

**PURCHASE AND SALE AGREEMENT  
FOR REAL PROPERTY**

**THIS PURCHASE AND SALE AGREEMENT** (the “Agreement”) is made and entered into as of the date of the last signature below (the “Effective Date”) by and between the CITY OF DAVENPORT, FLORIDA, a Florida municipal corporation (“Seller”), and CITY OF HAINES CITY, FLORIDA, a Florida corporation (“Purchaser”).

**RECITALS**

1. Seller and Purchaser are members of the Polk Regional Water Cooperative (“PRWC”) and have executed agreements to receive finished water from the PRWC.
2. Seller and Purchaser must construct new facilities to receive water from the PRWC and distribute such water to their respective Water Systems.
3. Seller and Purchaser are this day entering into that Interlocal Agreement for Alternative Water Supply Receiving Facilities Between Davenport and Haines City, Florida (the “Interlocal Agreement”).
4. Seller is the owner of that certain parcel of land located in the City of Davenport, Florida, as more particularly described in Exhibit “A” hereto (the “Land”).
5. The Purchaser and Haines City are simultaneously purchasing individual parcels that are a portion of the Land from Davenport by separate agreements.
6. Seller desires to sell, and Purchaser desires to acquire, the Land in accordance with the provisions of this Agreement.

**ACCORDINGLY**, in consideration of the above stated Recitals, mutual covenants contained herein, and other good and valuable consideration the receipt and sufficiency of which are acknowledged by the Parties, the Parties hereto covenant and agree as follows:

1. **Recitals**. The foregoing recitals are true and correct and are incorporated herein by this reference.
2. **Purchase and Sale**. Purchaser does not operate water facilities or systems within the boundaries of Seller, nor does Purchaser own land for the construction and operation of Alternative Water Supply Receiving Facilities. The Purchaser has requested the right to purchase certain property currently owned by Seller used by Seller for the delivery of retail water supply within Seller’s overall service area. Seller is willing to sell Purchaser a parcel of property approximately 1.25 acres in size as generally depicted within Exhibit “B” attached to and incorporated in this Agreement (the “Parcel”) at the same per acre value paid by Seller, for a purchase price of EIGHTY-SEVEN THOUSAND, FIVE HUNDRED DOLLARS (\$87,500.00), hereafter the ‘Purchase Price. Purchaser shall pay the costs of this transaction including but not limited to the cost of preparing the survey for its parcel. Each parcel shall be conveyed to the

purchasing Party by special warranty deed free and clear of any liens or encumbrances. Seller agrees to sell to Purchaser and Purchaser agrees to purchase from Seller the following property and rights owned by Seller:

- (a) the Parcel, together with all easements, privileges, rights to lands lying under any adjacent roadways, and all other appurtenances pertaining to or accruing to the benefit of the Parcel;
- (b) all transferable licenses, permits, authorizations, consents, notices of completion, variances, waivers, certificates (including, without limitation, certificates of occupancy or completion) and approvals pertaining to ownership and/or operation of the Parcel and held by, or hereafter issued or granted to, Seller.

3. **Purchase Price.** The purchase price to be paid by Purchaser for the Property (the "Purchase Price") Eighty-Seven Thousand, Five Hundred Dollars and 00/100 (\$87,500.00).

4. **Title and Survey.**

(a) Seller shall, at Purchaser's sole cost and expense, shall order ALTA Title Insurance Commitment ("Commitment") with respect to the Parcel in the amount of the Purchase Price issued by Gray Robinson, P.A. as agent for Fidelity National Title Insurance Company (the "Title Company"), and certified to a date even with or later than the Effective Date. Within the Title Review Period (as hereinafter defined), Purchaser shall obtain, at Purchaser's expense, a survey of the Property (the "Survey"). In the event that the Survey shall disclose any of the following: (i) any encroachment upon or from the Property which adversely affects Purchaser's intended use of the Property or which renders title to the Property unmarketable; or (ii) any other survey defect, such encroachment or other defect shall be treated in the same manner as a title defect and a the same time frames provided in subparagraph (b) to this Paragraph 4 with respect to title objections shall apply from the date that Purchaser receives the Survey.

(b) Purchaser shall have thirty (30) days after receipt of the commitment (the "Title Review Period") in which to examine the Commitment, all underlying exception documents, and the Survey described above and satisfy itself as to the marketability and status of Seller's title. In the event Purchaser notes any objections to the marketability of such title, or in the event that there are any matters of record which could, in Purchaser's reasonable judgment, interfere with Purchaser's intended use of the Property, Purchaser shall notify Seller in writing thereof and Seller shall use commercially reasonable efforts (which need not include the filing or defending of any suit) to cure such objections within fifteen (15) days thereafter. If Purchaser fails to deliver such notice to Seller within the Title Review Period, then, subject to Paragraph 5(c) below, Purchaser shall be deemed to have found title acceptable in all respects, and to have agreed to purchase the Property without reduction in purchase price or obligation on the part of Seller. If the objections of Purchaser are not cured or agreed to be cured by Seller within fifteen (15) days from the date of such notice to Purchaser's satisfaction ("Title Cure Period"), Purchaser shall have the right:

- (i) to cancel and rescind the Agreement; or

- (ii) to waive such objections and elect to proceed to acquire the Property and take title subject to such objections without reduction in the purchase price.

(c) On or before Closing, the Commitment shall be updated by the Title Company, and Purchaser may cause the Survey to be updated and if such updates should reveal any matter rendering title to the Property unmarketable and not disclosed in the original Commitment and not caused by, through or under Purchaser, Purchaser shall notify Seller of same. Seller shall cure any such matters, and Purchaser shall have the right to extend the Closing for up to 30 days to allow Seller to effectuate such cure, with the Closing to occur within 10 days from the date of cure, provided that Seller's obligation to cure any such matters not caused by Seller shall be as set forth in subparagraph (b) immediately above and Purchaser's remedy in such event shall be as set forth in subparagraph (b)(i) and (ii) above.

(d) Notwithstanding the foregoing, Seller shall pay any amount due in satisfaction of any mortgage, monetary judgment, past due tax or assessment or other similar liquidated amount (a "Monetary Lien") against the Property or any portion of the Property, or otherwise cause same to be removed from the Commitment with the consent of the Title Company (by bonding or otherwise), which amount, at the option of Seller, may be paid from the proceeds of the Purchase Price at Closing; and, if any such item has not been satisfied before the Closing date, then Purchaser and Escrow Agent are authorized to satisfy such item from the proceeds of the Purchase Price at Closing. Seller shall also satisfy all Schedule B-1 requirements set forth in the Commitment other than those applicable to Purchaser.

5. **Due Diligence.**

(a) **Inspection Period.** Purchaser acknowledges and agrees that Purchaser has had sufficient opportunity prior to the Effective Date to conduct its due diligence and inspections with regard to the Property and shall accept the Property "AS IS, WHERE IS, WITH ALL FAULTS" that is, in its present condition. Further, Purchaser has agreed, in Purchaser's sole and absolute discretion, to waive any right to terminate this Agreement due to such diligence and inspections, subject, however, to the other terms of this Agreement.

6. **Seller's Representations:** Seller represents and warrants to Purchaser as follows:

- (a) **Authority.** Seller is a city, duly organized, validly existing and in good standing under the laws of the State of Florida. This Agreement and the agreements and other documents to be executed by Seller at Closing pursuant to this Agreement, when so executed and delivered are and shall be legal, valid, and binding obligations of Seller and enforceable against Seller in accordance with their terms. Upon formal approval by the Commission, Seller as all requisite power and authority and will have taken all the requisite action necessary for the execution, delivery, and performance of this Agreement.

- (b) FIRPTA. Seller is not a "foreign person" within the meaning of the United States tax laws and to which reference is made in Internal Revenue Code Section 1445(b)(2). At Closing, Seller shall deliver to Purchaser a certificate to such effect.
- (c) Lawsuits. There are currently no lawsuits pending, or to the best of Seller's knowledge, threatened with respect to the Property or that might materially and detrimentally affect the ability of Seller to perform its obligations under this Agreement.
- (d) Condemnation. There are no condemnation or eminent domain proceedings pending, or to the best of Seller's knowledge, threatened against or affecting the Property or any portion thereof or interest therein.
- (e) No Other Contracts to Sell the Property. Except for Purchaser under this Agreement, no person or entity has any agreement, commitment, option, right of first refusal, right of first offer, or any other right, option or agreement, whether oral or written, with respect to the purchase, assignment or transfer of all or any portion of the Property.

At or prior to Closing, Seller shall update the representations set forth in this Paragraph 6 and re-certify same effective as of Closing. Except for the above representations and warranties, Seller makes no representations or warranties, and Purchaser is buying property "AS-IS" solely based upon its inspections.

7. **Purchaser's Representations**. Purchaser represents and warrants to Seller as follows:

- (a) Organization and Authority. Purchaser is a municipal corporation and has been duly organized and is validly existing under the laws of the State of Florida. Purchaser has the full right and authority to enter into this Agreement and to consummate or cause to be consummated the transaction contemplated by this Agreement. The person signing this Agreement on behalf of Purchaser is authorized to do so. No consent or approval of any person or entity or of any governmental authority is required with respect to the execution and delivery of this Agreement by Purchaser or the consummation by Purchaser of the transactions contemplated hereby or the performance by Purchaser of its obligations hereunder.
- (b) Pending Actions. There is no action, suit, arbitration, unsatisfied order or judgment, government investigation or proceeding pending against Purchaser which, if adversely determined, could individually or in the aggregate interfere with the consummation of the transaction contemplated by this Agreement.
- (c) Bankruptcy. There is not pending any case, proceeding or other action seeking organization, arrangement, adjustments, liquidation, dissolution or recomposition of Purchaser under any law relating to bankruptcy,

insolvency, reorganization, or the relief of debtors, or seeking the appointment of a receiver, trustee, custodian or similar official for the Purchaser.

8. **Operations of Property Prior to Closing.**

- (a) From the date of execution through the date of Closing, Seller shall maintain the Property in the same condition, repair, and appearance existing on the date of the execution of this Agreement by Seller, reasonable wear and tear excepted, unless otherwise provided for herein.
- (b) Prior to Closing, Seller shall not enter into any leases without the prior written consent of Purchaser.

9. **Default Provisions.** In the event Purchaser fails to close this transaction as contemplated by this Agreement, Seller shall receive the Deposit, together with all interest earned thereon, as Seller's sole and exclusive remedy and as agreed and liquidated damages, whereupon the parties shall be relieved of all further obligations hereunder except only those that expressly survive. Purchaser and Seller acknowledge and agree that actual damages are difficult or impossible to ascertain and the Deposit, together with all interest earned thereon, is a fair and reasonable estimation of the damages of Seller. In the event of a default by Seller under this Agreement, Purchaser at its option shall have the right, as its sole and exclusive remedies, to either: (i) receive the return of the Deposit together with all interest earned thereon, whereupon the parties shall be released from all further obligations hereunder except only those that expressly survive, or, alternatively, (ii) seek specific performance of the Seller's obligations hereunder; provided, however, that in the event Seller wrongfully conveys the Property or any portion thereof to a third party purchaser so that the remedy of specific performance is not available to Purchaser, then in such event, Purchaser shall be entitled to seek damages for Seller's wrongful conveyance. Notwithstanding the foregoing, in the event of a default by either party of any obligations which specifically survive Closing, then the non-defaulting party shall be entitled to seek any legal redress permitted by law or equity. The foregoing sentence shall survive Closing.

10. **Prorations, Deposits.** Real estate and personal property taxes, operating expenses of the Property, items of income and expense, and all other proratable items shall be prorated as of 12:01 a.m. of the date of Closing. Water, sewer, electricity, fuel, and other utility charges will be apportioned based upon meter readings taken as of the day immediately prior to Closing, but Purchaser and Seller agree to pay their respective shares of all utility bills received subsequent to Closing, prorated as of 12:01 a.m. on the date of Closing. In the event the real estate taxes for the year of closing are unknown, the tax proration will be based upon the taxes for the prior year reduced by the maximum discount available for early payment, and at the request of either party, the taxes for the year of closing shall be re prorated and adjusted when the tax bill for such year is received and the actual amount of taxes is known. At Closing, Seller shall be reimbursed or credited for all: (i) utility deposits, (ii) prepaid charges under the Contracts (and any new contract(s)), together with a credit for any deposits thereunder, and Purchaser shall receive a prorated credit for any unpaid amounts payable for the month of Closing and not yet paid by Seller for periods prior to Closing, as well as credit for security deposits on leases, and (iii) such other

reimbursements as are provided for in this Agreement. The provisions of this paragraph shall survive the Closing.

11. **Closing Costs**. The parties shall bear the following costs:
- (a) Purchaser shall be responsible for payment of the following: (i) the documentary stamp, surtax or other taxes on the deed; (ii) the costs of obtaining the Survey; (iii) any and all costs and expenses of architectural, engineering and other inspection and feasibility studies and reports incident to Purchaser's inspections; (iv) the cost of issuing the Commitment and the premiums, title search(es) and other related fees and costs for any owner's title insurance policies issued pursuant hereto; and (v) conveyance and notary fees and clerk's recordation fees for recording the deed.
  - (b) Purchaser shall be responsible for payment of the cost of any corrective or curative title documents.
  - (c) Each party shall pay its own legal fees except as otherwise expressly provided herein.

12. **Closing**. Subject to other provisions of this Agreement for extension, the closing (the "**Closing**") shall be held on **3 days after the expiration of the Title Cure Period** or at such earlier time as may be set by Purchaser on three (3) business days' notice, at the offices of GrayRobinson, P.A., in Orlando, Florida, or other mutually agreeable location, or by mail if all Seller documents are delivered to Purchaser's attorneys 48 hours prior to scheduled closing.

At Closing, Seller shall have prepared, and Seller shall execute and/or deliver or cause to be delivered to Purchaser the following closing documents:

- (a) a special warranty deed conveying the Property subject only to matters either consented to or not timely objected to by Purchaser pursuant to Paragraph 5 above;
- (b) a "non-foreign" affidavit or certificate pursuant to Internal Revenue Code Section 1445;
- (c) an appropriate and customary mechanic's lien affidavit in form reasonably required by Purchaser's title company;
- (d) entity resolutions, as applicable, and/or such other evidence of authority and good standing with respect to Seller as may be reasonably required by the Title Company; and
- (e) an updated certificate from Seller updating the representations made by Seller under Paragraph 6 above to the date of closing.

At Closing, Purchaser shall execute and/or deliver (as applicable) to Seller:

- (a) the Purchase Price; and
- (b) entity resolutions, as applicable, and/or such other evidence of authority and good standing with respect to the Purchaser, and any other documents as may be reasonably required by the Title Company.

Both parties shall execute and deliver counterpart closing statements and such other documents as are reasonably necessary to consummate this transaction.

13. **Broker.** Neither Seller nor Purchaser are represented by a real estate broker with respect to this transaction. If a claim for commission in connection with this transaction is made by any broker, salesperson, claiming to have dealt through or on behalf of one of the parties hereto (“Indemnitor”), Indemnitor shall indemnify, defend and hold harmless the other party hereunder (“Indemnitee”), and Indemnitee's officers, directors, agents and representatives, from and against all liabilities, damages, claims, costs, fees and expenses whatsoever (including reasonable attorney's fees and court costs at trial and all appellate levels) with respect to said claim for commission. Notwithstanding anything to the contrary contained in this Agreement, the provisions of this paragraph shall survive the Closing and any cancellation or termination of this Agreement.

14. **Notices.** Any notices required or permitted to be given under this Agreement shall be in writing and shall be deemed to have been given if delivered by hand, sent by recognized overnight courier (such as Federal Express), by certified or registered mail, return receipt requested, in a postage prepaid envelope, and addressed as follows, or by electronic mail, “E-Mail,” which shall be deemed delivered when sent:

If to the Seller at:                      City of Davenport, Florida  
Attn: Kelly Callihan, City Manager  
1 South Allapaha Avenue  
Davenport, FL 33837

With a copy to:                              GrayRobinson, P.A.  
Attn: Thomas A. Cloud, Esq.  
301 East Pine Street, Suite 1400  
Orlando, FL 32801

If to the Purchaser at: City of Haines City, Florida  
Attn: James Elensky, City Manager  
620 East Main Street  
Haines City, Florida 33844

With a copy to: Frederick John Reilly, City Attorney  
City of Haines City  
620 East Main Street  
PO Box 2039  
Haines City, FL 33845-2039

Notices personally delivered or sent by overnight courier or via facsimile shall be deemed given on the date of delivery and notices mailed in accordance with the foregoing shall be deemed given three (3) days after deposit in the U.S. mails.

15. **Risk of Loss.** In the event that the Parcel or any material portion thereof is taken by eminent domain prior to Closing, Purchaser and Seller shall have the option of either: (a) canceling this Agreement and Purchaser would receive a refund of the Deposit and all interest earned thereon whereupon all parties shall be relieved of all further obligations under this Agreement except those that expressly survive, or (b) if neither Purchaser or Seller elects to cancel the Agreement as provided in (a) above, then the parties shall proceed with Closing without reduction of the Purchase Price, in which case Purchaser shall be entitled to all condemnation awards and settlements, if any. In the event only a nonmaterial portion of the Parcel is taken by eminent domain prior to Closing, then Purchaser shall be required to proceed with Closing without reduction of Purchase Price, but Purchaser shall be entitled to all condemnation awards and settlements, if any. In the event that the Improvements are materially damaged or destroyed by fire or other casualty prior to Closing (which for purposes of this paragraph shall mean damages to Improvements that would cost in excess of \$2,500.00 to repair), Seller shall have the option of either: (i) canceling this Agreement and issuing a refund of the Deposit all interest earned thereon whereupon all parties shall be released from all further obligations under this Agreement, except only those that expressly survive, (ii) repairing the damage and proceeding with Closing without reduction in the Purchase Price in which case Seller shall have the ability to extend the Closing Date to make sure repair, or (iii) proceeding with Closing without making repairs but with a reduction in the Purchase Price equal to the estimated cost of repairs. In the event only a nonmaterial portion of the Improvements is damaged or destroyed by fire or other casualty prior to Closing, then Purchaser shall be required to proceed with Closing without reduction in the Purchase Price or claim against Seller therefor, in which case Purchaser shall be entitled to all insurance proceeds, if any, resulting from such casualty, plus a credit at Closing against the Purchase Price in the amount of any insurance deductible that is actually deducted from the proceeds made available to Purchaser.

16. **Radon Gas.** RADON IS A NATURALLY OCCURRING RADIOACTIVE GAS THAT, WHEN IT HAS ACCUMULATED IN A BUILDING IN SUFFICIENT QUANTITIES, MAY PRESENT HEALTH RISKS TO PERSONS WHO ARE EXPOSED TO IT OVER TIME. LEVELS OF RADON THAT EXCEED FEDERAL AND STATE GUIDELINES HAVE BEEN FOUND IN BUILDINGS IN FLORIDA. ADDITIONAL INFORMATION REGARDING



RADON AND RADON TESTING MAY BE OBTAINED FROM YOUR COUNTY PUBLIC HEALTH UNIT.

17. **Miscellaneous.**

- (a) This Agreement shall be construed and enforced in accordance with the laws of the State of Florida. All of the parties to this Agreement have participated fully in the negotiation and preparation hereof, and, accordingly, this Agreement shall not be more strictly construed against any one of the parties hereto.
- (b) In the event any term or provision of this Agreement be determined by appropriate judicial authority to be illegal or otherwise invalid, such provision shall be given its nearest legal meaning or be construed as deleted as such authority determines, and the remainder of this Agreement shall be construed to be in full force and effect.
- (c) In the event of any litigation between the parties under this Agreement, the prevailing party shall be entitled to reasonable attorney's fees and court costs at all trial and appellate levels. The parties stipulate and agree that venue in any such litigation shall be laid in Polk County, Florida.
- (d) In construing this Agreement, the singular shall be held to include the plural, the plural shall be held to include the singular, the use of any gender shall be held to include every other and all genders, and captions and paragraph headings shall be disregarded.
- (e) All of the exhibits attached to this Agreement are incorporated in, and made a part of, this Agreement.
- (f) All references to a number of days shall mean calendar days unless Business Days are expressly referred to. A Business Day is any Monday, Tuesday, Wednesday, Thursday or Friday other than any legal holiday.
- (g) This Agreement may be executed in one or more counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument. Copies of such counterparts sent by facsimile, e-mail or other electronic/digital means shall be deemed an original for all purposes.
- (h) Except as specifically provided herein or as represented by Seller in this Agreement, the Property shall be delivered by Seller to Purchaser at Closing “AS-IS” and “WITH ALL FAULTS.”

18. **Entire Agreement.** This Agreement constitutes the entire agreement and understanding between the parties with respect to the subject matter hereof and there are no other agreements, representations, or warranties other than as set forth herein. This Agreement may not

be changed, altered, or modified except by an instrument in writing signed by the party against whom enforcement of such change would be sought. This Agreement shall be binding upon the parties hereto and their respective successors and assigns. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement and all of which, when taken together, will be deemed to constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by facsimile transmission shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by facsimile shall be deemed to be their original signatures for all purposes.

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement as of the Effective Date.

ATTEST:

CITY OF DAVENPORT, FLORIDA

By: \_\_\_\_\_  
Rachel Castillo, City Clerk

By: \_\_\_\_\_  
Brynn Summerlin, Mayor

Reviewed as to form and legal sufficiency.

By: \_\_\_\_\_  
Thomas A. Cloud, City Attorney

**IN WITNESS WHEREOF**, the Parties hereto have executed this Agreement as of the Effective Date.

ATTEST:

CITY OF HAINES CITY, FLORIDA

By: \_\_\_\_\_  
Sharon Lauther, MMC, City Clerk

By: \_\_\_\_\_  
Omar Arroyo, Mayor-Commissioner

Reviewed as to form and legal sufficiency.

By: \_\_\_\_\_  
Fred Reilly, City Attorney

**EXHIBIT "A"**

**Parcel Identification Number:**

27-27-05-726000-020050

**EXHIBIT "B"**

**Parcel**

