

## RESOLUTION 14-2012

**A RESOLUTION OF THE TOWN OF MALABAR, BREVARD COUNTY, FLORIDA ADOPTING THE TERMS AND CONDITIONS OF THE AGREEMENT OF PURCHASE AND SALE OF WATER AND WASTEWATER SYSTEM TOWN OF MALABAR AND CITY OF PALM BAY, BILL OF SALE AND GRANT OF EXCLUSIVE CITY SERVICES EASEMENT ALL OF WHICH ARE ATTACHED HERETO AS EXHIBIT A; PROVIDING FOR REPEAL; AND PROVIDING FOR AN EFFECTIVE.**

**WHEREAS**, on May 5, 1993, the Town of Malabar (Town) and the Palm Bay Utility Corporation, a not-for-profit corporation (PBUC) entered into a Wholesale Water and Wastewater Service Agreement (Agreement), which Agreement was joined in by the City of Palm Bay (City); and,

**WHEREAS**, Section 13 of the Agreement provides, in part:

“PBUC agrees to provide water and wastewater service to the Town at PBUC’s **current retail rate**...”; and,

**WHEREAS**, the City has increased the rates charged to the citizens of the Town which rate is higher than PBUC’s **current retail rate**; and,

**WHEREAS**, the Town has taken the position that the City can not charge a rate for water and wastewater service to the Town which higher than the **current retail rate**; and

**WHEREAS**, The Town initiated a circuit court litigation against the City, Brevard County Circuit Court Case No. 05-2009-CA-049231; and,

**WHEREAS**, the Town and the City staff participated in settlement discussions resulting in the Agreement of Purchase and Sale of Water and Wastewater System Town of Malabar and City of Palm Bay, Bill of Sale and Grant of Exclusive City Services Easement (hereinafter the “AGREEMENTS”); and,

**WHEREAS**, the respective Councils for the parties must approve the AGREEMENTS at an open public hearing.

**NOW THEREFORE**, be it resolved by the Town Council of the Town of Malabar, Brevard County, Florida that:

**Section 1.** The Town Council has considered the requirements of FS 180.301, in particular:

The most recent available income and expense statement for the utility;  
The most recent available balance sheet for the utility, listing assets and liabilities and clearly showing the amount of contributions-in-aid-of-construction and the accumulated depreciation thereon;

A statement of the existing rate base of the utility for regulatory purposes:

The physical condition of the utility facilities being purchased, sold, or subject to a wastewater facility privatization contract;

The reasonableness of the purchase, sale, or wastewater facility privatization contract price and terms;

The impacts of the purchase, sale, or wastewater facility privatization contract on utility customers, both positive and negative;

Any additional investment required and the ability and willingness of the purchaser or the private firm under a wastewater facility privatization contract to make that investment, whether the purchaser is the municipality or the entity purchasing the utility from the municipality;

The alternatives to the purchase, sale, or wastewater facility privatization contract, and the potential impact on utility customers if the purchase, sale, or wastewater facility privatization contract is not made;

The ability of the purchaser or the private firm under a wastewater facility privatization contract to provide and maintain high-quality and cost-effective utility service, whether the purchaser is the municipality or the entity purchasing the utility from the municipality; and

The municipality shall prepare a statement showing that the purchase, sale, or wastewater facility privatization contract is in the public interest, including a summary of the purchaser's or private firm's experience in water, sewer, or wastewater reuse utility operation and a showing of financial ability to provide the service, whether the purchaser is the municipality or the entity purchasing the utility from the municipality.

**Section 2.** The Town Council finds that the sale of the water and wastewater facilities to the City is in the public interest. The Town Council further finds that the City has vast experience in providing and servicing water and wastewater utilities and the City maintains the financial ability to provide water and wastewater utility services. The Town Council for the Town of Malabar hereby approves the attached AGREEMENTS. The Town Council hereby authorizes the Town Mayor to execute the AGREEMENTS on behalf of the Town.

**Section 3.** All resolutions or parts of resolutions in conflict herewith are hereby repealed.

**Section 4.** This resolution shall take effect immediately upon its adoption

This Resolution was moved for adoption by Council Member McKnight and was seconded by Council Member Rivet and, upon being put to a vote, the vote was as follow:

**RESOLUTIONS:**

**5. Approve Sale of Malabar Utility to Palm Bay and Authorize Administrator to Sign Agreement (Resolution 14-2012)**

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**Exhibit:** Agenda Report No. 5

**Recommendation:** Request Action

Franklin read reso by title.

Chair said this issue was discussed at executive sessions and as part of litigation strategy.

Bohne said the sale of the utility must be handled at a public meeting.

**MOTION:** McKnight / Rivet to approve Reso 14-2012.

Discussion: Bohne said the City of Palm Bay staff is in audience and they are here at our request to answer any questions Council may have. Bohne said we have gone back and forth and have 99% of a fair agreement. They have discussed various pay-off plans. Malabar offered multiple year payback plan with interest and Palm Bay rejected those plans. Malabar offered a two year pay-off plan with no interest; half paid by 9/30/12 and remainder by 9/30/13. Palm Bay staff will still have to take it to their Council.

Bohne wanted to high light some issues he dealt with on the documents. They struck the indemnification stuff which benefits the Town. He accepts the language that is in there. We have to give customer deposits to City and they will be transferred over. There will be no mandatory hook-ups unless required by State law. City will give Town all the water we need. City will not be liable if there is some interruption beyond their control. The City will not be discriminatory. Town can impose the franchise fee. Those are the points on the agreement. Regarding Easement document, no issues and Bill of Sale was clarified to show the 250K and with 2 payments.

Rivet said we are good. Beatty said the issue he had was access to fire hydrants. TA said that is automatic it is State law. Bohne asked Sue Hann, City Mgr, and she has no objection to adding that language to Agreement. Beatty said he will offer his assistance to City as he has extensive knowledge of where stuff should be

Sue Hann said they want to work with us. Rivet also wanted to add that since she has worked with us as

**ROLLCALL VOTE:** Beatty, Aye; White, Aye; Rivet, Aye; McKnight, Aye; 1)Acquaviva, Aye.

Motion carried 5 to 0.

Bohne said our agreement will be changed for signature. Thanks to all.

Council Member, Carl Beatty	Aye
Council Member, David White	Aye
Council Member, Steven (Steve) Rivet	Aye
Council Member, Jeffrey (Jeff) McKnight	Aye
Council Member, Marisa Acquaviva	Aye

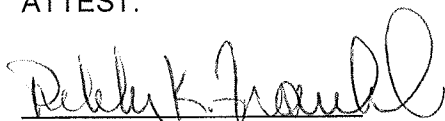
This Resolution was then declared duly passed and adopted this 18th day of June, 2012.

**TOWN OF MALABAR**



Mayor Philip Crews  
Council Chair

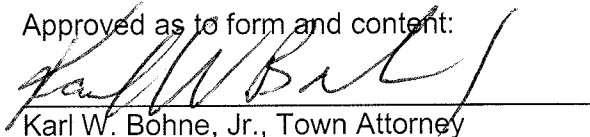
ATTEST:



Debby K. Franklin, C.M.C.  
Town Clerk/Treasurer

(Seal)

Approved as to form and content:



Karl W. Bohne, Jr., Town Attorney