

RESOLUTION 14-122

A RESOLUTION TO APPROVE RECLAIMED WATER AGREEMENT WITH KING'S CREEK GOLF COURSE

WHEREAS, the City of Spring Hill is the owner and operator of the Spring Hill Wastewater Treatment Plant that discharges treated municipal wastewater; and

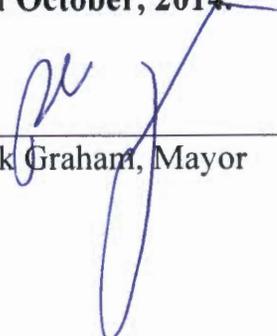
WHEREAS, King's Creek Golf Course wishes to use reclaimed water to fill a pond that is used for irrigation of the golf course; and

WHEREAS, it is in the best interest of the City of Spring Hill and the health, safety, and welfare of its residents to be able to sell reclaimed wastewater for irrigation and other purposes pursuant to the City's NPDES permit; and

WHEREAS, the City agrees to provide King's Creek Golf Course with reclaimed water, meeting the standards outlined in the attached agreement, which will be in effect for a term of ten (10) years.

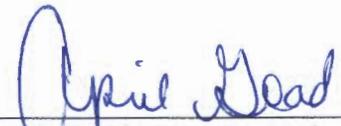
NOW, THEREFORE BE IT RESOLVED, that the City of Spring Hill, Board of Mayor and Aldermen approves the attached Reclaimed Water Agreement with King's Creek Golf Course.

Passed and adopted by the Board of Mayor and Aldermen of the City of Spring Hill, Tennessee on the 20th day of October, 2014.



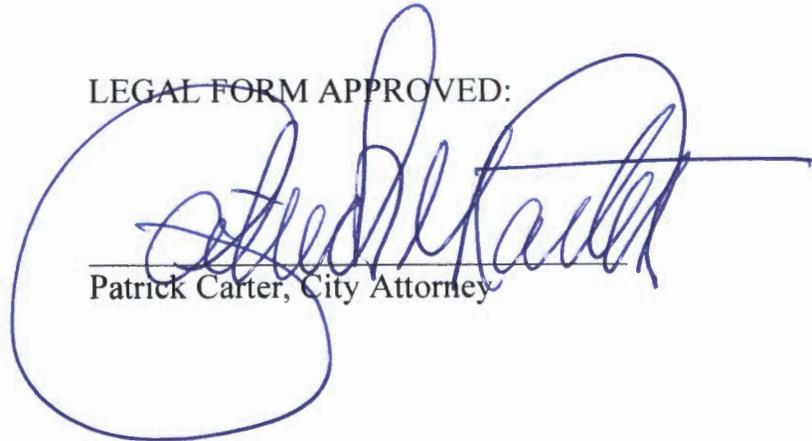
Rick Graham, Mayor

ATTEST:



April Goad, City Recorder

LEGAL FORM APPROVED:



Patrick Carter, City Attorney

CITY OF SPRING HILL, TENNESSEE
RECLAIMED WATER AGREEMENT
CITY OF SPRING HILL CONTRACT No. 2014-0011

THIS AGREEMENT ("Agreement") is made by and between the City of Spring Hill, Tennessee, hereinafter referenced as "City", and SPE GO Holdings, Inc., hereinafter referenced as "Customer", owner and operator of King's Creek Golf Course (the "Golf Course") who mutually agree as follows:

WHEREAS, the City is the owner and operator of a wastewater treatment plant ("Plant") that discharges treated municipal wastewater ("Reclaimed Water") which is located at 3893 Mahlon Moore Road in the City of Spring Hill, Tennessee (the "Plant Property"); and

WHEREAS, the Customer owns the Golf Course, which is located at 3901 Kedron Road in the City of Spring Hill, Tennessee, on property adjacent to the Plant Property (the "Golf Course Property"); and

WHEREAS, the City desires to dispose of Reclaimed Water discharged by the Plant and the Customer wishes to receive Reclaimed Water to fill a pond used for irrigation of the Golf Course Property; and

WHEREAS, it is in the best interest of the City and the health, safety, and welfare of its residents to be able to employ the Reclaimed Water for irrigation and other purposes pursuant to the City's National Pollutant Discharge Elimination System (NPDES) Permit; and

NOW THEREFORE, in consideration of the foregoing recitals and the mutual covenants and agreements of the parties, the receipt and sufficiency of such consideration being hereby acknowledged, it is hereby agreed as follows:

ARTICLE 1. AGREEMENT TO SUPPLY RECLAIMED WATER.

1.1 So long as the Golf Course Property is used as a golf course, the City agrees to provide the Customer at the point of delivery herein specified, Reclaimed Water meeting the standards set out herein in such amount as is reasonably required by the Customer to meet its irrigation needs with respect to the Golf Course.

1.2 The Customer shall not be required to receive any minimum amount of Reclaimed Water, and shall not be required to pay a minimum usage charge.

1.3 In the event the Customer ceases to use the Golf Course Property as a golf course, the City shall have the right, upon thirty (30) days' advance written notice to the Customer, to disconnect the Customer from the Reclaimed Water system and to terminate this Agreement.

DCW

ARTICLE 2. PAYMENT FOR RECLAIMED WATER

Subject to the terms contained herein, the City shall charge the Customer and the Customer shall pay to the City for the Reclaimed Water provided hereunder the sum of One Dollar (\$1.00) annually with the first annual payment being made on or before the 30th day of September, 2014, and all future payments being made on or before the 30th day of September in each subsequent year during the term of this Agreement.

ARTICLE 3. TERM OF AGREEMENT

This Agreement shall take effect on the date hereof and shall continue in effect for a term of ten (10) years. During the sixth (6th) through tenth (10th) years of the term, either party may give notice of cancellation which must be given in writing one hundred eighty (180) days or more in advance of termination. This Agreement is not eligible for extension and must renegotiated at the end of the term.

ARTICLE 4. RECLAIMED WATER QUALITY

4.1 The quality of Reclaimed Water delivered by the City to the Customer hereunder shall meet the standards of the City's NPDES permit and all other applicable and governing laws, statutes, and ordinances. The City shall test and monitor all pollutants as required by the NPDES permit to evidence compliance with this subsection. The test procedures and results will be made available to the Customer upon request. The Reclaimed Water and the City's procedures at all times will meet minimum standards established pursuant to the NPDES permit and all other applicable and governing laws, statutes and ordinances.

4.2 The City shall operate their respective portions of the Reclaimed Water System in accordance with the standards established by the Tennessee Department of Environment and Conservation (TDEC) and the City. The City's portion of the Reclaimed Water System facilities are the Plant and the public distribution system up to and including the meter installed for the Customers service (the "City's Facilities"). The Customer's portion of the Reclaimed Water System facilities are all privately owned distribution, storage, and delivery points located on the Golf Course Property that are behind (downstream) from the meter (delivery point) (the "Customer's Facilities"), which meter is presently in the location indicated on Exhibit A attached hereto.

4.3 The City shall be allowed reasonable access to the Customer's facilities in order to observe operating procedures and to collect samples for testing.

ARTICLE 5. RELATED FACILITIES

5.1 The City, at its expense, shall operate and maintain all facilities necessary for the purpose of delivering Reclaimed Water hereunder to the Golf Course Property.

5.2 The Customer, at its expense, shall procure, furnish, install, operate, and maintain all facilities from the delivery point and downstream therefrom that are necessary for receiving, applying, and utilizing the Reclaimed Water delivered to the Customer.

ARTICLE 6. TEMPORARY INTERRUPTIONS OR REDUCTIONS

The City may temporarily discontinue or reduce the quantity of Reclaimed Water to be furnished to the Customer as herein provided for the purposes of investigation, inspection, maintenance, repair, or replacement of any of the plant or any part thereof necessary for the furnishing of Reclaimed Water to the Customer but so far as feasible the City will coordinate such temporary discontinuance or reduction and give the Customer due notice in advance of such temporary discontinuance or reduction, except in case of an operating emergency, in which case no notice need be given. The City shall endeavor to prevent any such interruption or reduction of service, other than those caused by operating emergencies, from continuing for a period lasting longer than twelve (12) consecutive hours. Interruptions or reductions caused by operating emergencies shall be addressed immediately. In the event of an upset (as defined in the NPDES permit) at the plant which adversely affects the Reclaimed Water Quality, the City may temporarily discontinue delivery of the Reclaimed Water until such upset is corrected. The City shall endeavor to correct such upsets, interruptions, or reductions in service caused by operating emergencies as soon as possible. An operating emergency shall include, but not necessarily be limited to, interruptions due to line breaks, mechanical failure of the plant or any part of the delivery system, power failure, flood, fire, earthquake, or other catastrophe. The City shall not be liable for any damages for any interruption of service whatsoever.

ARTICLE 7. INDEMNIFICATION OF THE CITY

The City shall not be responsible for the control, use, distribution or discharge of the Reclaimed Water by the Customer from the Customer's Facilities. The Customer shall indemnify and hold the City and its officers and agents and employees harmless on account of damage or claim of damage of any nature whatsoever for which there is a legal responsibility, including property damage, personal injury or death arising out of or connected with the Customer's control, use, distribution or discharge of such Reclaimed Water from the Customer's Facilities. Nothing in this Section shall be deemed to provide an indemnification to the City against liability attributable to the failure of the City to maintain the minimum standards of quality required for the Reclaimed Water by NPDES permit, this Agreement, and applicable law.

ARTICLE 8. COMPLIANCE WITH LAWS

The City and the Customer, in carrying out their respective provisions of the Agreement, shall comply with all applicable water and air pollution laws and regulations of the United States and the State of Tennessee and shall obtain all required permits or licenses from the appropriate Federal and/or State authorities.

ARTICLE 9. ASSIGNMENT

This Agreement may be assigned by the Customer to any person or entity who may acquire the Customer's interest in the Golf Course Property. Otherwise, this Agreement may not be assigned by the Customer without the City's prior written approval which will not be unreasonably withheld. Subject to the foregoing, this Agreement is binding upon and shall inure to the benefit of the permitted successors and assigns of the parties hereto.

ARTICLE 10. ATTORNEYS' FEES AND OTHER COSTS.

In the case of litigation by and between the Parties regarding this Agreement, the Parties agree that the prevailing party in any such legal action shall be entitled, in addition to any other rights and remedies it may have, to reimbursement for its expenses including court costs and reasonable attorneys' fees.

ARTICLE 11. NONWAIVER CLAUSE.

One or more waivers of breach of any provision of this Agreement by any party shall not be construed as a waiver of subsequent breach of the same provision, nor shall it be considered a waiver of any other then existing or subsequent breach of a different provision.

ARTICLE 12. HEADINGS.

The headings of this Agreement are for the purposes of reference only and shall not limit or otherwise affect the meaning thereof.

ARTICLE 13. GOVERNING LAW.

This Agreement shall be construed and enforced in accordance with, and governed by, the laws of the State of Tennessee. Venue and jurisdiction shall be in the General Sessions or Circuit Court for Maury County, Tennessee.

ARTICLE 14. BINDING EFFECT ON SUCCESSORS, ASSIGNEES, ETC.

A. Except for assignments permitted in Article 9 above, Customer may not assign nor may it delegate any rights or obligations hereunder without first obtaining the written consent of City, which will not be unreasonably withheld.

B. This Agreement shall be binding on and inure to the benefit of any immediate, intermediate or ultimate successor to the business or assets of Customer by way of merger, consolidation, reorganization, dissolution, sale or transfer of assets, liquidation or otherwise.

ARTICLE 15. NOTICE.

A. Any notice required to be given in writing by any party to this Agreement may be delivered personally or by registered, certified or overnight mail:

if to Customer: SPE GO Holdings, Inc.
c/o Textron Financial Corporation
Two Cessna Boulevard, Suite 100
Wichita, KS 67215-1423
Attn: General Counsel

and if to City: 199 Town Center Parkway
Spring Hill, TN 37174

copy to: Patrick M. Carter, Esq.
Hardin, Parkes, Kelley, Carter & Bryant, PLLC
P.O. Box 929
Columbia, TN 38402-0929

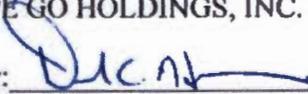
Any party may change the address to which future notices shall be mailed by giving notice of such change to the other party in writing.

ARTICLE 16: EXECUTION.

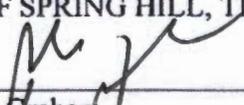
This Agreement may be executed and delivered via email in multiple counterparts, each of which shall be deemed an original to the same effect as if all parties hereto had executed the same original, and all of which, when taken together, shall constitute a single instrument.

IN WITNESS WHEREOF, the parties have executed this Agreement, as of the 20th day of October, 2014.

SPE GO HOLDINGS, INC.

By: 
Donald C. Henderson
Title: Senior Vice President
Date: 9/26/14

CITY OF SPRING HILL, TENNESSEE

By: 
Rick Graham
Mayor
Date: 10/27/14

This instrument prepared by Patrick M. Carter, Attorney, 102 West Seventh Street, Post Office Box 929, Columbia, Tennessee 38402-0929.

P/O Map 043, Parcel 020.00

GRANT OF SEWER EASEMENT

For and in consideration of the sum of One Hundred Ninety-nine Thousand Dollars (\$199,000.00), cash in hand paid, and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the undersigned, SPE GO HOLDINGS, INC. (hereinafter called "Grantor"), does hereby grant, transfer and convey to the CITY OF SPRING HILL, TENNESSEE, (hereinafter called "Grantee"), its successors and assigns, a 20-foot wide permanent gravity sewer line easement for the purpose of constructing, operating, maintaining, repairing, replacing and inspecting said proposed gravity sewer line. The center line of the proposed 20-foot wide permanent gravity sewer line easement is described as follows:

Beginning at an existing manhole, said point being located S 21°03'28" E 269.48 feet from an existing upstream manhole; thence, South 87°25'59" East, 304.96 feet to a point; thence, South 24°6'17" East, 357.92 feet to a point; thence, South 11°0'20" East, 367.27 feet to a point; thence, South 56°13'1" East, 350.04 feet to a point; thence, South 71°36'1" East, 370.11 feet to a point; thence, South 68°42'19" East, 253.44 feet to a point; thence, South 43°30'41" East, 401.32 feet to a point; thence, South 54°32'37" East, 250.90 feet to a point; thence, South 33°36'10" East, 325.67 feet to a point; thence, South 9°40'8" East, 235.15 feet to its terminus at the property boundary of Parcel No. 13, Tax Map 043.

In addition to the above-described permanent gravity sewer line easement, the undersigned grants an adjoining 20-foot wide temporary construction easement located on each side of the 20-foot wide permanent easement for the purpose of facilitating gravity sewer line installation. The temporary construction easement shall become null and void upon project completion and acceptance by the City of Spring Hill.

The City of Spring Hill agrees to require its agents and contractors to protect and restore said property to a condition similar or equal to that existing at the commencement of construction.

Being a portion of the same property previously conveyed to RLG Investments, LLC herein by deed of record in Book R1722, Page 794, Register's Office of Maury County, Tennessee.

This parcel of land upon which said sewer way is to be constructed is to remain the property of the undersigned and may be used by the undersigned for any purpose desired after the construction of said drainage way is completed, provided, in the opinion of the City of Spring Hill, Tennessee, said use does not destroy, weaken, or damage the above-described improvement nor impede or interfere with the operation or maintenance of same. Said easement is binding upon the Grantor, its heirs, successors and assigns.

Said easement and rights associated therewith, shall run with the land and shall be perpetual.

Included with the easement are the following incidental rights and powers which Grantor hereby agrees that Grantee, its successors and assigns, shall have: (a) Grantee shall have the right of ingress and egress upon said easement for the purpose of moving any debris, rubbish, limbs, or other obstructions which may obstruct or rest upon said easement due to the drainage and runoff, (b) Grantee shall have the right of ingress and egress upon said easement for the purpose of doing reasonably necessary work to keep water and runoff from its property from going further upon Grantor's land outside the boundaries of the easement.

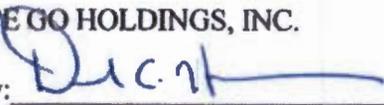
Said easement is granted and conveyed subject to the limitations, restrictions, agreements and requirements set out herein.

TO HAVE AND TO HOLD the above-described sewer easement with the estate, title and interest thereto, including all rights and powers therewith, belonging to Grantee, its successors and assigns, forever; and Grantor does covenant with Grantee that Grantor is lawfully seized and possessed of the underlying land in fee simple and of the drainage and runoff easement, has a good

right to convey said easement, and the easement is unencumbered, except as otherwise herein set out; and Grantor does further covenant and bind itself, its heirs, successors and assigns, to warrant and forever defend the title to said easement to Grantee, its successors and assigns, against the lawful claims of all persons whomsoever.

SPE GO HOLDINGS, INC.

By:



Donald C. Henderson
Its: Senior Vice President

STATE OF KANSAS
COUNTY OF SEDGWICK

Before me, the undersigned authority, a Notary Public in and for the State and County aforesaid, personally appeared Donald C. Henderson, with whom I am personally acquainted, and who, upon oath acknowledged him/herself to be the Senior Vice President of SPE GO HOLDINGS, INC., a corporation, the within named bargainer, and as such Donald C. Henderson, being authorized so to do, executed the foregoing instrument for the purposes therein expressed and contained by signing the name of the corporation by Donald C. Henderson.

Witness my hand and seal at office in Wichita, Kansas, this the 21st day of October, 2014.


NOTARY PUBLIC

My Commission Expires:



OATH

_____, being duly sworn, deposes and says, under penalties of perjury, that the consideration or value, whichever is greater, for transfer of the property described herein is \$ _____.

Sworn to and subscribed before me, this the _____ day of _____, 2014.

NOTARY PUBLIC

My Commission Expires: _____