

a. As a condition precedent to receiving payment, Utility shall provide to City an invoice.

b. City shall pay all invoices as set forth in Exhibit "A" within thirty (30) days of receipt from Utility. In the event that City disputes any invoice submitted, it shall advise Utility in writing and shall pay such invoice subject to subsequent resolution of the dispute. Neither the City's reviewer acceptance of, nor payment for, any services provided hereunder shall be construed as a waiver of any rights under this Agreement.

c. Utility agrees to assign competent individuals to perform the assigned responsibilities and duties timely, reliably, to the best of their ability, and in the best interest of Utility and City during the term of this Agreement. City may request Utility to reread specific meters. In the event that the request to reread meters is shown by City to be due to Utility's error, omission or negligence, City will not be obligated to pay for the re-performing of the services. Otherwise, Utility will be entitled to additional compensation as identified in Exhibit "B" of the Agreement.

5. **Authorization to Provide Services.** Utility shall be authorized to provide meter reading services as set forth above upon execution of the Agreement by both parties. Thereafter, Utility shall perform the services contemplated herein until the Agreement is terminated as described herein.

6. **Term.** This Agreement shall take effect when executed by both parties and shall continue, until such time as the agreement is terminated as provided in Section 7 below.

7. **Termination.**

a. The non-breaching party upon breach of the terms and conditions contained herein may terminate this Agreement upon written notice to the other party.

b. Either party shall have the right to terminate the agreement, for any reason, upon one-hundred eighty (180) days prior written notice to the non-terminating party. In the event of termination pursuant to this section 7b, Utility shall be compensated in accordance with the services completed as of the date of the termination and as set forth in the Scope of Services. However, Utility may not terminate this Agreement during the first five (5) years, except for City's breach.

8. **Responsibilities of Utility.** In addition to all other responsibilities provided herein, Utility expressly understands and agrees that, through the below-referenced assigned personnel in section 10, it shall perform all of the services required in the Scope of Services, and further agrees as follows:

a. Utility may retain subcontractors to provide any of the services contemplated herein. Said subcontractors shall be used at the sole expense of Utility, under the direct supervision of Utility and with the prior written approval of City.

b. City expressly acknowledges that the meter reading records acquired or created by Utility in connection with the services provided hereunder shall remain at all times the property of Utility; however, Utility shall preserve and maintain said records in accordance with its records retention policy and shall promptly provide copies of said meter reading records (to the extent they have been retained under Utility's record retention policy) to City upon termination of this Agreement.

9. **Authorized Representative of the City.** During the term of this Agreement, the City's representative authorized to act on behalf of the City, as provided by law, with respect to this Agreement shall be the City Manager.



10. **Warranty/Limitation of Liability.** Utility warrants to City that services performed under this Agreement will: (a) be performed in a professional and workmanlike manner in accordance with applicable commercial standards; and (b) comply with any applicable law, rule, or regulation. THE FOREGOING WARRANTY IS UTILITY'S SOLE AND EXCLUSIVE WARRANTY TO CITY. ANY CLAIM BY CITY UNDER THE FOREGOING WARRANTY MUST BE MADE WITHIN SIX (6) MONTHS AFTER PROVISION OF THE SERVICES TO WHICH THE CLAIM RELATES, AND CITY AGREES THAT ALL OTHER CLAIMS ARE HEREBY WAIVED. THE MAXIMUM LIABILITY OF UTILITY, ITS DIRECTORS AND OFFICERS TO CITY FOR DAMAGES FOR ANY AND ALL CAUSES WHATSOEVER, AND CITY'S MAXIMUM, SOLE AND EXCLUSIVE REMEDY, REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT OR OTHERWISE, SHALL BE LIMITED TO AN AMOUNT EQUAL TO THE CONTRACT CHARGE PAID BY CITY TO UTILITY HEREUNDER FOR A TWO MONTH PERIOD IN WHICH THE SERVICES GIVING RISE TO ANY CLAIM WERE PERFORMED. IN NO EVENT SHALL UTILITY, ITS DIRECTORS AND OFFICERS BE LIABLE FOR ANY LOST PROFITS, BUSINESS INTERRUPTION OR FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL, EXEMPLARY OR PUNITIVE DAMAGES ARISING OUT OF OR RELATING TO SERVICES PROVIDED UNDER THIS AGREEMENT, EVEN IF UTILITY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND NOTWITHSTANDING THE FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

11. **Independent Contractor.** The parties agree that at all times and for all purposes within the scope of this Agreement, the relationship of Utility and City is that of an independent contractor.

12. **Force Majeure.** With regard to the performance hereunder, Utility shall not be deemed to be in default of this agreement, or have to failed to comply with any term or conditions herein if, for

reasons beyond Utility's reasonable control (including, but not limited to, acts of God, natural disaster, labor unrest, war, declared or undeclared, the existence of injunctions or requirements for obtaining licenses, permits or other compliance with applicable laws, rules and regulations), such performance is not reasonably possible within such time periods, then the time for such performance shall be extended until removal of such reasons beyond Utility's reasonable control, provided that Utility commences such performance as soon as reasonably possible and diligently pursues such performance.

13. **Notices.** All notices shall be in writing and sent by United States mail, certified or registered, with return receipt requested and postage prepaid, or by nationally recognized overnight courier service to the address of the party set forth below. Any such notice shall be deemed given when received by the party to whom it is intended.

|          |   |
|----------|---|
| Utility: | Utilities Inc. of Florida<br>200 Weathersfield Avenue<br>Altamonte Springs, FL 32714<br>Attn: President               |
| Copy to: | Utilities Inc. of Florida<br>c/o Utilities Inc.<br>2335 Sanders Road<br>Northbrook, IL 60062<br>Attn: General Counsel |
| City:    | Darren Gray, City Manager<br>City of Clermont<br>685 W. Montrose Street<br>Clermont, FL 34711                         |

14. **General Provisions.**

a. **Pre-suit Mediation.** Prior to, and as a condition precedent to the commencement of any lawsuit or administrative proceeding to resolve any disputes arising out of this Agreement the parties agree that the dispute first shall be submitted to non-binding mediation for a minimum of eight hours before a business mediation organization approved by the parties. Such mediation shall be held at the City's offices at the address set forth above. The parties shall bear the costs of the mediation equally.

b. **Waiver.** The waiver by either party of breach of any provision of this Agreement shall not be construed or operate as a waiver of any subsequent breach of such provision or of such provision itself and shall in no way affect the enforcement of any other provisions of this Agreement.

c. **Severability.** If any provision of this Agreement or the application thereof to any person or circumstance is to any extent invalid or unenforceable, such provision, or part thereof, shall be deleted or modified in such a manner as to make the Agreement valid and enforceable under applicable law, the remainder of this Agreement and the application of such a provision to other persons or circumstances shall be unaffected, and this Agreement shall be valid and enforceable to the fullest extent permitted by applicable law.

d. **Amendment.** Except for as otherwise provided herein, this Agreement may not be modified or amended except by an Agreement in writing signed by both parties.

e. **Entire Agreement.** This Agreement including the documents incorporated by reference contains the entire understanding of the parties hereto and supersedes all prior and contemporaneous agreements between the parties with respect to the performance of services by Utility.

f Assignment. This Agreement is personal to the parties hereto and may not be assigned by either party, in whole or in part, without the prior written consent of the other party; provided, however, that such consent shall not be required for any transaction involving the sale of all of Utility or its assets or an affiliate transaction.

g Venue. The parties agree that the sole and exclusive venue for any cause of action arising out of this Agreement shall be Lake County, Florida.

h Applicable Law. This Agreement and any amendments hereto are executed and delivered in the State of Florida and shall be governed, interpreted, construed and enforced in accordance with the laws of the State of Florida.

i Records. Utility expressly understands and acknowledges that the meter reading records related to the services provided herein may be considered records that are subject to examination and production in accordance with Florida's Public Records Law. In accordance therewith, Utility agrees to act as follows:

1. Keep and maintain, in a manner consistent with Utility's record retention policy, said meter readings that ordinarily and necessarily would be required by the City in order to perform the services contemplated herein.

2. Provide the City with access to respond to public records requests for said meter reading records.

3. Cooperate as needed with the City to ensure that any meter reading records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.

4. Transfer, at no cost, to the City all said meter reading records in possession of the Utility upon termination of the contract. All records stored electronically must be provided to the City in

the format utilized by the Utility.

5. If Utility has questions regarding the application of Chapter 119, *Florida Statutes*, to the Utility's duty to provide public records relating to this Agreement, Utility shall contact the City's Custodian of Public Records at the City Clerk's Office (352) 241-7331.

IN WITNESS WHEREOF, the parties hereto have made and executed this Agreement for the purposes herein expressed on the date first above written.

Attest:

City of Clermont, Florida

BY: \_\_\_\_\_  
Tracy Ackroyd, City Clerk

BY: \_\_\_\_\_  
Darren Gray, City Manager  
Date: \_\_\_\_\_

Attest:

Utilities Inc. of Florida

BY: \_\_\_\_\_  
Patrick C. Flynn, Vice President

BY: \_\_\_\_\_  
John P. Hoy, President  
Date: \_\_\_\_\_

## Exhibit A

### Mutual Customers

City of Clermont and Utilities, Inc. of Florida

#### Customers:

Once per month, Utilities Inc. of Florida (Utility) shall provide a Report to the City of Clermont (City) containing the water meter readings taken by Utility during Utility's preceding monthly billing cycle from those meters located in the subdivisions listed below that also serve sewer-only customers of City (Mutual Customers).

It is understood and agreed that additional Mutual Customers may be added or removed from the Report on a monthly basis. New and terminated Mutual Customers will be clearly identified using a mutually agreed format.

The Report will also include any changes in contact information associated with each affected account.

#### Subdivisions:

The following list of subdivisions reflects those that contain Mutual Customers of Utility and City as of the date of execution of the Agreement.

1. Legends
2. Spring Valley
3. Bent Tree
4. Timberlane
5. Overlook
6. Foxchase
7. Hammock Pointe
8. Hammock Reserve
9. Summit Ridge

The monthly Report will include customers in the above listed subdivisions as well as all other commercial, multi-family, and single family accounts that are mutually served by Utility and City.

As subdivisions are developed that receive water service from Utility and sewer service from City, those future customers will be added to the monthly report, along with any non-subdivision customers, once service is established.

Exhibit B

City of Clermont and Utilities, Inc. of Florida  
Scope of Services  
Compensation Schedule

Scope of Services:

Utilities Inc. of Florida (Utility) shall provide to the City of Clermont (City) the water meter readings taken from each of the customer addresses listed in Exhibit "A", or as may be included in this agreement in the future.

Utility shall provide the meter reading and account information in a format and by a delivery means as agreed to by the parties. The consumption information shall be provided to City by Utility on or before the 20th day of the month and shall include all information for the immediate prior month. If the 20<sup>th</sup> falls on a weekend, or holiday, the information shall be delivered the previous business day.

The electronic file will be sent monthly, by the above date, to the following email address: [ubsewerrpts@clermontfl.org](mailto:ubsewerrpts@clermontfl.org)

Compensation Schedule:

City shall pay Utility for the timely provision of the meter readings as follows:

\$0.75 per meter per month.

City shall pay Utility for any rereads requested by City that are not due to Utility's errors or omissions as follows:

\$0.75 per reread.

Invoices shall clearly identify the total number of accounts read and the reading date(s) and be sent to:

City of Clermont – Environmental Services  
3335 Hancock Road  
Clermont, FL 34711

Limitation on Compensation:

Notwithstanding anything in this Exhibit to the contrary, Utility shall provide the meter readings to the City at no cost for a period of five (5) years.













