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ADMINISTRATIVE LAW
GOVERNMENTAL LAW
PUBLIC UTILITY LAW

ORIGINAL

May 8, 2001

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Blanca Bayo
Director, Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399

Docket No. 010 704-SU

In re: Request by St. Johns County, Florida for declaratory statement concerning a special service availability contract with United Water Florida, Inc.

Dear Ms. Bayo:

Enclosed for filing are the original and fifteen copies of St. Johns County, Florida's Petition for Declaratory Statement and Motion for Expedited Ruling.

Please stamp a copy and return to us for our files. If you should have any questions please contact me at 850-877-5200.

Very truly yours,

Suzanne Brownless
Attorney for St. Johns County

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FPSC-RECORDS/REPORTING

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Request by St. Johns County,
Florida for declaratory statement)
concerning a special service)
availability contract with United)
Water Florida, Inc.)
_____)

DOCKET NO. 010704-SU

PETITION FOR DECLARATORY STATEMENT

St. Johns County, Florida (County), by and through its undersigned attorney, pursuant to §120.565, Florida Statutes, and Rules 28-105.001-.003, Fla. Stat., files this request for a declaratory statement and in support thereof states as follows:

1. The name, address, telephone number and facsimile number of the petitioner is:

St. Johns County, Florida
Attention: James G. Sisco, County Attorney
P.O. Box 1533
St. Augustine, Florida 32085-1533
Phone: (904) 823-2457
FAX: (904) 823-2575

2. The name, address, telephone number and facsimile number of the attorney or qualified representative of the petitioner is:

Suzanne Brownless, Esq.
Suzanne Brownless, P.A.
1311-B Paul Russell Road
Suite 201
Tallahassee, Florida 32301
Phone: (850) 877-5200
FAX: (850) 878-0090

3. The statutory provisions, agency rules, agency orders and case law on which the declaratory statement is sought are:

- a. Rule 25-30.515(18), Florida Administrative Code;
- b. Rule 25-30.515(17), Florida Administrative Code;

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- c. Rule 25-30.525, Florida Administrative Code;
- d. Rule 25-30.550, Florida Administrative Code;
- e. Section 367.111(1), Fla. Stat.;
- f. Section 367.101, Fla. Stat.;
- g. H. Miller & Sons, Inc. v. Hawkins, 373 So.2d 913 (Fla. 1979); Christian and Missionary Alliance Foundation, Inc. v. Florida Cities Water Co., 386 So.2d 543 (Fla. 1980); and
- h. In re: Complaint of Naples Orangetree, Ltd. against Orange Tree Utility Company in Collier County for Refusal to Provide Service, 95 F.P.S.C. 2:342 (1995).

4. The statutes, rules, orders and case law cited above substantially affect the petitioner in the petitioner's particular set of circumstances as follows:

a. The Ponte Vedra Beach Municipal Service District (MSD) was created in the northeast portion of St. Johns County in 1982 by special legislative act¹ to "provide services to the public of the district independent of, as well as supplemental to, those services provided by St. Johns County and in cooperation with the function of the county."² While the MSD is authorized to construct "utilities, including, but not limited to, sewage, water, and lighting", funding for such facilities can not be accomplished by special property assessments pursuant to Chapter 170, Florida Statutes.³ St. Johns County, however, does have the statutory

¹ Chapter 82-375, Laws of Florida.

² Section 2(1), Chapter 82-375, *supra*, as amended by s. 2(1), Chapter 90-463, Laws of Florida.

³ Op. Att'y Gen. Fla. 99-26 (1999).

authority to levy special property assessments for the construction of sewer facilities.⁴

b. The portion of the MSD at issue in this docket is located entirely within the certificated service territory of United Water Florida, Inc., (UWF) an investor-owned utility regulated by the Florida Public Service Commission (FPSC, Commission) pursuant to §367.171(7), Florida Statutes. UWF provides centralized water service to the MSD but sewer services are provided via individual septic tanks. There are roughly 715 customers, the vast majority of whom are residential, within the MSD. Due to the location of the MSD, it is neither legally possible⁵, nor economically practicable, for either the County or the MSD to provide wastewater treatment to these MSD customers.

c. Failing septic tanks within the MSD have contributed to the pollution and degradation of the Guana River. Providing centralized sewer services to the MSD would significantly reduce the further pollution of this area.

d. UWF is a Class A utility providing water and wastewater

⁴ §125.01(1)(r), Florida Statutes.

⁵ Ponte Vedra Utilities was a private investor-owned utility regulated by the St. Johns County Water and Sewer Authority until its purchase by UWF. The sale of Ponte Vedra Utilities to UWF was approved by the St. Johns County Water and Sewer Authority. UWF is a "functionally related" investor owned utility crossing county boundaries regulated by the Commission pursuant to §367.171(7), Florida Statutes. Board of County Commissioners of St. Johns County v. Beard, 601 So.2d 590 (Fla. 1st DCA 1992). Since the MSD is located totally within the service area originally certificated by the County to Ponte Vedra Utilities, and now certificated by the Commission to UWF, no other entity can provide wastewater service to the MSD.

service to approximately 27,000 customers in Duval, Nassau, and St. Johns Counties. UWF is located in a critical use area as designated by the St. Johns River Water management District.

e. UWF has a uniform service availability policy for its water and wastewater system and has recently been granted uniform service availability charges by Proposed Agency Action Order No. PSC-01-0857-PAA-WS (PAA Order 01-0857), issued on April 2, 2001 in Docket No. 000610-WS. Order PSC-01-1039-CO-WS, issued on April 30, 2001, finalized PAA Order 01-0857. Pursuant to UWF's wastewater service availability policy, UWF is obligated to provide wastewater service upon the written application of either property owners or their duly authorized agents.⁶

f. Due to the fact that a force main and associated wastewater facilities would have to be constructed to serve the MSD, UWF's tariffs provide that the following costs would have to be paid by the property owners or their authorized agents:

Plant Capacity Charge	\$ 1,316.00 per ERC ⁷ - residential
	\$ 4.70 per gallon - all others
Service Lateral Extensions	\$ full costs
Main Extensions	\$ full costs ⁸

g. The location of the MSD is such that the force main(s) and other off-site facilities needed to provide adequate central sewage services to the District would not be capable of providing

⁶ Tariff, Sheet No. 28.2, Rule A.5.

⁷ Equivalent Residential Connection.

⁸ Tariff, Sheet No. 22.0, 28.15; Rules B.1, B.2 and B.3

service to other developments. That being the case, UWF would allocate the entire cost of the MSD's off-site facilities to the MSD property owners.⁹ Finally, the MSD/property owners would be required to convey the MSD main extension and associated off-site facilities once constructed to UWF at the time of connection with UWF's system.¹⁰ In sum, while UWF does not dispute that the retirement of the septic tanks in the MSD is environmentally beneficial, it takes the position that the cost of extending its sewer system to the MSD must be borne by the MSD property owners or their agent.

h. At the request of the MSD Board of Trustees, the St. Johns County Board of County Commissioners (Board) conducted a survey among the property owners of the MSD who would be assessed to pay the cost of the off-site facilities necessary for UWF to provide wastewater services to the MSD. This survey revealed that

⁹ Tariff, Sheet No. 28.10, Rules C.6. and C.7. Previous estimates of the amount of money each property owner would have to pay to hook up to the sewer force main are as follows:

Property assessment (\$4.6M total cost)	\$6,425
Service availability charge (United Water)	\$ 210*
Connection fee (United Water)	\$1,000
Abandon drain & septic tank	<u>\$ 750</u>
TOTAL:	\$8,385

* As explained in ¶ 4.e. above, this charge has been increased to \$1,316 per ERC.

Jacksonville Times Union, "County plans survey on sewers", November 13, 1999.

¹⁰ Tariff, Sheet 28.11, Rules 9, 10, 11, 12.

a majority of the MSD property owners favored the construction of the off-site facilities and the imposition by the County of a property assessment sufficient to fund same. Based on the results of that survey, the Board passed Resolution No. 2000-07 on January 18, 2000.

i. Resolution No. 2000-07 instructed the County Administrator to take the steps necessary under §197.3632, Fla. Stat.¹¹, to levy the special assessments needed to fund the MSD main extensions and off-site facilities (the "wastewater collection facilities"). It is intended that this resolution will be amended to increase the assessments in amounts sufficient to reimburse the County for its payment of UWF's wastewater service availability and connection charges associated with providing wastewater treatment services to the MSD customers.

j. The Board intends to incur long term debt estimated to cover a 30 year period, secured by annual property assessments against all improved and vacant lands within the MSD that will be benefitted by the wastewater collection facilities over the same financing period, to construct the MSD off-site facilities and pay UWF's wastewater service availability and connection charges. The Board, after hearings pursuant to §§125.3401 and 125.35, Fla. Stat., intends to enter into a lease-purchase agreement with UWF whereby UWF will lease the wastewater collection facilities to be constructed by the County for the length of the financing term at

¹¹ Uniform method for the levy, collection, and enforcement of non-ad valorem assessments.

the end of which UWF would purchase the facilities for a nominal sum.

k. During the financing term, UWF would be responsible, at its sole expense, for the maintenance and operation of the wastewater collection facilities throughout the entire lease term.

l. UWF would, throughout the lease term, also provide retail wastewater services to the MSD customers at UWF's stated retail service tariff rates and charges with the exception that UWF would not impose any service availability charges on the MSD customers.¹² UWF would have the wastewater treatment plant capacity necessary to provide the MSD customers service at the conclusion of the financing/construction process through its currently planned \$2.5 million expansion of its Ponte Vedra wastewater treatment plant.

m. The County's continued ownership of the MSD wastewater collection facilities, UWF's responsibility to maintain and operate those facilities for the financing term under a lease agreement with the County, and the fact that regardless of the time of connection, no additional service availability charges or

¹² The County wishes to make clear that UWF has not formally committed to the terms and conditions stated in the attached special service availability contract or the lease agreement. However, in discussions with the County, UWF has expressed its willingness to agree to the basic outline of the arrangement as set forth in this pleading and to submit the service availability cap issue to the Commission. While discussions with UWF's counsel have been conducted on these points, as of the date of filing UWF has not agreed to waive the administrative, inspection, or legal fees which are set forth in its service availability tariff (Rules Nos. A8, A27, C2; A23, C10; and A27, C2; respectively). However, these fees have not been included in the special service availability contract attached to this pleading.

connection fees would be charged MSD property owners by UWF, are a departure from UWF's service availability policy as stated in UWF's approved tariffs and past court and FPSC decisions.

n. The County will remit to UWF the current \$1,316 per ERC residential and \$4.70 per gallon non-residential wastewater service availability charges and the currently approved wastewater connection fees for all residential and commercial customers within the MSD prior to the connection of the MSD force main to UWF's system. Under the proposed Special Service Availability Contract, MSD property owners would not be required to pay any additional wastewater service availability charges or connection fees at time of connection nor would they be required to connect within any specified period of time. That is, the connection fee and wastewater service availability charge would be levied and collected by UWF and paid by the County at the time the force main is connected to UWF's system, not at the time that each property owner/resident is connected to UWF's system.

o. Other fees associated with applying for wastewater service from UWF (application fee, deposits, etc.) would be paid by property owners at the currently approved tariffed rate at the time of connection.

5. Statement of law

a. The purpose of declaratory statements is to address the applicability of statutory provisions, orders or rules of an agency to a set of particular circumstances where there is a doubt as to the petitioner's rights, status and/or other equitable or legal

relations. Childs v. Department of State, Division of Elections, 711 So. 2d 151, 154 (Fla. 1st DCA 1998); Sutton v. Department of Environmental Protection, 654 So.2d 1047, 1048 (Fla. 5th DCA 1995).

b. Declaratory statements are similar to petitions for declaratory judgments and appellate courts apply the decisions issued under the declaratory judgments statute to declaratory statement cases. Sutton v. Department of Environmental Protection, 654 So.2d 1047, 1048 (Fla. 5th DCA 1995); Couch v. State, 377 So.2d 32, 33 (Fla. 1st DCA 1979).

c. Declaratory statements, like declaratory judgments, are appropriately issued where: (1) there is an actual, present and practical need for the declaration and (2) the declaration deals with a present, ascertained, or ascertainable state of facts or present controversy as to a state of facts. Sutton, 654 So.2d at 1048. Where there is no doubt as to particular rights, status or equitable or legal relations, a declaratory statement should not issue. Id.

d. The County is unclear whether the departures from UWF's approved service availability policy with regard to UWF's lease of the wastewater collection facilities and the requirement that UWF maintain facilities that it does not hold legal title to, in light of the particular facts of this case, are significant enough to necessitate the use of a "special service availability contract" ¹³

¹³ In re: Joint petition for approval of agreement for water and wastewater service to the Flagler County Airport by Palm Coast Utility Corporation and Flagler County Board of County Commissioners, 96 FPSC 4:409 ("The parties believe that the

under Rule 25-30.515(18), Florida Administrative Code,¹⁴ requiring prior Commission approval before it can become effective.¹⁵ Further, the County is unclear whether the Commission will grant its approval for such a special service availability contract where it is proposed that, due to the special circumstances of this case,¹⁶ service availability charges are capped at currently approved rates in contravention of established Commission policy

agreement may be deemed a special service availability contract, in that it includes provisions and charges for the extension of service which are not provided in the Utility's established service availability policy.")

¹⁴ "Special Service Availability Contract means an agreement for charges for the extension of service which is not provided for in the utility's service availability policy."

¹⁵ Rule 25-30.550(2), Florida Administrative Code.

¹⁶ The MSD is not a new development in which there is one developer who owns, and has control over, all of the lots and property that will be provided with wastewater service from UWF. The MSD is a substantially "built out" community that has existed for many years. In St. Johns County, approval of most newly platted subdivisions and all new Planned Unit Developments (PUDs) and Developments of Regional Impacts (DRIs) require the installation of centralized wastewater systems by the developer as a condition of permitting. These development costs, plus a return on investment, are normally recovered by the developer in the cost of the subdivision's lots and/or homes. Obviously, that is not the case here. The County stands to make no return at all on the construction of this wastewater force main and associated facilities nor will the County realize any revenue from wastewater treatment since UWF will be providing that service. The County is simply stepping in, at its citizens' request, to do something that the citizens cannot do for themselves: finance the installation of the wastewater collection facilities that are necessary to serve the existing structures that are located within the MSD.

and case law.¹⁷

e. As discussed above, the initiation by the County of the special assessment process set forth in §197.3632, Florida Statutes, is very lengthy and involves, among other things: the consent of the County Property Appraiser and County Tax Collector; contracts with the County Property Appraiser, County Tax Collector and a consultant for the preparation of the County non ad valorem assessment rolls; a series of public hearings¹⁸; preparation of a bid package for the design and construction of the wastewater collection facilities needed to serve the MSD; financing;

¹⁷ H. Miller & Sons, Inc. v. Hawkins, 373 So.2d 913, 916 (Fla. 1979) ("The crucial time in regard to service availability charges must be the date of connection since there can be no ascertainment of the actual cost of maintaining sufficient capacity until that date."); Christian and Missionary Alliance Foundation, Inc. v. Florida Cities Water Co., 386 So.2d 543, 545-6 (Fla. 1980) (Court rejected argument that developer had a "vested right" to remain connected to water system without paying increased, newly approved service availability charge.) (In re: Complaint of Naples Orangetree, Ltd. against Orange Tree Utility Company in Collier County for Refusal to Provide Service, 95 F.P.S.C. 2:342, 349 (1995) ("Even though developers may have reserved capacity through pre-payment of CIAC, if the charges are increased, they will be responsible for paying the amount of the increase for any unconnected ERCs to be connected. Likewise, if the charges are decreased, the developers would be due refunds for any then-connected ERCs.") The County is willing to forgo any refund which would be due as a result of any future decrease in wastewater service availability charges.

¹⁸ Hearings must be held regarding the amount of property assessment for the construction of the wastewater collection facilities and payment of the wastewater service availability and connection charges, the financing must be completed, bids must be awarded for the construction of the wastewater collection facilities and another set of public hearings held pursuant to §§125.3401 and 125.35, Florida Statutes, prior to the time that the lease-purchase agreement with UWF can be entered into.

preparation of numerous ordinances and resolutions to implement the financing/special assessments; and preparation of §381.00655, Florida Statute, notices requiring connection to the completed sewer line.

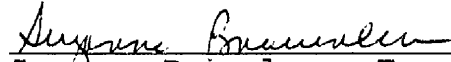
f. Due to the location of the County's wastewater treatment facilities and the location of the MSD squarely within UWF's service territory, if MSD septic tanks are retired the sewage generated by the MSD must be treated by UWF. There is no other economically feasible treatment option available. Prior to the commencement of the long and expensive special assessment process outlined above¹⁹, the County needs to know that the Commission will approve the arrangement outlined above. Absent the issuance of this declaratory statement, the County may find itself in the worst of all possible positions having entered into a contract with UWF for service and financed and constructed a sewer line that UWF is unable to connect. There is a genuine doubt as to the County's rights under the statutes and rules cited above and an immediate, bona fide and practical need for this declaratory statement.

WHEREFORE St. Johns County, Florida respectfully requests that the Commission issue a declaratory statement as to whether a service availability agreement between St. Johns County, Florida and United Water Florida, Inc. with the terms and conditions described above requires prior Commission approval as a "special

¹⁹ Calculation of the special assessment fee for each vacant and occupied property within the MSD is estimated to cost approximately \$50,000.

service availability contract" and whether this contract is acceptable to the Commission.

Respectfully submitted this 8th day of May, 2001 by



Suzanne Brownless, Esq.
1311-B Paul Russell Road
Suite 201
Tallahassee, FL 32301
(850) 877-5200
FAX: (850) 878-0090

c:3164

SPECIAL SERVICE AVAILABILITY CONTRACT

No. _____

THIS AGREEMENT, made and entered into this _____ day of _____, 200__, by and between St. Johns County, whose address is 4020 Lewis Speedway, St. Augustine, Florida 32095, ("Developer"), and United Water Florida, Inc. whose address is 1400 Millcoe Road, Jacksonville, Florida 32225 ("Service Company").

WITNESSETH

RECITALS. There is an area within the Municipal Service District of Ponte Vedra Beach in St. Johns County, Florida that is described on Exhibit "A", attached hereto and made a part hereof by reference ("Property"). The Property contains improvements including houses and other buildings that generate wastewater and may contain additional improvements that generate wastewater in the future ("Development"). Developer desires that the Service Company's wastewater system ("Service Company's Utility System") be extended to serve the Development and that capacity in Service Company's wastewater treatment plants be reserved so that Service Company can and will provide wastewater collection and treatment service to the Development. Service Company is willing to expand Service Company's Utility System and to reserve such treatment capacity and provide such service, so that the Development may have an adequate wastewater disposal system furnished to it and its occupants subject to all of the terms and conditions of this Agreement. The Service Company and the Developer recognize that wastewater collection, treatment and disposal is a necessity for public health. Thus, the collection, treatment and disposal of

wastewater (sometimes referred to herein as "wastewater services") must be regulated and controlled to assure an adequate wastewater collection, treatment and disposal capacity for all members of the public served by the Service Company. The Developer and the Service Company further recognize that the wastewater collection, treatment and disposal service by the Service Company to the Development is subject to regulation, prohibition, limitation and restriction by local, state and federal governmental agencies, as well as the Service Company.

NOW THEREFORE, in consideration of the mutual undertakings and agreements contained herein and assumed and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Developer and Service Company hereby covenant and agree as follows:

1. Construction of Developer's Extension. Developer shall, in accordance with the terms of this Agreement, cause to be constructed free and clear of all encumbrances and at no cost to Service Company, the extension to Service Company's Utility System from [Description of location where the Developer's Extension interconnects with the Service Company's wastewater treatment system] to and within the Property and the Developer shall complete the wastewater collection system on the Property ("Developer's Extension"). The Developer's Extension shall be deemed to include service lateral lines connecting the wastewater force main to the Service Company's sewer tap ("T" pipe) and the "T" pipe. The Developer's Extension shall not include the lateral line connecting

the "T" pipe to the Property improvement(s) that generate(s) the wastewater. Developer shall submit to Service Company engineering plans and specifications for the Developer's Extension prepared by or for the Developer which plans and specifications shall be acceptable to the Service Company and shall be approved in writing by Service Company prior to Developer's undertaking any construction. All construction of Developer's Extension shall be done by utility contractors approved in advance by Service Company as competent to perform such work, which said approval shall not be arbitrarily withheld. Pursuant to the Lease, as defined below in Paragraph 2, Developer's Extension, additions, repairs and replacements thereto shall remain at all times under the control of Service Company during the term of the Lease.

2. Lease of Developer's Extension. Developer and Service Company have this date entered into a Lease of Developer's Extension, a copy of which is attached as Exhibit B ("Lease") and incorporated herein. In the event that Service Company's rights under the Lease are materially interfered with by the Developer, Service Company is required to make additional or greater lease payments to the Developer to use Developer's Extension, or Developer's rights to Developer's Extension are abrogated or are assigned, conveyed or transferred to a party other than Service Company, such event shall constitute a default under this Agreement, and Service Company shall have no further obligation to the Developer concerning the wastewater needs of Developer, its successor or assigns.

3. Contributions and Fees. Developer shall pay the following contributions and fees to Service Company:

(a) Contribution to Utility Plant. At the time that the Final Acceptance of the Developer's Extension occurs but prior to connection to the Service Company's Utility System, Developer shall pay to Service Company the following contribution to utility plant approved by the Florida Public Service Commission in Order No. PSC-01-0857-PAA-WS, issued in Docket No. 000610-WS on April 2, 2001.

Said contribution for wastewater is:

(i) Wastewater - plant capacity charge in the amount of \$1,316.00 per Equivalent Residential Connection (ERC) and \$4.70 per gallon for non-residential connections or (total dollars) for (total number of) ERCs.

(ii) Wastewater - connection fee in the amount of \$1,000.00 for each residential connection or (total dollars) for (total number of) residences and a (\$ dollars) connection fee for each commercial connection or (total dollars) for (total number of) commercial entities.

The lateral lines located on each individual homeowner's property connecting his improvement with the Developer's Extension shall be constructed, owned and paid for by each individual property owner. Under no circumstances will owners of improvements located within the Property be required to pay to the Service Company a service availability charge or connection fee associated with the Service Company's sewer collection system or the Developer's Extension. Neither the County nor the owners of

improvements located within the Property shall be required at any time to pay a wastewater collection service availability fee for the Developer's Extension.

4. Grant of Rights. Developer hereby grants to Service Company, its successors and assigns, during the term of the Lease, the right, privilege and license to construct, reconstruct, operate, maintain, repair, replace improve and inspect the Developer's Extension and to enter upon, over, across and under Developer-owned land and easements when necessary to provide wastewater treatment services to the Development; such entry and work to be consistent with St. Johns County ordinances, rules and regulations.

5. Developer's Right to Connect. Provided that (i) this Agreement has been approved by the Florida Public Service Commission in accordance with Paragraph 14 below, (ii) the Developer has complied with the terms of this Agreement, and (iii) the Developer's Extension is installed and approved by the Service Company, which approval shall not be unreasonably withheld, and is in compliance with the requirements of all public, governmental or other agencies having supervision, regulation, direction or control of such wastewater utility systems, Service Company shall allow Developer or its successors-in-title to connect the Developer's Extension into Service Company's Utility System.

6. Underground Utility Contractor. The Service Company reserves the right to approve in writing the underground utility contractor and/or his subcontractor installing utility lines for

the Developer under this Agreement.

7. Developer's Plans and Specifications. All engineering plans and specifications prepared by or for the Developer, as provided in Paragraph 1 above, shall be reviewed and approved by Service Company which said approval shall not be unreasonably withheld prior to Developer submitting said plans and specifications to any other governmental agencies. The Developer shall incorporate into the engineering design, plans and specifications, the applicable standards and specifications of the Service Company.

8. Installation and Inspection. The Developer's Extension shall be installed in accordance with the engineering plans and specifications approved by the Service Company and the Service Company shall have the right, but not the obligation, to make inspections as installation progresses. Service Company shall not accept Developer's Extension and will issue no certifications until all manhole lids and valve boxes in Developer's Extension are exposed and at proper finish grade and valves are operational.

9. Test of Developer's Extension. Service Company shall have the right to refuse to accept the use of the Developer's Extension until Developer's Extension has passed hydraulic pressure tests and closed circuit television inspection of the Developer's Extension, arranged and witnessed by Service Company, or its representatives, to determine whether the Developer's Extension is constructed in accordance with the approved engineering plans and specifications. Said tests, if desired by the Service Company,

shall be performed at Service Company's expense by a certified testing service of Service Company's choice upon completion of the Developer Extension. Upon receipt and review of the testing service results, the Developer agrees, if the results so indicate, to have its wastewater contractor correct any leak location and make repairs deemed necessary by the Service Company as a result of the test. If such repairs are not made by its contractor, then Developer must pay all costs of said leak location and repairs.

10. General Conditions Precedent to Receiving Service. Prior to Service Company accepting the use of the Developer's Extension, Developer shall comply with all terms of this Agreement and shall:

(a) Provide Service Company an accounting of the actual cost of the Developer's Extension, together with appropriate releases of liens from its wastewater contractor, in connection with the construction of the Developer's Extension;

(b) Furnish, in form and substance acceptable to Service Company, all of the following relating to the Developer's Extension;

(i) All permits and governmental approvals obtained by Developer, its contractors or agents;

(ii) Engineer's certifications;

(iii) A copy of the subdivision or development locations showing 911 addresses and, where applicable, lot numbers;

(iv) One (1) mylar and two (2) blue line prints of the as-builts of the Developer's Extension as well as a disk created on the latest version of AUTOCAD. The Engineer of Record shall

provide a letter certifying the as-built information to be correct. The final submittal shall include Disk or CD, one (1) blue-line print and final plot on Vellum or Mylar;

(v) A schedule of values of Developer's Extension acceptable to Service Company; and

(vi) A listing of any repair costs incurred with regard to the Developer's Extension.

(11) Discharge of Developer. There are no Developer duties under this Agreement after the Service Company accepts the Developer Extension.

(12) Wastewater Discharge. Discharge into the Developer Extension shall at all times be in compliance with federal, state and local regulations. Service Company may prohibit certain discharges into the Developer Extension and may, according to its standard procedures, require pretreatment of certain commercial wastewater before discharging such wastewater into the Developer Extension.

(13) Limitation of liability. Neither party shall be liable or responsible to the other party as a result of injury to property or person, or failure to comply with the terms hereof, proximately caused by force majeure. The term "force majeure" as employed herein shall be acts of God, strikes, lockouts or other industrial disturbances, acts of public enemy, wars, blockades, riots, acts of Armed Forces, epidemics, delays by carriers, inability to obtain materials or right-of-way on reasonable terms, acts of public authorities, acts of vandals or other third parties, or any other

causes not within the control of such party, whether or not of the same kind as enumerated above.

(14) Special Service Availability Contract and Approval by Florida Public Service Commission. Developer acknowledges that Developer's request for the use of a Lease instead of a conveyance of title and other factors may require a Special Service Availability Contract and that such a contract requires Florida Public Service Commission (FPSC) approval prior to becoming effective. Developer is willing to file a declaratory statement with the Service Company regarding this contract with the FPSC and Service Company is willing to cooperate with the Developer in connection with such filing. Service Company's obligations under this Agreement shall not become effective until all of the following occur: (i) the FPSC approves this Agreement and/or issues an affirmative declaratory statement regarding this Agreement; (ii) such approval or declaratory statement becomes final and effective; (iii) Developer obtains all necessary approvals for the construction of the Developer's Extension from all governmental agencies that regulate such extension; (iv) Developer performs its obligations under this Agreement that are necessary for Final Acceptance of Developer's Extension; and (v) all contingencies for Final Acceptance of Developer's Extension have occurred or been satisfied.

(15) Approval by Governmental Agencies. Service Company's obligations under this Agreement are contingent upon Developer obtaining all necessary approvals for construction of the

Developer's Extension from all concerned governmental agencies. Developer hereby assumes the risk of loss as a result of the denial or withdrawal of the approval of any concerned governmental agency prior to Final Acceptance of Developer's Extension.

(16) Occurrence of Contingency in Paragraphs 14 or 15. In the event a contingency as set forth in paragraphs 14 or 15 above occurs such that a Developer's Extension cannot be completed, or the Service Company cannot obtain approval from the FPSC to provide service to Developer's Property, or both, (i) Developer will be responsible with regard to payment for all construction work done on the Developer's Extension and Service Company shall refund the funds paid by Developer to Service Company pursuant to paragraph 3 of this Agreement, less the reasonable expenses, incurred by Service Company regarding this Agreement and the proposed service to the Development, (ii) Service Company shall not be required to serve the Property, (ii) Developer shall not connect the Developer's Extension into Service Company's Utility System or if the connection has already been made, Service Company shall disconnect the Developer's Extension from Service Company's Utility System.

(17) No Prohibition of Further Extension. This Agreement shall not prohibit or prevent Service Company from extending Service Company's Utility System in or to areas not referred to herein to serve other developers or consumers; provided, however, such extension of utility service shall not cause the Developer's Extension to become overloaded and shall not adversely affect the

reservation of capacity.

(18) Final Acceptance of Developer's Extension. The final acceptance of the use of Developer's Extension shall occur at such time as Developer has fulfilled all of the terms and conditions hereof that are necessary to be performed by Developer in order for the Developer's Extension to be connected to and used by the Service Company's Utility System and all engineering tests and evaluations have been completed and approved by Service Company ("Final Acceptance of Developer's Extension"). The Service Company shall use due diligence in performing its duties and tasks pertaining to Final Acceptance of Developer's Extension so that such Final Acceptance is not unreasonably delayed.

(19) Warranty and Security. Developer will assign all warranties and payment and/or performance bonds that it receives that pertain to the Developer's Extension and that are capable of being assigned to the Service Company.

(20) Developer's Liability for Damage to Developer's Extension. Developer shall be responsible for and make any repairs or replacements as the result of any breakage, vandalism or other damage caused to Developer's Extension, including, without limitation, meter boxes and Service Company's meters, until Final Acceptance of Developer's Extension by Service Company.

(21) Limited Reservation of Treatment Capacity. Service Company hereby reserves and agrees to provide, or cause to be provided, wastewater treatment capacity and wastewater services pursuant to this Agreement for the Property equivalent to a total

of _____ wastewater Equivalent Residential Connections ("ERCs"), which is _____ wastewater gallons per day ("GPD"). This obligation to reserve and provide wastewater treatment capacity and services to the Property shall continue for the term of the Lease and all extensions thereof and, if the Service Company acquires title to the Developer's Extension, after such acquisition for so long as the Service Company and its successors and assigns have a right given or granted by an appropriate governmental wastewater regulator to serve the Property. This paragraph shall survive the termination of this Agreement and the termination of the Lease.

(22) Construction of Developer's Extension. Developer agrees to commence construction of Developer's Extension within _____ calendar days from the effective date of this Agreement. Developer further agrees that construction shall not cease for a continuing period of One Hundred Eighty (180) calendar days. Should the Developer not strictly adhere to these conditions, then any obligations or duties of the Service Company arising out of or prescribed by this Agreement shall be null, void and unenforceable. If Developer cannot start construction within _____ calendar days, it can request in writing an extension of ninety (90) days to commence construction. The utility shall grant the ninety (90) day extension if needed.

(23) Notice of Connection to Wastewater System. Developer shall give Service Company written notice that Developer is connecting the Developer's Extension to the Service Company's

wastewater collection system no less than two (2) days prior to said connection for inspection. If Developer fails to give said written notice, Service Company may require Developer to uncover and expose said connection for inspection, at the sole cost of the Developer.

(24) Depth of Service Line and Cleanouts. Depth of 6" gravity line and cleanouts shall be set by distance to house connecting at 1/8" per foot minimum, 1% slope, however, the depth shall be a minimum of three (3) feet.

(25) Connection of Buildings. The private property owner shall at its sole cost and expense construct and connect the private property wastewater pipes (lateral lines) of each building constructed on the Property to the "T" pipe that is connected to the wastewater service laterals of the Developer's Extension.

(26) Application for Service. The occupant(s) of the improvements located on the Property shall make written application to Service Company for the opening of an account(s) for service. Said application is to be made only after the payment of all utility plant contributions as set forth herein. The occupant(s) of the improvements located on the Property shall have no additional charges for utility plant contributions or connection to the Developer's Extension.

(27) Regulation by Governmental and Regulatory Authority. The parties recognize and agree that the terms and provisions of Service Company's existing tariff approved by and on file with the FPSC, including the Service Availability Policy ("Tariff") shall be

deemed to have been expressly incorporated herein by reference. Developer acknowledges, by its execution hereof, its review of a copy of said Tariff in effect on the date of the execution of this Agreement. The parties further agree and recognize that certain contributions, fees, amounts and other charges collected, and rules, regulations and operating procedures followed by Service Company are subject to continuing approval and modification by the FPSC and other governmental and regulatory authorities. Developer further agrees that it will comply with all rules, regulations and operating procedures approved for, or required of, the Service Company by the FPSC or other governmental or regulatory authority as being applicable at the time actions are to be taken by the Developer. However, notwithstanding the above, occupants of improvements located on the Property shall not be required to pay any additional money should the wastewater plant capacity charge increase above \$1,316.00 per ERC for residential connections and \$4.70 per gallon for non-residential connections or should the connection fee exceed \$1,000.00 per residential and _____ per commercial connection in the future.

(28) Miscellaneous.

(a) All monies required to be paid by Developer to Service Company shall be and become the sole exclusive property of Service Company, except as otherwise provided for in this Agreement.

(b) This Agreement is made in conjunction with the Lease Agreement and taken together they supersede all previous agreements or representations either verbal or written hereto fore in effect

between Developer and Service Company and made with respect to the matters contained herein, and when each is duly executed, constitute the complete agreement between the Developer and Service Company.

(c) The provisions of this Agreement shall not be construed by the Developer as establishing a precedent in connection with the amount of fees or contributions made by the Developer or by a different developer, or in connection with the acceptance thereof on the part of the Service Company for other wastewater utility extensions that may be required hereafter by Developer that are not the subject of this Agreement.

(d) The signature of any person to this Agreement shall be presumptive proof that he has the power and authority to bind the party for which he or she purports to act.

(e) The headings used in the paragraphs of this Agreement are solely for the convenience of the parties and the parties agree that they shall be disregarded in the construction of this Agreement.

(f) This Agreement shall inure to the benefit of, and be binding upon the heirs, successors and assigns of the parties hereto. It is understood that Developer may assign its rights hereunder to the owners of, or a representative of the owners of, the real property included in the Property.

(g) The validity, construction and performance of this Agreement and the Lease shall be governed by the laws of the State of Florida. Any action brought to enforce or construe any of the

terms and conditions of this Agreement or the Lease shall be .
brought in a court of competent jurisdiction located in St. Johns
County, Florida.

IN WITNESS WHEREOF, the parties have executed this Agreement
as of the day and year first written above.

Signed, sealed and delivered
in the presence of:

ST. JOHNS COUNTY, FLORIDA,
a political subdivision of
the State of Florida

Print: _____

By: _____
Print: _____
Chairman, Board of County
Commissioners of St. Johns
County

Print: _____

Witnesses as to Developer

"DEVELOPER"

UNITED WATER FLORIDA, INC.

Print: _____

By: _____
Gary R. Moseley, Vice
President

Print: _____

Witnesses as to Service Company

"SERVICE COMPANY"

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me on this _____ day of _____, 200__, by _____ as Chairman of the Board of County Commissioners of St. Johns County, Florida, on behalf of said county. He/She is personally known to me or has produced _____ as identification and who did take an oath.

Notary Public, State of Florida
My Commission Expires:
My Commission No.: _____

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me on this _____ day of _____, 200__, by Gary R. Moseley, as Vice President of United Water Florida, Inc., a Florida corporation, on behalf of said corporation. He/She is personally k n o w n t o m e o r h a s p r o d u c e d _____ as identification and who did take an oath.

Notary Public, State of Florida
My Commission Expires:
My Commission No.: _____

EXHIBIT "A"

Legal description of Property

c: 3387
5/3/01

This instrument was prepared by
and after recording please return to:
Suzanne Brownless
1311-B Paul Russell Rd.
Tallahassee, FL 32301

LEASE AGREEMENT

This Lease Agreement ("Agreement") is made this ____ day of _____, 200__, by and between St. Johns County, Florida, a political subdivision of the State of Florida ("Lessor"), and United Water Florida, Inc., a Florida corporation ("Lessee").

WITNESSETH

WHEREAS, the Lessor is a political subdivision of the State of Florida; and

WHEREAS, the real property described in Exhibit "A" ("Property") is located and situated in St. Johns County, Florida and a legal description of the Property is attached hereto in Exhibit "A" and by this reference made a part hereof; and

WHEREAS, Lessor intends to construct and install the Leased Facilities (as defined below) in and around the Property in order that wastewater treatment service will be provided to improvements located within the Property; and

WHEREAS, the Leased Facilities are to be constructed in whole or in part by Lessor with the proceeds received from a financing mechanism hereinafter referred to as "Bonds"; and

WHEREAS, Lessor has determined that it is in its best interests to lease to Lessee the Leased Facilities and to provide for certain other matters, all on the terms and conditions provided herein; and

WHEREAS, Lessee desires to lease the Leased Facilities from Lessor on the terms and conditions provided herein.

NOW THEREFORE, for and in consideration of the mutual covenants and promises hereinafter set forth, and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, Lessor and Lessee, intending to be legally bound, covenant and agree with each other as follows:

1. Definition of Leased Facilities. The term "Leased Facilities" means the wastewater service transmission facilities to be constructed by or on behalf of the Lessor on or about the Property, including, without limitation, all wastewater collection and interceptor mains, collection lines, valves, connections, and all other equipment, facilities, and installations constructed by or on behalf of the Lessor appurtenant to such facilities located in, on or about the Property and shall be the same as the Developer's Extension, as defined in that certain Special Service Availability Contract between the Lessor and Lessee dated _____, 200__ ("Service Availability Contract"). The Leased Facilities, which shall not include the lateral extensions described in paragraph 3 of the Service Availability Contract, are more fully described on Exhibit "B" attached hereto. Any attachments, additions, or accessories incorporated in or affixed to the Leased Facilities made by Lessee or by the owners of the improvements served by the Leased Facilities shall not be a part of the Leased Facilities. [Exhibit B will be the approved design plans of the Developer's Extension.]

2. Grant of Lease. Subject to the terms and conditions of this Agreement and the Service Availability Contract and effective upon the construction and installation of the Leased Facilities on the Property, and the approval by Lessee of the Leased Facilities, also known as Developer's Extension, pursuant to the Service Availability Contract, Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Leased Facilities, including all replacements, parts and repairs incorporated in or affixed to the Leased Facilities made by Lessor, together with the full and exclusive use, occupation and enjoyment thereof and the rights of ingress and egress to said Leased Facilities as described in the Grant of Rights paragraph in the Service Availability Contract for the purposes set forth herein.

3. Term of Lease. The initial term of this Agreement shall commence upon the date first written above and shall terminate on the repayment and satisfaction of all Lessor liabilities and obligations under the Bonds, and if applicable, any refinancings thereof, provided, however, that Lessor and Lessee shall each have the right and option to renew and extend the term of this Agreement for two (2) additional periods of fifty (50) years each upon the same terms and conditions provided herein. Lessor covenants and agrees to furnish written notice to Lessee at least two hundred and forty (240) days, but no more than three hundred and sixty (360) days prior to the expiration of the initial term of this Agreement in order to provide Lessee the opportunity to renew and extend the term hereby at Lessee's discretion. If Lessor fails to timely

provide such notice, Lessee shall retain its option for such extensions (i) until sixty (60) days after the Lessor does provide such notice, or, (ii) in the event that Lessor does not provide any such notice, until Lessee provides written notice to Lessor of Lessee's intent not to exercise Lessee's options. In all events, the Lessor and/or the Lessee shall exercise their options for such extensions by written notice to the other at least one hundred and eighty (180) days prior to the expiration of the then current term. The foregoing notwithstanding, neither this Agreement nor the Service Availability Contract shall terminate until and unless adequate provision has been made for one or more entities to accept, transport and treat the wastewater that is generated within the Property.

4. Rent. Lessee shall pay to Lessor as rent for the term of this Agreement and for the use and benefit of the Leased Facilities the sum of Ten U.S. Dollars (\$10.00) per annum, plus applicable sales tax thereon. All rent due hereunder shall be payable by Lessee to Lessor in advance commencing on the date of this Agreement and continuing on each anniversary throughout the term of this Agreement.

5. Use. Lessee shall use the Leased Facilities in the usual and ordinary course of its business and shall provide the wastewater treatment capacity and services described in paragraph 21 of the Service Availability Contract. Throughout the term of this Agreement Lessee will maintain the Leased Facilities to the points of delivery, as defined in its tariff on file with the

Florida Public Service Commission (FPSC) or its successors ("Point of Delivery"), to its customers at its own cost and expense so as to keep the same in good operating order, repair and condition, reasonable wear and tear excepted. Lessee shall also furnish, at its own cost and expense, all parts, supplies and services necessary for the operation and maintenance of the Leased Facilities to the Point of Delivery for the term of this Agreement. Lessor shall, in its proprietary capacity, assist and otherwise cooperate with Lessee in obtaining all necessary permits, approvals and agreements necessary or desirable to enable Lessee to be able to directly serve the customers to be benefitted by the Leased Facilities and collect all applicable fees and charges directly from such customers.

6. Representations and Warranties of Lessor. Lessor represents and warrants to Lessee that (i) it has all legal right and authority to enter into and perform this Agreement and that all conditions precedent necessary to make this Agreement a legal contract have been taken; (ii) it owns the Leased Facilities without restriction and that the same are adequate and sufficient for the furnishing of wastewater services to the customers to be benefitted hereby; (iii) the Leased Facilities are in good operating condition and repair; (iv) there are no pending or threatened actions or proceedings before any court, administrative body or regulatory agency that would have a material adverse effect on the ability of Lessor to perform its obligations under this Agreement, and (v) it has good title to the Leased Facilities.

7. Exclusive Option to Purchase Leased Facilities. In consideration of Lessee entering into this Agreement, Lessor hereby grants to Lessee the continuing and exclusive right and option to purchase fee simple title to the Leased Facilities. This option shall remain in effect only throughout the term of this Agreement and any extension or renewal thereof. Lessee may exercise the option granted herein at any time during the term of this Agreement or any extension thereof by delivering written notice of exercise to Lessor, provided, however, that the closing of the purchase and sale shall not occur until a mutually acceptable date to Lessor and Lessee which shall be after repayment and satisfaction of all Lessor liabilities and obligations under the Bonds and any refinancings thereof. As a consideration of closing the sale, the Lessee shall execute and deliver to Lessor a written agreement satisfactory to Lessor whereby Lessee agrees to continue to provide, or to cause the continued provision of, adequate, safe and reliable wastewater treatment capacity and services to all houses, buildings and other improvements that are or will be connected to the Leased Facilities. The obligation of the Lessee to continue to provide, or cause to be provided, such wastewater treatment capacity and services shall survive the termination of this Lease.

The value established and the purchase price for the Leased Facilities shall be Ten Dollars (\$10.00). At closing, Lessor shall execute and deliver to Lessee a bill of sale conveying title to the Leased Facilities.

8. Assignment. Without the prior written consent of the

other party to this Agreement, neither Lessor nor Lessee may assign, pledge, hypothecate, or in any other way transfer all or any of their respective rights under this Agreement or the Leased Facilities (or any part thereof or any interest therein); provided, however, that Lessee may transfer without restriction its rights and duties under this Agreement to any successor in interest to Lessee or to another utility company which has been granted by the appropriate state or local regulatory agency the right to provide the wastewater services described herein and agrees in writing to provide same.

9. Ownership. The Leased Facilities are and shall remain the sole and exclusive property of the Lessor until closing of the purchase of said Leased Facilities pursuant to a valid exercise by Lessee of the option granted herein. Lessee shall have no right, title or interest therein except for the right and duty to possess, use, maintain and otherwise operate the Leased Facilities as expressly set forth in this Agreement.

10. Personal Property. The Leased Facilities are and shall at all times remain personal property notwithstanding that they may be affixed or attached to, or imbedded in the Property or any building thereon, or attached in any manner to what is permanent.

11. Notices. All notices and other communications required or desired to be given pursuant to this Agreement shall be in writing and sent by facsimile or regular U.S. Mail to the parties listed below:

To Lessor: St. Johns County, Florida
Attention: Chairman, Board of County
Commissioners
County Administrative Building
4020 Lewis Speedway
St. Augustine, FL 32095

With a copy to: County Administrator
County Administrative Building
4020 Lewis Speedway
St. Augustine, FL 32095

To Lessee: United Water Florida, Inc.
1400 Millcoe Road
Jacksonville, FL 32259

With a copy to: Scott G. Schildberg, Esq.
Martin, Ade, Birchfield & Mickler, P.A.
One Independent Drive, Suite 3000
Jacksonville, FL 32202

12. Governing Law and Venue. The validity, construction and performance of this Agreement shall be governed by the laws of the State of Florida. Any action brought to enforce or construe any of the terms and conditions of this Agreement shall be brought in a court of competent jurisdiction located in St. Johns County, Florida.

13. Bonds. Lessor represents that the holders of the Bonds have no security interest in the Leased Facilities.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first written above.

ST. JOHNS COUNTY, FLORIDA,
a political subdivision of the
State of Florida,

By: _____

Print: _____
Chairman of the Board of County
Commissioners of St. Johns
County, Florida

UNITED WATER FLORIDA, INC.,
a Florida corporation,

By: _____

Print: _____
Its _____

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me on this _____ day of _____, 200__, by _____ as Chairman of the Board of County Commissioners of St. Johns County, Florida, on behalf of said county. He/She is personally known to me or has produced _____ as identification.

Notary Public, State of Florida
My Commission Expires:
My Commission No.: _____

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me on this
_____ day of _____, 200__, by _____
_____ as _____ of
United Water Florida, Inc., a Florida corporation, on behalf of
said corporation. He/She is personally known to me or has produced
_____ as
identification.

Notary Public, State of Florida
My Commission Expires:
My Commission No.: _____

EXHIBIT "A"

(Legal description of the Property)

c:3389
5/03/01