

APPENDIX N
SUB-METERING AGREEMENT TEMPLATE

This Document Prepared by: _____
After Recording Return to:
Theresa Hunter
Tohopekaliga Water Authority
951 Martin Luther King Blvd.
Kissimmee, FL 32741

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TOHOPEKALIGA WATER AUTHORITY SUBMETERING AGREEMENT

THIS AGREEMENT is made and entered into this ____ day of _____, 20____, by and between the Tohopekaliga Water Authority, an independent special district established and created pursuant to Chapter 189, Florida Statutes, by special act of the Florida Legislature ("TWA") and _____, ("OWNER") to provide for the submetering of water services on the property located at _____ and more particularly described in the attached Exhibit "A" ("PROPERTY").

RECITALS

1. The OWNER represents and warrants to TWA that OWNER is the record owner of the PROPERTY, and this Agreement has been duly authorized.
2. The OWNER desires to install individual water meters for each individual unit ("SUBMETERS") after the installation of a master meter on the PROPERTY.
3. This Agreement allows the operation of private SUBMETERS subject to compliance with the rules, resolutions, policies, procedures and regulations of TWA.

ACCORDINGLY, for and in consideration of the Recitals, the mutual undertakings and agreements herein contained and assumed, and other good and valuable consideration the receipt and sufficiency of which are acknowledged by the parties, the OWNER and TWA hereby covenant and agree as follows:

SECTION 1. RECITALS. The above Recitals form a material part of this Agreement.

SECTION 2. DEFINITIONS. The following definitions and references are given for the purpose of interpreting the terms as used in this Agreement and apply unless the context indicates a different meaning:

“**SUBMETERING**” shall mean the resale of water service by use of a SUBMETER by the OWNER charging a rate that does not exceed the OWNER’s actual purchase price from TWA.

“**SERVICE**” shall mean the readiness and ability on the part of TWA to furnish water and/or wastewater service to the Property and individual units thereon.

SECTION 3. COVENANTS, PROVISIONS AND TERMS ASSOCIATED WITH SUBMETERING. The OWNER covenants and agrees on behalf of itself and its successors to abide by and accept the covenants, terms and conditions hereof, which include at a minimum the following:

1. The OWNER is hereby authorized by TWA, pursuant to this Agreement, to install SUBMETERS in a multi-unit development and shall not charge administrative fees representing additional costs to individual tenants.

2. The OWNER shall abide by all policies, rules, resolutions and regulations of TWA; and all applicable federal, state and local laws, administrative codes, rules, ordinances and regulations, all as may be amended from time to time.

3. The installation, operation and use of SUBMETERS on the PROPERTY, shall be subject to the limitations and conditions set forth in this Agreement; federal, state and local laws, rules, codes and regulations; the provisions of Florida Building Code, as amended; and Utility Standards and Requirements of the American Water Works Association (“AWWA”).

4. The OWNER is solely responsible for any and all costs associated with the installation, operation, maintenance and use of the SUBMETERS, in connection with SUBMETERING on the PROPERTY including, but not limited to, the cost of permitting, installation and maintenance of all SUBMETERS and associated plumbing and shall obtain all required permits prior to the installation of same.

5. The use of SUBMETERS shall be limited to the purpose of allocating the direct cost of water and sewer services to the individual user and shall be billed at a rate consistent with the rate billed by TWA. At no time shall the OWNER be permitted to charge an individual user more than the actual direct costs of the water and sewer consumption for the individual unit.

6. No SUBMETER shall be placed into service unless it has been approved by TWA and tested by a certified testing facility to comply with AWWA Standards for accuracy. OWNER shall be responsible to test and inspect all SUBMETERS within the time intervals recommended by the AWWA for the applicable size and type of SUBMETER, by a facility that is accredited and in compliance with AWWA standards for accuracy of flow rates and test flow quantities. OWNER shall submit copies of all results to TWA within ten (10) calendar days of completing all required tests.

7. OWNER agrees to replace all meters upon the meter being in service for 10 years or the meter reaching a maximum consumption total of one million (1,000,000.00) gallons of water. OWNER shall submit to TWA an annual report providing for the meters that have been replaced to date.

8. Upon reasonable request by TWA or an individual user, the OWNER shall also perform and be responsible for all costs associated with testing the accuracy of a SUBMETER at any time during the term of this Agreement. The OWNER shall submit copies of all results within ten (10) calendar days of completing all required tests to TWA. The OWNER shall also submit copies to the individual user requesting the test.

9. The OWNER is required to read the SUBMETERS on a periodic schedule and use the readings to determine the water use among the individual units. The SUBMETERS shall be read once every thirty (30) days.

10. Separate utility bills shall be rendered to individual unit owners for the same billing period as that of TWA, generally monthly, unless service is rendered for less than that period. Utility bills shall be rendered as promptly as possible following the reading of the SUBMETERS. The OWNER shall ensure that water service consumption billed to each individual unit is only for each unit's SUBMETERED usage. No administrative charges shall be charged as part of the SUBMETERING bill. OWNER agrees to include TWA bill inserts in each individual unit owner's monthly utility bill to provide the unit owners with supplemental information related to water service.

11. OWNER agrees that the individual unit owner's water service utility bill shall show, at a minimum, the following information:

- a. The date and SUBMETER reading of the period for which the bill is rendered.
- b. The prior and current SUBMETER readings.
- c. The total gallons of water service being billed.
- d. The computed rate for gallons being billed.
- e. The total amount due for water service used and applicable taxes.
- f. The name and address of the unit owner to whom the bill is issued.
- g. The name of the company rendering the SUBMETERING bill, if applicable, and the address and telephone number of the person from that firm that is to be contacted in case of a billing dispute.
- h. The date by which the unit owner must pay the bill.
- i. The name address, telephone number and email address of the party to whom payment is to be made.
- j. If it is an estimated bill, the bill shall be distinctly marked as such.
- k. The consequences of non-payment.

12. OWNER agrees that estimated utility bills shall not be rendered unless: the SUBMETER has been tampered with or bypassed, in such case then the estimated billing shall not exceed two (2) billing periods; or the SUBMETER is found not to be in conformance with AWWA accuracy standards or has stopped and found not to register for any period. OWNER may in this case impose an estimated charge for a period not to exceed (1) billing period, based on the amount used under similar conditions by the same occupant during periods preceding or subsequent thereto, or during the corresponding period in previous years.

13. OWNER shall provide TWA with consecutive quarterly reports in a compatible electronic or digital format that contain a list of addresses and/or individual units with SUBMETERS and a summary of the billing for that quarter, including a breakdown of all SUBMETER readings for each month within the quarter, a comparison of previous quarter totals, and the direct billing and the calculation for the billing of all individual unit occupants. TWA reserves the right to increase the frequency of these reports from quarterly to a monthly basis upon giving OWNER thirty (30) days advance notice of such new requirement.

14. OWNER agrees to provide TWA with an annual report in a compatible electronic or digital format, due on or before January 15th of each year, containing a list of the individual unit occupant names, telephone numbers and addresses with SUBMETERS to ensure compliance with all Florida Department of Environmental Protection applicable laws, policies and regulations.

15. TWA shall have the right, but not the duty, to audit the prorated bills distributed to the individual users to verify that the aggregate amount charged to the individual user is not greater than the direct amount charged to the OWNER by TWA. OWNER agrees to promptly provide billing information to TWA as requested.

16. The OWNER shall pay TWA a monthly fee of \$ _____ for each unit to cover the costs of inspecting, monitoring, and auditing the SUBMETERING system. Said PROPERTY is composed of _____ units, which results in a total annual fee due to TWA in the amount of \$ _____. This fee shall be paid annually to TWA and shall be due on January 1st of each year. Upon thirty (30) days advance notice, TWA reserves the right to increase this fee if TWA's direct cost to provide its services under this Agreement increases. A _____ late fee shall be assessed to the OWNER for payments made after the due date as stated above.

17. OWNER shall initially distribute information regarding the SUBMETERING system to all individual users who will receive distributed utility bills and annually to all users thereafter. Included in that information shall be the name and phone number of the appropriate OWNER's representative to whom all billing and maintenance inquiries shall be directed.

18. OWNER agrees that all rental agreements between OWNER and the occupant shall clearly state that the individual unit is SUBMETERED, that utility bills for water service will or may be issued on a SUBMETERED basis, that utility bills shall not include charges for water service for common areas and facilities, that the occupant is a customer of the OWNER and all billing and maintenance inquires shall be directed to OWNER as the water provider via SUBMETERING. The occupant shall initial this provision on the rental agreement.

19. TWA shall not be liable or responsible for any problems with the water and sewer services that are caused by SUBMETERING of the PROPERTY and OWNER hereby covenants to hold harmless and indemnify TWA from all loss, cost, damages or consequences of every kind which may arise from SUBMETERING of the PROPERTY. The OWNER shall be solely responsible for all costs associated with SUBMETERING of every kind. In no case shall OWNER extend water, and sewer lines across a street, alley, lane, court, property line, avenue, or other public thoroughfare or right-of-way in order to furnish utility service for an adjacent parcel even though such adjacent parcel is owned by said person or entity.

20. The OWNER, its officers, directors, members, employees, volunteers, assistants, agents, successors, and assigns shall be an independent contractor and at no time shall be considered an employee or agent for TWA. The OWNER hereby agrees at no time to represent or cause to be represented that they are employees or agents of TWA.

21. OWNER shall indemnify, save and hold harmless TWA against all liability, losses, damage or other expenses, including reasonable attorney's fees which may be imposed upon, incurred by or asserted against TWA by reason of any negligence on the part of the OWNER, the OWNER or its employees, agents, contractors, licensees or invitees; any personal injury or property damage occurring on or about the property or any part thereof; or any failure on the part of the OWNER to perform or comply with any covenant required to be performed or complied with against TWA by reason of any such occurrences, OWNER will, at OWNER's expense, resist or defend any such action or proceeding. Provided further, however, OWNER shall have no obligation with respect to claims arising out of the intentional or negligent conduct of TWA or its employees, agents, contractors, licensees or invitees or of third parties not included in the definitions above. The liability and immunity of TWA is governed by the provisions of Section 768.28, Florida Statutes, and nothing in this agreement is intended to extend the liability of TWA or to waive any immunity enjoyed by TWA under that statute. Any provisions of this agreement determined to be contrary to Section 768.28 or to create any liability or waive any immunity except as specifically provided in Section 768.28 shall be considered void. Notwithstanding anything which might be construed to the contrary herein, TWA does not waive any sovereign immunity as a result of this or any other agreement associated with the subject matter hereof or otherwise; and, nothing herein shall be construed to usurp or interfere with its duty and authority to exercise any police powers as defined by law.

SECTION 4. PROMPT PAYMENT FOR SERVICE NOT EXCUSED. The OWNER, its successors and assigns shall pay TWA for monthly service, within thirty (30) days after statement is rendered by TWA, all sums due and payable as set forth in such statement. The failure to not receive payment from any individual unit user or occupant shall not affect the OWNER's obligation to otherwise timely pay TWA in full as billed. Upon failure or refusal to pay the amounts due on statements as rendered, TWA may, in its sole discretion, terminate service, or exercise any other right of enforcement for non-payment available by law, and neither this Agreement, nor any non-payment by third parties shall be a defense to such enforcement by TWA.

SECTION 5. BINDING AGREEMENT; ASSIGNMENTS BY OWNER. This Agreement shall be binding upon and shall inure to the benefit of OWNER, TWA and their respective assigns and successors by law, merger, consolidation or conveyance. This Agreement shall not be separately sold, conveyed, assigned or otherwise disposed of by OWNER without the written consent of TWA first having been obtained, and which shall be given in the sole discretion of TWA, if at all. Nonetheless, this Agreement and all provisions hereof shall and does hereby run with, touch, and concern the PROPERTY.

SECTION 6. ENTIRE AGREEMENT; AMENDMENTS; APPLICABLE LAW; ATTORNEY'S FEES. This Agreement supersedes all previous agreements or representations, either verbal or written, heretofore in effect between OWNER and TWA, made with respect to the matters herein contained, and when duly executed, constitutes the agreement between OWNER and TWA. No additions, alterations or variations of the terms of this Agreement shall be valid, nor can provisions of the Agreement be waived by either party, unless such additions, alterations, variations or waivers are expressed in writing and duly signed. This Agreement shall be governed by the laws of the State of Florida, as well as all applicable local resolutions of TWA and it shall be and become effective immediately upon execution by both parties hereto. In the event that TWA or OWNER is required to enforce this Agreement by court proceedings or otherwise, by instituting suit or otherwise, then TWA or OWNER shall be entitled to recover all costs incurred, including reasonable attorney's fees at trial and upon appeal. Venue shall be in Circuit Court in Osceola County, Florida before a judge and not a jury.

SECTION 7. RECORDATION. The parties hereto agree that an executed copy of this Agreement and Exhibits attached hereto shall be recorded in the Public Records of Osceola County, Florida at the expense of the OWNER.

SECTION 8. SEVERABILITY. If any part of this Agreement is found invalid or unenforceable by any court, such invalidity or unenforceability shall not affect the other parts of this Agreement if the rights and obligations of the parties contained therein are not materially prejudiced, and if the intentions of the parties can continue to be effected. To that end, this Agreement is declared severable.

SECTION 9. AUTHORITY TO EXECUTE AGREEMENT. The signature by any person to this Agreement shall be deemed a personal warranty by that person that he has the full power and authority to bind any corporation, partnership, or any other business entity for which he purports to act hereunder.

SECTION 10. ARMS LENGTH TRANSACTION. Both parties have contributed to the preparation, drafting and negotiation of this document and neither has had undue influence or control thereof. Both parties agree that in construing this Agreement, it shall not be construed in favor of either party by virtue of the preparation, drafting, or negotiation of this Agreement.

IN WITNESS WHEREOF, OWNER and TWA have executed or have caused this Agreement, with the named Exhibits attached, if any, to be duly executed in several counterparts, each of which counterpart shall be considered an original executed copy of this Agreement.

TOHOPEKALIGA WATER AUTHORITY

By: _____
Brian L. Wheeler, Executive Director

Attest: _____
Nilsa C. Diaz, Executive Assistant

STATE OF FLORIDA
COUNTY OF OSCEOLA

The foregoing instrument was acknowledged before me on __ day of _____ 2014 by Brian L. Wheeler, as Executive Director of the Tohopekaliga Water Authority. He [] is personally known to me, or [] has produced a driver's license as identification.

(Notary Seal)

Signature of Notary Public

Name of Notary Typed, Printed or Stamped

IN WITNESS WHEREOF, OWNER and TWA have executed or have caused this Agreement, with the named Exhibits attached, if any, to be duly executed in several counterparts, each of which counterpart shall be considered an original executed copy of this Agreement.

Signed, sealed and delivered
In our presence:

OWNER:
[to come]

Witness #1

By: _____
[Name, Title]

(Witness #1 printed name)

Witness #2

(Witness #2 printed name)

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____
2014, by _____, as _____ of _____
_____, a _____ authorized to
do business in the State of Florida, on behalf of the _____. He/She [] is
personally known to me, or [] has produced a driver's license as identification.

(Notary Seal)

Signature of Notary Public

Name of Notary Typed, Printed or Stamped

EXHIBIT A
PROPERTY DESCRIPTION