



Public Service Commission
-M-E-M-O-R-A-N-D-U-M-

DATE: March 6, 2002
 TO: Kay Flynn, Chief of Records and Hearing Services
 Ruth Nettles, Commission Deputy Clerk
 FROM: Cheryl Johnson, Analyst
 RE: Docket No. 981780-WS Stock Purchase Agreement for Jasmine Lakes Utilities Corporation

020000-PU

Please file the attached Stock Purchase Agreement between AquaSource Utility, Inc. and Jasmine Lakes Utilities Corporation in docket file no. 981780-WS.

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State of Florida



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LAW OFFICES
ROSE, SUNDSTROM & BENTLEY, LLP

2548 BLAIRSTONE PINES DRIVE
TALLAHASSEE, FLORIDA 32301

(850) 877-6555

CHRIS H. BENTLEY, P.A.
F. MARSHALL DETERDING
CAROL L. DUTRA
MARTIN S. FRIEDMAN, P.A.
JOHN R. JENKINS, P.A.
STEVEN T. MINDLIN, P.A.
DAREN L. SHIPPY
WILLIAM E. SUNDSTROM, P.A.
DIANE D. TREMOR, P.A.
JOHN L. WHARTON

December 30, 1998

VIA HAND DELIVERY

MAILING ADDRESS
POST OFFICE BOX 1567
TALLAHASSEE, FLORIDA 32302-1567
TELEPHONE (850) 656-4029
TELECOPIER (850) 656-4029
ROBERT M. C. ROSE
OF COUNSEL
11:09
REGULATION

Ms. Cheryl Johnson
Florida Public Service Commission
Water and Wastewater Division
2540 Shumard Oaks Boulevard
Tallahassee, Florida 32399-0850

Re: AquaSource Utility, Inc./Jasmine Lakes Utilities Corporation
Docket No. 981780-WS
Our File No. 33087.08

Dear Cheryl:

In response to John Williams' December 18, 1998 correspondence in the above-referenced docket, I have enclosed a copy of the Stock Purchase Agreement between AquaSource Utility, Inc. and Jasmine Lakes Utilities Corporation. This transfer has not yet been closed. Since this is a transfer of majority organizational control, the 1998 Annual Report and regulatory assessment fees will not be prorated and will be paid by Jasmine Lakes Utilities Corporation. The only difference is that Jasmine Lakes Utilities Corporation will be owned by AquaSource Utility, Inc. and not Mr. Dreher.

If I can provide you with any additional information, please do not hesitate to give me a call.

Very truly yours,



MARTIN S. FRIEDMAN
For the Firm

MSF/brm

cc: Mr. Derek Clow
Mr. James M. Dreher

STOCK PURCHASE AGREEMENT

THIS AGREEMENT (the "Agreement") dated the 15th day of December, 1998 (the "Effective Date") between AquaSource Utility, Inc. (the "Buyer") at 16810 Barker Springs, Suite B-215, Houston, Texas 77084, and James M. Dreher and all other shareholders (collectively, the "Seller") at 1817 U.S. 19, Holiday, Florida 34691 sets forth the terms and conditions by which the Buyer shall acquire all of the outstanding stock of Jasmine Lakes Utilities Corporation, a Florida corporation (the "Company"). The Buyer and the Seller are referred to collectively as the "Parties".

RECITALS

WHEREAS, Seller owns all the issued and outstanding stock of the Company that operates a water and/or wastewater utility business located in Pasco County, Florida (the "Business");

WHEREAS, Seller desires to sell and Buyer desires to purchase all of the issued and outstanding stock of the Company (the "Company Stock") on and subject to the terms and conditions set forth herein;

NOW, THEREFORE, in consideration of the premises and the mutual promises herein made, and in consideration of the covenants herein contained, the Parties agree as follows:

Section I – Definitions

1.1 **Definitions:** In this Agreement the following terms have the meaning specified or referred to in this Section I:

"*Assets*" shall mean all real property, leaseholds, buildings, plants, structures, or equipment utilized in the operation of the business.

"*Buyer*" has the meaning set forth above.

"*Closing*" shall mean the consummation of the transactions contemplated by this Agreement.

"*Contract*" shall mean any agreement, contract, obligation, promise, or undertaking (whether written or oral and whether express or implied) that is legally binding.

"*Closing Date*" shall have the meaning set out in Section II below.

"*Company*" shall have the meaning set out in the Recitals.

"*Company Stock*" shall have the meaning set out in the Recitals.

"*Effective Date*" has the meaning set forth above.

"*Encumbrance*" shall mean any charge, claim, equitable interest, lien, option, pledge, security interest, right of first refusal, or restriction of any kind including any restriction on use, voting, transfer, receipt of income, or exercise of any other attribute of ownership.

"*Environmental, Health, and Safety Laws*" means all laws of federal, state, and local governments (and all agencies thereof) concerning pollution or protection of the environment, public health and safety, including laws relating to emissions, discharges, releases, or threatened releases of pollutants, contaminants or chemical, industrial, hazardous, or toxic materials or waste into ambient air, surface water, ground water, or lands or otherwise.

"*Escrow Agent*" shall be Allgood and Misemer, P.A. located at 5645 Nebraska Avenue, New Port Richey 34652.

"*Financial Statements*" shall mean the consolidated balance sheet and statement of income for the Company for the most recent period, all in conformity with generally accepted accounting principles applied on a consistent basis.

"*Knowledge*", an individual will be deemed to have "Knowledge" of a particular fact or other matter if such individual has actual awareness of such fact or matter, or a prudent individual

could be expected to discover or otherwise become aware of such fact or other matter in the course of conducting a reasonably comprehensive investigation concerning the existence of such fact or other matter.

"Liability" means any liability (whether known or unknown, whether asserted or unasserted, whether absolute or contingent, whether accrued or unaccrued, whether liquidated or unliquidated, and whether due or to become due), including liability for Taxes.

"Net Working Capital" means the sum of the total current assets of the Company comprising of (a) cash held by the Company as of the opening of business on the Closing Date, (b) all receivables of the Company as of the opening of business on the Closing Date; (c) prepayments made by the Company in the ordinary course of business relating to any period following the opening of business on the Closing Date, (d) other current assets of the Company as of the opening of business on the Closing Date, *minus* (i) the value of all current payables and other current liabilities of the Companies as of the opening of business on the Closing Date and (ii) any amount of any debt of the Company in excess of One Million Two Hundred Thirty Four Thousand One Hundred Seventeen and 76/100 Dollars (\$1,234,117.76) as of the opening of business on the Closing Date.

"Ordinary Course of Business" means taken in the ordinary course of normal day-to-day operations of the Business consistent with past custom and practice.

"Parties" has the meaning set forth above.

"Purchase Price" has the meaning set forth in Section II below.

"Seller" shall have the meaning set forth above.

"Tax" means any federal, state, or local income, or gross receipts, license, payroll, employment, severance, unemployment, disability, real property, personal property, sales, use, transfer, or

other tax of any kind whatsoever, including any interest, penalty, or addition thereto, whether disputed or not.

Section II – Sale and Transfer of Stock; Closing

2.1 **Purchase and Sale of Stock:** Subject to the terms and conditions of this Agreement, the Buyer agrees to purchase from the Seller and the Seller agrees to sell, transfer, assign, and deliver to the Buyer, the Company Stock free and clear of any Encumbrances on the Closing Date against receipt by Seller of the Purchase Price.

2.2 **Purchase Price:** In consideration for the sale of the Company Stock, the Buyer agrees to pay Seller Three Million Five Hundred Thousand and No/100 Dollars (\$3,500,000.00) (the "Purchase Price") subject to the following adjustments:

- (i) All Taxes shall be prorated as of the Closing Date and the Purchase Price shall be adjusted to account for any Taxes.
- (ii) The Purchase Price shall be further adjusted ninety (90) days after the Closing Date to reflect any adjustments that may be required as a result of any unknown assets or liabilities that become known during that period. This adjustment may require a refund by the Seller of a portion of the Purchase Price paid at the Closing or an increase in the Purchase Price paid by the Buyer to the Seller. At the Closing, One Hundred Thousand and No/100 Dollars (\$100,000.00) of the Purchase Price will be retained by the Buyer for ninety (90) days after the Closing to satisfy any adjustment required hereunder. At the end of said ninety (90) day period, remaining funds will be paid to Seller.
- (iii) The value of Net Working Capital should be zero at the Closing Date. If the actual Net Working Capital on the Closing Date is not zero, then the Purchase Price payable hereunder shall be adjusted to reflect such variance. The adjustment shall be determined within sixty (60) days after the Closing Date at which time the Seller shall cause the preparation and delivery to Buyer of a statement of Net Working Capital as of Jan 1, 1999 of the Company (the "Statement"). The Statement shall be prepared in accordance with

generally accepted accounting principals. Buyer shall have up until thirty (30) days after receipt of the Statement during which to notify Seller of any items in the Statement the accuracy and fairness of which it disputes. If Buyer shall have failed to notify the Seller within such period of any dispute with respect to the Statement, then the Statement shall be conclusively considered true and correct. If Buyer disputes any items of the Statement, Buyer and Seller shall attempt to resolve the disputed items. If such disputed items are not resolved within sixty (60) days after receipt by Buyer of the Statement, Buyer and Seller shall promptly instruct a nationally recognized independent firm of accountants agreed to by the Parties to resolve such disputed items. The decision of such firm shall be binding upon the Parties, and the fees and expenses of such firm shall be borne one-half by the Seller and one-half by the Buyer. At the end of such time, Buyer and Seller will make such payments necessary to reflect the Net Working Capital adjustments.

2.3 The Closing: The closing of the transactions contemplated by this Agreement (the "Closing") shall take place via mail or facsimile, or at Buyer's principal place of business located at 16810 Barker Springs, Suite B-215, Houston, Texas, on or before the fifth (5th) business day after the conditions to close set forth in this Agreement have been satisfied or waived (the "Closing Date"). Buyer and Seller agree that December 22, 1998 will be the anticipated Closing Date, however such date may be extended by mutual agreement of the Buyer and Seller.

At the Closing, the Seller shall deliver to the Buyer stock certificates representing the Company Stock, in each case with stock powers attached thereto duly executed in blank, resignations of such directors and officers as Buyer may request, the Stock and Minute Books, the Corporate Seal of the Company, and a certificate of good standing from the state of incorporation of the Company and the appropriate corporate resolutions of the Company authorizing the transactions contemplated by this Agreement. The Buyer shall pay the Purchase Price less the \$50,000 down payment and other adjustments indicated herein via wire transfer to the Escrow Agent. The Escrow Agent shall disburse the escrowed funds in accordance with the Escrow Agreement (Exhibit D).

2.4 **Down Payment:** Within five (5) business days upon Sellers execution of this agreement, Buyer shall advance \$50,000 of the Purchase Price to the Escrow Agent. At the Closing, Escrow Agent shall disburse this amount to the Seller as a portion of the Purchase Price. In the event this Agreement is terminated pursuant to Sections V and VI herein, Escrow Agent shall disburse the entire escrowed down payment amount to the Buyer.

Section III – Representations and Warranties of the Seller

3.1 Except as set forth in the attached Disclosure Schedule (Exhibit "A"), the Seller represents and warrants that:

- (i) it has all the requisite power and authority to enter into this Agreement;
- (ii) the Company is a corporation duly organized, validly existing, and in good standing under the laws of the State of Florida;
- (iii) the authorized capital stock of the Company consists of 10,000 shares of common stock, \$ 1.00 par value, of which 10,000 shares are issued and outstanding, duly authorized, validly issued, fully paid and nonassessable, and were not issued in violation of any preemptive or other rights, and there are no outstanding options, convertible securities, rights, warrants, calls, or agreements relating to any capital stock of the Company;
- (iv) this Agreement and its consummation will not conflict with or result in a breach of the Company's bylaws, charter, or any agreement, judgment, order, or government permit, or will result in the creation of a lien, or require consent from a third party or any governmental entity except as set forth in Section IX hereof;
- (v) the Buyer has been provided with the most recent Financial Statements (Exhibit "B") for the Company, and that they have been maintained in accordance with generally accepted accounting principles and there are no undisclosed Liabilities associated with the Company;
- (vi) to the Knowledge of the Seller and the Company, there are no violations of any Environmental, Health, and Safety Law;

- (vii) the Company has good and marketable title to all real property purported to be owned in fee and good and merchantable title to all personal property free and clear of all Encumbrances;
- (viii) there are no actions, claims, suits, or proceedings to which the Company is a party pending or to Knowledge of Seller and the Company, threatened, that may have any effect on the Company;
- (ix) the Company is not, and upon consummation of the transactions contemplated hereby will not be, in default under any Contract;
- (x) the Company does not maintain, sponsor, participate in or contribute to, and is not required to contribute to, and has no obligation under any employee benefit plans;
- (xi) all returns of Taxes, information, and other reports required to be filed in any jurisdiction by the Company have been timely filed and all such returns are true and correct in all material respects;
- (xii) the representations and warranties of Seller contained in this Agreement, and all other documents and information furnished to Buyer, are complete and accurate and do not and will not include any untrue statement of a material fact or omit to state any material fact necessary to make the statements made, and to be made, not misleading;
- (xiii) all Assets of the Company are set forth in Exhibit C;
- (xiv) the Company is not obligated under any Contract that cannot be terminated with thirty (30) days' notice without penalty;
- (xv) the accounts receivable of the Company as reflected on the Financial Statements are collectable and represent valid obligations arising from the operations of the Company; and
- (xvi) since the date of the Balance Sheet contained in the Financial Statements there has not been any material adverse change in the business, operations, properties, prospects, Assets, or any condition of the Company, and no event has occurred or condition exists that may result in such a material adverse change.

Section IV – Representations and Warranties of the Buyer

4.1 Buyer represents and warrants to Seller that:

- (i) Buyer is a corporation duly organized, validly existing, and in good standing under the laws of the State of Texas;
- (ii) this Agreement constitutes a legally binding and enforceable obligation of the Buyer enforceable against the Buyer in accordance with its terms;
- (iii) Buyer is acquiring the stock for its own account and not with a view to its distribution within the meaning of the Securities Act; and
- (iv) there are no proceedings or other actions commenced against the Buyer that may prevent or delay the closing of the transactions contemplated hereby.

Section V – Agreements Through Closing

5.1 The Buyer's obligation to consummate the transactions contemplated by this Agreement are subject to the following conditions:

- (i) the representations and warranties of Seller will be accurate at and as of the Closing Date as though such representations and warranties had been made at an as of such date;
- (ii) all statutory requirements for the valid consummation of the transactions contemplated herein shall have been fulfilled and all governmental consents, approvals or authorizations necessary for the valid consummation of the transactions contemplated herein shall have been obtained; however such requirements may be waived at Buyers sole discretion;
- (iii) no action or suit shall have been commenced and no statute, rule, regulation, or order shall have been enacted or proposed that reasonably may be expected to prohibit Buyer's ownership of the Company or render the Buyer unable to purchase the Company, make the sale of the Company illegal, or impose material limitations on the ability of the Buyer to exercise full rights of ownership of the Company;

- (iv) the completion of a Phase I Report regarding the facilities of the Company and, if recommended, the completion of a Phase II Report, each performed pursuant to ASTM Protocol, and the contents of each such report being to the reasonable satisfaction of Buyer; however such requirements may be waived at Buyers sole discretion; and
- (v) Buyer shall have completed to its satisfaction a due diligence review of the Business being acquired.

Section VI – Termination

6.1 Anything herein to the contrary notwithstanding, this Agreement shall terminate upon the occurrence of any of the following events: (i) by mutual consent of Buyer and Seller or (ii) written notice from the Buyer to Seller or Seller to the Buyer if the Closing has not occurred on or before ninety (90) days from the date of this Agreement.

Section VII – Indemnification

7.1 Survival; Right to Indemnification Not Affected By Knowledge: All representations, warranties, covenants, and obligations in this Agreement or any document delivered pursuant to this Agreement will survive the Closing. The right to indemnification will not be affected by any investigation or any Knowledge acquired at any time with respect to the accuracy or inaccuracy of or compliance with, any such representation, warranty, covenant, or obligation.

7.2 Post Closing Indemnity: For a two (2) year period following the Closing Date, except with respect to Seller's indemnification for Taxes which has no time limitation, the Seller shall indemnify and hold harmless Buyer and its officers, directors, shareholders, employees, agents, and assigns from and against any claim arising out of, resulting from, or in any way related to:

- (i) a breach of, or the failure to perform or satisfy, any of the representations, warranties, and covenants made by Seller in this Agreement;

- (ii) violations or claimed violations of any Environmental, Health, and Safety Law, which Seller should have Knowledge of, which relates in any way to the ownership, occupancy, use, operation, or conditions of any present or former properties of the Company on or before the Closing Date; or
- (iii) any cleanup or remediation requirement or liability respecting a release or threatened release of any hazardous substances to the extent that those hazardous substances are present at any present or former properties of the Company on or before the Closing Date.

When Buyer proposes to assert the right to be indemnified under this Paragraph, Buyer shall, within thirty (30) days after the receipt of notice of the commencement of the claim, action, suit or proceeding, notify Seller in writing, enclosing a copy of all papers served or received. On receipt of the notice, Seller shall have the right to direct the defense of the matter but Buyer shall be entitled to participate in the defense. Should contamination be found from a release or threatened release of any hazardous substances that were present at any present or former properties of the Company on or before the Closing Date, Seller shall have the right to perform such cleanup or remediation activities as is necessary thereunder. Upon Seller's failure to perform clean-up and remediation activities within 30 days of Seller's notification, Buyer may perform such clean-up and remediation requirements, and Seller shall reimburse Buyer for any actual loss or expenses that Buyer may incur as a result of Seller's indemnification.

7.3 Buyer accepts the Assets at closing on an as is condition and basis and with all faults. No claim, indemnification or adjustment to the purchase price will be made for repairs, maintenance or improvements required after the closing date to the Assets, water systems, wastewater systems, or any such components.

Section VIII – Covenants

8.1 Seller and Buyer agree as follows:

- (i) Non-Compete. During the two (2) year period following the Closing, the Seller shall not directly or indirectly compete with the Buyer in Buyer's operation of the Business.
- (ii) Operations. Seller agrees to provide reasonable assistance to the Buyer in the administration and operation of the Business for a period of ninety (90) days after the Closing.

Section IX – Public Service Commission Approval

9.1 The parties acknowledge that this transaction is subject to the jurisdiction of the Florida Public Service Commission (the "FPSC") and Section 367.071 of the Florida Statutes. Recognizing that FPSC approval of the transaction and transfer of the water and wastewater certificates may not be accomplished on or before the Closing Date, this Agreement shall be subject to modification, including rescission by mutual agreement, in the event the FPSC fails to approve the transfer. Furthermore, it is the understanding of the Parties that the Buyer is assuming all of the risk and expenses (including Seller's) of the regulatory approval process, or lack thereof, and as such, Seller agrees to fully cooperate with Purchaser to obtain such regulatory approvals. In the event the FPSC fails to approve the transaction, the Seller agrees to cooperate with the Buyer to the maximum extent reasonably possible in Buyer's efforts to sell the Company to another entity.

9.2 The Buyer (i) promptly and at its sole cost and expense shall apply for all necessary approvals and authorization required from the FPSC, and (ii) agrees to use its reasonable best efforts, at its sole cost and expense, to obtain such approvals and authorizations from the FPSC.

Section X – General Provisions

10.1 Expenses: The Parties to this Agreement shall be responsible for his or its own expenses incurred in connection with this Agreement including any broker's fees.

10.2 Further Assistance: Seller shall execute and deliver without additional expense to the Buyer such additional documents as are reasonably necessary to transfer the Business to the Buyer.

10.3 **Governing Law:** This Agreement supercedes all previous agreements and understandings between the Parties and shall be governed by and construed in accordance with the laws of the State of Florida without giving effect to any choice or conflict of law provision or rule that would cause the application of the laws of any jurisdiction other than the State of Florida.

10.4 **Modification and Waiver.** This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter contained in it and supercedes all prior or contemporaneous agreements, representations and understandings with the Parties. No supplement, modification or amendment of this Agreement shall be binding unless executed in writing by all the Parties. No waiver of any of the provisions of this Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed in writing by the Parties making the waiver.

10.5 **Miscellaneous:** This Agreement may be executed in one or more counterparts each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement may be delivered by facsimile transmission.

[SIGNATURES ON NEXT PAGE]

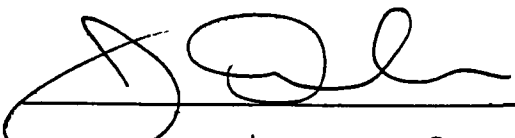
IN WITNESS WHEREOF, the Parties hereto have executed this Agreement which is effective as of the date first written above.

Buyer

Seller(s)

AquaSource Utility, Inc.

By: 



Name: MICHAEL J. MILLER

Printed Name: James Dehen

Title: V. Pres.

N/A

Printed Name: N/A

EXHIBITS

(Seller To Provide at Closing)