

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for
amendment of Certificates Nos.
533-W and 464-S to add territory
in Lake and Orange Counties by
SOUTHLAKE UTILITIES, INC.

DOCKET NO. 940303-WS
ORDER NO. PSC-98-0764-FOF-WS
ISSUED: June 3, 1998

The following Commissioners participated in the disposition of
this matter:

JULIA L. JOHNSON, Chairman
J. TERRY DEASON
SUSAN F. CLARK
JOE GARCIA
E. LEON JACOBS, JR.

NOTICE OF PROPOSED AGENCY ACTION
ORDER APPROVING WHOLESALE AGREEMENT AND NEW CLASSES OF SERVICE,
AND ORDER ACKNOWLEDGING WITHDRAWAL OF REQUEST FOR EXPANSION

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein approving the wholesale water and wastewater agreement, new classes of service, and bulk rates is preliminary in nature and will become final unless a person whose interests are substantially affected files a petition for a formal proceeding, pursuant to Rule 25-22.029, Florida Administrative Code.

BACKGROUND

Southlake Utilities, Inc. (Southlake or utility) is a Class C utility which provides water and wastewater service to approximately 238 water customers and 237 wastewater customers in Lake County, Florida. The utility's 1997 annual report shows an annual operating revenue of \$172,893 and a net operating loss of \$194,111.

On March 25, 1994, Southlake filed an application for amendment of Certificates Nos. 533-W and 464-S to include additional territory in Lake and Orange Counties. By Final Order

DOCUMENT NUMBER-DATE

05958 JUN-3 98

FPSC-REGULATORY REPORTING

No. PSC-94-1508-FOF-WS, issued December 8, 1994, the Commission approved the utility's application. However, on January 9, 1995, the Orange County Board of Commissioners (County) filed an Opposition to Certificate Amendment Application, Request for Administrative Hearing, and Petition to Modify Order No. PSC-94-1508-FOF-WS. By this pleading, the County opposed Southlake's amendment only as it related to the territory in Orange County. On January 23, 1995, Southlake filed a response to the County's pleading.

By Order No. PSC-96-0066-FOF-WS, issued January 16, 1996, the Commission granted the County's request for administrative hearing, finding that Order No. PSC-94-1508-FOF-WS was issued in error and was therefore void in its entirety, and setting the matter for hearing. On January 26, 1996, Southlake filed a motion for reconsideration of Order No. PSC-96-0066-FOF-WS. By Order No. PSC-96-0329-FOF-WS, issued March 6, 1996, the Commission granted, in part, the utility's motion for reconsideration, finding that Order No. PSC-94-1508-FOF-WS should have been voided only as it pertained to the territory extension in Orange County, reinstating its approval of Southlake's territory extension in Lake County, and affirming Order No. PSC-96-0066-FOF-WS in all other respects.

By Order No. PSC-96-0238-PCO-WS, issued February 19, 1996, the procedures and dates for key activities were established. Since that time, this matter was continued through October 14, 1997, by Orders Nos. PSC-96-0563-PCO-WS, PSC-96-0687-PCO-WS, PSC-97-0006-PCO-WS, and PSC-97-0431-PCO-WS, issued April 30, 1996, May 23, 1996, January 2, 1997, and April 17, 1997, respectively, to allow the parties additional time to reach a settlement. Because no settlement was reached within 180 days of the issuance date of Order No. PSC-97-0431-PCO-WS, pursuant to the terms of that order, the matter was scheduled for a formal hearing on June 3-4, 1998. By Order No. PSC-97-1587-PCO-WS, issued December 19, 1997, the procedures and dates for key activities were reestablished.

However, on December 30, 1997, the parties entered into a wholesale water and wastewater agreement under which terms the County has agreed to become a bulk customer of the utility, and the utility has agreed to withdraw the portion of its application which remains at issue for amendment of territory situated within the County. The agreement is contingent upon our approval. Consequently, on January 6, 1998, Southlake filed a Motion for Continuance of the proceedings in this docket, and on January 7, 1998, the parties filed the agreement in a Joint Motion for Entry

of Order Approving Wholesale Water and Wastewater Agreement (joint motion). A copy of the agreement is appended to this Order as Attachment A. On April 14, 1998, the parties amended the agreement to comply with the noticing provisions of Section 367.123, Florida Statutes. A copy of the amended agreement is appended to this Order as Attachment B.

By Order No. PSC-98-0092-PCO-WS, issued January 14, 1998, in consideration of the settlement agreement and the joint motion, the prehearing officer granted the utility's Motion for Continuance pending a ruling by the Commission on the joint motion. The Chairman canceled the June 3-4, 1998, hearing. This Order addresses the joint motion of the parties, and the wholesale agreement, as amended.

WHOLESALE WATER AND WASTEWATER AGREEMENT AND
WITHDRAWAL OF APPLICATION

Under the terms of the agreement which was filed along with the joint motion on January 7, 1998, the County has agreed to become a bulk customer of Southlake, and Southlake has agreed to withdraw the portion of its application which remains at issue for amendment of territory situated within the County. Moreover, the parties have agreed that prior to filing a future application to amend its certificates to include any portion of the County into its water and wastewater service areas, Southlake will first notify the County of its intention and give the County an opportunity to enter into an agreement similar to the one at issue herein.

On April 14, 1998, at the request of our staff, the parties amended the agreement to comply with the noticing provisions of Section 367.123, Florida Statutes. Section 367.123, Florida Statutes, provides that "in the event a governmental authority voluntarily enters into an agreement for resale, such agreement shall provide that the service will not be discontinued without 90 days' notice being given to the purchaser prior to discontinuing such service." Section 4.5 of the original agreement provided that the County was to pay each monthly bill within thirty days of receipt thereof, and that in the event that the County did not make payment within that time frame, the utility would send the County a delinquent notice which would give the County an additional fifteen days to render payment in full. By the amended agreement, which was filed on April 22, 1998, the parties have agreed that in addition to giving the County an additional fifteen days to render payment in full, the delinquent notice will notify the County that

service will be discontinued if payment in full is not received within ninety days following the date of the mailing of the notice.

By the joint motion, the parties state that they have diligently worked together to resolve their differences, and request that we issue an order approving the agreement. Upon review of the agreement, it appears that the parties have reached a reasonable compromise among themselves to resolve their dispute, which obviates the necessity of conducting a hearing and results in a saving of resources and time for both the parties and the Commission. We believe that the agreement, as amended, is an appropriate resolution to the parties' dispute. We believe that the agreement, as amended, is consistent with our rules, regulations, and policies regarding bulk service agreements. Moreover, we note that because the County will become a bulk water and wastewater customer of Southlake under the terms of the agreement, the agreement obviates the need for Southlake to seek to amend its water and wastewater certificates in order to serve the requested area within the County. Accordingly, we find it appropriate to approve the agreement, as amended. The utility's withdrawal of its request for expansion of territory into Orange County is acknowledged.

RATES AND NEW CLASS OF SERVICE

The agreement provides that the County will become a bulk water and wastewater customer of Southlake, and will use Southlake as its sole source of water and wastewater treatment service for the service area at issue for a period of twenty-five years.

The proposed rates are as follows:

Monthly Service Rates

Water Service

Orange County Bulk Service

Base Facility Charge

Meter Size:

5/8" x 3/4"	\$ 8.33
1"	20.82
1 1/2"	41.63

2"	66.61
3"	133.22
4"	208.15
6"	416.30

Gallonge Charge per 1,000
gallons: \$.78

Wastewater Service

Orange County Bulk Service

Base Facility Charge

Meter Size:

5/8" x 3/4"	\$ 8.94
1"	22.36
1 1/2"	44.72
2"	71.55
3"	143.11
4"	223.60
6"	447.21

Gallonge Charge per 1,000
gallons based upon
wastewater meter reading: \$.94

Bills will be based on monthly readings from water and wastewater meters. Bulk rates are sometimes established at a lower level than standard monthly service charges to recognize a reduction in the cost of providing service to the large customers. However, in this case, the proposed rates are identical to the general service rates approved for the utility. The parties agreed to these rates, since Orange County's rates are higher than Southlake's general service rates. We find it appropriate to approve the proposed bulk rates and new classes of service for bulk water service and bulk wastewater service. The utility shall submit and have approved proposed tariff sheets for bulk water and wastewater service. The tariff sheets shall be approved upon

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staff's verification that they are consistent with our decision. Pursuant to Rule 25-30.475, Florida Administrative Code, the rates shall be effective for services rendered on or after the stamped approval date on the tariff sheets.

CLOSING OF DOCKET

Upon expiration of the protest period, if a timely protest is not filed by a substantially affected person within 21 days of the issuance date of the order, no further action is necessary and this docket shall be closed upon the receipt and approval of the revised tariff sheets.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that the Wholesale Water and Wastewater Agreement between Southlake Utilities, Inc., and Orange County is hereby approved. It is further

ORDERED that the new classes of service for Bulk Water and Wastewater Service are hereby approved as set forth in the body of the this Order. It is further

ORDERED that Southlake Utilities, Inc.'s proposed rates for Bulk Water Service and Wastewater Service are hereby approved as set forth in the body of this Order. It is further

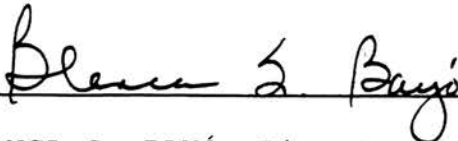
ORDERED that the approved rates shall be effective for service rendered on or after the stamped approval date of the tariffs. It is further

ORDERED that the provisions of this Order, issued as proposed agency action, shall become final and effective unless an appropriate petition, in the form provided by Rule 25-22.036, Florida Administrative Code, is received by the Director, Division of Records and Reporting, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on the date set forth in the "Notice of Further Proceedings or Judicial Review" attached hereto. It is further

ORDERED that in the event this Order becomes final, this Docket shall be closed.

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By ORDER of the Florida Public Service Commission this 3rd
day of June, 1998.



BLANCA S. BAYÓ, Director
Division of Records and Reporting

(S E A L)

RG/LAJ

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

As identified in the body of this order, our action approving the wholesale water and wastewater agreement and new classes of service, is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on June 24, 1998. In the absence of such a petition, this order shall become effective on the date subsequent

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to the above date as provided by Rule 25-22.029(6), Florida Administrative Code.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

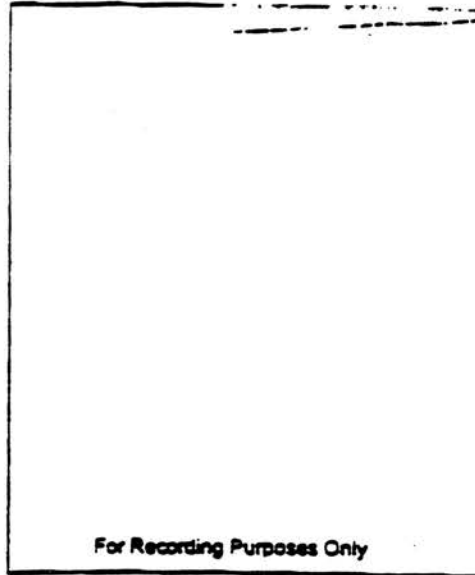
If the relevant portion of this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or wastewater utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

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Attachment A
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APPROVED
BY ORANGE COUNTY BOARD
OF COUNTY COMMISSIONERS
DEC 30 1997 RB/BS



ORANGE COUNTY/SOUTHLAKE UTILITIES WHOLESALE WATER AND WASTEWATER AGREEMENT

This Agreement is made and entered into this the 20th day of December, 1997, by and between SOUTHLAKE UTILITIES, INC., a Florida corporation (hereinafter "UTILITY"), and ORANGE COUNTY, a political subdivision of the State of Florida (hereinafter "COUNTY").

RECITALS

1. The COUNTY is a political subdivision of the State of Florida and a provider of retail water and wastewater services, and presently furnishes water and wastewater services to customers in Orange County, Florida.
2. UTILITY is a private water and wastewater utility company supplying water and wastewater services to customers in a portion of Lake County, Florida, in accordance with Florida Public Service Commission (hereinafter "FPSC") certificates numbered 533-W and 464-S.

3. UTILITY filed an application with the FPSC on April 25, 1994, to amend its water and wastewater certificates to include additional territory in Lake County and to include, for the first time, territory in Orange County.

4. The UTILITY and the COUNTY recognize the desirability and the need to provide water and wastewater service within Orange County in a manner that is economical and consistent with the State of Florida environmental rules and policies, and consistent with the COUNTY's Comprehensive Plan.

5. It is the intent of the UTILITY and the COUNTY to conserve and protect water resources, in the interest of public health, safety and welfare, and to avoid and eliminate the circumstances giving rise to duplication of water and wastewater service, resulting in uneconomical and wasteful operations.

6. The parties recognize that it is in their mutual interest to enter into this Agreement and further recognize that COUNTY shall be considered as sole retail provider of utility services within the Service Territory.

THEREFORE, for and in consideration of the mutual covenants and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the parties agree as follows:

SECTION 1. RECITALS. The above Recitals are true and correct, and form a material part of this Agreement.

SECTION 2. DEFINITIONS. For purposes of this Agreement, the following terms shall have the following meanings:

2.1. "Agreement" means this ORANGE COUNTY/SOUTHLAKE UTILITIES WHOLESAL WATER AND WASTEWATER AGREEMENT, or as it may from time to time be modified.

2.2. "ADF" means average annual daily flow.

2.3. "GPD" means gallons per day, ADF.

2.4. "ERC" means equivalent residential connection.

2.5. "ERU" means equivalent residential unit. For the COUNTY, one (1) ERU equals one ERC of water service at 350 GPD (plus fire flows) and one (1) ERU of wastewater service at 300 GPD.

2.6. "Service Territory" means the geographic region described in the attached Exhibit "A."

2.7. "FPSC" means Florida Public Service Commission.

2.8. "Tariff" shall have the meaning as approved by the FPSC for Southlake Utilities.

2.9. "Sewage" or "Wastewater" means water-carried wastes from residences, business buildings, institutions, industrial establishments, and other customers, but does not mean or include hazardous or toxic wastes.

2.10. "Wastewater Service Capacity" means the volume of wastewater flow measured in GPD, which UTILITY agrees to accept from COUNTY on a continuous basis into its wastewater system.

2.11. "Water Service Capacity" means the volume of water flow measured in GPD including necessary fire flows, which UTILITY provides to COUNTY on a continuous basis from its water system.

SECTION 3. TERMS OF AGREEMENT. This Agreement shall become effective upon the date of execution by the last of the parties hereto (hereinafter the "Effective Date") and shall remain in full force and effect unless terminated pursuant to Section 22 hereof.

SECTION 4. UTILITY AND COUNTY SYSTEMS INTERCONNECTION.

4.1. Withdrawal of UTILITY's Application. Within five (5) business days after execution of this Agreement, the COUNTY and the UTILITY agree to file a joint motion requesting the FPSC approve this Agreement as a part of the pending FPSC docket. UTILITY agrees to withdraw its application and request for expansion of territory filed with the FPSC and referred to in Recital Number 3 herein within ten (10) days after the approval of this Agreement by the FPSC. Both parties agree that simultaneous with said withdrawal, they shall enter into a mutual release agreement to resolve the dispute for which the FPSC hearing was scheduled. Said withdrawal and mutual release agreement shall be in such form and substance substantially similar to the Withdrawal and Mutual Release Agreement attached hereto as Exhibits "B" and "C," respectively. Further, UTILITY, its successors or assigns, agree that, prior to filing an application with the FPSC to amend its certificates to include any portion of Orange County, Florida into its water and wastewater service areas, UTILITY will first notify COUNTY of its intention and give COUNTY an opportunity to enter into a wholesale water and wastewater agreement with UTILITY for the new service area containing the same terms and conditions as contained in this Agreement. If COUNTY elects not to enter into such an agreement, COUNTY shall retain its right to object and fully participate in the proceeding before the FPSC regarding UTILITY's application filed before the FPSC.

4.2. Service Agreement. In consideration of UTILITY foregoing all attempts to establish direct service in the Service Territory, the COUNTY agrees to

maintain the proposed interconnections as the sole source of water and wastewater treatment service for the Service Territory for a period of twenty-five (25) years, commencing on the date UTILITY first provides water and wastewater service to the Service Territory. The COUNTY and UTILITY shall have the right to extend the term of this Agreement for successive two (2) year terms by the written agreement signed by both parties.

4.3. Provision of Wholesale Water and Wastewater Capacity. It is the intent of the parties hereto that the COUNTY shall have a binding legal obligation to apply to UTILITY for wholesale service to the Service Territory and UTILITY shall have a legal binding obligation to accept such application and provide Water and Wastewater Service Capacities (hereinafter "water and wastewater service") in a timely manner as set forth below:

(1) The COUNTY may request water and wastewater service at any time in writing. UTILITY shall respond in writing to the COUNTY within thirty (30) days after receipt of any such request as to whether said service is available. If said service is available, UTILITY shall provide a timetable for providing said service. If UTILITY is unable to provide service within twenty-four (24) months from the date of the receipt of such request, then the COUNTY shall be free to pursue other options.

(2) UTILITY shall deliver and provide water and wastewater service, including all types of water and wastewater services, that is, both domestic, commercial, industrial, irrigation water and fire flow services to the extent of its ability to do, so.

(3) UTILITY agrees that the COUNTY may purchase water and wastewater service at rates set forth below so that the COUNTY shall be the exclusive retail water and wastewater service provider within the area described on Exhibit "A" hereof.

(4) The parties agree, subject to FPSC approval, that these and future rates shall be based upon UTILITY's actual and reasonable costs of service allocated in a just, fair, equitable, and non-discriminatory manner which is equal to UTILITY's then current FPSC approved retail water master meter base facility charges and rates per 1,000 gallons and UTILITY's then current FPSC approved retail wastewater master meter base facility charges and rates per 1,000 gallons. Notwithstanding anything to the contrary, UTILITY rates to the COUNTY are subject to current and future rates as promulgated and approved by the FPSC. If rates of the UTILITY exceed 80% of the COUNTY's rates for water and wastewater service, COUNTY may elect to discontinue purchasing water and/or wastewater service from the UTILITY and utilize its own or another's service after providing ninety (90) days notice pursuant to Section 15. If COUNTY discontinues water and/or wastewater services, UTILITY shall be released from all obligations under the agreement, including reservation of plant capacity and any

restrictions this Agreement imposes on UTILITY in applying for additional territory in Orange County.

(5) The COUNTY shall also pay a monthly base facility charge for water and wastewater service based upon the meter sizes of the master meters installed pursuant to Section 4 hereof, based upon FPSC approved tariffs.

(6) The COUNTY shall construct and own all necessary infrastructure (hereafter "COUNTY's Facilities") in order to connect into UTILITY's existing pipelines and treatment plants (hereinafter "UTILITY's Facilities"), and receive water and wastewater service from UTILITY at its expense at reasonable points of connection to be agreed to by the parties.

(7) UTILITY agrees that the COUNTY shall have the right to purchase water and wastewater service as, when, and in such increments as requested by the COUNTY to service the Service Territory described in Exhibit "A" hereof. If the requested water and wastewater service is then available for use, the COUNTY shall be entitled to the water and wastewater service upon payment of then applicable plant capacity charges and allowances for funds prudently invested (hereinafter "AFPI") charges, to UTILITY as hereinafter set forth. If said water and wastewater service is not available for use by the COUNTY, UTILITY shall notify the COUNTY thereof and be entitled to have the said water and wastewater service available for use within twenty-four (24) months. At that time, the COUNTY shall have the option of paying then applicable plant capacity charges and AFPI charges when notified that said water and wastewater service is available, or if the COUNTY wishes to participate in the cost of constructing any expansion to the treatment plant capacities, it may elect in writing to pay its prorata share thereof, provided, however, that the expansion timing must be agreed to by the COUNTY and UTILITY prior to UTILITY's right to receive any COUNTY contributions therefor, and

(8) Within thirty (30) days after the end of each calendar quarter, the COUNTY shall provide UTILITY a report of all collections of plant capacity or similar charges that have been made for the water and wastewater systems in the Service Territory described in Exhibit A during the preceding calendar quarter and shall pay to UTILITY, with the quarterly report, all then applicable plant capacity charges and AFPI charges for all such collections. At the request of UTILITY, the COUNTY shall make available to UTILITY during normal business hours the COUNTY records necessary for UTILITY to verify the correctness of the information contained in the quarterly report and the amount of the payment made by the COUNTY.

(9) UTILITY shall be responsible for obtaining any necessary governmental approvals for this Agreement and any expansions of its water and wastewater facilities, including but not limited to approvals from the Florida Public Service Commission ("FPSC"), the Florida Department of Environmental Protection ("FDEP"), and

the St. Johns River Water Management District ("SJRWMD") and COUNTY agrees to assist UTILITY in obtaining such approvals.

(10) The COUNTY shall have the right to expand the Service Territory by notifying UTILITY in writing of its desire to do so. If UTILITY does not notify the COUNTY within sixty (60) days that UTILITY is unable to provide water and wastewater service to the expanded territory, then the Service Territory shall be expanded as requested by the COUNTY.

4.4. Metering. Upon COUNTY's request for service, UTILITY shall be responsible for installing all appropriate piping up to the discharge flange of UTILITY's bulk water meter and a sewage flow meter, including all reasonable and necessary metering equipment in size to be agreed upon by the parties. Ownership of the meters shall remain with the UTILITY, however the COUNTY shall be responsible for paying in advance all actual reasonable costs associated with the UTILITY's installation of line extension and metering for purposes of the interconnections (hereinafter the "Actual Costs"). Notwithstanding anything to the contrary set forth herein, the COUNTY shall not be responsible for any oversizing of these pipelines beyond what is reasonably necessary to provide water and wastewater service to the Service Territory described in Exhibit "A" hereof. Upon installation, calibration and acceptance by both UTILITY and COUNTY, the metering equipment shall remain the property of UTILITY, and UTILITY shall be responsible for the operation, maintenance, and replacement of the meters. UTILITY shall read the meters for billing purposes. COUNTY may request an accuracy test by the UTILITY at the established cost for such tests as reflected in the UTILITY's Tariff filed with the FPSC. Copies of the test results will be provided by UTILITY to COUNTY within thirty (30) days of the test. UTILITY shall not charge COUNTY for tests that result in discovery of an inaccurate meter. If an inaccurate meter is found, as defined (a deviation greater than that provided by standards published by the American Waterworks Association for the meters installed), bill adjustments will be made for one-half (1/2) of the preceding period since the last accuracy test, but in no case shall the preceding period exceed twelve (12) months.

4.5. Billing and Payment. UTILITY shall read the meters monthly and bill COUNTY each month for all water delivered hereunder and wastewater received during the prior month. COUNTY shall pay each monthly bill within thirty (30) days of receipt thereof. In the event that COUNTY does not make payment to UTILITY within thirty (30) days, then UTILITY will send COUNTY a delinquent notice (via certified mail) which will ~~give COUNTY an additional fifteen (15) days to render payment in full to UTILITY.~~

SECTION 5. STATUS OF CUSTOMERS. Upon connection to the COUNTY's system of any customers which utilize any purchase or sale of water and wastewater service, those customers shall be and remain retail customers of the COUNTY and shall pay the COUNTY's rates, charges and deposits for water and wastewater service.

SECTION 6. CONDITION SUBSEQUENT: FDCA. Notwithstanding anything in the foregoing to the contrary, COUNTY shall not be obligated to utilize UTILITY as a source or sole source of water and/or wastewater treatment service, for the Service Territory, nor be required to interconnect to UTILITY's systems if the Florida Department of Community Affairs (hereinafter "FDCA") finds that the COUNTY's provisions of water and wastewater services to the Service Territory through interconnection, as set forth in this Agreement, is not in compliance with COUNTY's Comprehensive Policy Plan. If FDCA makes such a determination, COUNTY and UTILITY shall use their best efforts to amend COUNTY's Comprehensive Policy Plan to permit the purchase and sale of water and wastewater service required by this Agreement.

SECTION 7. DEFAULT. Should either party fail or refuse to comply with any of its covenants or obligations hereunder, after notice of such default is duly given by the other party as hereinafter provided in Section 9, then such other party shall have the right by reason thereof to pursue any and all remedies available to it in law or in equity, as required or appropriate to fully protect its interests under this Agreement.

SECTION 8. ASSIGNMENTS. UTILITY shall have the right to assign all of its rights, duties and obligations contained in this Agreement as a whole with the approval of the COUNTY, which such approval shall not be unreasonably withheld. The COUNTY shall have the right to assign or transfer this Agreement, in whole or in part, to any property authorized commission, authority or other public agency empowered by law to serve the unincorporated area of Orange County.

SECTION 9. NOTICE OF DEFAULT/CURE. Each of the parties hereto shall give the other party written notice of any defaults hereunder and shall allow the defaulting party thirty (30) days from the date of receipt to cure such defaults.

SECTION 10. SEVERABILITY. If any part of this Agreement is found invalid or unenforceable by any court, such invalidity or unenforceability shall not affect the other parts of the Agreement if the rights and obligations of the parties contained therein are not materially prejudiced and if the intentions of the parties can continue to be effected. To that end, this Agreement is declared severable.

SECTION 11. LAND USE APPROVALS. This Agreement shall not be construed as granting or assuring, or indicating any future grant of any land use, zoning, subdivision, density or development approvals, permissions or rights with respect to any property or land referred to in this Agreement

SECTION 12. ENTIRE AGREEMENT. This instrument constitutes the entire agreement between the parties and supersedes all previous discussion, understandings and agreements.

SECTION 13. APPLICABLE LAW. This Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida.

SECTION 14. TIME OF THE ESSENCE. Time is hereby declared of the essence to the lawful performance of the duties and obligations contained in this Agreement.

SECTION 15. NOTICE. Any notice or document required or permitted to be delivered under this Agreement shall be in writing and shall be deemed delivered at the earlier of (1) the date received, or (2) five (5) business days after the date deposited in a United States Postal Service depository, postage pre-paid, registered or certified mail, return receipt requested, addressed to the COUNTY or UTILITY, as the case may be, at the addresses set forth below:

UTILITY: Robert L. Chapman, President
Southlake Utilities, Inc.
710 Avenida Curata #204
Clermont, Florida 34711

ORANGE COUNTY: Director
Orange County Utilities
109 E. Church Street
Orlando, Florida 32801

SECTION 16. NONWAIVER. A failure by either party to demand compliance with a provision of this Agreement will not constitute a waiver of that party's right to demand compliance with the provision thereafter.

SECTION 17. SUCCESSORS, HEIRS AND ASSIGNS. This Agreement is binding upon and inures to the benefit of the parties and their respective successors, heirs and assigns.

SECTION 18. VENUE. Venue shall lie in Orange County, Florida, in the event of litigation proceedings to enforce the terms and conditions of this Agreement.

SECTION 19. DISCLAIMER OF THIRD-PARTY BENEFICIARIES. This Agreement is solely for the benefit of the formal parties herein, and no right or cause of action shall accrue upon or by reason hereof to or for the benefit of any third party not a formal party hereto.

SECTION 20. COVENANT TO ENFORCE. If the validity of this Agreement or any portion hereof is challenged in any judicial, administrative or appellate proceeding (each party hereby covenanting with the other party not to initiate or acquiesce to such challenge), the parties hereto, collectively and individually, agree, at their respective sole

cost and expense, to defend in good faith its validity through to a final judicial determination, unless both parties mutually agree not to defend such challenge or not to appeal any decision invalidating any portion of this Agreement.

SECTION 21. SERVICE STANDARDS. Each of the parties hereto agrees to comply with all state, regional, and federal requirements and rules applicable to the provision of water and wastewater Service to the public. Under any interconnection accomplished hereunder, however, the provider does not guarantee any special service, pressure, quality, capacity, availability or other facility other than what is required to fulfill the provider's duty of reasonable care to those to whom it provides water and wastewater service.

SECTION 22. CONDITION SUBSEQUENT: FPSC. This Agreement shall terminate at the option of either party in the event that the FPSC does not approve his Agreement within one hundred eighty (180) days after the date of execution of this Agreement. UTILITY shall be responsible for applying to the FPSC for approval of this Agreement.

SECTION 23. AMENDMENTS. Amendments to and waivers of the provisions herein shall be made by the parties in writing by formal amendments.

SECTION 24. ARMS LENGTH TRANSACTION. Both parties have contributed to the preparation, drafting and negotiation of this document and neither has had undue influence or control thereof. Both parties agree that in construing this Agreement, it shall not be construed in favor of either party by virtue of the preparation, drafting, or negotiation of this Agreement.

SECTION 25. EXERCISE OF POLICE POWER. Without limiting the obligations of either party under this Agreement, nevertheless, nothing contained in his Agreement shall be construed to require either the COUNTY or the FPSC to exercise the police power, and nothing herein shall act as a waiver of the COUNTY's or the FPSC's authority to require any permit, license, certificate, approval, exception, or variance of any kind applicable to similar projects and uniformly imposed by the COUNTY or the FPSC.

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

ORANGE COUNTY, FLORIDA

BY: James C. Bennett
County Chairman

DATE: DEC 30 1997

ATTEST: Martha O. Haynie as Clerk
to the Board of County Commissioners



BY: [Signature]
Deputy Clerk

Signed, sealed and delivered
in the presence of:

SOUTHLAKE UTILITIES, INC.

Attest: [Signature]
Print Name: VICKY PATTON
Title: ASS'T. SECRETARY

BY: [Signature]
Print Name: ROBERT L. CHAPMAN, III
Title: PRESIDENT

DATE: December 3, 1997

[CORPORATE SEAL]

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this 30 day of December, 1997, by LINDA W. CHAPIN, as County Chairman of ORANGE COUNTY, FLORIDA, and acknowledged before me that she executed the foregoing instrument on behalf of ORANGE COUNTY, FLORIDA.



Trisha M. Duckworth
MY COMMISSION / COMMISSION EXPIRES
September 16, 2001
ADVISED THAT TRISHA HAS INSURANCE, ETC.

AFFIX NOTARY STAMP

[Signature]
Signature of Notary Public
TRISHA M. DUCKWORTH
(Print Notary Name)
My Commission Expires: 9-16-2001
Commission No.: CC66905
 Personally known, or
 Produced Identification
Type of Identification Produced

FOR THE USE AND RELIANCE
OF ORANGE COUNTY ONLY.
APPROVED AS TO FORM.

December 9, 1997
[Signature] UTILITIES COUNSEL
Assistant County Attorney

STATE OF North Carolina
COUNTY OF Durham

The foregoing instrument was acknowledged before me this 3 day of December, 1997, by Robert Chapman III as President of SOUTHLAKE UTILITIES, INC.

Paul R. Conway
Signature of Notary Public
Paul R. Conway
(Print Notary Name)
My Commission Expires: 3/13/01
Commission No.: NA
 Personally known, or
 Produced Identification
Type of Identification Produced
Drivers License #
FLC155772464540

AFFIX NOTARY STAMP

EXHIBIT "A"

**ORANGE COUNTY/SOUTHLAKE UTILITIES
WHOLESALE WATER AND
WASTEWATER AGREEMENT**

The North 1/2 of the Southwest 1/4 and Southeast 1/4 of the Northwest 1/4 in Section 30, Township 24 South, Range 27 East, Orange County, Florida.

The North 1/2 of the Northwest 1/4 of the Southeast 1/4 of Section 30, Township 24 South, Range 27 East, Lying West of County Road 175 (Now County Road No. 545); and the Southwest 1/4 of the Northeast 1/4 West of County Road No. 545 of Section 30, Township 24 South, Range 27 East, all in Orange County, Florida.

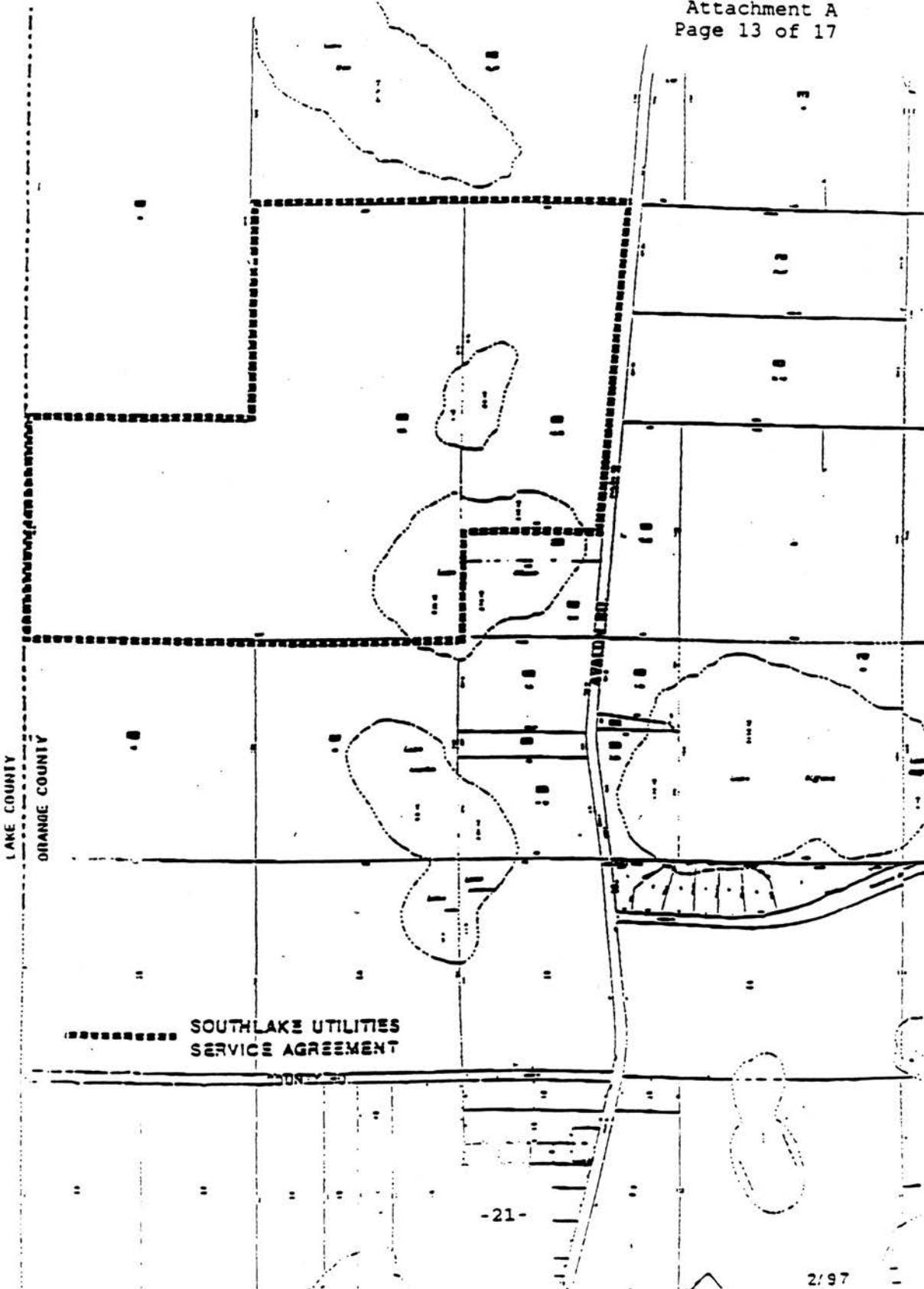


EXHIBIT "B"

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for amendment)
of Certificate Nos. 533-W and 464-S) Docket No. 940303-WS
to add territory in Lake and Orange)
Counties by Southlake Utilities, Inc.)
_____)

**NOTICE OF AND MOTION FOR ENTRY OF ORDER
ACKNOWLEDGING WITHDRAWAL OF APPLICATION**

SOUTHLAKE UTILITIES, INC. ("Applicant"), by and through its undersigned counsel hereby notifies the Commission that it hereby withdraws the request for territory located in Orange County, Florida, contained in its Application for Amendment of Certificate Nos. 533-W and 464-S to add territory in Lake and Orange Counties by Southlake Utilities, Inc., as set forth in Docket No. 940303-WS. Applicant hereby requests that the Commission enter an order acknowledging withdrawal of the portion of the application for amendment as set forth above and closing Docket No. 940303-WS.

Respectfully submitted, this _____ day of _____, 199__.

James L. Ade, Esquire
Fla. Bar No. 000460
MARTIN, ADE, BIRCHFIELD & MICKLER, P A.
3000 Independent Square
Post Office Box 59
Jacksonville, FL 32201-0059
Telephone: (904) 353-2050
Facsimile: (904) 354-5842

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing was served on the _____ day of _____, 199__ to:

Original and 7 copies, together with the document on diskette, via U.S. Mail.

- (1) Blanca S. Bayo, Director
Division of Records and Reporting
FLORIDA PUBLIC SERVICE COMMISSION
2540 Shumard oak Boulevard
Tallahassee, FL 32399-0850

With a copy via U.S. Mail,

- (2) Carol Reiss, Esquire
ORANGE COUNTY ATTORNEY'S OFFICE
Post Office Box 1393
Orlando, FL 32802-1393
- (3) Thomas A. Cloud, Esquire
GRAY, HARRIS & ROBINSON, P.A.
Post Office Box 3068
Orlando, FL 32802-3068
- (4) Roseann Gervasi, Esquire
FPSC, Legal Division
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

this _____ day of _____, 199__.

James L. Ade, Esquire
Fla. Bar No. 000460
MARTIN, ADE, BIRCHFIELD & MICKLER, P.A.
3000 Independent Square
Post Office Box 59
Jacksonville, FL 32201-0059
Telephone: (904) 353-2050
Facsimile: (904) 354-5842

EXHIBIT "C"

MUTUAL RELEASE AGREEMENT

This Mutual Release Agreement (hereinafter "Agreement") is made and entered into this _____ day of _____, 199__, by and between ORANGE COUNTY, a political subdivision of the State of Florida (the "County") which the term the "County" shall include each of the members of the Board of County Commissioners, and SOUTHLAKE UTILITIES, INC., its successor and assigns (collectively referred to as "Utility"), based upon the parties' mutual obligations and desire to amicably end pending administrative litigation before the Florida Public Service Commission and fully and finally settle all existing or potential claims and disputes between them, whether known or unknown, the parties agree as follows:

1. **Mutual Release.** In consideration of the execution of the Orange County/ Southlake Utilities Wholesale Water and Wastewater Agreement, the County and the Utility forever waive and release each other from any claims, demands, damages, lawsuits, obligations, promises, administrative actions, charges, and causes of action, both known and unknown, in law or in equity of any kind whatsoever, including, but not limited to, all matters relating to or arising out of In Re: Application for amendment of Certificates Nos. 533-W and 464-S to add territory in Lake and Orange Counties by Southlake Utilities, Inc., Docket No. 940303-WS, before the Florida Public Service Commission that either party has, had, or may have from the beginning of the world to the end of time (including, but not limited to, attorneys' and paralegals' fees, costs, and expenses through all stages of settlement and litigation, including all appeals and all settlement and/or collection proceedings). This mutual waiver and release of the County and the Utility by the parties covers any causes of action or claims under all federal, state and local statutes, laws, regulations and ordinances, and including any law suits founded in tort (including negligence), contract (oral, written or implied), statute, regulations, ordinance or any other common-law or equitable basis of action.

2. **Non-Admission.** Neither this Agreement or anything contained herein is to be construed as an admission by the County or the Utility of any liability, wrong doing or unlawful conduct whatsoever.

3. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

ORDER NO. PSC-98-0764-FOF-WS
DOCKET NO. 940303-WS
PAGE 25

Attachment A
Page 17 of 17

IN WITNESS WHEREOF, the parties hereto have executed this Mutual Release as of the dates indicated below with the intent to be legally bound thereby.

ORANGE COUNTY, FLORIDA

BY: _____
County Chairman

DATE: _____

**ATTEST: Martha O. Haynie as Clerk
to the Board of County Commissioners**

BY: _____
Deputy Clerk

Signed, sealed and delivered
in the presence of:

SOUTHLAKE UTILITIES, INC.

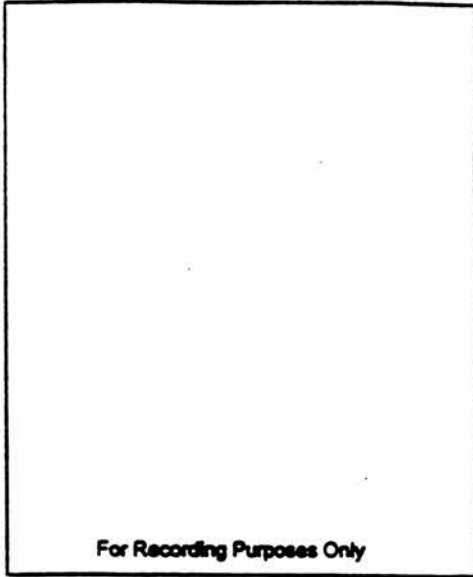
Attest: _____
Print Name: _____
Title: _____

BY: _____
Print Name: _____
Title: _____

DATE: _____

[CORPORATE SEAL]

APPROVED
BY ORANGE COUNTY BOARD
OF COUNTY COMMISSIONERS
APR 14 1998 *WJ/KJW*



AMENDMENT TO ORANGE COUNTY/SOUTHLAKE UTILITIES WHOLESALE WATER AND WASTEWATER AGREEMENT

This AMENDMENT TO ORANGE COUNTY/SOUTHLAKE UTILITIES WHOLESALE WATER AND WASTEWATER AGREEMENT is made and entered into this the 14th day of April, 1998, by and between SOUTHLAKE UTILITIES, INC., a Florida corporation (hereinafter "UTILITY"), and ORANGE COUNTY, a political subdivision of the State of Florida (hereinafter "COUNTY").

RECITALS

1. UTILITY and COUNTY entered into that certain ORANGE COUNTY/SOUTHLAKE UTILITIES WHOLESALE WATER AND WASTEWATER AGREEMENT dated December 30, 1997 (hereinafter "AGREEMENT").
2. COUNTY and UTILITY desire to amend the AGREEMENT as hereinafter set forth.

- 26 -

STATE OF FLORIDA, COUNTY OF ORANGE
HEREBY CERTIFY this is a copy of a document
approved by the BCC on APR 14 1998
[Signature]
HAYMIE COUNTY COMPTROLLER
4/15/98
Date



SEAL

THEREFORE, for and in consideration of the mutual covenants and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties, the parties agree as follows:

1. **SECTION 4.5.** of the AGREEMENT shall be deleted in its entirety and amended to provide as follows:

***4.5. Billing and Payment.** UTILITY shall read the meters monthly and bill COUNTY each month for all water delivered hereunder and wastewater received during the prior month. COUNTY shall pay each monthly bill within thirty (30) days of receipt thereof. In the event that COUNTY does not make payment to UTILITY within thirty (30) days, then UTILITY will send COUNTY a delinquent notice (via certified mail) which will (i) give COUNTY an additional fifteen (15) days to render payment in full to UTILITY and (ii) notify COUNTY that service to COUNTY will be discontinued if payment in full is not received by UTILITY within ninety (90) days following the date of the mailing of the notice. UTILITY shall not discontinue service to COUNTY prior to ninety (90) days following the date of the mailing of the delinquent notice to COUNTY. The DEFAULT and the NOTICE OF DEFAULT/CURE provisions of sections 7 and 9 of this Agreement shall not apply to the discontinuance of service by UTILITY for the late payment or nonpayment of monthly bills by COUNTY.

2. The AGREEMENT, as amended, shall remain in full force and effect except as amended by this AMENDMENT TO ORANGE COUNTY/SOUTHLAKE UTILITIES WHOLESALE WATER AND WASTEWATER AGREEMENT.

IN WITNESS WHEREOF, the parties have executed this AGREEMENT on the day and year first above written.

ORANGE COUNTY, FLORIDA

BY: *Linda Chapin*
County Chairman

DATE: 4/14/98

ATTEST: Martha O. Haynie as Clerk
to the Board of County Commissioners

BY: *Martha O. Haynie*
Deputy Clerk



Signed, sealed and delivered
in the presence of:

SOUTHLAKE UTILITIES, INC.

Attest: *Vicky Patton*
Print Name: Vicky Patton
Title: Asst. Secretary-Treasurer

BY: *Robert L. Chapman, III*
ROBERT L. CHAPMAN, III
President

DATE: March 23, 1998

[CORPORATE SEAL]

STATE OF FLORIDA
COUNTY OF ORANGE

The foregoing instrument was acknowledged before me this 14 day of April, 1998, by LINDA W. CHAPIN, as County Chairman of ORANGE COUNTY, FLORIDA, and acknowledged before me that she executed the foregoing instrument on behalf of ORANGE COUNTY, FLORIDA.

 Trisha M. Duckworth
MY COMMISSION # CCB0008 EXPIRES
September 16, 2001
WRANDED THIRD PARTY FARM INSURANCE, INC.
AFFIX NOTARY STAMP

Trisha M. Duckworth
Signature of Notary Public
TRISHA M - DUCKWORTH
(Print Notary Name)
My Commission Expires: 9-16-2001
Commission No.: C C 009008
 Personally known, or
 Produced Identification
Type of Identification Produced

FOR THE USE AND RELIANCE
OF ORANGE COUNTY ONLY.
APPROVED AS TO FORM.

March 27, 1998
Thomas A. Clark
Assistant County Attorney
Special Counsel

STATE OF NORTH CAROLINA
COUNTY OF DURHAM

The foregoing instrument was acknowledged before me this 23 day of March, 1998, by ROBERT L. CHAPMAN, III, as President of SOUTHLAKE UTILITIES, INC.



Marilyn L. Akins
Signature of Notary Public
MARILYN L. AKINS
(Print Notary Name)
My Commission Expires: Sept. 28, 1998
Commission No.: NA
 Personally known, or
 Produced Identification
Type of Identification Produced
FL. Driver's Lic.