

RESOLUTION NO. 2019-01

A RESOLUTION OF THE CITY OF NEW PORT RICHEY, FLORIDA, DIRECTING AND AUTHORIZING THE ACQUISITION OF CERTAIN POTABLE WATER SUPPLY AND DISTRIBUTION UTILITY SYSTEM AND ASSET OWNED BY ORANGEWOOD LAKES SERVICES, INC. LOCATED IN PASCO COUNTY; FINDING THAT SUCH ACQUISITION IS IN THE PUBLIC INTEREST AND SERVES A PARAMOUNT PUBLIC PURPOSE; APPROVING UTILITY ASSET PURCHASE AGREEMENTS WITH ORANGEWOOD LAKES SERVICES, INC., AND DIRECTING EXECUTION THEREOF; DETERMINING THE TRANSACTIONS CONTEMPLATED THEREBY RELATIVE TO SUCH UTILITY SYSTEMS AND ASSETS ARE IN THE PUBLIC INTEREST IN ACCORDANCE WITH SECTION 180.301, FLORIDA STATUTES; AUTHORIZING AND DIRECTING THE EXECUTION OF SUCH OTHER DOCUMENTS AS MAY BE NECESSARY TO ACQUIRE THE UTILITY SYSTEMS AND ASSETS; PROVIDING FOR SEVERABILITY; PROVIDING FOR APPLICABILITY; AND PROVIDING FOR AN EFFECTIVE DATE

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF NEW PORT RICHEY, FLORIDA, IN SESSION DULY AND REGULARLY ASSEMBLED, AS FOLLOWS:

SECTION 1. AUTHORITY. This Resolution of the City of New Port Richey, Florida (the "City") is adopted pursuant to agreements with the Board of County Commissioners of Pasco County, Florida, City Ordinance No. 731, Chapter 180, Florida Statutes, and, in particular Section 180.301, Florida Statutes, and other applicable provisions of law.

SECTION 2. INCORPORATION BY REFERENCE. One or more public briefing documents, including a description of the potable water supply and distribution utility system known as Orangewood Services (the "Utility System") currently owned by Orangewood Lakes Services, Inc., (the "Seller") the most recent income and expense statement, the most recent available balance sheet, a description of the Utility System's physical condition, a statement on the reasonableness of the price, a statement on customer impacts, a statement on additional investments required by the City, if any, and the City's ability and willingness to make these investments, a description of alternatives to acquisition by the City and a statement on the ability of the City to operate the acquired system, presented at the public hearing held on February 5, 2019 are hereby incorporated by reference and made a part of this Resolution (collectively, the "Report"). The Report is intended to be a statement demonstrating that the acquisition by the City of the Utility System owned by the Seller is in the public interest.

SECTION 3. FINDINGS. It is hereby ascertained, determined and declared that:

(A) Pursuant to chapter 180, Florida Statutes, the City has the power to acquire, own, operate, and maintain potable water supply and distribution utility systems in certain unincorporated areas of Pasco County, Florida.

(B) The Seller is an investor owned utility company which owns and operates the Utility System in unincorporated areas of Pasco County, Florida. Representatives of the City and the Seller have drafted Asset Purchase Agreement whereby the City will acquire the Utility System and related assets of the Seller, the form of which is attached hereto as Exhibit A (the "Asset Purchase Agreement").

(C) The Utility System is located within, and serves customers located within, the Municipal Water and Sanitary Sewage Utility Service District established by City Ordinance No. 731.

(D) The City is required to hold a public hearing on the acquisition of the Utility System to consider whether such acquisition serves the public interest. This public hearing was duly advertised in the Tampa Bay Times on January 26, 2019, and held on February 5, 2019. All interested persons had an opportunity to attend and participate and to file written comments.

(E) The City's ownership and control of the Utility System will provide an opportunity for the City to:

(1) address and provide water and wastewater service to the service area of the Utility System; better provide and plan for quality water distribution, treatment and disposal facilities necessary to accommodate existing development and anticipated future growth in a manner concurrent with the demand for such facilities in the area, and better meet future requirements of state and federal mandates, and the demands of existing and new development;

(2) further develop a regional approach within the area served and the areas nearby also now served by the City, relative to the comprehensive distribution of water;

(3) seek economies of scale relative to operations, maintenance, customer service and management;

(4) provide current and future users, both within the area currently served by the City and the customers now served by the Systems, with cost efficient services and management;

(5) operate and maintain the Utility System in a more proactive and responsible manner and incorporate such system into the City's overall utility system;

(6) stabilize rates over the long term, reduce inefficient service expansion or extension of service capabilities, and avoid the expense of proliferation or rehabilitation of smaller facilities and sites;

(7) permit the City to coordinate the expansion and extension of facilities in a more comprehensive manner;

(8) accomplish a greater public use and increased public benefit which results from the City's ownership, operation and control of the utility facilities and service area of the Utility System; and

(9) enable the City, as the general purpose local government, to more effectively and efficiently plan and fulfill its comprehensive planning requirements as provided by law and increase the prospect over time that high quality, cost efficient water utility services are available to affected landowners and utility customers located in the City as well as the unincorporated area adjacent thereto.

SECTION 4. DETERMINATION OF PUBLIC USE AND BENEFIT. Based upon the Report and the legislative findings incorporated in Section 3 of this Resolution, the acquisition of the Utility System by the City is in the public interest. The City has the experience and the financial ability to acquire, assimilate, and manage the Utility System and provide quality customer service. The City expressly finds and determines that the acquisition of the Utility System by the City, pursuant to the terms of the Asset Purchase Agreement in substantially the form attached hereto as Exhibit A and the provision of water through facilities owned by the City constitutes a paramount public purpose and is in the best interests of the health, safety, and welfare of the customers of the City generally, the customers of the Utility System, and customers served by the City in the immediate vicinity of the Utility System.

SECTION 5. PUBLIC INTEREST DETERMINATION OF PURCHASE. In making the public interest determination concerning the acquisition of the Utility System, the City Council has considered numerous factors, including but not limited to the following matters set forth in section 180.301, Florida Statutes:

(A) the most recently available income and expense statement(s) for the Utility System, including but not limited to the most recent annual report of Orangewood Lakes Services, Inc., filed with the Florida Public Service Commission in its capacity as the regulatory authority with jurisdiction over investor-owned utility systems;

(B) the most recently available balance sheet(s) for the Utility System, listing assets and liabilities and clearly showing the amount of contributions-in-aid-of-construction and the accumulated depreciation thereon;

(C) a statement of the existing rate base for regulatory purposes;

(D) the general physical condition of the Utility System;

- (E) the reasonableness of the purchase price;
- (F) the impacts of the contemplated purchase on utility customers served by the Utility System and by those now served by the City generally and in the same vicinity as the Utility System;
- (G) any additional investment required and the ability and willingness of the City to make that investment;
- (H) the alternatives to the contemplated purchase and the potential impacts on utility customers of the Utility System and by those now served by the City in the same vicinity if the Utility System if the Utility System is not acquired by the City; and
- (I) the ability of the City to provide and maintain high-quality and cost-effective utility service upon acquisition of the Utility System.

SECTION 6. APPROVAL OF ASSET PURCHASE AGREEMENT.

(A) The form, terms and provisions of the Asset Purchase Agreement by and between the Seller and the City, substantially in the form attached hereto as Exhibit A is hereby approved. Execution of this Resolution by the Mayor shall be deemed to be conclusive evidence of approval by the City.

(B) The appropriate officers of the City are authorized and directed to execute and deliver on behalf of the City, the Asset Purchase Agreements to provide for the purchase of the Utility System upon the terms and conditions contained in this Resolution and other terms and conditions (except as to price, which may not be changed) as the City Manager and Public Works Director, with approval of the City Attorney as to form, may approve, and such officers are further authorized and directed to negotiate, execute, deliver and accept all other documents necessary or convenient to close such purchase in accordance with the Asset Purchase Agreements, including but not limited to escrow agreement(s), and all closing documents required by the closing agent.

(C) This Resolution expressly contemplates that the City will acquire, finance, operate and/or maintain the Utility System in a manner consistent with the Asset Purchase Agreements, chapter 180, Florida Statutes, and the City Code of Ordinances.

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SECTION 7. SEVERABILITY. Each provision of this Resolution shall be deemed separate and severable and if any section or part thereof is held to be invalid by a court of competent jurisdiction, the remainder of the Resolution shall not be affected.

SECTION 8. APPLICABILITY AND EFFECTIVE DATE. This Resolution shall be liberally construed to affect the purposes hereof and shall take effect immediately upon its adoption.

DULY ADOPTED this 5th day of February, 2019.

CITY OF NEW PORT RICHEY, FLORIDA

By: _____
Rob Marlowe, Mayor

(SEAL)

ATTEST:

Approved as to Form:

City Clerk

Nicole C. Day, B.C.S.
Special Counsel to the City

EXHIBIT A

FORM OF ASSET PURCHASE AGREEMENT WITH ORANGEWOOD LAKES SERVICES, INC.