

BEFORE THE STATE OF FLORIDA  
PUBLIC SERVICE COMMISSION

991746-WU

IN RE: DESTIN WATER USERS, INC.

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**RECEIVED**

NOV 15 1999

Florida Public Service Commission  
Division of Water and Wastewater

**PETITION FOR DECLARATORY STATEMENT**

Comes now, Petitioner DESTIN WATER USERS, INC., (DWU), and petitions the Florida Public Service Commission for a declaratory statement on Section 367.011, Florida Statutes. The Petition is filed pursuant to Chapter 28-105, Florida Administrative Code, and in support thereof states as follows:

1. Petitioner Destin Water Users, Inc. (DWU), has a mailing address of P.O. Box 308, Destin, Florida 32540, phone 850-837-6146, and facsimile 850-654-5173. However, for purposes of the instant proceeding, Petitioner's address will be the same as that of its undersigned attorneys, Oertel, Hoffman, Fernandez & Cole, P.A., 301 S. Bronough St., Suite 500, Tallahassee, Fl 32301, phone 850-521-0700, and facsimile 850-521-0720.

**Background**

2. DWU is a not-for-profit member-owned and controlled water and wastewater utility providing service in Okaloosa County. DWU provides service solely to its members. All customers of DWU are members of DWU. The members own and control the utility. A sketch of the DWU service territory is attached as Exhibit "A."

3. DWU was incorporated in 1963 for the purpose of providing water and wastewater service to its member owners. Currently, DWU provides water, wastewater, and reclaimed water service to approximately 6,000 member owners. The member owners are entitled to one vote each, and elect a Board of Directors each year. The member owners vote to approve all rate increases and other decisions outside the day-to-day operation of the utility. DWU provides for its own billing. DWU is located in Okaloosa County and all of its customers are in Okaloosa County.

4. The Okaloosa Board of County Commissioners adopted and submitted a resolution on October 1992, granting the PSC exclusive jurisdiction over each utility in Okaloosa County with respect to its authority, service, and rates.

5. On December 24, 1992, DWU filed its request for exemption from PSC regulation pursuant to Section 367.022(7), F.S. In order to comply with both statute and PSC rule governing exempt utilities, DWU was required to amend its Articles of Incorporation and By-Laws. The Articles of Incorporation were amended to clearly state that members only will be served. The By-Laws were amended to reflect that members receive one vote per unit of ownership.

6. On June 9, 1993, the PSC granted DWU's request for exemption from PSC regulation by Order PSC-93-0873-FOF-WS. The Order expressly exempts DWU from PSC regulation pursuant to the terms of Section 367.022(7), F.S. A copy of this Order is attached as Exhibit "B."

7. At all times prior to, and following, the issuance of Order PSC-93-0873-FOF-WS, DWU has been a self-regulating water and wastewater provider.

8. The City of Destin was incorporated in 1984. The incorporation of the City of Destin did not affect DWU service to its customers (member owners) located within the City.

9. On June 20, 1994, the City of Destin adopted City Ordinance 263 and 264. These ordinance(s) purported to create City water and wastewater franchises, and grant the same to DWU. City Ordinances 263 and 264 were unilaterally adopted by the City and imposed on DWU. A copy of City Ordinance 263 is attached as Exhibit "C." A copy of City Ordinance 264 is attached as Exhibit "D."

10. The terms of the City franchise ordinances purport to grant the City the power to fix rates for water and wastewater service provided by DWU. The City cites to Section(s) 180.14 and 180.20, F.S., and "other applicable general law" as the basis for the alleged authority to fix rates.

11. The terms of the franchise ordinances require DWU to pay the City 1% of the gross revenues received from City water and sewer customers in return for the privilege of operating under the franchise. The fees have been paid to date as prescribed in the ordinances.

12. In 1996, DWU joined as an equal partner with South Walton Utilities, Inc., a neighboring not-for-profit utility, to form the Water Resource Partnership, Inc., (WRP). In July 1996 (WRP), applied for a water use permit from the Northwest Florida Water Management District (District).

13. The proposed water use permit envisions the development of an inland well field located north of the City of Freeport, Florida, as a source of water supply for DWU.

14. The well field location and source of water are both supported by the District due to the degradation of water quality in the coastal area.

15. DWU, as a partner in WRP, has been seeking issuance of the water use permit from the District for the past three years. The District has proposed issuance of the permit; however, the

City of Freeport appealed the District decision to the Florida Land and Water Adjudicatory Commission. The City of Freeport recently withdrew its appeal.

16. DWU is developing a rate structure to support extensive capital improvements associated with construction of an inland well field and transmission line. The location, source, and quantity of water described in the permit have all been approved by the District.

17. Since the incorporation of the City of Destin, DWU has, in the interest of good relations, kept the City apprised of issues affecting rate payers, many of whom are City residents.

18. The City has been kept informed of the nature and progress of the water use permit sought by DWU. In 1998, DWU informed the City that a rate increase would be necessary to support the water supply project required by the District pursuant to the water use permit. The City requested copies of documents produced by DWU in support of the rate increase. These documents included rate studies, cost projections, and fee schedules, etc. All of the documents requested by the City during this time were provided.

19. On June 7, 1999, the City approved an Order Establishing Procedure for the fixing of utility rates for DWU. A copy of the Order Establishing Procedure is attached as Exhibit "E." Exhibit "E" also contains a memorandum to the City from counsel explaining the Procedural Order, and recommending its adoption.

20. The Procedural Order passed by the City Council requires a quasi-judicial rate hearing with discovery, pre-filed statements, and cross examination of DWU witnesses by both parties and non-parties. In the opinion of DWU, the procedures outlined are unprecedented, unnecessary, and outside the authority of the City.

21. Correspondence from regulatory counsel for the City to counsel for DWU explaining the nature of the quasi-judicial rate fixing proceeding outlines the City's position. A copy of correspondence between the counsel for the City and DWU is attached as Exhibit "F."

### **Need for Declaratory Statement**

#### **Section 367.011(2), F.S.**

22. This Petition for Declaratory Statement seeks a declaratory statement from the PSC as to the force and effect of Section 367.011(4), F.S.

23. As stated above, DWU is located in Okaloosa County. Okaloosa County passed a resolution granting exclusive regulatory jurisdiction over utilities in the County to the PSC. Following this delegation of jurisdiction to the PSC in 1992, DWU sought and received Order PSC-93-0873-FOF-WS from the PSC, exempting DWU from PSC regulation.

24. DWU obtained the exemption based on the fact they are a nonprofit corporation providing service to members who own and control the corporation. Furthermore, DWU provides for its own billing. *See*, Section 367.022(7), F.S., and the PSC Order attached as Exhibit "B."

25. Following issuance of the PSC exemption Order, DWU continued operation as a self-regulating member owned and controlled utility. DWU has fixed its own rates for utility service for the past 36 years, subject to the approval of its member owners.

26. The existing rate-fixing procedure has been challenged by the City of Destin. The City has proposed a vastly more complicated and expensive procedure by which utility rates should be fixed. Most importantly, the City has designated itself as the rate-fixing authority. The City alleges as the source of its authority, Ordinances 263 and 264, passed by the City in 1994, purporting to grant DWU a franchise to serve City customers, and Section(s) 180.14 and 180.20, F.S.

27. DWU is a self-regulating member-owned utility located in a PSC jurisdictional county (Okaloosa County), over which no other entity has regulatory jurisdiction. DWU maintains that in accordance with the applicable statutory law, *jurisdiction* over it remains with the PSC.

28. Section 367.011(2), F.S. states:

The Florida Public Service Commission shall have exclusive jurisdiction over each utility with respect to its authority, service and rates.

29. The PSC found DWU exempt from *regulation* pursuant to Section 367.022(7), F.S.. The exemption determination by the PSC does not open the door for the City of Destin to assume regulatory jurisdiction over DWU authority, service and rates. The PSC found DWU exempt from its *regulation*, not its *jurisdiction*<sup>1</sup>.

**Section 367.011(4), F.S.**

30. Chapter 367, F.S., grants to the Florida Public Service Commission (PSC) exclusive jurisdiction over water and wastewater utilities with respect to authority, service, and rates within PSC-regulated counties. Section 367.011(4) states as follows:

This chapter shall supersede all other laws on the same subject, and subsequent inconsistent laws shall supersede this chapter only to the extent that they do so by express reference. This chapter shall not impair or take away vested rights other than procedural rights or benefits.

31. It is well established that Chapter 367, F.S., covers the entire subject of legislation in the area of water and wastewater regulatory law in PSC jurisdictional counties.

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<sup>1</sup> For example the Order granting the DWU exemption from regulation is clear that, should the circumstances of DWU change, the PSC retains jurisdiction to reevaluate its exempt status. This language indicates the retention of PSC jurisdiction.

32. DWU is exempt from PSC regulation pursuant to Section 367.022(7), F.S., as a nonprofit corporation providing service solely to member owners.

33. The City of Destin lacks the statutory authority to assume rate regulation jurisdiction over a private not for profit utility located in a PSC jurisdictional county. DWU is a utility which the PSC has exempted from regulation due to its self-regulating nature.

34. Reliance upon the so-called “franchise ordinances” as the source of authority enabling the City to assume regulatory jurisdiction is misplaced. The “franchise ordinances” reference Chapter 180, F.S., specifically Section(s) 180.14 and 180.20, F.S., as the City’s source of rate-fixing authority over DWU. The assumption of rate-fixing authority by the City over a private utility located within a PSC County is inconsistent with the express language of Section 367.011(4), F.S.

35. The Legislature clearly intended its 1971 total revision of Chapter 367, F.S., to supersede all other laws on the same subject, whether special or general. *Orange City Water Company v. Town of Orange City*, 255 So.2d 257, 259 (Fla. 1971). The Legislature’s complete revision of a subject is an implied repeal of earlier acts dealing with the same subject unless a contrary intent is clearly shown. Where an Act is intended to cover an entire subject of legislation, it operates to repeal all former acts dealing with the same subject. See *Orange City* at Note 1, p. 259, *Oldham v. Rooks*, 361 So.2d 140, 143 (Fla. 1978). Both Sections 180.14 and 180.20, F.S., relied upon by the City as the basis for its alleged rate-fixing authority, became law in 1936. Consequently, to the extent Section(s) 180.14 and 180.20, F.S., are in conflict with Chapter 367, F.S., they are considered repealed.

36. The rules of statutory construction are clear that there is a general presumption that later statutes are passed with knowledge of prior existing laws, and construction is favored which

gives each one a field of operation, rather than having the former repealed by implication; nevertheless, when the Legislature makes a complete revision of subject, it serves as implied repeal of earlier Acts dealing with the same subject unless intent to the contrary is shown. *Oldham* at 143.

37. Section(s) 180.14 and 180.20, F.S., may remain applicable to private utilities located in non-PSC jurisdictional counties. This allows the Sections of Chapter 180, F.S., a field of operation which does not conflict with Chapter 367, F.S. However, this does not allow the field of operation of Section(s) 180.14 and 180.20, F.S., to extend to regulation of private utilities located within PSC jurisdictional counties.

38. Case law has provided examples of the force and effect of Chapter 367, F.S. The Town of Orange City challenged PSC jurisdiction by seeking to regulate a private utility in a PSC jurisdictional County. The Supreme Court held that the Water and Sewer System Regulatory Law of 1971 superseded a 1967 Special Act enabling the Town of Orange City to regulate water rates in its corporate limits, thus the town is without authority to regulate or fix rates for supply of water furnished in the town. *Orange City Water Company v. Town of Orange City*, 255 So.2d 257, (Fla. 1971). The Court found that the special law relied upon by the City was expressly superseded as provided by Section 367.011(4), F.S.

39. Chapter 367, F.S., is intended to supersede all other laws, both special and *general*. *Orange City* at 259. Section(s) 180.14 and 180.20, F.S., are sections of the General Laws of Florida.

40. In 1973, the Supreme Court ruled on the validity of a special law granting water and wastewater regulatory authority to the City of Cape Coral. The special law expressly divested the PSC of its exclusive jurisdiction under Chapter 367, F.S., within the city limits of the City of Cape Coral. *City of Cape Coral v. GAC Utilities, Inc., of Florida*, 281 So.2d 493, (Fla. 1973). The

Supreme Court upheld the divestiture because of its express nature. No divestiture of PSC jurisdiction is present in the instant case, either implied or express.

41. Both the *City of Cape Coral* and *Town of Orange City* cases provide examples of consistent application of Section 367.011, F.S.

**Effect of Declaratory Statement**

42. Destin Water Users, Inc. requests a Declaratory Statement from the Florida Public Service Commission consistent with the plain language of Chapter 367.011, F.S., and as interpreted by the Supreme Court of Florida.

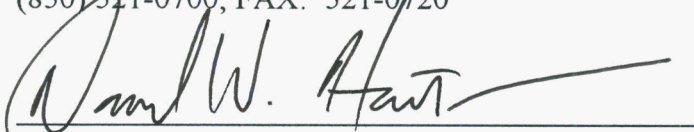
43. DWU respectfully requests a Declaratory Statement under the authority cited above stating that:

- a. A Utility determined by the PSC to be exempt from PSC regulation pursuant to Section 367.022(7), F.S., exempting nonprofit corporations providing service solely to member owners, remains under PSC jurisdiction and is not subject to regulation by any municipal or other regulating authority.

DATED this 15th day of November, 1999.

Respectfully submitted,

OERTEL, HOFFMAN, FERNANDEZ & COLE, P.A.  
Post Office Box 1110  
301 S. Bronough Street, Fifth Floor (32301)  
Tallahassee, FL 32302-1110  
(850) 521-0700; FAX: 521-0720

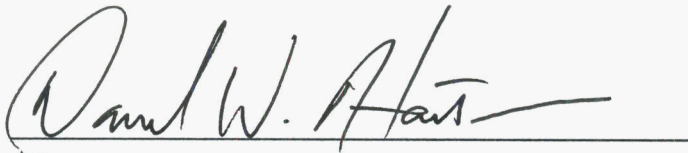


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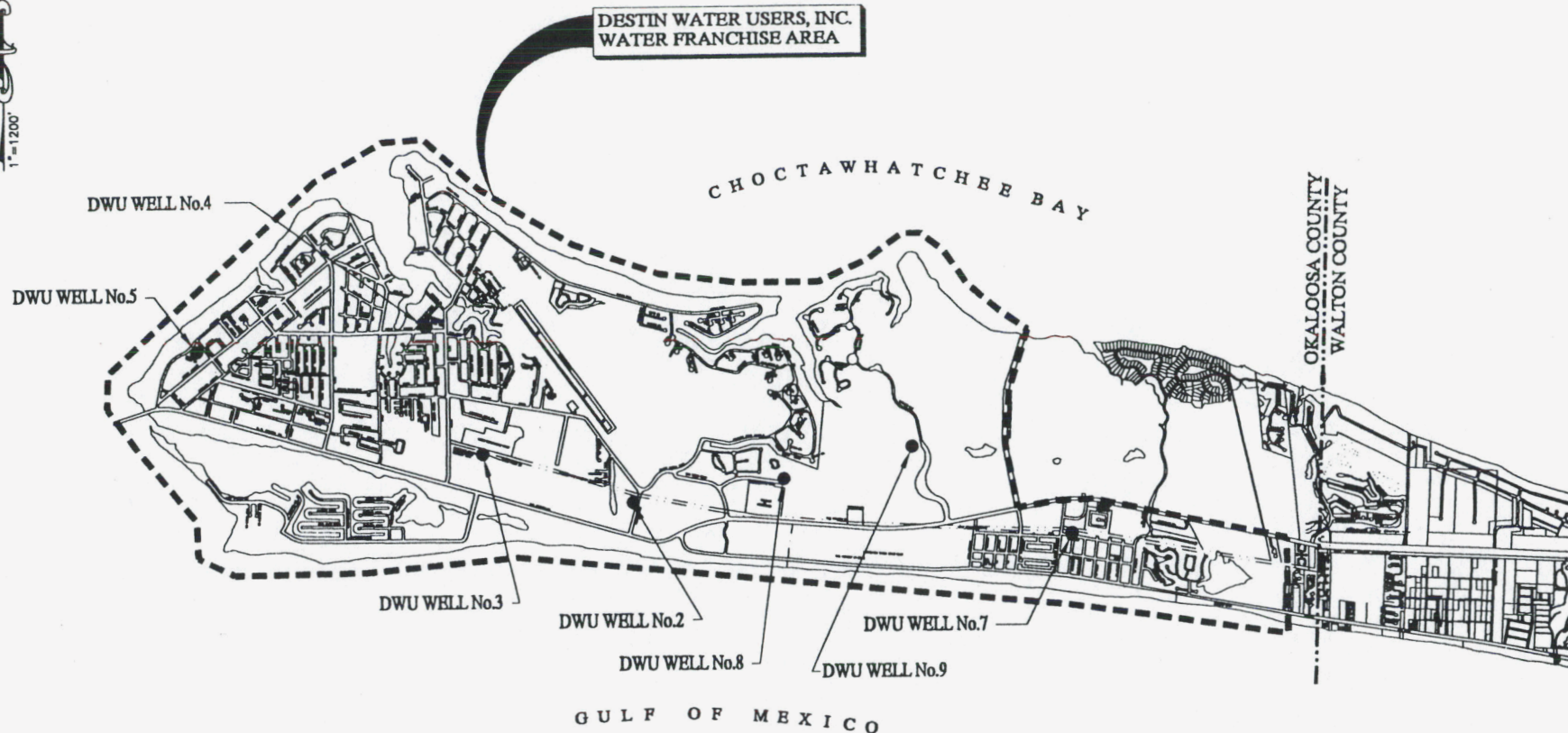
**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that the original and one copy of the foregoing have been filed with the Florida Public Service Commission, 4075 Shumard Oak, Tallahassee, Florida, 32399, by hand delivery this 15th day of November, 1999.



Attorney

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WRP's Exhibit #60



DESTIN WATER USERS, INC.  
WATER FRANCHISE AREA  
DESTIN, FLORIDA



NOVEMBER 1998

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In Re: Request for Exemption ) DOCKET NO. 921312-WS  
from Florida Public Service ) ORDER NO. PSC-93-0873-FOF-WS  
Commission Regulation for ) ISSUED: June 9, 1993  
Provision of Water and )  
Wastewater Service in Okaloosa )  
County by DESTIN WATER USERS, )  
INC. )

ORDER INDICATING THE EXEMPT STATUS OF  
DESTIN WATER USERS, INC.

BY THE COMMISSION:

On December 24, 1992, Destin Water Users, Inc. (Destin) filed its request for exemption from Commission regulation pursuant to Section 367.022(7), Florida Statutes. Destin is located in Okaloosa County. Its treatment plant is situated at Industrial Park Lane and its office is located at 135 Benning Drive, Destin, Florida 32540. The corporation's contact person Erik T. Smith, General Manager, whose mailing address is P. O. Box 308, Destin, Florida 32540, filed the application on behalf of the applicant.

Destin requested that it be found exempt pursuant to Section 367.022(7) of Chapter 367, Florida Statutes. In addition, Destin filed its application in accordance with Rule 25-30.060(3)(g), Florida Administrative Code. In order to comport with the statute and rule, Destin amended its Articles of Incorporation to clearly state that members only will be served and its By-Laws to reflect that members' voting rights are one vote per unit of ownership.

In its application Destin states that it is a nonprofit corporation, that it provides water and wastewater services solely to its members who own and control it, and that it will provide its own billing. Destin is a major provider of water and wastewater services and currently provides these services to most of the City of Destin and some of the surrounding unincorporated area in Okaloosa County. Ownership of the utility facilities was provided by a Warranty Deed.

In addition, the application form states that pursuant to Section 837.06, Florida Statutes, anyone knowingly making a false statement in writing with the intent to mislead is guilty of a misdemeanor. By signing the application, Erik T. Smith acknowledged that he is aware of Section 837.06, Florida Statutes, and the penalties for making false statements in the application.

ORDER NO. PSC-93-0873-FOF-WS  
DOCKET NO. 921312-WS  
PAGE 2

Section 367.022(7), Florida Statutes, states that nonprofit corporations, associations, or cooperatives providing service solely to members who own and control such nonprofit entities are exempt from Commission regulation. Based upon the facts as represented, we find that Destin is exempt from our regulation under the terms of Section 367.022(7), Florida Statutes. However, should there be any change in circumstances of Destin, a representative of the applicant must inform the Commission within thirty days of such change, so that we may determine whether exempt status is still appropriate.

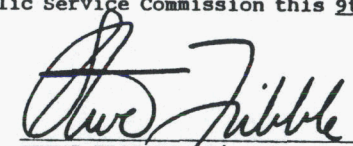
It is, therefore,

ORDERED by the Florida Public Service Commission that, based upon the facts as represented, Destin Water Users, Inc., located at c/o Mr. Erik T. Smith, P. O. Box, Destin, Florida 32540 is hereby exempt from Commission regulation pursuant to the terms of Section 367.022(7), Florida Statutes. It is further

ORDERED that should there be any change in circumstances of Destin, a representative of the applicant shall inform the Commission within thirty days of such change so that we may reevaluate the applicant's exempt status. It is further

ORDERED that this docket is closed.

By ORDER of the Florida Public Service Commission this 9th day of June, 1993.

  
STEVE TRIBBLE, Director  
Division of Records and Reporting

( S E A L )

SLE

DOCUMENT NUMBER-DATE

06211 JUN-93

RECORDS/REPORTING

**Exhibit "B"**

## **ORDINANCE 263**

**AN ORDINANCE OF THE CITY OF DESTIN, FLORIDA, RELATING TO THE GRANTING OF A WATER DISTRIBUTION FRANCHISE TO DESTIN WATER USERS, INC.; PROVIDING FOR AUTHORITY; PROVIDING FOR SHORT TITLE; PROVIDING FOR DEFINITIONS; PROVIDING FOR GRANT OF FRANCHISE AND ACCEPTANCE BY OPERATION; PROVIDING FOR NON-EXCLUSIVE GRANT; PROVIDING FOR GEOGRAPHIC AREA; PROVIDING FOR LIMITS OF THE FRANCHISE; PROVIDING FOR TERM OF THE FRANCHISE; PROVIDING FOR PERIODIC REVIEW AND FEE INCREASE; PROVIDING FOR PAYMENT TO GRANTOR; PROVIDING FOR ASSIGNMENT; PROVIDING FOR RIGHT OF FIRST REFUSAL; PROVIDING FOR BANKRUPTCY OR INSOLVENCY; PROVIDING FOR COMPLIANCE WITH LAWS; PROVIDING FOR FORFEITURE; PROVIDING FOR GRANTOR RIGHTS IN FRANCHISE; PROVIDING FOR CONDITIONS OF OCCUPANCY OF HIGHWAYS, SIDEWALKS, EASEMENTS, DEDICATIONS AND OTHER PUBLIC PROPERTY; PROVIDING FOR PLACEMENT OF FACILITIES; PROVIDING FOR SECURING RIGHTS OF WAY OR PERMITS; PROVIDING FOR RESTORATION; PROVIDING FOR EMINENT DOMAIN; PROVIDING FOR COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES; PROVIDING FOR INDEMNIFICATION, LIABILITY AND INSURANCE; PROVIDING FOR WORKERS' COMPENSATION; PROVIDING FOR PERFORMANCE BOND; PROVIDING FOR ARBITRATION; PROVIDING FOR OPERATIONS DURING DISPUTE; PROVIDING FOR CONTINUITY OF SERVICE MANDATORY; PROVIDING FOR NONDISCRIMINATION; PROVIDING FOR MISCELLANEOUS; PROVIDING FOR FAILURE TO REQUIRE PERFORMANCE, NOT A WAIVER; PROVIDING FOR RECORDS AND REPORTS; PROVIDING FOR PREFERENTIAL OR DISCRIMINATORY PRACTICES PROHIBITED; PROVIDING FOR WATER DISTRIBUTION SYSTEM PROHIBITION; PROVIDING FOR RATES: PROVIDING FOR LINE EXTENSION POLICY; PROVIDING FOR COMPLAINTS; PROVIDING FOR CAPTIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEALING ORDINANCE NUMBER 183 AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS,** the City finds it in the public interest to ensure that all areas within its limits are adequately provided with high-quality fresh water service;

**WHEREAS,** the City finds it in the public interest to retain regulatory authority over the provision of water, to the extent allowed by law, because of the overriding public health, safety and welfare considerations associated with the provision of this service;

**WHEREAS,** the City finds it in the public interest to retain control over the use of public rights of way by providers of water to ensure against interference with the public

convenience, to promote aesthetic considerations, to promote planned and efficient use of limited right of way space; and to protect the public investment of right of way property;

**WHEREAS,** the City finds it in the public interest to attract high-quality providers of water and that this can be accomplished by protecting capital investments of water utilities;

**WHEREAS,** the City finds it in the public interest to ensure that high-quality water service is maintained through a responsive complaint procedure;

**WHEREAS,** the City finds that the provisions of water usually take the form of a natural monopoly which, if not regulated, would have the power to operate without adequate regard for the public interest;

**WHEREAS,** the City finds that the granting of nonexclusive franchises is the best means of assuring that the above-described interests of the City are promoted;

**WHEREAS,** the Grantee hereunder has constructed and is operating plant and facilities to provide water service within the City of Destin, and provide to the provider of fire protection services and sewer services, without additional compensation except as hereinafter provided, the use of water from any fire hydrants for the purpose of extinguishing fires and for the flushing of sewers;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF DESTIN, FLORIDA, AS FOLLOWS:**

**SECTION 1. AUTHORITY.** The authority for enactment of this Ordinance is Article I, Section 1.01 (b), of the City Charter; Section 166.021, Florida Statutes; and Chapter 180, Florida Statutes.

**SECTION 2. SHORT TITLE.** This Ordinance shall be known and may be cited as the "Destin Water Users, Inc.. Water Franchise Ordinance".

**SECTION 3. DEFINITIONS.** For the purposes of this Ordinance the following terms, phrases, words and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory. Words not defined shall be given their common and ordinary meaning, or for those so included, the meaning found in Section 1-2 of the Code of Ordinances of the City of Destin.

(a). "Customer" shall mean any person, firm or public or private corporation served by the Grantee within the franchise area.

(b). "Dedication" shall mean any real property appropriated to water distribution use by its owner and accepted by the Grantor for water distribution use on behalf of the public.

(c). "Easement" shall mean real property, the right to use and enjoyment of which is

vested in the public generally or in the City and which permits water distribution use.

(d). "Franchise area" shall mean the area subject to the franchise granted pursuant to this Ordinance.

(e). "Grantee" shall mean the Destin Water Users, Inc., a Florida Corporation, who is hereby granted this franchise and who shall perform each and every obligation assigned herein and hereby agreed to.

(f). "Grantor" shall mean the City Council of the City of Destin, Florida.

(g). "Highway" shall mean a way or place of whatever nature, publicly maintained and open to the use of the public for purposes of vehicular travel. Highway shall include street or alley.

(h). "Public property" shall mean all public lands owned by the City other than a highway, sidewalk, easement or dedication.

(i). "Sidewalk" shall mean any portion of a street between the curblines, or the lateral lines of a roadway where there is no curb, and the adjacent property line intended for the use of pedestrians.

#### **SECTION 4. GRANT OF FRANCHISE AND ACCEPTANCE BY OPERATION.**

Grantee is hereby granted a non-exclusive franchise, including every right and privilege appertaining thereto, to erect, construct, operate and maintain a water distribution system in, upon, above, over, under and across the present and future highways, sidewalks, easements, dedications and other public property within the franchise area, such water lines, pipes, and any and all other appurtenances providing operation necessary for the purpose of supplying water within the franchise area on the terms and conditions hereinafter set forth. The continued use of the franchise area by the franchisee after the effective date of this franchise shall be deemed an acceptance of all of the terms and conditions of this Grant of Franchise.

**SECTION 5. NON-EXCLUSIVE GRANT.** The right to use and occupy said highways, sidewalks, easements, dedications and other public property for the purpose herein set forth shall not be exclusive, and Grantor reserves the right to grant a similar use in said highways, sidewalks, easements, dedications and other public property to any other person.

**SECTION 6. GEOGRAPHIC AREA.** This franchise covers the geographical area of the City limits. Grantee agrees that the limits of the franchise are subject to expansion or reduction by annexation and contraction of municipal boundaries and that Grantee has no vested right in a specific area.

**SECTION 7. LIMITS OF THE FRANCHISE.** All persons within the area described and designated in this Ordinance are hereby granted the privilege and right to receive from the Grantee the services described herein, subject to the terms and conditions described herein; provided, however, that any request for Grantee services that require the extension of water mains shall be subject to the prior approval of Grantor.

**SECTION 8. TERM OF THE FRANCHISE.** This franchise and the rights and privileges granted herein shall remain in full force and effect for a period of thirty (30) years

from the effective date of this Ordinance unless sooner terminated by reason of a breach of the terms hereof by the Grantee.

**SECTION 9. PERIODIC REVIEW AND FEE INCREASE.** The Grantee and the Grantor agree to meet through their designated representatives at three (3) year intervals beginning with the third anniversary of the adoption by the Grantee of the franchise granted herein, for the purpose of reviewing the provisions of the franchise against any material, technological or other pertinent changes which may have occurred since the granting of the franchise. In the event that any such change impairs the fundamental purpose of the franchise, the parties agree to negotiate in good faith an appropriate modification of the franchise. Additionally, Grantor reserves the right to review the franchise for purposes of changing the fee charged to Grantee at each three (3) year interval as defined above. Any change in the fee charged hereunder may be effected by duly passed ordinance of the City of Destin.

**SECTION 10. PAYMENT OF GRANTOR.**

(a). The Grantee shall pay to the Grantor for the privilege of operating a water distribution system under this franchise a sum equivalent to one percent (1%) of the gross revenues from the sale of water to residential and commercial customers within the area described in this Ordinance. If the Grantee, after the date of adoption of this Ordinance, agrees to pay any municipality or county in the State of Florida a greater percentage of the gross receipts the Grantee shall immediately notify the Grantor and the Grantor reserves the right to amend this Ordinance to require the Grantee to pay the Grantor such a percentage equal to the percentage paid to such other municipality or county, effective the date such increased percentage was first paid to such other municipality or county. Payment to the City shall be made four (4) times per year, in March, June, September and December, within fifteen (15) days of the close of each quarter and without demand by the City.

(1). The Grantee will file with the Grantor with each payment a statement of its gross revenues for the period on which such payment is based, sworn to by an authorized official of the Grantee, in such reasonable form and detail as the Grantor's auditor may prescribe and sufficient to show the source and method of computation of said gross revenues. The acceptance of any statement or payment shall not estop the Grantor from asserting that the amount paid is not the amount due or from recovering any deficit by any lawful proceeding.

(2). All accounts and records of the Grantee necessary to determine the correctness of any statement may be inspected by the Grantor or its duly authorized representatives during normal business hours, and the Grantee will promptly and without delay furnish the Grantor and its said representatives with any and all such information that the Grantor or its said representatives may request or require; provided, however, that the Grantee shall have no obligation hereunder to furnish to the Grantor off of the Grantee's premises any list of customers' names, telephone numbers or billing information.

(b). No acceptance of any payment shall be construed as an accord that the amount paid is, in fact, the correct amount, nor shall such acceptance of payment be construed as a release of any claim the Grantor may have for further or additional sums.

(c). In the event that any payment is not made within fifteen (15) days of when due,

interest on such payment shall apply from such date at the effective prime rate of interest of the AmSouth Bank of Destin, or, if it has ceased to exist, the First National City Bank of New York.

**SECTION 11. ASSIGNMENT.** The franchise rights herein granted to the Grantee shall not be assigned by Grantee except with the expressed approval of the Grantor, which approval shall not be unreasonably withheld, but which shall be reflected by a resolution of Grantor. In the event of such assignment, Grantee shall cause its assignee to execute an Agreement of Acceptance, subject to the approval of Grantor, evidencing that such assignee accepts the assignment subject to any and all of the terms, conditions and limitations imposed hereby, and which acceptance shall include an affirmative statement evidencing such assignee's intent to fulfill the obligations imposed upon Grantee in contemplation hereof. Notwithstanding the Grantor's approval of such an assignment and assignee's acceptance, Grantee shall guarantee the performance of its assignee and such assignment shall always be with full recourse to Grantee.

**SECTION 12. RIGHT OF FIRST REFUSAL.** In the event Grantee shall at any time during the term of this Ordinance desire to sell the water distribution system then existing and shall have received a bona fide offer from any other person or from any other municipal corporation or county, authority or political subdivision of the State of Florida satisfactory to Grantee to purchase the same, the Grantee shall within ten (10) days after receipt of said bona fide offer advise the Grantor in writing of the purchase price and other terms and provisions of such offer, and the Grantor shall for a term of thirty (30) days after the giving of such notice have the option to purchase the water distribution system within the franchise area from Grantee upon the same terms and conditions as are set forth in said offer. In the event that Grantor shall fail or refuse to exercise the right and option granted to it by this section within the time limit set forth above, the Grantee shall have the right to sell the water distribution system to the prospective purchaser thereof, subject to the terms set forth in Section 11 herein.

**SECTION 13. BANKRUPTCY OR INSOLVENCY.** If the Grantee becomes insolvent, and if the Grantee files a petition of voluntary bankruptcy or has filed against it a petition for involuntary bankruptcy, this Ordinance shall terminate no later than the date of filing of the bankruptcy petition.

**SECTION 14. COMPLIANCE WITH LAWS.** Grantee shall conduct all operations under this agreement in compliance with all applicable laws, ordinances and regulatory standards.

**SECTION 15. FORFEITURE.**

(a). Any violation by the Grantee, its vendee, lessee or successor, of the provisions of this franchise or any material portions thereof, shall be cause for the forfeiture of this franchise and all rights hereunder to the Grantor after receipt of written notice by the Grantee of such violation and continuation of such violation, without agreement of the Grantor for a period of thirty (30) days thereafter.

(b). If Grantee protests the reasonableness or propriety of Grantor's declaration, said

protest shall be served upon the Grantor in writing within ten (10) days following receipt by the Grantee of the Grantor's notice. If no protest is served on Grantor by Grantee, the franchise shall be forfeited and terminated upon resolution of Grantor.

(c). If Grantor and Grantee cannot agree as to the reasonableness or propriety of the Grantor's declaration of default, then the issue shall be promptly submitted to arbitration as provided herein, by notice of either party.

(d). If Grantor prevails in whole or part, the correction of the default shall be accomplished by Grantee within thirty (30) days of the arbitrators' ruling. If not corrected within the time provided, the franchise is forfeited and terminated upon resolution of Grantor. If the default is not one for which correction is possible, the franchise is forfeited and terminated upon the arbitrators' ruling without further action of Grantor.

#### **SECTION 16. GRANTOR RIGHTS IN FRANCHISE.**

(a). The right is hereby reserved to the Grantor to adopt, in addition to the provisions herein contained and existing, applicable ordinances, and such additional regulations as it shall find necessary in the exercise of the police power, provided that such regulations, by ordinance or otherwise, shall be reasonable and not in conflict with the rights herein granted, and shall not be in conflict with the laws of the State of Florida and the lawful regulations of any state agency possessing the power to regulate the activities of the Grantee.

(b). The Grantor shall have the right to inspect all construction and installation work performed subject to the provisions of this Ordinance and to make such inspections as it shall find necessary to ensure compliance with all applicable laws, ordinances, regulatory standards and applicable codes.

#### **SECTION 17. CONDITIONS OF OCCUPANCY OF HIGHWAYS, SIDEWALKS, EASEMENTS, DEDICATIONS, AND OTHER PUBLIC PROPERTY.**

(a). All distribution structures, pipes, water lines, equipment and fixtures erected by Grantee within the franchise area shall first be approved by the City Manager, or his designee, upon application by Grantee and shall be so located as to cause minimum interference with the proper use of highways, sidewalks, easements, dedications and other public property, and to cause minimum interference with the rights and reasonable convenience of property owners who adjoin any of the said highways, sidewalks, easements, dedications and other public property, or with any installations of the Grantor or any public utility serving the City.

(b). Grantee shall protect, support, temporarily disconnect, relocate or remove from any highway, sidewalk, easement, dedication or other public property at its own expense, any property of Grantee when reasonably required by the Grantor by reason of traffic conditions, public safety, highway construction, change or establishment of highway grade, installation of sewers, drains, water pipes, power lines, signal lines and tracks or any other type of structures or improvements by public agencies.

**SECTION 18. PLACEMENT OF FACILITIES.** Grantee shall, where feasible, place all of its facilities underground. Grantee shall comply with the requirements of future ordinances which regulate the placement of utilities.

**SECTION 19. SECURING RIGHTS OF WAY OR PERMITS.** Grantee shall not be required to assume any responsibility for the securing of any rights of way or easements, on behalf of the Grantor, nor shall Grantor be responsible for securing any permits or agreements with other persons or utilities on behalf of the Grantee.

**SECTION 20. RESTORATION.** The Grantee agrees to repair all property, public or private, altered or damaged by it, its agents or employees in the performance of its duties herein in as good or better condition as it was before being damaged or altered.

**SECTION 21. EMINENT DOMAIN.** The City will allow, assist and authorize the Grantee to exercise eminent domain authority on its behalf or on behalf of the City when reasonably and necessarily required in order to accomplish the purposes of this agreement.

**SECTION 22. COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES.**

(a). The Grantee shall, at all times during the life of the franchise, be subject to all lawful exercise of the police power of the Grantor, and to such reasonable regulation as the Grantor shall hereafter by resolution or ordinance provide.

(b). The rights and privileges granted to the Grantee by this Ordinance shall, at all times, be subordinate and inferior to the rights of the public in and to the ordinary use of the Grantor's highways, sidewalks, easements, dedications, or other public property, and nothing in this Ordinance shall be construed as a surrender by the Grantor of its right and power to use and regulate the use of such.

(c). The franchise and rights herein granted are subject to the provisions of the existing laws of the State of Florida and those hereinafter enacted pertaining to the granting of franchises and to existing ordinances and provisions of the charter of the Grantor and those hereinafter enacted pertaining to the granting of franchises.

**SECTION 23. INDEMNIFICATION, LIABILITY AND INSURANCE.**

(a). The City shall not be liable or legally responsible for any accident or damage that may occur in the construction, operation or maintenance by Grantee of its facilities hereunder, and the acceptance of this Ordinance shall signify the agreement of Grantee to indemnify Grantor, the City of Destin, and the City's officers and employees, and hold them harmless against any and all liability, loss, cost, damage or expense, that may accrue to the City by reason of the neglect, default, or misconduct of Grantee in the construction, operation or maintenance of its facilities hereunder, or the actions of Grantee's officers, directors, agents or employees which result from a breach of duty or any active negligence.

(b). The Grantee shall pay and by its acceptance of the franchise specifically agrees that it will pay all expenses incurred by Grantor, the City of Destin, and its officers or employees in defending itself with regard to all damages and penalties mentioned in Subsection (a) above. These expenses shall include all out-of-pocket expenses, such as attorneys' fees, and shall also include the reasonable value of any services rendered by the City's legal staff and any officers or employees of the Grantor and its agents.

(c). The Grantee shall maintain and by its acceptance of the franchise specifically agrees that it will maintain throughout the term of the franchise, comprehensive general liability

insurance insuring the City and the Grantee with regard to all damages mentioned in Subsection (a) in the minimum amount of one million dollars (\$1,000,000.00), combined single limits, personal injury and property damage, current evidence of which shall be filed with the City. All such liability policies shall provide for notice by the insurer to the City at least sixty (60) days prior to any termination, revocation or modification thereof

(d). The Grantee shall immediately advise the City Manager, by registered mail, of any litigation or claim that might affect the adequacy of the insurance.

(e). Neither the provisions of this section nor any damages recovered by the City thereunder shall be construed to limit the liability of the Grantee under any franchise issued hereunder.

(f). The parties acknowledge that the City of Destin is an entity entitled to the privilege of sovereign immunity pursuant to Section 768, Florida Statutes, except to the extent it has been waived, which is not hereby intended.

**SECTION 24. WORKERS' COMPENSATION.** Grantee shall carry Workers' Compensation insurance on all its employees, current evidence of which shall be filed with the City. All such Workers' Compensation policies shall provide for notice by the insurer to the City at least sixty (60) days prior to any termination, revocation or modification thereof.

**SECTION 25. PERFORMANCE BOND.** Grantee shall furnish to the City a performance bond, or letter of credit with interest benefitting Grantee, in a form approved by the City Manager, for the faithful performance of this agreement and all its obligations arising hereunder, in the amount of \$50,000.00. Said bond shall be executed by a surety company approved by the City Manager and licensed to do business in the State of Florida.

**SECTION 26. ARBITRATION.**

(a). If any arbitrable controversy or circumstance shall arise between the parties, it may be arbitrated in the following manner.

(1). After the dispute or circumstance has arisen and either party determines that arbitration is necessary, either party shall serve written demand for arbitration upon the other party. Within ten (10) days after the service of such notice, each party shall select one (1) arbitrator. Within five (5) days thereafter, the two (2) arbitrators cannot agree upon a third arbitrator within such time, either the Grantor or the Grantee may apply to the senior judge of the Circuit Court of Okaloosa County, Florida, to have such arbitrator appointed by such judge.

(2). In case either party shall neglect for a space of ten (10) days after service of such notice to select an arbitrator and notify in writing the other party of such selection, the party having selected an arbitrator may apply to the said senior judge of the Circuit Court of Okaloosa County for the appointment of an arbitrator to represent such party; thereupon the said judge may appoint such arbitrator who shall have the same powers to perform the duties of an arbitrator as though selected by the party for whom he was to be appointed.

(3). Within ten (10) days thereafter, the three (3) arbitrators will hear the dispute and render a decision unless a majority of the arbitrators agree that additional time is needed. The decision of the arbitrators shall be binding on the parties. Each party will pay the fees and expenses of its arbitrator, and the two (2) arbitrators selected by the parties will agree on the

fees and expenses of the third arbitrator together with the agreed-upon cost of the arbitration, all of which shall be paid one-half by each party. Each party shall be entitled to produce witnesses and submit evidence before the arbitrators. The decision of the arbitrators will be binding on the parties and may be enforced as provided for by Florida law.

#### **SECTION 27. OPERATIONS DURING DISPUTE.**

(a). In the event that a dispute arises between the Grantor and the Grantee, or any other interested party in any way relating to this agreement, performance or compensation hereunder, the Grantee shall continue to render service in full compliance with all terms and conditions herein regardless of the nature of the dispute.

(b). Grantee expressly recognizes the paramount right and duty of Grantor to provide an adequate water distribution service as a necessary governmental function, and further agrees, in consideration for the execution of this agreement, that in the event of a dispute, said Grantee will neither stop service nor seek injunctive relief in any court, but will either negotiate for an adjustment on the matter in dispute, or arbitrate arbitrable disputes.

#### **SECTION 28. CONTINUITY OF SERVICE MANDATORY.**

(a). It shall be the right of all customers to continue receiving service insofar as their financial and other obligations to the Grantee are honored. In the event that the Grantee elects to overbuild, rebuild, modify or sell the system, or the Grantor gives notice of intent to terminate or fails to renew this franchise, the Grantee shall act to ensure that all customers receive continuous, uninterrupted service for the duration of the franchise regardless of the circumstances. In the event of a change of franchise, or in the event a new operator acquires the system, the Grantee shall cooperate with the Grantor and the new franchisee or operator in maintaining continuous service to all customers. During such period, Grantee shall be entitled to the revenues for any period during which it operates the system, and shall be entitled to reasonable compensation for its services when it no longer operates the system.

(b). In the event Grantee fails to operate the system for four (4) consecutive days without prior approval of the Grantor or without just cause, the Grantor may, at its option, operate the system or designate an operator until such time as Grantee restores service under conditions acceptable to the Grantor or until a permanent operator is selected. If the Grantor is required to fulfill this obligation for the Grantee, the Grantee shall reimburse the Grantor for all reasonable costs or damages in excess of revenues from the system received by the Grantor that are the result of the Grantee's failure to perform.

**SECTION 29. NONDISCRIMINATION.** The Grantee agrees that it has adopted and will maintain and enforce a policy of nondiscrimination on the basis of race, color, religion, sex, age, handicap, disability or national origin. Said nondiscrimination policy shall apply to employment practices of the Grantee and the provision of services. The Grantee agrees that on written request, it will permit reasonable access to its records of employment, employment advertisements, application forms and other pertinent data and records by Grantor for the purposes of investigation to ascertain compliance with the nondiscrimination policy of this section, provided however, that the Grantee shall not be required to produce for inspection any records covering any period of time more than two (2) years prior to the effective date of this

Ordinance.

**SECTION 30. MISCELLANEOUS.**

(a). When not otherwise prescribed herein, all matters herein required to be filed with Grantor shall be filed with the City Manager.

(b). Nothing herein shall be deemed or construed to impair or affect in any way or to any extent the right of the Grantor to acquire the system at any time through the exercise of eminent domain.

**SECTION 31. FAILURE TO REQUIRE PERFORMANCE, NOT A WAIVER.** The failure of the Grantor at any time to require performance by the Grantee of any provision hereof shall not affect the right of the Grantor thereafter to enforce same; nor shall waiver by the Grantor of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach or as a waiver of any provision itself.

**SECTION 32. RECORDS AND REPORTS.**

(a). The Grantor shall have access at all reasonable hours to all of the Grantee's plans, contracts, engineering, accounting, financial, statistical, and service records relating to the property and operation of the Grantee and to all other records required to be kept hereunder. The following records and reports shall be made available and copied without expense at the request of the Grantor and shall be kept in the local office of the Grantee:

(1). Accounting. A summary report showing gross revenues from the sale of water to residential and commercial customers within the area designated in this Ordinance. Such summary records shall be kept and maintained in accordance with generally accepted accounting principles. The detail used to prepare such summary records shall, on written request of the Grantor, be open for examination and audit by the Grantor's Internal and External Auditors and their staff during ordinary business hours.

(2). Annual Audit. An annual audit statement attesting to the franchise fees that have been billed and collected in compliance with this Ordinance.

(3). Underground Installation Records. The Grantee will make all records of its underground installation available for inspection by the Grantor at all times during ordinary business hours.

**SECTION 33. PREFERENTIAL OR DISCRIMINATORY PRACTICES PROHIBITED.** The Grantee shall not, as to rates, charges, service facilities, rules, regulations, or in any other respect, make or grant any preference or advantage to any person, nor subject any person to any prejudice or disadvantage, provided that nothing herein shall be deemed to prohibit the establishment of a graduated scale of charges and classified rate schedules to which any customer coming within such classification would be entitled.

**SECTION 34. WATER DISTRIBUTION SYSTEM PROHIBITION.** The Grantee agrees that it will not provide distribution facilities for a water distribution system to any person who does not have the necessary authority from the Grantor to operate same.

**SECTION 35. RATES.**

(a). Rates charged by the Grantee for service hereunder shall be fair and reasonable and designed to meet all necessary costs of the service, including a fair rate of return on the net valuation of its properties devoted thereto, under efficient and economical management.

(b). Initial rates to be charged by Grantee for service to be performed hereunder are described in the Exhibit attached hereto and made a part hereof by reference. The fixing of rates hereafter shall be accomplished consistent with Sections 180.14 and 180.20, Florida Statutes, and other applicable general law.

**SECTION 36. LINE EXTENSION POLICY.** The Grantee shall provide service to any person within the initial service area who requests service, regardless of location. The Grantee shall provide service to any person within the service area, as extended in the future, who requests service in subdivisions, planned unit developments and commercial developments composed of at least twenty-five users.

**SECTION 37. COMPLAINTS.** The Grantee shall use its best efforts to promptly resolve all customer complaints.

**SECTION 38. CAPTIONS.** The section headings and captions contained herein are for convenience only and shall not be used to vary or interpret the terms of this Ordinance.

**SECTION 39. SEVERABILITY.** If any section, subsection, sentence, clause or phrase of this Ordinance for any reason be held invalid or unconstitutional by the decision of any court of competent jurisdiction or administrative agency, such decision shall not affect the validity of the remaining portions thereof. The Grantee hereby declares that it would have accepted the provisions of this Ordinance and each section, subsection, sentence, clause and phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared illegal, invalid or unconstitutional. The invalidity of any portion of this Ordinance shall not abate, reduce or otherwise affect any consideration or other obligation by the Grantee of the franchise granted hereunder; provided, however, that the Grantor may amend those provisions invalidated; provided further, however, that the Grantor may terminate the franchise when the invalidated provision may not be so amended as to preserve the purposes for which it was agreed to in the original franchise and when said invalidated provision is found by the Grantor to be essential to the franchise as a whole.

**SECTION 40. REPEAL OF ORDINANCE 183.** Ordinance number 183 is hereby repealed.

SECTION 41. **EFFECTIVE DATE.** This Ordinance shall take effect upon its adoption by Council and signature of the Mayor. The franchise created herein shall become effective when this ordinance becomes law.

ADOPTED: June 20, 1994

BY: [Signature]  
GARY L. ALDEN, MAYOR

ATTEST:

[Signature]  
PHILIP COOK  
CITY MANAGER

[Signature]  
CAROLYN LEE GARRETT  
CITY CLERK

The form and legal sufficiency  
of the foregoing has been  
reviewed and approved by the  
City Attorney.

[Signature]  
ROBERT E. MCGILL, III  
CITY ATTORNEY

First Reading 6-6-94

Second Reading 6-20-94

## ATTACHMENT "A"

### DESTIN WATER USERS, INC. FEE RATES:

#### Membership Fees:

\$15.00 for water plus service charge

#### Service Charges:

Initial turn-on and meter reading fee	\$10.00
Turn-off's	No Charge
Meter readings requested by member	
a) First one free	
b) Meter reading correct	\$ 5.00
c) Meter reading incorrect	No Charge

#### Other Services:

Re-institute service after turn-off for non-payment	\$35.00
Transfer fee from one location to another	\$10.00
Returned check	\$ 5.00

#### Basic Water Rates:

0 3,000 gallons (minimum rate)	\$6.00
3,000 15,000	\$1.40/thousand
15,000 50,000	\$1.65/thousand
50,000 70,000	\$1.85/thousand
70,000 and above	\$2.00/thousand

Effective December Billing 1992

Water Tap-In Fees:

a)	Residential	\$1,000.00
b)	Discounted Units Motels	900.00*
c)	Commercial	Negotiated Meter Size
d)	Commercial - heavy use	Negotiated Meter Size

\*Multi-Unit - more than one unit on one meter.

Cost of Meter According to Size:

5/8"	---	\$1,000.00
1"	---	1,277.00
1-1/2"	---	2,610.00
3"	---	4,871.00
3/4"	---	1,000.00
1-1/4"	---	1,860.00
2"	---	4,330.00
4"	---	5,412.00
6"	---	6,765.00

G:\CityClerk\Ord\DWUWater.Fee

## **ORDINANCE 264**

**AN ORDINANCE OF THE CITY OF DESTIN, FLORIDA, RELATING TO THE GRANTING OF A SEWER FRANCHISE TO DESTIN WATER USERS, INC.; PROVIDING FOR AUTHORITY; PROVIDING FOR SHORT TITLE; PROVIDING FOR DEFINITIONS; PROVIDING FOR GRANT OF FRANCHISE AND ACCEPTANCE BY OPERATION; PROVIDING FOR NON-EXCLUSIVE GRANT; PROVIDING FOR GEOGRAPHIC AREA; PROVIDING FOR LIMITS OF THE FRANCHISE; PROVIDING FOR TERM OF THE FRANCHISE; PROVIDING FOR PERIODIC REVIEW AND FEE INCREASE; PROVIDING FOR PAYMENT TO GRANTOR; PROVIDING FOR ASSIGNMENT; PROVIDING FOR RIGHT OF FIRST REFUSAL; PROVIDING FOR BANKRUPTCY OR INSOLVENCY; PROVIDING FOR COMPLIANCE WITH LAWS; PROVIDING FOR FORFEITURE; PROVIDING FOR GRANTOR RIGHTS IN FRANCHISE; PROVIDING FOR CONDITIONS OF OCCUPANCY OF HIGHWAYS, SIDEWALKS, EASEMENTS, DEDICATIONS AND OTHER PUBLIC PROPERTY; PROVIDING FOR PLACEMENT OF FACILITIES; PROVIDING FOR SECURING RIGHTS OF WAY OR PERMITS; PROVIDING FOR RESTORATION; PROVIDING FOR EMINENT DOMAIN; PROVIDING FOR COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES; PROVIDING FOR INDEMNIFICATION, LIABILITY AND INSURANCE; PROVIDING FOR WORKERS' COMPENSATION; PROVIDING FOR PERFORMANCE BOND; PROVIDING FOR ARBITRATION; PROVIDING FOR OPERATIONS DURING DISPUTE; PROVIDING FOR CONTINUITY OF SERVICE MANDATORY; PROVIDING FOR NONDISCRIMINATION; PROVIDING FOR MISCELLANEOUS; PROVIDING FOR FAILURE TO REQUIRE PERFORMANCE, NOT A WAIVER; PROVIDING FOR RECORDS AND REPORTS; PROVIDING FOR PREFERENTIAL OR DISCRIMINATORY PRACTICES PROHIBITED; PROVIDING FOR SEWER DISTRIBUTION SYSTEM PROHIBITION; PROVIDING FOR RATES; PROVIDING FOR LINE EXTENSION POLICY; PROVIDING FOR COMPLAINTS; PROVIDING FOR CAPTIONS; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEALING ORDINANCE NUMBER 185 AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the City finds it in the public interest to ensure that all areas within its limits are adequately provided with high-quality sewer service;

**WHEREAS**, the City finds it in the public interest to retain regulatory authority over the provision of sewer service, to the extent allowed by law, because of the overriding public health, safety and welfare considerations associated with the provision of this service;

**WHEREAS**, the City finds it in the public interest to retain control over the use of public rights of way by providers of sewer service to ensure against interference with the public

convenience, to promote aesthetic considerations, to promote planned and efficient use of limited right of way space; and to protect the public investment of right of way property;

**WHEREAS**, the City finds it in the public interest to attract high-quality providers of sewer service and that this can be accomplished by protecting capital investments of sewer utilities;

**WHEREAS**, the City finds it in the public interest to ensure that high-quality sewer service is maintained through a responsive complaint procedure;

**WHEREAS**, the City finds that the provisions of sewer service usually take the form of a natural monopoly which, if not regulated, would have the power to operate without adequate regard for the public interest;

**WHEREAS**, the City finds that the granting of nonexclusive franchises is the best means of assuring that the above-described interests of the City are promoted;

**WHEREAS**, the Grantee hereunder has constructed and is operating plant and facilities to provide sewer service within the City of Destin;

**NOW, THEREFORE, BE IT ORDAINED BY THE CITY OF DESTIN, FLORIDA, AS FOLLOWS:**

**SECTION 1. AUTHORITY.** The authority for enactment of this Ordinance is Article I, Section 1.01 (b), of the City Charter; Section 166.021, Florida Statutes; and Chapter 180, Florida Statutes.

**SECTION 2. SHORT TITLE.** This Ordinance shall be known and may be cited as the "Destin Water Users, Inc. Sewer Franchise Ordinance".

**SECTION 3. DEFINITIONS.** For the purposes of this Ordinance the following terms, phrases, words and their derivations shall have the meanings given herein. When not inconsistent with the context, words used in the present tense include the future, words in the plural number include the singular number and words in the singular number include the plural number. The word "shall" is always mandatory and not merely directory. Words not defined shall be given their common and ordinary meaning, or for those so included, the meaning found in Section 1-2 of the Code of Ordinances of the City of Destin.

(a). "Customer" shall mean any person, firm or public or private corporation served by the Grantee within the franchise area.

(b). "Dedication" shall mean any real property appropriated to sewer service use by its owner and accepted by the Grantor for sewer service use on behalf of the public.

(c). "Easement" shall mean real property, the right to use and enjoyment of which is vested in the public generally or in the City and which permits sewer service use.

(d). "Franchise area" shall mean the area subject to the franchise granted pursuant to this

**Ordinance.**

(e). "Grantee" shall mean the Destin Water Users, Inc., a Florida Corporation, who is hereby granted this franchise and who shall perform each and every obligation assigned herein and hereby agreed to.

(f). "Grantor" shall mean the City Council of the City of Destin, Florida.

(g). "Highway" shall mean a way or place of whatever nature, publicly maintained and open to the use of the public for purposes of vehicular travel. Highway shall include street or alley.

(h). "Public property" shall mean all public lands owned by the City other than a highway, sidewalk, easement or dedication.

(i). "Sidewalk" shall mean any portion of a street between the curblane, or the lateral lines of a roadway where there is no curb, and the adjacent property line intended for the use of pedestrians.

**SECTION 4. GRANT OF FRANCHISE AND ACCEPTANCE BY OPERATION.**

Grantee is hereby granted a non-exclusive franchise, including every right and privilege appertaining thereto, to erect, construct, operate and maintain a sewer system in, upon, above, over, under and across the present and future highways, sidewalks, easements, dedications and other public property within the franchise area, such sewer collection pumping stations, lift stations, force mains, manholes, sewerage treatment plant lines, pipes, and any and all other appurtenances providing operation necessary for the purpose of treating sewage within the franchise area on the terms and conditions hereinafter set forth. The continued use of the franchise area by the franchisee after the effective date of this franchise shall be deemed an acceptance of all of the terms and conditions of this Grant of Franchise.

**SECTION 5. NON-EXCLUSIVE GRANT.** The right to use and occupy said highways, sidewalks, easements, dedications and other public property for the purpose herein set forth shall not be exclusive, and Grantor reserves the right to grant a similar use in said highways, sidewalks, easements, dedications and other public property to any other person.

**SECTION 6. GEOGRAPHIC AREA.** This franchise covers the geographical area of the City limits. Grantee agrees that the limits of the franchise are subject to expansion or reduction by annexation and contraction of municipal boundaries and that Grantee has no vested right in a specific area.

**SECTION 7. LIMITS OF THE FRANCHISE.** All persons within the area described and designated in this Ordinance are hereby granted the privilege and right to receive from the Grantee the services described herein, subject to the terms and conditions described herein; provided, however, that any request for Grantee services that require the extension of sewer mains shall be subject to the prior approval of Grantor.

**SECTION 8. TERM OF THE FRANCHISE.** This franchise and the rights and privileges granted herein shall remain in full force and effect for a period of thirty (30) years from the effective date of this Ordinance unless sooner terminated by reason of a breach of the

terms hereof by the Grantee.

**SECTION 9. PERIODIC REVIEW AND FEE INCREASE.** The Grantee and the Grantor agree to meet through their designated representatives at three (3) year intervals beginning with the third anniversary of the adoption by the Grantee of the franchise granted herein, for the purpose of reviewing the provisions of the franchise against any material, technological or other pertinent changes which may have occurred since the granting of the franchise. In the event that any such change impairs the fundamental purpose of the franchise, the parties agree to negotiate in good faith an appropriate modification of the franchise. Additionally, Grantor reserves the right to review the franchise for purposes of changing the fee charged to Grantee at each three (3) year interval as defined above. Any change in the fee charged hereunder may be effected by duly passed ordinance of the City of Destin.

**SECTION 10. PAYMENT OF GRANTOR.**

(a). The Grantee shall pay to the Grantor for the privilege of operating a sewer system under this franchise a sum equivalent to one percent (1%) of the gross revenues from the sale of sewer service to residential and commercial customers within the area described in this Ordinance. If the Grantee, after the date of adoption of this Ordinance, agrees to pay any municipality or county in the State of Florida a greater percentage of the gross receipts the Grantee shall immediately notify the Grantor and the Grantor reserves the right to amend this Ordinance to require the Grantee to pay the Grantor such a percentage equal to the percentage paid to such other municipality or county, effective the date such increased percentage was first paid to such other municipality or county. Payment to the City shall be made four (4) times per year, in March, June, September and December, within fifteen (15) days of the close of each quarter and without demand by the City.

(1). The Grantee will file with the Grantor with each payment a statement of its gross revenues for the period on which such payment is based, sworn to by an authorized official of the Grantee, in such reasonable form and detail as the Grantor's auditor may prescribe and sufficient to show the source and method of computation of said gross revenues. The acceptance of any statement or payment shall not estop the Grantor from asserting that the amount paid is not the amount due or from recovering any deficit by any lawful proceeding.

(2). All accounts and records of the Grantee necessary to determine the correctness of any statement may be inspected by the Grantor or its duly authorized representatives during normal business hours, and the Grantee will promptly and without delay furnish the Grantor and its said representatives with any and all such information that the Grantor or its said representatives may request or require; provided, however, that the Grantee shall have no obligation hereunder to furnish to the Grantor off of the Grantee's premises any list of customers' names, telephone numbers or billing information.

(b). No acceptance of any payment shall be construed as an accord that the amount paid is, in fact, the correct amount, nor shall such acceptance of payment be construed as a release of any claim the Grantor may have for further or additional sums.

(c). In the event that any payment is not made within fifteen (15) days of when due, interest on such payment shall apply from such date at the effective prime rate of interest of the

AmSouth Bank of Destin, or, if it has ceased to exist, the First National City Bank of New York.

**SECTION 11. ASSIGNMENT.** The franchise rights herein granted to the Grantee shall not be assigned by Grantee except with the expressed approval of the Grantor, which approval shall not be unreasonably withheld, but which shall be reflected by a resolution of Grantor. In the event of such assignment, Grantee shall cause its assignee to execute an Agreement of Acceptance, subject to the approval of Grantor, evidencing that such assignee accepts the assignment subject to any and all of the terms, conditions and limitations imposed hereby, and which acceptance shall include an affirmative statement evidencing such assignee's intent to fulfill the obligations imposed upon Grantee in contemplation hereof. Notwithstanding the Grantor's approval of such an assignment and assignee's acceptance, Grantee shall guarantee the performance of its assignee and such assignment shall always be with full recourse to Grantee.

**SECTION 12. RIGHT OF FIRST REFUSAL.** In the event Grantee shall at any time during the term of this Ordinance desire to sell the sewer system then existing and shall have received a bona fide offer from any other person or from any other municipal corporation or county, authority or political subdivision of the State of Florida satisfactory to Grantee to purchase the same, the Grantee shall within ten (10) days after receipt of said bona fide offer advise the Grantor in writing of the purchase price and other terms and provisions of such offer, and the Grantor shall for a term of thirty (30) days after the giving of such notice have the option to purchase the sewer system within the franchise area from Grantee upon the same terms and conditions as are set forth in said offer. In the event that Grantor shall fail or refuse to exercise the right and option granted to it by this section within the time limit set forth above, the Grantee shall have the right to sell the sewer system to the prospective purchaser thereof, subject to the terms set forth in Section 11 herein.

**SECTION 13. BANKRUPTCY OR INSOLVENCY.** If the Grantee becomes insolvent, and if the Grantee files a petition of voluntary bankruptcy or has filed against it a petition for involuntary bankruptcy, this Ordinance shall terminate no later than the date of filing of the bankruptcy petition.

**SECTION 14. COMPLIANCE WITH LAWS.** Grantee shall conduct all operations under this agreement in compliance with all applicable laws, ordinances and regulatory standards.

**SECTION 15. FORFEITURE.**

(a). Any violation by the Grantee, its vendee, lessee or successor, of the provisions of this franchise or any material portions thereof, shall be cause for the forfeiture of this franchise and all rights hereunder to the Grantor after receipt of written notice by the Grantee of such violation and continuation of such violation, without agreement of the Grantor for a period of thirty (30) days thereafter.

(b). If Grantee protests the reasonableness or propriety of Grantor's declaration, said protest shall be served upon the Grantor in writing within ten (10) days following receipt by the

Grantee of the Grantor's notice. If no protest is served on Grantor by Grantee, the franchise shall be forfeited and terminated upon resolution of Grantor.

(c). If Grantor and Grantee cannot agree as to the reasonableness or propriety of the Grantor's declaration of default, then the issue shall be promptly submitted to arbitration as provided herein, by notice of either party.

(d). If Grantor prevails in whole or part, the correction of the default shall be accomplished by Grantee within thirty (30) days of the arbitrators' ruling. If not corrected within the time provided, the franchise is forfeited and terminated upon resolution of Grantor. If the default is not one for which correction is possible, the franchise is forfeited and terminated upon the arbitrators' ruling without further action of Grantor.

#### **SECTION 16. GRANTOR RIGHTS IN FRANCHISE.**

(a). The right is hereby reserved to the Grantor to adopt, in addition to the provisions herein contained and existing, applicable ordinances, and such additional regulations as it shall find necessary in the exercise of the police power, provided that such regulations, by ordinance or otherwise, shall be reasonable and not in conflict with the rights herein granted, and shall not be in conflict with the laws of the State of Florida and the lawful regulations of any state agency possessing the power to regulate the activities of the Grantee.

(b). The Grantor shall have the right to inspect all construction and installation work performed subject to the provisions of this Ordinance and to make such inspections as it shall find necessary to ensure compliance with all applicable laws, ordinances, regulatory standards and applicable codes.

#### **SECTION 17. CONDITIONS OF OCCUPANCY OF HIGHWAYS, SIDEWALKS, EASEMENTS, DEDICATIONS, AND OTHER PUBLIC PROPERTY.**

(a). All system structures, pipes, sewer lines, equipment and fixtures erected by Grantee within the franchise area shall first be approved by the City Manager, or his designee, upon application by Grantee and shall be so located as to cause minimum interference with the proper use of highways, sidewalks, easements, dedications and other public property, and to cause minimum interference with the rights and reasonable convenience of property owners who adjoin any of the said highways, sidewalks, easements, dedications and other public property, or with any installations of the Grantor or any public utility serving the City.

(b). Grantee shall protect, support, temporarily disconnect, relocate or remove from any highway, sidewalk, easement, dedication or other public property at its own expense, any property of Grantee when reasonably required by the Grantor by reason of traffic conditions, public safety, highway construction, change or establishment of highway grade, installation of sewers, drains, water pipes, power lines, signal lines and tracks or any other type of structures or improvements by public agencies.

**SECTION 18. PLACEMENT OF FACILITIES.** Grantee shall, where feasible, place all of its facilities underground. Grantee shall comply with the requirements of future ordinances which regulate the placement of utilities.

**SECTION 19. SECURING RIGHTS OF WAY OR PERMITS.** Grantee shall not be

required to assume any responsibility for the securing of any rights of way or easements, on behalf of the Grantor, nor shall Grantor be responsible for securing any permits or agreements with other persons or utilities on behalf of the Grantee.

**SECTION 20. RESTORATION.** The Grantee agrees to repair all property, public or private, altered or damaged by it, its agents or employees in the performance of its duties herein in as good or better condition as it was before being damaged or altered.

**SECTION 21. EMINENT DOMAIN.** The City will allow, assist and authorize the Grantee to exercise eminent domain authority on its behalf or on behalf of the City when reasonably and necessarily required in order to accomplish the purposes of this agreement.

**SECTION 22. COMPLIANCE WITH APPLICABLE LAWS AND ORDINANCES.**

(a). The Grantee shall, at all times during the life of the franchise, be subject to all lawful exercise of the police power of the Grantor, and to such reasonable regulation as the Grantor shall hereafter by resolution or ordinance provide.

(b). The rights and privileges granted to the Grantee by this Ordinance shall, at all times, be subordinate and inferior to the rights of the public in and to the ordinary use of the Grantor's highways, sidewalks, easements, dedications, or other public property, and nothing in this Ordinance shall be construed as a surrender by the Grantor of its right and power to use and regulate the use of such.

(c). The franchise and rights herein granted are subject to the provisions of the existing laws of the State of Florida and those hereinafter enacted pertaining to the granting of franchises and to existing ordinances and provisions of the charter of the Grantor and those hereinafter enacted pertaining to the granting of franchises.

**SECTION 23. INDEMNIFICATION, LIABILITY AND INSURANCE.**

(a). The City shall not be liable or legally responsible for any accident or damage that may occur in the construction, operation or maintenance by Grantee of its facilities hereunder, and the acceptance of this Ordinance shall signify the agreement of Grantee to indemnify Grantor, the City of Destin, and the City's officers and employees, and hold them harmless against any and all liability, loss, cost, damage or expense, that may accrue to the City by reason of the neglect, default, or misconduct of Grantee in the construction, operation or maintenance of its facilities hereunder, or the actions of Grantee's officers, directors, agents or employees which result from a breach of duty or any active negligence.

(b). The Grantee shall pay and by its acceptance of the franchise specifically agrees that it will pay all expenses incurred by Grantor, the City of Destin, and its officers or employees in defending itself with regard to all damages and penalties mentioned in Subsection (a) above. These expenses shall include all out-of-pocket expenses, such as attorneys' fees, and shall also include the reasonable value of any services rendered by the City's legal staff and any officers or employees of the Grantor and its agents.

(c). The Grantee shall maintain and by its acceptance of the franchise specifically agrees that it will maintain throughout the term of the franchise, comprehensive general liability insurance insuring the City and the Grantee with regard to all damages mentioned in Subsection

(a) in the minimum amount of one million dollars (\$1,000,000.00), combined single limits, personal injury and property damage, current evidence of which shall be filed with the City. All such liability policies shall provide for notice by the insurer to the City at least sixty (60) days prior to any termination, revocation or modification thereof.

(d). The Grantee shall immediately advise the City Manager, by registered mail, of any litigation or claim that might affect the adequacy of the insurance.

(e). Neither the provisions of this section nor any damages recovered by the City thereunder shall be construed to limit the liability of the Grantee under any franchise issued hereunder.

(f). The parties acknowledge that the City of Destin is an entity entitled to the privilege of sovereign immunity pursuant to Section 768, Florida Statutes, except to the extent it has been waived, which is not hereby intended.

**SECTION 24. WORKERS' COMPENSATION.** Grantee shall carry Workers' Compensation insurance on all its employees, current evidence of which shall be filed with the City. All such Workers' Compensation policies shall provide for notice by the insurer to the City at least sixty (60) days prior to any termination, revocation or modification thereof.

**SECTION 25. PERFORMANCE BOND.** Grantee shall furnish to the City a performance bond, or letter of credit with interest benefitting Grantee, in a form approved by the City Manager, for the faithful performance of this agreement and all its obligations arising hereunder, in the amount of \$50,000.00. Said bond shall be executed by a surety company approved by the City Manager and licensed to do business in the State of Florida.

**SECTION 26. ARBITRATION.**

(a). If any arbitrable controversy or circumstance shall arise between the parties, it may be arbitrated in the following manner:

(1). After the dispute or circumstance has arisen and either party determines that arbitration is necessary, either party shall serve written demand for arbitration upon the other party. Within ten (10) days after the service of such notice, each party shall select one (1) arbitrator. Within five (5) days thereafter, the two (2) arbitrators cannot agree upon a third arbitrator within such time, either the Grantor or the Grantee may apply to the senior judge of the Circuit Court of Okaloosa County, Florida, to have such arbitrator appointed by such judge.

(2). In case either party shall neglect for a space of ten (10) days after service of such notice to select an arbitrator and notify in writing the other party of such selection, the party having selected an arbitrator may apply to the said senior judge of the Circuit Court of Okaloosa County for the appointment of an arbitrator to represent such party; thereupon the said judge may appoint such arbitrator who shall have the same powers to perform the duties of an arbitrator as though selected by the party for whom he was to be appointed.

(3). Within ten (10) days thereafter, the three (3) arbitrators will hear the dispute and render a decision unless a majority of the arbitrators agree that additional time is needed. The decision of the arbitrators shall be binding on the parties. Each party will pay the fees and expenses of its arbitrator, and the two (2) arbitrators selected by the parties will agree on the fees and expenses of the third arbitrator together with the agreed-upon cost of the arbitration,

all of which shall be paid one-half by each party. Each party shall be entitled to produce witnesses and submit evidence before the arbitrators. The decision of the arbitrators will be binding on the parties and may be enforced as provided for by Florida law.

#### **SECTION 27. OPERATIONS DURING DISPUTE.**

(a). In the event that a dispute arises between the Grantor and the Grantee, or any other interested party in any way relating to this agreement, performance or compensation hereunder, the Grantee shall continue to render service in full compliance with all terms and conditions herein regardless of the nature of the dispute.

(b). Grantee expressly recognizes the paramount right and duty of Grantor to provide an adequate sewer service as a necessary governmental function, and further agrees, in consideration for the execution of this agreement, that in the event of a dispute, said Grantee will neither stop service nor seek injunctive relief in any court, but will either negotiate for an adjustment on the matter in dispute, or arbitrate arbitrable disputes.

#### **SECTION 28. CONTINUITY OF SERVICE MANDATORY.**

(a). It shall be the right of all customers to continue receiving service insofar as their financial and other obligations to the Grantee are honored. In the event that the Grantee elects to overbuild, rebuild, modify or sell the system, or the Grantor gives notice of intent to terminate or fails to renew this franchise, the Grantee shall act to ensure that all customers receive continuous, uninterrupted service for the duration of the franchise regardless of the circumstances. In the event of a change of franchise, or in the event a new operator acquires the system, the Grantee shall cooperate with the Grantor and the new franchisee or operator in maintaining continuous service to all customers. During such period, Grantee shall be entitled to the revenues for any period during which it operates the system, and shall be entitled to reasonable compensation for its services when it no longer operates the system.

(b). In the event Grantee fails to operate the system for four (4) consecutive days without prior approval of the Grantor or without just cause, the Grantor may, at its option, operate the system or designate an operator until such time as Grantee restores service under conditions acceptable to the Grantor or until a permanent operator is selected. If the Grantor is required to fulfill this obligation for the Grantee, the Grantee shall reimburse the Grantor for all reasonable costs or damages in excess of revenues from the system received by the Grantor that are the result of the Grantee's failure to perform.

**SECTION 29. NONDISCRIMINATION.** The Grantee agrees that it has adopted and will maintain and enforce a policy of nondiscrimination on the basis of race, color, religion, sex, age, handicap, disability or national origin. Said nondiscrimination policy shall apply to employment practices of the Grantee and the provision of services. The Grantee agrees that on written request, it will permit reasonable access to its records of employment, employment advertisements, application forms and other pertinent data and records by Grantor for the purposes of investigation to ascertain compliance with the nondiscrimination policy of this section, provided however, that the Grantee shall not be required to produce for inspection any records covering any period of time more than two (2) years prior to the effective date of this Ordinance.

### **SECTION 30. MISCELLANEOUS.**

(a). When not otherwise prescribed herein, all matters herein required to be filed with Grantor shall be filed with the City Manager.

(b). Nothing herein shall be deemed or construed to impair or affect in any way or to any extent the right of the Grantor to acquire the system at any time through the exercise of eminent domain.

**SECTION 31. FAILURE TO REQUIRE PERFORMANCE, NOT A WAIVER.** The failure of the Grantor at any time to require performance by the Grantee of any provision hereof shall not affect the right of the Grantor thereafter to enforce same; nor shall waiver by the Grantor of any breach of any provision hereof be taken or held to be a waiver of any succeeding breach or as a waiver of any provision itself.

### **SECTION 32. RECORDS AND REPORTS.**

(a). The Grantor shall have access at all reasonable hours to all of the Grantee's plans, contracts, engineering, accounting, financial, statistical, and service records relating to the property and operation of the Grantee and to all other records required to be kept hereunder. The following records and reports shall be made available and copied without expense at the request of the Grantor and shall be kept in the local office of the Grantee:

(1). Accounting. A summary report showing gross revenues from the sale of sewer service to residential and commercial customers within the area designated in this Ordinance. Such summary records shall be kept and maintained in accordance with generally accepted accounting principles. The detail used to prepare such summary records shall, on written request of the Grantor, be open for examination and audit by the Grantor's Internal and External Auditors and their staff during ordinary business hours.

(2). Annual Audit. An annual audit statement attesting to the franchise fees that have been billed and collected in compliance with this Ordinance.

(3). Underground Installation Records. The Grantee will make all records of its underground installation available for inspection by the Grantor at all times during ordinary business hours.

**SECTION 33. PREFERENTIAL OR DISCRIMINATORY PRACTICES PROHIBITED.** The Grantee shall not, as to rates, charges, service facilities, rules, regulations, or in any other respect, make or grant any preference or advantage to any person, nor subject any person to any prejudice or disadvantage, provided that nothing herein shall be deemed to prohibit the establishment of a graduated scale of charges and classified rate schedules to which any customer coming within such classification would be entitled.

**SECTION 34. SEWER DISTRIBUTION SYSTEM PROHIBITION.** The Grantee agrees that it will not provide sewer system facilities for a sewage distribution system to any person who does not have the necessary authority from the Grantor to operate same.

### **SECTION 35. RATES.**

(a). Rates charged by the Grantee for service hereunder shall be fair and reasonable and

designed to meet all necessary costs of the service, including a fair rate of return on the net valuation of its properties devoted thereto, under efficient and economical management.

(b). Initial rates to be charged by Grantee for service to be performed hereunder are described in the Exhibit attached hereto and made a part hereof by reference. The fixing of rates hereafter shall be accomplished consistent with Sections 180.14 and 180.20, Florida Statutes, and other applicable general law.

**SECTION 36. LINE EXTENSION POLICY.** The Grantee shall provide service to any person within the initial service area who requests service and can be provided that service by gravity maintenance methods. The Grantee shall provide service to any person within the initial service area who requests service but cannot be serviced by gravity maintenance methods in subdivisions, planned unit developments and commercial developments composed of at least twenty-five users. The Grantee shall provide service to any person within the service area, as extended in the future, who requests service in subdivisions, planned unit developments and commercial developments composed of at least twenty-five users.

**SECTION 37. COMPLAINTS.** The Grantee shall use its best efforts to promptly resolve all customer complaints.

**SECTION 38. CAPTIONS.** The section headings and captions contained herein are for convenience only and shall not be used to vary or interpret the terms of this Ordinance.

**SECTION 39. SEVERABILITY.** If any section, subsection, sentence, clause or phrase of this Ordinance for any reason be held invalid or unconstitutional by the decision of any court of competent jurisdiction or administrative agency, such decision shall not affect the validity of the remaining portions thereof. The Grantee hereby declares that it would have accepted the provisions of this Ordinance and each section, subsection, sentence, clause and phrase hereof, irrespective of the fact that any one or more sections, subsections, sentences, clauses or phrases be declared illegal, invalid or unconstitutional. The invalidity of any portion of this Ordinance shall not abate, reduce or otherwise affect any consideration or other obligation by the Grantee of the franchise granted hereunder; provided, however, that the Grantor may amend those provisions invalidated; provided further, however, that the Grantor may terminate the franchise when the invalidated provision may not be so amended as to preserve the purposes for which it was agreed to in the original franchise and when said invalidated provision is found by the Grantor to be essential to the franchise as a whole.

**SECTION 40. REPEAL OF ORDINANCE 185.** Ordinance number 185 is hereby repealed.

SECTION 41. **EFFECTIVE DATE.** This Ordinance shall take effect upon its adoption by Council and signature of the Mayor. The franchise herein created shall become effective when this ordinance becomes law.

ADOPTED: June 20, 1994

BY: [Signature]  
GARY L. ALDEN, MAYOR

ATTEST:

[Signature]  
PHILIP COOK  
CITY MANAGER

[Signature]  
CAROLYN LEE GARRETT  
CITY CLERK

The form and legal sufficiency  
of the foregoing has been  
reviewed and approved by the  
City Attorney.

[Signature]  
ROBERT E. MCGILL, III  
CITY ATTORNEY

First Reading 6-6-94

Second Reading 6-20-94

ATTACHMENT "A"

DESTIN WATER USERS, INC. FEE RATES:

Membership Fees:

\$30.00 for sewer plus service charge

Service Charges:

Initial turn-on and meter reading fee	\$10.00
Turn-off's	No Charge
Meter readings requested by member	
a) First one free	
b) Meter reading correct	\$ 5.00
c) Meter reading incorrect	No Charge

Other Services:

Re-institute service after turn-off for non-payment	\$35.00
Transfer fee from one location to another	\$10.00
Returned check	\$ 5.00

Basic Monthly Sewer Charges:

Residential	\$18.00/unit
Condominium	\$16.00/unit
Motels	\$13.50/unit
Campground & trailer parks	\$13.50/unit
Apartments & Mobile Home	\$18.00/unit
Commercial (normal usage)	\$18.00/unit
Commercial (heavy usage)	\$25.00/unit

Effective December Billing 1992

Sewer Tap-In Fees:

a)	Residential	\$1,500.00
b)	Discounted Units Motels	1,350.00*
c)	Commercial	1,675.00
d)	Commercial - heavy use	1,675.00

\*Multi-Unit - more than one unit on one meter.

G:\CtyClerk\Ord\DWUSewer.Fee

**SUZANNE BROWNLESS, P. A.**

ATTORNEY AT LAW

1311-B Paul Russell Road, Suite 201

Tallahassee, Florida 32301

ADMINISTRATIVE LAW  
GOVERNMENTAL LAW  
PUBLIC UTILITY LAWTELEPHONE (850) 877-5200  
TELECOPIER (850) 878-0090

June 1, 1999

VIA FAX

TO: Mayor and City Council

FROM: Suzanne Brownless

RE: DWU rate case

**DISCUSSION**

In accord with the instructions of the City Council, a quasi-judicial hearing is scheduled on August 11, 25 and 26, 1999 to consider the request of Destin Water Users, Inc. (DWU) for an increase in its water and wastewater rates and charges.

While the hearing is quasi-judicial in nature, a procedure that the City Council routinely uses for land use matters, regulatory proceedings combine policy making with fact finding and are therefore, somewhat different than the process the City Council is used to.

First, it is necessary in regulatory proceedings to issue a procedural order. This order addresses the "housekeeping" aspects of the hearing, e.g., the issues to be addressed by all parties, discovery cut-off dates, requirement that all parties disclose witnesses and exhibits, filing dates for pre and post-hearing statements, etc. A proposed procedural order is attached for your review and approval.

Second, the format of the hearing is modified somewhat as the attached memo to Larry Rubenstein details. The whole point of rate case hearings is to allow the public, in this case the customers of DWU, to not only give the Council the benefit of their opinion, but also cross examine the witnesses themselves on their own behalf if they choose to do so. Thus, the regulatory format allows the Council to develop a record of competent, substantial evidence while allowing customers full participation in the hearing.

**RECOMMENDATION**

Approve the attached Order Establishing Procedure and approve the formal hearing process outlined in the attached memo to L. Rubenstein.

c:2804

**Exhibit "E"**

SUZANNE BROWNLESS, P. A.

ATTORNEY AT LAW

1311-B Paul Russell Road, Suite 201

Tallahassee, Florida 32301

ADMINISTRATIVE LAW  
GOVERNMENTAL LAW  
PUBLIC UTILITY LAW

TELEPHONE (850) 877-5200  
TELECOPIER (850) 878-0090

June 1, 1999

TO: Larry Rubenstein, City Manager *MR*  
FROM: Suzanne Brownless, Esq. *SB*  
RE: DWU rate case

I have heard from several commissioners concerning the way in which the DWU rate case proceeding, currently scheduled for August 11, 25 and 26, 1999, will be conducted. Commissioners are concerned that the general members of the public both be given an opportunity to express their opinions and concerns about the rate increase proposed by DWU and be given an opportunity to cross examine DWU witnesses.

The quasi-judicial format requires that witnesses be sworn in and subject to cross-examination and that persons who wish to participate as a party to the case, with the right to cross examine witnesses, have a substantial interest in the case. Rate cases are exercises in regulation, a process that blends policy making with fact finding, and are therefore, very unique.

In this proceeding the following format will be used:

1. All persons who wish to offer testimony will be sworn in. Members of the public who wish merely to offer their opinion on the proposed rate increase do not have to be sworn in to offer their testimony. However, unsworn testimony alone will not be substantial grounds on which the Council can base its decisions.

2. Any members of the public who wish to present either sworn or unsworn testimony on the proposed rate increase will be allowed to do so.

3. Witness will be presented as follows:  
Direct Case  
DWU;  
Intervenors represented by counsel; and  
City Staff.

The applicant, DWU, will present its direct case, i.e., all witnesses that support its request for a rate increase. These witnesses will be subject to cross examination by the following persons:

a. Any member of the public who is a customer of DWU who

Larry Rubenstein,  
City Manager  
June 1, 1999  
Page 2

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wishes to cross examine may do so on his/her own behalf alone;

- b. Parties represented by counsel;
- c. City staff; and
- d. Council members.

4. Rebuttal

Intervenors represented by counsel;  
City Staff;  
DWU.

Again, these witnesses will be subject to cross examination by the persons identified in paragraph 3 above.

5. All parties, and customers of DWU who wish to act as their own counsel, shall have the opportunity to offer opening and closing statements.

Subsequent to the close of the hearing the Staff will prepare a recommendation addressing all of the issues identified in the prehearing order which will be distributed to all of the parties upon publication. It is intended that the Council will vote on all of the issues identified in the prehearing order at the next regularly scheduled Council meeting.

The procedure outlined above comports with the substantial requirements of law, gives the public both a chance to express their opinion as well as participate in the hearing on their own behalf and allows the Council to develop a record on which to base their decision in this important matter.

Please contact me if you have any questions concerning the proposed procedure or need any additional information.

c:2801

BEFORE THE CITY COUNCIL OF DESTIN, FLORIDA

RECEIVED

IN RE: Application of Destin Water  
Users for an increase in water and  
wastewater rates.

Case No. 99-01

JUN 30 1999

OERTEL, HOFFMAN,  
FERNANDEZ & COLE, P.A.

ORDER ESTABLISHING PROCEDURE

Ordinance Nos. 263 and 264, adopted by the City Council of Destin, Florida on June 20, 1994, the franchise agreements between the City of Destin, Florida (City) and Destin Water Users, Inc. (DWU), and §§180.14 and 180.20, Florida Statutes, give the Destin City Council the ability to set fair, nondiscriminatory and reasonable rates and charges for all water and wastewater services provide by DWU within the city limits of Destin.

Ordinance Nos. 263.2 and 264.2, adopted on April 20, 1998, approved interim water and sewer rates for DWU effective May 1, 1998, contingent upon DWU filing a full rate case on or before September 1, 1998 which would include "a full cost of service study, rate base, net operating income statement, and cost of capital schedules for both the water and sewer systems which will include the capital expenditures for both systems projected for the next five years." Had DWU filed its rate case by September 1, 1998, the City was required by these ordinances to process the application by December 31, 1998 so that final rates could be put into effect on January 1, 1999.

DWU initially filed its rate increase application on October 1, 1998 and amended it on November 10, 1998 (recalculation of water system tap-in fee). Prior to the City Council workshop on October 29, 1998 DWU had been requested to provide a comparison with other area utilities of its proposed tap-in fee, an ERU comparison by class of service for the historic years 1997 and 1998 to date and for the five year projected period from 1999-2003 for Destin DWU customers and non-Destin DWU customers and a draft or final version, if available, of the contract between South Walton Utilities and DWU establishing the WRP. In addition to these items, worksheets supporting the miscellaneous service charges requested and water and sewer tariff sheets revised to reflect DWU's proposed Phase I and Phase II rates were requested at the October 29, 1998 workshop. These materials were not provided to the City until January 6, 1999. The City has established January 6, 1999, four months after the September 1, 1998 filing deadline established by the above-referenced ordinances, as the official filing date of DWU's application.

This Order is issued pursuant to §§166.021, 180.14 and 180.20, Florida Statutes. The scope of this proceeding shall be based upon the issues raised by the parties and the City staff (staff) up to and during the prehearing conference, unless modified by the City Council. The hearing will be conducted as a quasi-judicial

proceeding in accord with applicable Florida case law.

#### Discovery

Discovery pursuant to Florida Rules of Civil Procedure 1.280 - 1.390 will be allowed. When discovery requests are served and the respondent intends to object to or ask for clarification of the discovery request, the objection or request for clarification shall be made within ten days of service of the discovery request. This procedure is intended to reduce delay in resolving discovery disputes.

The hearing in this case is currently scheduled for August 11, August 25 and August 26, 1999. Unless authorized by the City Council for good cause shown, all discovery shall be completed by August 2, 1999. All interrogatories, requests for admissions, and request for production of documents shall be numbered sequentially in order to facilitate their identification. The discovery requests will be numbered sequentially within a given set and any subsequent discovery requests will continue the sequential numbering system.

#### Prehearing Statements

A prehearing statement shall be required of all parties to this proceeding as well as staff. The original and ten (10) copies of each prehearing statement shall be filed with the Clerk of the City of Destin, Florida by the close of business, which is 5:00 p.m., on the due date. A copy of the prehearing statement shall be served on all other parties and staff no later than the date it is filed with the City Clerk. Failure of a party to timely file a prehearing statement shall be a waiver of any issue not raised by other parties or the City Council members. In addition, such failure shall preclude the party from presenting testimony in support of its position. Such prehearing statements shall set forth the following information in the sequence listed below:

1. The name of all known witnesses that may be called by the party, and the subject matter on which they will testify;
2. a description of all known exhibits that may be used by the party, whether they may be identified on a composite basis, and the witnesses sponsoring each;
3. a statement of basic position in the proceeding;
4. a statement of each question of fact the party considers an issue, specifically addressing the issues listed in Attachment A to this order, the party's position on each such issue, and which of the party's witnesses will address the issue;
5. a statement of each policy question the party considers

at issue and the party's position on each such issue and which of the party's witnesses will address the issue;

6. a statement of issues that have been stipulated to by all of the parties;
7. a statement of all pending motions or other matter the party seeks action upon; and
8. a statement as to any requirement set forth in this order that cannot be complied with, and the reasons therefore.

Prehearing conference

A prehearing conference will be held in this case at Destin City Hall, 4200 Two Trees Road, Destin, Florida 32541-3323. Any party who fails to attend the prehearing conference, unless excused by the City Council, will have waived all issues and positions raised in that party's prehearing statement.

Waiver of Issues

Any issue not raised prior to or at the prehearing conference shall be deemed waived unless the affected party can demonstrate good cause for its failure to identify the late-raised issue.

Controlling dates

The following dates have been established to govern the key activities in this proceeding:

- |                            |                    |
|----------------------------|--------------------|
| 1. Prehearing statements   | August 2, 1999     |
| 2. Discovery cut-off date  | August 2, 1999     |
| 3. Prehearing conference   | August 4, 1999     |
| 4. Prehearing order        | August 9, 1999     |
| 5. Hearing                 | August 11, 1999    |
|                            | August 25-26, 1999 |
| 6. Post-hearing statements | September 13, 1999 |
| 7. City Council vote       | September 27, 1999 |

Based on the foregoing, it is

ORDERED by the City Council of the City of Destin, Florida, that the provisions of this Order shall govern unless modified by the City Council of the City of Destin, Florida.

Dated this \_\_\_\_\_ day of \_\_\_\_\_, 1999.

\_\_\_\_\_  
Kenneth B. Beaird, Mayor

ATTEST:

\_\_\_\_\_  
Larry Rubenstein, City Manager

\_\_\_\_\_  
Carolyn Lee Garrett, City Clerk

c:2800

ATTACHMENT A  
DWU RATE CASE ISSUES

1. Has DWU appropriately projected water demand for the next 20 years?
  - a. What is the current water demand for DWU? for customers located within the City of Destin?
  - b. What is the projected demand for the next five years, ten years and 20 years for DWU customers? customers located within the City of Destin?
  - c. What has been the historic demand for water for DWU over the last five years? for customers located within the City of Destin?
  - d. Is the methodology used by DWU to make water demand projections appropriate?
2. Based on appropriate demand projections, when does DWU need additional water supplies?
3. Does the Water Resource Partnership (WRP) pipeline proposal represent the most cost-effective means of meeting DWU's projected water demands over the next twenty years?
  - a. Has DWU appropriately evaluated other water alternatives: reverse osmosis, blended reverse osmosis, State Road 85 corridor wells, purchases from So. Walton Utility, etc.
  - b. Is the WRP pipeline option, if most cost-effective, a viable option, i.e., has the NFWFMD issued a consumptive use permit for this option?
4. Are the rates requested by DWU appropriate?
  - a. Is it appropriate to use "units" instead of Equivalent Residential Units/Connections (ERCs) as a basis for the development of DWU's proposed water and wastewater rate structure?
  - b. What is the appropriate cost of capital, cost of debt, expenses, working capital, etc. for DWU?
  - c. What is the appropriate rate design for water and wastewater services?
  - d. Should a "separations factor" be applied to the proposed rates to reflect the cost of service to City of Destin

customers as opposed to non-City customers of DWU? If appropriate, how should this factor be calculated?

- e. What are the appropriate capital and financing costs associated with the development of the WRP pipeline project?
  - 1. Did DWU need to buy approximately 5,000 acres of land in order to implement the pipeline project?
  - 2. Was the cost of the land reasonable?
  - 3. Should DWU have paid cash for this land?
- f. Should DWU rates include the capital investment necessary to "hookup" all current City residents to DWU's wastewater system? If so, how should this cost be distributed, i.e., over all DWU customers or over only City customers?
- g. Is DWU's service availability policy appropriate?

c:2800

**RECEIVED**

**MAY 17 1999**

**SUZANNE BROWNLESS, P. A.**  
ATTORNEY AT LAW  
1311-B Paul Russell Road, Suite 201  
Tallahassee, Florida 32301

ADMINISTRATIVE LAW  
GOVERNMENTAL LAW  
PUBLIC UTILITY LAW

OERTEL, HOFFMAN,  
FERNANDEZ & COLE, P.A.  
TELEPHONE (850) 878-5200  
TELECOPIER (850) 878-0090

May 14, 1999

VIA FAX AND U.S. MAIL

Kenneth G. Oertel, Esq.  
Oertel, Hoffman, Fernandez & Cole, P.A.  
301 South Bronough Street  
Fifth Floor  
Tallahassee, Florida 32301

RE: Destin Water Users Application for rate increase

Dear Mr. Oertel:

As the City of Destin's franchise and regulatory attorney representing the Staff of the City of Destin in the review of the Destin Water Users' (DWU) rate increase application currently pending before the City I have been asked to respond to your letter of April 27, 1999 regarding the status of DWU's rate case.

Ordinance Nos. 263.2 and 264.2, adopted on April 20, 1998, approved interim water and sewer rates for DWU effective May 1, 1998, contingent upon DWU filing a full rate case on or before September 1, 1998 which would include "a full cost of service study, rate base, net operating income statement, and cost of capital schedules for both the water and sewer systems which will include the capital expenditures for both systems projected for the next five years." Had DWU filed its rate case by September 1, 1998, the City was required by these ordinances to process the application by December 31, 1998 so that final rates could be put into effect on January 1, 1999.

DWU did not meet the September 1, 1998 deadline. DWU initially filed its rate increase application on October 1, 1999 and amended it on November 10, 1998 (recalculation of water system tap-in fee). Prior to the City Commission workshop on October 29, 1998 DWU had been requested to provide a comparison with other area utilities of its proposed tap-in fee, an ERU comparison by class of service for the historic years 1997 and 1998 to date and for the five year projected period from 1999-2003 for Destin DWU customers and non-Destin DWU customers and a draft or final version, if available, of the contract between South Walton Utilities and DWU establishing the WRP. In addition to these items, worksheets supporting the miscellaneous service charges requested and water and sewer tariff sheets revised to reflect DWU's proposed Phase I and Phase II rates were requested at the October 29, 1998 workshop. These materials were not provided to the City until January 6,

**Exhibit "F"**

Kenneth G. Oertel, Esq.  
May 14, 1999  
Page 2

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1999. The City has established January 6, 1999, four months after the September 1, 1998 filing deadline established by the above-referenced ordinances, as the official filing date of DWU's application.

I am surprised that DWU does not understand either the time schedule or the type of proceeding that will be used in processing its rate increase application. For the last year and a half the City, both informally with the Staff of DWU and formally in Council workshops, has consistently taken the position that this rate increase application will be processed as a quasi-judicial proceeding before the full Council with testimony, exhibits and cross examination of witnesses. Both this process and the schedule to be followed were most recently addressed at the City's April 5, 1999 Council meeting in which the Council voted to hold a quasi-judicial hearing 30 days after the Northwest Florida Water Management District issues or denies the WRP's requested consumptive use permit. A copy of the agenda and associated motions are attached for your review.

Based upon the Council's direction on April 5th, the City has scheduled the following hearing dates at the Destin City Hall for DWU's rate increase application:

Wednesday, August 11, 1999	5:00 - 9:00 p.m.
Wednesday, August 25, 1999	5:00 - 9:00 p.m.
Thursday, August 26, 1999	5:00 - 9:00 p.m.

These dates are subject to change in that the City is required to cancel any City hearings or proceedings that conflict with District School Board or Okaloosa County budget hearings. To the extent that a conflict with the County or School District hearings subsequently arises, the City's hearing dates will have to be rescheduled.

If the hearings are held as scheduled above, the City Council will render a decision on or about the second week in September, 1999. Otherwise, the decision will be held roughly two weeks after the last day of hearing.

As the City Staff has stated repeatedly to DWU Staff, there are five categories of issues which the City expects to be addressed by DWU at hearing:

- 1) DWU's current and projected water demands for the City;
- 2) The most cost-effective means of supplying DWU's projected water and wastewater needs;
- 3) The capital and financial resources needed to meet

- current and projected capacity demands and efficiently provide water and wastewater services;
- 4) Rate design; and
- 5) Connection of septic tanks located within the City to DWU's system.

More specifically, the following are the issues which have been identified by the City with regard to DWU's application:

1. Has DWU appropriately projected water demand for the next 20 years?
  - a. What is the current water demand for DWU? for customers located within the City of Destin?
  - b. What is the projected demand for the next five years, ten years and 20 years for DWU customers? customers located within the City of Destin?
  - c. What has been the historic demand for water for DWU over the last five years? for customers located within the City of Destin?
  - d. Is the methodology used by DWU to make water demand projections appropriate?
2. Based on appropriate demand projections, when does DWU need additional water supplies?
3. Does the Water Resource Partnership (WRP) pipeline proposal represent the most cost-effective means of meeting DWU's projected water demands over the next twenty years?
  - a. Has DWU appropriately evaluated other water alternatives: reverse osmosis, blended reverse osmosis, State Road 85 corridor wells, purchases from So. Walton Utility, etc.
  - b. Is the WRP pipeline option, if most cost-effective, a viable option, i.e., has the NFWMD issued a consumptive use permit for this option?
4. Are the rates requested by DWU appropriate?
  - a. Is it appropriate to use "units" instead of Equivalent Residential Units/Connections (ERCs) as a basis for the development of DWU's proposed water and wastewater rate structure?

- b. What is the appropriate cost of capital, cost of debt, expenses, working capital, etc. for DWU?
- c. What is the appropriate rate design for water and wastewater services?
- d. Should a "separations factor" be applied to the proposed rates to reflect the cost of service to City of Destin customers as opposed to non-City customers of DWU? If appropriate, how should this factor be calculated?
- e. What are the appropriate capital and financing costs associated with the development of the WRP pipeline project?
  - 1. Did DWU need to buy approximately 5,000 acres of land in order to implement the pipeline project?
  - 2. Was the cost of the land reasonable?
  - 3. Should DWU have paid cash for this land?
- f. Should DWU rates include the capital investment necessary to "hookup" all current City residents to DWU's wastewater system? If so, how should this cost be distributed, i.e., over all DWU customers or over only City customers?
- g. Is DWU's service availability policy appropriate?

In addition to myself and City engineering staff, the City will retain the services of an consulting engineer, a regulatory accountant and a regulatory rate consultant. Mr. Hartman is under contract to the City to provide general engineering services but has not been engaged to work on DWU's application. The City expects to select these consultants within the next two weeks and will promptly notify you of the individuals selected. Until the consultants review DWU's application, the City has no position on its merits.

Finally, with regard to the procedure to be followed by the City, the City will issue a procedural order which addresses discovery, requires each party to file a statement of issues and positions and identifies witnesses and exhibits to be used at hearing prior to the hearing dates listed above.

Kenneth G. Oertel, Esq.  
May 14, 1999  
Page 5

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Should you have any questions concerning this letter or need any additional information, please contact me.

Very truly yours,

  
Suzanne Brownless

c:2786  
cc: Mr. Larry Rubenstein  
Destin City Council

**AGENDA  
REGULAR MEETING  
DESTIN CITY COUNCIL  
MONDAY, APRIL 5, 1999  
DESTIN CITY HALL COUNCIL CHAMBERS  
5:00 P.M.**

**1.0 CALL TO ORDER**

**2.0 INVOCATION AND PLEDGE OF ALLEGIANCE**

**3.0 SPECIAL PRESENTATIONS**

**3.1 Presentation of Destin's Water Needs / Destin Water Users/Baskerville  
Donovan**

*Motion to hold Quasi-Judicial  
hearing as soon as the hearing  
officer rules and 30 days after  
NFWMD issues permit.*

*Franchise Attorney to advise staff  
when hearing officer rules & City Clerk  
to advertise and schedule hearing.*

**FRANCHISE ATTORNEY WILL TRACK HEARING AND SCHEDULE  
MEETING WHEN HEARING OFFICER RULES.**

**4.0 PUBLIC HEARING**

**4.1 \*\*\*QJ: 2nd Reading Ordinance 332; Request to amend zoning map from  
RGD (Residential General Development District) to BR (Retail Business  
District) / Bob Bonezzi**

*Motion to adopt Ordinance 332  
on second reading passed 7-0.*

*City Clerk to make normal distribution  
of ordinance.*

**COMPLETE**

**4.2 1st Reading Ordinance 152.38; Amending Land Development Code,  
Extension of Development Orders**

*Motion to approve Ordinance  
152.38 on first reading passed  
6-1.*

*City Clerk to advertise and schedule  
for second reading.*

**COMPLETE**

SUZANNE BROWNLESS, P. A.

ATTORNEY AT LAW  
1311-B Paul Russell Road, Suite 201  
Tallahassee, Florida 32301

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TELECOPIER (850) 878-0090

June 1, 1999

VIA U.S. MAIL

Kenneth Oertel, Esq.  
Oertel, Hoffman, Fernandez & Cole, P.A.  
301 South Bronough Street  
Suite 500  
Tallahassee, Florida 32301

RECEIVED

JUN 03 1999

RE: DWU rate case

OERTEL, HOFFMAN,  
FERNANDEZ & COLE, P.A.

Dear Mr. Oertel:

In response to your letter of May 24, 1999, I offer the following clarifications. First, all of the issues which were identified in my letter of May 14, 1999 are the issues which will be the subject of the hearing on DWU's proposed water and wastewater rate case before the City of Destin Council members.

I have no reason to doubt that the Northwest Florida Water Management District (NFWFMD) has reviewed both WRP's and DWU's projected water demand needs for the next five years and WRP's and DWU's alternatives to supply that need. However, evaluation for a consumptive use permit is not evaluation for the purposes of setting rates under Chapter 180, Florida Statutes. NFWFMD has no authority to set the rates for DWU, the City Council of Destin does. These are the standard issues in a rate case and will be reviewed and voted on by the Council in this proceeding.

As you are aware, exhibits and testimony adduced before one judicial or administrative body are not automatically admissible in another judicial or administrative hearing. And, whether or not any documents are public record is completely immaterial to DWU's rate case. Proof of a need for water and the most cost effective means of meeting that need are issues which are necessary for DWU to carry its burden to support its application for a rate increase. Failure of DWU to provide testimony at hearing on these issues will necessarily result in a denial of the rate increase.

With regard to the City's position on any of the issues identified in my letter of May 14th, let me repeat again that the City is hiring consultants and until the consultants review DWU's application, the City has no position on any of the issues involved in the case.

Finally, Mr. Hartman has not been hired to work on, and will not work on, the DWU rate case application on behalf of the City.

Kenneth Oertel, Esq.  
June 1, 1999  
Page 2

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We are in the final stages of hiring the regulatory accounting and engineering consultants and will immediately advise you of the individuals selected once hiring is final.

Very truly yours,

  
Suzanne Brownless

c:2799  
cc: Mr. Larry Rubenstein  
Destin City Council