

State of Florida



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

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**DATE:** October 29, 2002  
**TO:** Division of the Commission Clerk and Administrative Services  
**FROM:** Office of the General Counsel (Holley) *YAM*  
**RE:** Docket No. 021066-WS - Investigation into proposed sale of Florida Water Services Corporation.

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Please file the attached documents in the docket file for the above-referenced docket: letter from Tim Devlin to Kenneth A. Hoffman, dated September 27, 2002; response letter from Kenneth A. Hoffman to Tim Devlin, dated October 4, 2002; Interlocal Agreement, dated September 16, 2002, between City of Gulf Breeze and City of Milton.

Thank you for your assistance in this matter.

LAH/dm

cc: Division of Economic Regulation (Daniel, Kummer, Willis)  
Division of External Affairs (J. Williams)

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DOCUMENT NUMBER 021066

11847 OCT 29 2002

.FPSC-COMMISSION CLERK

STATE OF FLORIDA

COMMISSIONERS:  
LILA A. JABER, CHAIRMAN  
J. TERRY DEASON  
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MICHAEL A. PALECKI  
RUDOLPH "RUDY" BRADLEY



TIMOTHY DEVLIN, DIRECTOR  
DIVISION OF ECONOMIC REGULATION  
(850) 413-6900

Public Service Commission

September 27, 2002

Mr. Kenneth A. Hoffman, Esq.  
Rutledge, Ecenia, Purnell & Hoffman, P.A.  
215 S. Monroe Street  
Suite 420  
Tallahassee, Florida 32301-1841

RE: Proposed Sale of Florida Water Services Corporation to the Florida Water Services Authority

Dear Mr. Hoffman:

The Commission has been following the proposed sale of Florida Water Services Corporation by its parent company Allete, Inc. to the newly formed Florida Water Services Authority. As you are aware, the Commission's authority over this proposed sale is governed by section 367.071(4)(a), Florida Statutes. The Commission, according to this statutory provision, must approve as a matter of right, the sale to a governmental authority. However, before this action can be taken, the Commission must have assurance that the proposed purchaser is in fact a governmental authority as defined by section 163(7)(g)1, Florida Statutes.

Because of the high interest in this proposed sale, I am requesting with this letter, that you provide me with the answers and documentation to the attached information request by October 15, 2002. If you have any questions concerning this request, please call Marshall Willis at 413-6914. Thank you in advance for your prompt attention to this request.

Sincerely,

A handwritten signature in cursive script that reads "Tim Devlin".

Tim Devlin  
Director

cc: Dr. Mary Bane, Executive Director  
Harold McLean, General Counsel  
Donnie R. Crandell, President & CEO, Florida Water Services  
Marshall W. Willis, Division of Economic Regulation

## **Florida Public Service Commission Staff Information Request**

1. When was the Florida Water Services Authority formed?
2. How was the authority formed?
3. Who will operate the utility systems after this sale is consummated?
4. Please explain how the concerns of the customers in each individual county will be addressed by the governmental authority?
5. Does Florida Water Service Corporation intend to file for any rate increases prior to the sale such as an index or pass through?
6. How does the authority plan on funding the purchase price? If it is to be done through bonding, who will be the bonding agent?
7. How was the purchase price determined and were any appraisals done to justify the purchase price?
8. Are there any conflicts of interest present in this proposed sale? If so, what are they?
9. What fees will be paid to close the transaction and to whom will they be paid?
10. What type of recurring fees and commissions will be paid by the authority if the transaction is consummated?
11. Will monthly service rates be reduced to reflect the fact that Florida Water Services Authority will not be paying, property taxes, regulatory assessment fees and federal and state income taxes?
12. Are there any plans to increase service availability charges for any of the systems? If yes, identify the systems.
13. What type of rate proceeding will be used to set the rates? Will rates be set on a County basis? Will systems be consolidated for ratemaking purposes?
14. Has the purchase price been allocated down to each individual system? If so, please provide the breakdown.
15. How will billing and collecting and complaints concerning bills and service be addressed under Florida Water Services Authority ownership?
16. What water and wastewater facilities has the Cities of Gulf Breeze and Milton owned and operated?

17. What services will the Cities of Gulf Breeze and Milton provide for the two percent of gross revenues fee that will be collected by these Cities each year?
18. Please provide copies of the following documents:
  - a. Gulf Breeze Resolution No. 21-02: Establishing Florida Water Service Authority and Interlocal Agreement with Milton, Florida.
  - b. The actual signed Interlocal Agreement between Gulf Breeze and Milton, Florida.
  - c. The purchase agreement between Allete, Inc. and the Florida Water Services Authority.
  - d. Minutes of the September 17, 2002 Gulf Breeze City Council meeting.
  - e. Transcript or electronic recording of the September 17, 2002 Gulf Breeze City Council meeting and any other City Council meetings addressing the Florida Water Services Authority.
  - f. Minutes of the applicable Milton City Council meetings addressing the Florida Water Services Authority.
  - g. Transcript or electronic recording of the applicable Milton City Council meetings addressing the Florida Water Services Authority.

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M. LANE STEPHENS

October 4, 2002

Mr. Timothy Devlin, Director  
Division of Economic Regulation  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
1<sup>st</sup> Floor, Gunter Building  
Tallahassee, Florida 32399-0850

**VIA HAND DELIVERY**

Re: Proposed Sale of Florida Water Services Corporation to the Florida Water Services Authority

Dear Mr. Devlin:

This letter will acknowledge receipt of your letter to me dated September 27, 2002, which attached a series of "information requests" concerning the proposed sale of Florida Water Services Corporation ("Florida Water") to the Florida Water Services Authority. I attempted to contact you on September 30, 2002, the date I received the letter, and was told that you would be out of your office until Monday, October 7, 2002.

As you note in your letter, the Commission's statutory authority over this sale is governed by Section 367.071(4)(a), Florida Statutes, which provides that the Commission must approve a sale to a governmental authority as a matter of right. You go on to state in your letter that "before this action can be taken (that is, the approval as a matter of right), the Commission must have assurance that the proposed purchaser is in fact a governmental authority as defined by Section 163(7)(g)1 (sic), Florida Statutes."<sup>1</sup> Attached hereto is a copy of the Interlocal Agreement creating the Florida Water Services Authority. As you can see from this Agreement, the Authority is clearly a governmental entity created pursuant to Chapter 163, Florida Statutes.

Florida Water is concerned that Staff's information requests do not seem to relate to your stated purpose of confirming that the purchaser is a governmental authority. As you acknowledged in your letter, the Commission must approve a sale to a governmental authority as a matter of right. Further, the Commission does not regulate "systems owned, operated, managed or controlled by

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<sup>1</sup>See, Fla. Stat. §163.01(7)(g)1.

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October 4, 2002

governmental authorities.”<sup>2</sup> Accordingly, it is difficult to ascertain the basis or authority for a number of the questions included in Staff’s information requests.

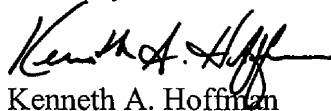
This is not the first time a transfer of facilities to a governmental authority established pursuant to Section 163.01(7)(g)1, Florida Statutes, will be presented to the Commission for approval as a matter of right. Previously, the Commission approved the transfer of facilities owned and operated by Florida Cities Water Company (“Florida Cities”) and Poinciana Utilities Inc. (“Poinciana”) in a numerous counties to the Florida Governmental Utility Authority pursuant to Order No. PSC-00-2351-FOF-WS issued December 7, 2000. A docket concerning that transfer was not even opened until the post-closing filing of the Joint Application for Transfer of Facilities by Florida Cities and Poinciana and the approval was issued in accordance with the statutory standard. Here, it appears Staff is taking an inconsistent approach by seeking information concerning a transaction that: (i) has not closed; and (ii) has not been placed before the Commission pursuant to a formal application for approval of transfer.

Florida Water is also concerned that many of the information requests address matters that are not within Florida Water’s knowledge and may ultimately be resolved by the Florida Water Services Authority.

I had hoped to discuss these issues with you on Monday, September 30, 2002, and hope to discuss them with you upon your return to the office next week. In the meantime, in order to allow a reasonable amount of time to discuss the concerns raised above, I am requesting an extension of four weeks for the provision of a response or formal objections to the Staff’s information requests. Such response will be provided by November 12, 2002.

Thank you for your attention to this matter and consideration of our request.

Sincerely,



Kenneth A. Hoffman

KAH/rl

cc: Dr. Mary Bane, Executive Director  
Harold McLean, General Counsel  
Marshall W. Willis, Division of Economic Regulation  
Donnie R. Crandell, President and CEO, Florida Water Services Corporation  
Forrest L. Ludsen, Chief Operating Officer, Florida Water Services corporation  
Carlyn Kowalsky, General Counsel, Florida Water Services Corporation  
J. Stephen Menton, Esq.

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<sup>2</sup>See Fla. Stat. §367.022(2).

## INTERLOCAL AGREEMENT

This **INTERLOCAL AGREEMENT**, made and entered into as of September 16, 2002, initially by and between **CITY OF GULF BREEZE**, a municipal corporation of the State of Florida (the "Gulf Breeze") and **CITY OF MILTON**, a municipal corporation of the State of Florida ("Milton"),

### WITNESSETH:

In consideration of the mutual benefits and obligations assumed herein, the undersigned hereby agree as follows:

#### Section 1 Findings

The undersigned hereby find, determine and declare as follows:

(A) Milton and Gulf Breeze each own and operate public water and sewer utility systems within and outside their political boundaries, and have determined that there is a substantial need and demand for public ownership and operation of essential purpose public utilities within the State.

(B) Public water and sewer utility systems, including without limitation, potable water development; water production, storage and distribution; alternative water sources; sewerage; water reuse, advance water treatment, water and sewer pre-treatment; sludge removal and waste collection and disposal; environmental recycling; and other similar utility systems contribute to the welfare and benefit of the public, promote economic and personal prosperity.

(C) In order to reduce and relieve the burdens of administrative government currently borne by the parties hereto, and future management and administrative responsibilities attendant to utility systems, the undersigned Participating Governmental Units wish to cooperate by interlocal agreement to jointly exercise, together with other Participating Governmental Units which may join in this agreement from time to time, the powers each Participating Governmental Unit has to facilitate the development, transfer, consolidation, financing, ownership, management, improvement, expansion and operation of the essential public purpose utilities authorized herein.

(D) Pursuant to all of the privileges, benefits, powers and terms of Section 163.01, Florida Statutes, as amended, together with all of the home rule powers granted by the Constitution and laws of the State of Florida, and all other applicable provisions of law (the "Act"), the parties are duly authorized to enter into this Agreement on behalf of themselves and any future Participating Governmental Unit.

(E) The parties have determined that for administrative convenience and efficiencies, and to reduce duplication of efforts and improve services, it is desirable to create a separate legal entity (the "Authority" hereinafter described), for the public purpose of promoting, planning,

establishing, financing, acquiring, constructing, equipping, owning, operating, maintaining, repairing, managing, expanding, consolidating, improving, leasing and disposing of Projects (as hereinafter defined) and establishing, implementing, financing and administering Programs (as hereinafter defined) in furtherance of such purposes .

(E) The creation of a special-purpose legal entity for the administration, ownership, operation and management of the public utilities referred to herein will provide economies of scale, increase bargaining power, attract employees with specialized talents and abilities, reduce overhead and provide other financial advantages to the utility operations of the parties, and will improve the level of protection of the environment improve and enhance service to customers.

(G) It is the intent of the parties hereto that the Authority shall have all possible powers which may be conferred upon the Authority pursuant to law which may be necessary or desirable to enable the Authority to acquire, construct, finance, own, manage, operate and dispose of Projects and Programs and to fulfill the objectives and purposes of this Interlocal Agreement.

(H) It is the intent of the parties hereto that the Authority is specifically authorized, in addition to its other powers, to undertake Projects and Programs pursuant to the provisions of the Section 163.01(7)(g)(1), Florida Statutes. It is further the intent of the parties that, pursuant to Section 163.01(5)(o), Florida Statutes, all liabilities incurred by the Authority with respect to the Project and all liabilities resulting from or arising out of or in connection with Projects and Programs (the "Project Liabilities"), shall be the sole responsibility and obligation of the Authority. None of the Participating Governmental Units shall be responsible for any Project Liabilities and no Project Liabilities shall constitute a pledge of the faith and credit or taxing power of or constitute an obligation of any of the Participating Governmental Units.

## **Section 2 Definitions**

As used herein, the capitalized terms shall have the following meanings, unless the context hereof expressly requires otherwise:

**"Act"** shall have the meaning assigned thereto in Section 1 hereof.

**"Agreement"** shall mean this Interlocal Agreement and any amendment hereto which may be adopted as hereinafter provided.

**"Authority"** shall mean the Florida Water Services Authority created by Section 3 of this Agreement.

**"Board"** means the Authority's Board of Directors, which is its governing body, appointed as hereinafter set forth to operate the Authority.

**"Bonds"** shall mean any bonds, loans, notes, certificates of indebtedness, time warrants, debentures, lease financing instruments, or other debt instruments, evidences of indebtedness or debt obligations issued by the Authority under the provisions of this Agreement, as



supplemented by the provisions of any resolution of the Authority or general or special law, to establish or finance any Program or pay or finance the cost of the Project or any portion thereof, and payable from the all or any of the following: revenues derived from such Program, from the operation of the Project or any loan payments, lease payments or other receipts in respect thereof or of loaned funds, from any guaranty, insurance or disposition proceeds, from contributions or credit support payments, and/or from any or all funds of the Authority legally available for such purpose.

**"Cost"** shall mean (i) in respect of a Project, the cost or costs of acquiring, constructing, erecting, improving, expanding, furnishing, equipping and installing the Project, or any portion thereof, and shall include, without limiting the generality of the foregoing, the cost of all labor and materials, the cost of all lands, property, rights, easements and franchises which shall be deemed necessary for the Project, good will, value of going concerns, financing charges, interest prior to and during construction and for a reasonable period after the completion of construction, working capital, architectural and legal expenses, costs of plans, specifications, surveys, estimates of costs and of revenues, discount upon the sale of bonds, if any, municipal bond insurance or credit enhancement, if any, financial products payments, if any, other expenses necessary or incidental to determining the feasibility or practicability of the Project and the financing thereof, administrative expense related solely to the Project and such other expenses as may be necessary, convenient or desirable and incident to such acquisition, construction, erection, improving, expanding, furnishing, equipping, owning, operating, managing and installing of the Project, the placing of the Project in operation and the financing thereof as herein authorized, and (ii) in respect of a Program, the cost or costs of developing and implementing, the Program, the financing of the purposes and objectives of the Program, estimates of costs and of revenues, demand surveys, feasibility reports, appraisals, discount upon the sale of bonds, if any, municipal bond insurance or credit enhancement, if any, other expenses necessary or incidental to determining the feasibility or practicability of the Program and the financing thereof, administrative expense related to the Program and such other expenses as may be necessary or desirable and incident to and such other expenses as may be necessary or desirable and incident to such Program or the financing thereof.

**"Local Authority"** means any public agency (as defined in Section 163.01, Florida Statutes) that enters into an Interlocal Agreement with the Authority or the Members for the purposes of authorizing the Authority to operate within the jurisdiction of such public agency to finance a Project or Program therein.

**"Member"** means Gulf Breeze and Milton, as well as any additional Participating Governmental Unit which might hereafter join in this Agreement and the Authority created hereby.

**"Participating Governmental Unit"** shall mean Gulf Breeze, Milton and other public agencies (as defined in Section 163.01, Florida Statutes) which are or later become signatories to this Agreement for the purpose of facilitating the financing of Projects or Programs.

**"Project"** shall mean, but shall not be limited to, any one or more or any combination of public utilities, including, without limitation, the following: public utilities as defined in the Act,

and any capital improvement described in Chapter 163, Florida Statutes, any public utility or improvement or expansion thereof that is lawful for acquisition, ownership, operation or management by the Authority under the Act, including any public utility project at the time authorized under Ordinance 5-97, of the City of Gulf Breeze, and any and all real or personal property in connection with same.

**"Program"** shall mean the plan of finance or financing program for providing funds to finance Projects, or financing mechanism that provide the benefits of public financing to any private, not-for-profit or public organizations to implement or further the purposes and objectives of the Authority.

### **Section 3 Authority Created and Purpose**

Pursuant to the Act, there is hereby created an independent public body corporate and politic of the State of Florida, to be known as the "Florida Water Services Authority" for the purpose of promoting, planning, establishing, financing, acquiring, constructing, equipping, operating, maintaining and leasing the Project, all in the manner provided herein. The Authority may be an entity incorporated under Chapter 617, Florida Statutes, as its directors may determine, but such incorporation shall not be deemed a requirement or condition to its creation hereunder.

### **Section 4 Powers of the Authority**

The Authority shall have the powers to, and all powers necessary and incidental to, accomplish the purpose or objectives of this Agreement, including, without limiting the generality of the foregoing, the power to promote, plan, establish, acquire, construct, erect, finance, expand, improve, consolidate, furnish, equip, operate, maintain, manage, diversify and develop Programs and Projects from time to time, and issue Bonds from time to time to finance the cost thereof. To the extent not inconsistent with general or special law, such powers shall include, but shall not be restricted to, the power to:

(A) Adopt its own rules of procedure, select its officers and set the time and place of its official meetings.

(B) Sue and be sued in its own name and compromise and settle claims by and against it.

(C) Enter into agreements with other Public Agencies for the joint performance, or performance by one unit in behalf of the other, of any of either Authority's authorized purposes.

(D) Enter into contracts and other undertakings necessary or desirable to carry out the purposes of the Authority and to finance Projects and Programs.

(E) Borrow money and issue Bonds for the purpose of providing funds for the Programs and Projects; provided that any such Bonds shall be repayable solely from and may be secured solely by a pledge of (i) the proceeds of such Bonds and the investment earnings on

such proceeds prior to the application thereof to the purposes of the Project or the repayment of such Bonds; (ii) all or any portion of the receipts to be derived from or in connection with any Project or Programs; and (iii) any source of funds derived by the Authority from operation, lease, management or disposition of any Project, or from any Program; provided, however, that nothing herein shall authorize the Authority to create any financial obligation on the part of any Participating Governmental Unit, unless such Participating Governmental Unit consents thereto and expressly approves such financial obligation in a separate written instrument entered into with the Authority subsequent to the effective date of this Interlocal Agreement.

(F) Adopt resolutions necessary for the exercise of its powers.

(G) Employ attorneys, architects, engineers, independent financial firms, trust companies, financial consultants, accounting firms and others and to contract or otherwise provide for audits of any of its funds, accounts and financial records.

(H) Own, acquire, purchase, hold, convey, lease, sublease, lease-purchase, mortgage, lend, transfer, exchange, dispose of and encumber any real or personal property necessary or convenient for the purposes of the Authority, with or without consideration.

(I) Operate, maintain, promote, develop, design, support, prepare, acquire, construct, equip, expand, upgrade, renovate, reconstruct and repair any Project or any portion thereof.

(J) Exercise any and all powers, authorities, rights, protections and immunities authorized by this Agreement in the Authority's own name.

(K) Solicit, make claims for, perfect, accept and receive gifts, bequests, funds, grants, aid, assistance or contributions.

(L) Acquire by purchase, business acquisition, stock acquisition or other means, whenever the Authority deems expedient, any facility, wholly or partly constructed, and any franchise, easements, permits and contracts for the construction of any public utility or other Project, upon such terms and at such prices as may be reasonable and can be agreed upon between the Authority and the owner thereof, title to be taken in the name of the Authority or any owned subsidiary or limited liability organization, and issue Bonds to pay the cost of the acquisition of any Project.

(M) To issue any Bonds for any purpose for which any public agency or governmental entity of the State of Florida may lawfully issue Bonds to finance public utilities, Programs and Projects, and to make loans for such purposes to private, not-for-profit and governmental corporations and organizations.

(N) Subject to the limitations set forth in Section 163.01, Florida Statutes, to exercise the power of eminent domain in connection with any Projects, including, without limitation, the procedural powers under Chapters 73 and 74, Florida Statutes, to the fullest extent permitted by law; provided that if any such exercise shall ever be required to be approved by a Participating

Governmental Unit, it is agreed that the City of Gulf Breeze shall be the sole unit required to give such approval.

(O) To exercise all powers heretofore or hereafter granted by law to the Authority in respect of the acquisition, construction, ownership, operation, financing and disposition of public utilities, including, without limitation, the powers granted under Section 163.01(7) Florida Statutes.

No enumeration of powers herein shall be deemed exclusive or restrictive, but shall be deemed to incorporate all implied powers necessary or incident to the carrying out of such enumerated powers, including, specifically, authority to employ personnel, borrow and expend funds and enter into contractual obligations, all in furtherance of the Projects or other purposes of the Authority. The Authority shall not have the power to levy or collect taxes, nor the police or other governmental regulatory power, except that the Authority shall have full and plenary power to establish and collect the rates, fees and charges for the various facilities and services of any of its Projects, the power to establish and enforce policies and procedures incident to the operation and administration of its Projects or purposes, and the power to impose, levy, collect and enforce special assessments.

The Authority shall be a public instrumentality of the City of Gulf Breeze and the City of Milton, acting on behalf of such municipalities and imbued with all powers of such municipalities which may lawfully be exercised by either such municipality in furthering the purposes of and objectives hereof. Gulf Breeze shall have the power to remove any director without cause at any time, by furnishing written notice thereof to the Chairman and the Executive Director of the Authority, and such vacated seat on the Authority shall be filled in the same manner as such seat was initially established. Milton shall have the right to remove any director appointed by Milton, and such vacated seat on the Authority shall be filled in the same manner as such seat was initially established.

#### **Section 5 Board of Directors; Organization**

(A) The Authority shall be governed by, and its powers, authorities, privileges, rights, protections and immunities exercised and protected by a Board of Directors composed initially of three (3) directors, two appointed by Gulf Breeze and one appointed by Milton. Gulf Breeze may from time to time by resolution change the number of board members, provided (i) there shall never be less than three nor more than seven directors positions and (ii) at least 20% of the director positions shall be appointees of Milton.

(B) All directors of the Authority shall be deemed to be acting in their official capacity when conducting the business of the Authority. If any director shall cease to serve on the Authority then such person shall be deemed to have vacated his seat on the Authority and such seat shall be filled in the same manner as such seat was initially established.

(C) The Authority shall make all policies for its governance and shall formulate and may amend its own rules or procedures and written bylaws not inconsistent with this Agreement. Unless otherwise established by rules of the Authority, the presence of a majority of the directors

eligible to vote shall constitute a quorum; and a majority vote of the total number of directors eligible to vote shall be required to authorize Authority action. Fewer than a quorum may adjourn from time to time and may compel the attendance of absent directors. The Board of Directors shall select one of its directors as chairperson, another as vice-chairperson, and another as secretary/treasurer and shall prescribe their duties, powers and terms of office.

(D) The Board of Directors shall hold regular meetings at least once each calendar quarter and shall provide in its rules for holding other regular and special meetings. All meetings shall be given public notice and shall be open to the public, and the Authority shall use its best efforts to give notice thereof at least 48 hours prior to any such meeting; except upon emergency for reasons set forth in a declaration filed with records maintained by the Administrator or the secretary/treasurer of the Authority at the time of such meeting. The Authority shall keep a record of its transactions, findings and determinations; and all records of the Authority and its staff shall be public records. Directors of the Authority shall receive compensation for their services in amounts fixed from time to time by the City of Gulf Breeze, and shall be entitled to receive their necessary expenses incurred in the performance of their official duties within the limits of a budget adopted for such purpose by the Authority. Subject to Subsection 7(B) hereof, the Authority shall prepare and adopt, not later than the first day of June of each year, a budget for the next succeeding fiscal year which shall be from the first day of October through and including the last day of September.

(E) The Authority may establish an Advisory Panel ("Advisory Panel") to advise and counsel the Authority with respect to customer service and rate matters of any utility it may acquire or own. The Advisory Panel may consist of members selected by the Authority who may be customers of the utility and/or have expertise in the fields of engineering, environmental, utility rate design, finance, accounting, law, utility operations or other utility related experience. If such an Advisory Panel is established, the members shall be entitled to attend and participate at all meetings of the Authority, where they will be accorded the status of *ex-officio* non-voting members of the Authority. Such Advisory Panel may meet from time to time apart from the Authority meetings, and may establish rules and procedures for such meetings. All meetings and correspondence of the Advisory Panel shall be subject to the Florida Sunshine Laws and Public Records Laws.

(F) The principal place of business of the Authority shall be Gulf Breeze, Florida; *provided, however*, that, subject to the requirements of the Florida Government in the Sunshine Law, meetings of the Authority may be conducted at such locations as deemed convenient by the directors, including any location convenient to the business or residence of any director, any location at which a quorum is present, and any location convenient to any service area served by a utility of the Authority.

(G) Gulf Breeze Financial Services, Inc., or such other entity as may be designated or appointed by Gulf Breeze, shall serve as the initial Administrator for the Authority. In case of the absence, inability or refusal of the Chairman of the Board of the Authority to call any meeting of the Authority, the Administrator shall have the power to establish the times and places for meetings of the Authority. The Administrator shall have the power to arrange for the publication of notices of all meetings of the Authority, and to make all required transcripts and

minutes of such meetings. Notices of all meetings of the Authority shall be distributed in accordance with the requirements of the Florida Government in the Sunshine law, and to the Executive Director of the Authority, the City Managers of Gulf Breeze and Milton, the Administrator and to each Director of the Authority. The Administrator shall have the power to review or investigate any of the management, facilities or operations of the Authority and to make recommendations to the Board with respect to any such matter. The Administrator shall have the power on behalf of the Authority to contract for such services, and engage such professionals and consultants, as may be necessary in the opinion of the Administrator for the acquisition of Projects, to conduct due diligence inquiries and secure financing with respect to such acquisitions and to develop and plan such acquisitions. Nothing herein shall be deemed to prohibit the Authority and its staff from also undertaking any of such matters enumerated in this paragraph. If at any time the Authority shall determine that the services of the Administrator are unnecessary or duplicative, the Authority shall submit to Gulf Breeze an alternative plan for provision of the administrative services. During any period in which such alternative plan shall be in operation following approval of such plan by Gulf Breeze, the provisions herein regarding the Administrator shall be inapplicable to the extent provided in such plan.

(H) Except to the extent otherwise provided by law, any failure on the part of the Administrator or the Authority to comply with the provisions hereof regarding organization of the Authority, composition and office of its members, giving of notices and other administrative matters shall not affect the validity or enforceability of any Bonds of the Authority.

## **Section 6     Bonds**

In addition to the powers granted to the Authority by other provisions of this Agreement, the Authority also shall have the power and it is hereby authorized to provide by resolution, at one time or from time to time, for the issuance of Bonds for the purpose of paying all or a part of the cost of any Project or any portion thereof or to establish and fund any Program. The principal of and interest on such Bonds shall be payable solely from revenues to be derived from the operation of projects and/or any or all funds of the Authority derived from sources other than ad valorem taxation and legally available for such purpose. The Bonds of each issue shall be dated, shall bear interest at such rate or rates, shall mature at such time or times not exceeding forty (40) years from their date or dates, as may be determined by resolution of the Authority, and may be made redeemable before maturity, at the option of the Authority, at such price or prices and under such terms and conditions as may be fixed by the Authority prior to the issuance of the Bonds. The Authority shall determine the form of the Bonds and the interest coupons to be attached thereto, the manner of executing the Bonds and coupons, and shall fix the denomination or denominations of the Bonds and the place or places of payment of the principal thereof and the interest thereon, which may be at any bank or trust company within or without the State of Florida. In case any officer whose signature or a facsimile of whose signature shall appear on any Bonds or coupons shall cease to be such officer before the delivery of such Bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes the same as if he had remained in office until such delivery. All Bonds shall have and are hereby declared to be and to have all the qualities and incidents of negotiable instruments under the laws of Florida. Provision may be made for the registration of any of the Bonds in the name of the owner thereof as to principal alone and also as to both principal and interest, and for the

reconversions of any Bonds registered as to both principal and interest into coupon Bonds. Bonds may be issued without regard to any limitation on indebtedness prescribed by any law. The Authority may sell Bonds in such manner, at such interest rate or rates, without limitation, and for such price as it may determine to be for the best interests of the Authority. Prior to the preparation of definitive Bonds, the Authority may, under like restrictions, issue interim receipts, interim certificates, or temporary Bonds, with or without coupons, exchangeable for definitive Bonds when such Bonds have been executed and are available for delivery. The Authority may also provide for the replacement of any Bonds which shall become mutilated, or be destroyed or be lost. Such Bonds may be issued without any other proceedings, or the happening of any other conditions or things than those proceedings, conditions or things which are specifically required by this Agreement.

In the event that the Authority heretofore acquired or constructed a project and, to pay the cost of such acquisition or construction thereof, shall have issued bonds payable from the funds provided for herein, and in the further event that the Authority shall desire to construct additions, extensions, improvements or betterments to such project or to acquire by purchase or to construct an additional project and to combine such additional project with the project theretofore purchased or constructed, and to refund such outstanding bonds, the Authority may provide for the issuance of a single issue of bonds under the provisions of this Agreement for the combined purposes of refunding such bonds then outstanding and of constructing such additions, extensions, improvements or betterments or of acquiring by purchase or of constructing such additional project, and the principal of and interest on such Bonds shall be payable from the funds pledged therefor and provide herein.

Any holder of Bonds or of any of the coupons attached thereto, except to the extent the rights therein granted may be restricted by resolution of the Authority adopted before the issuance of the Bonds, may be suit, action, mandamus or other proceedings, protect and enforce any and all rights under the laws of Florida or granted hereunder or under such resolution and may enforce and compel the performance of all duties required by this Agreement or by such resolution to be performed by the Authority or by any officer thereof.

The Authority may evidence any borrowing authorized herein by the issuance of its Bonds; provided, however, that any such Bonds shall state on their face that such Bonds shall not be or constitute a general obligation or indebtedness of the Authority, the State of Florida, any political subdivision or municipality thereof, but shall be a limited, special obligation of the Authority, payable solely from the revenues, receipts and other sources available to the Authority. Such Bonds shall further provide that no owner of any such Bonds shall have the right to require or compel the payment of such Bonds except from the sources set forth therein. Nothing in this section shall be deemed to prohibit any Participating Governmental Unit from securing its Lease Agreement with any funds or Bonds which may lawfully be pledged for such purpose.

The parties to this agreement hereby covenant and agree that they will not, either individually or in concert, (i) take any action that would adversely affect the validity or enforceability of any bonds of the Authority and all covenants and obligations of the Authority, or the tax-exempt status of the bonds, or (ii) impair or limit the ability of the Authority to levy,

collect, receive and apply any revenues of the Authority pledged to secure any bonds of the Authority, or (iii) fail to take any action reasonably within the control of such parties, which may, in the opinion of nationally recognized bond counsel, be necessary to maintain, preserve, or assure the validity, enforceability, and, to the extent applicable, the tax-exempt status, of any bonds of the Authority. The parties agree and acknowledge that the holders of any bonds or other obligations for borrowed money shall be beneficiaries of this Agreement.

## **Section 7 Facilities and Staff Assistance; Disposition of Surpluses**

(A) The Participating Governmental Units may cooperate in providing offices and workspaces, equipment and supplies and staff assistance necessary for the use of this Authority. All such non-expendable items shall remain the property of the Participating Governmental Unit furnishing them to the Authority.

(B) So long as the Authority shall own or operate any public utilities, the Authority shall establish, levy and collect sufficient rates, fees and charges for the services and facilities thereof to enable the Authority to include in its annual budget, and to pay over to Gulf Breeze, an amount equal to not less than two percent (2%) of the annual gross revenues of such utilities, but in no event less than \$1,500,000.00. Such amount shall be in addition to all amounts otherwise due and payable to Gulf Breeze for services or facilities provided or furnished by Gulf Breeze to the Authority. It is hereby acknowledged and agreed that the obligation of the Authority to transfer any such annual amount to Gulf Breeze shall be payable from the net revenues of such project, after provision has been made for reasonable costs of operation, maintenance capital improvement programs of the Authority, and junior and subordinate to the payment of all bonded indebtedness of the Authority secured by any portion of such net revenues.

(C) In addition to any other transfers of net revenues required herein, the Authority shall transfer to Gulf Breeze such amounts as may be required to be transferred from time to time, as specified by resolution or resolutions of Gulf Breeze, to provide funds for the payment to public agencies having jurisdiction over portions of the service areas of any project, of regulatory fees, reimbursements or taxes, (including contributions or payments in lieu of such amounts) in connection with the facilities and operations of the Authority in such jurisdictions.

(D) Gulf Breeze hereby agrees to promptly remit to Milton twenty percent (20%) of all amounts received by Gulf Breeze from the Authority pursuant to the Subsection 7(B) hereof; provided that computation of the portion due to Milton hereunder shall not take into account the portion of any such transfers from the Authority constituting (i) amounts received by Gulf Breeze for the provision of services, properly allocable administrative overhead, or the sale of assets, to the Authority, and (ii) amounts described in subsection 7(C) above, and (iii) amounts distributed by Gulf Breeze to other public agencies for the purpose of maintaining good will in the operation of the utilities of the Authority.

## **Section 8 Annual Audit**

The Authority shall at least once a year, within one hundred eighty (180) days after the close of its fiscal year or as soon thereafter as may be practicable with due diligence, cause its



books, records and accounts to be properly audited by a recognized independent firm of certified public accountants and shall deliver copies of the report thereof to the Participating Governmental Units.

#### **Section 9 Term**

The term of this Agreement shall commence upon its execution by Gulf Breeze and Milton and filing in the Official Records as required by Chapter 163, Florida Statutes, and shall continue indefinitely unless terminated as provide herein. The Authority shall exist so long as any portion of any Project is owned by the Authority and shall exist so long as the Authority has obligations outstanding. Any Participating Governmental Unit may withdraw as a Member upon one hundred eighty (180) days notice in writing to the Authority and the other Members. This Agreement may be terminated by the then Member Participating Governmental Unit upon one hundred eighty (180) days written notice to one other, provided, however, that no such termination shall take effect prior to the time payment (or provision for payment, as may be authorized by any contract under which Bonds are issued) of all outstanding Bonds of the Authority has been made and provisions for payment of all obligations of the Authority has been made. Upon termination of this Agreement, all property of any Participating Governmental Unit that has provided such property to the Authority upon condition that it be returned upon dissolution of the Authority shall be so returned thereto, and all other property, and all funds of the Authority not needed to pay the Bonds and other obligations of the Authority, or to operate any Project, shall be distributed in such manner as the City of Gulf Breeze and the Participating Governmental Units have theretofore agreed in writing, or upon their failure to agree, as determined by the City of Gulf Breeze, provided, that Milton shall receive twenty percent of the amount distributed to Gulf Breeze under this Section 9..

#### **Section 10 Other Participating Governmental Units**

Other Public Agencies may become Participating Governmental Units and Members of the Authority by entering into a supplemental agreement with the Authority, without necessity of any further approval by Gulf Breeze or Milton, provided that unless otherwise required by law, membership shall not be required of a Local Agency in order to enter into an Interlocal Agreement for the financing of a Project or Program within the jurisdiction of such Local Agency.

#### **Section 11 Validation Authorized**

The attorney for the Authority and the Authority's bond counsel, are hereby authorized, but not required, to file proceedings and to take appropriate action, in cooperation with other counsel, for the validation of this agreement and of any Bonds of the Authority herein authorized, and all matters connected therewith in conformity with applicable law.

#### **Section 12 Severability of Invalid Provisions**

If any one or more of the covenants, agreements or provisions herein contained shall be held contrary to any express provisions of law or contrary to the policy of express law, though

not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed severable from the remaining covenants, agreements or provisions and shall in no way affect the validity of any of the other provisions hereto.

### **Section 13 Counterparts**

This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

### **Section 14 Effective Date; Amendments**

This Agreement shall take effect when duly executed by the parties and filed in accordance with law. This Agreement may be amended only by written instrument signed by authorized representatives of the City of Milton and the City of Gulf Breeze; provided, however, that no such amendment which would adversely affect the rights of the holders or owners of any outstanding Bonds of the Authority or of any other Member shall take effect until such time as all necessary consents or approvals with respect to such Bonds shall have been obtained, in the case of the rights of bondholders, or the consents and approvals of the affected Members, in the case of the rights of Members.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed by their duly authorized officers.

CITY OF GULF BREEZE

By: *Jane Gilchrist*  
Mayor

ATTEST:

*Marita Rhodes*  
City Clerk

CITY OF MILTON

By: *Sam Shroyer*  
Mayor 9/17/02

ATTEST:

*Dewitt Noble*  
City Clerk

6524

RESOLUTION NO. 1040-02

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF MILTON, FLORIDA, EMPOWERING A SEPARATE LEGAL ENTITY, FLORIDA WATER SERVICES AUTHORITY TO EXERCISE POWERS PURSUANT TO CHAPTER 163, PART I, FLORIDA STATUTES, IN REGARD TO THE ACQUISITION, OWNERSHIP AND OPERATION OF A PUBLIC WATER, WASTEWATER AND REUSE WATER UTILITY ON BEHALF OF THE CITY OF MILTON AND ON BEHALF OF OTHER GOVERNMENTAL ENTITIES AND ENTITIES NOT-FOR-PROFIT WITHIN THE STATE OF FLORIDA PURSUANT TO AN INTERLOCAL AGREEMENT WITH THE CITY OF GULF BREEZE, FLORIDA; APPROVING THE FORM OF AN INTERLOCAL AGREEMENT EMPOWERING AND CREATING FLORIDA WATER SERVICES AUTHORITY; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS, Milton and Gulf Breeze each own and operate public water and sewer utility systems within and outside their political boundaries, and have determined that there is a substantial need and demand for public ownership and operation of essential purpose public utilities within the State; and**

**WHEREAS, public water and sewer utility systems, including without limitation, potable water development; water production, storage and distribution; alternative water sources; sewerage; water reuse, advance water treatment, water and sewer pre-treatment; sludge removal and waste collection and disposal; environmental recycling; and other similar utility systems contribute to the health, welfare and benefit of the public, and promote economic and personal prosperity; and**

**WHEREAS, in order to reduce and relieve the burdens of administrative government currently borne by the parties hereto, and future management and administrative responsibilities attendant to utility systems, Milton wishes to join with Gulf Breeze and other Participating Governmental Units from time to time, to exercise the powers each Participating Governmental Unit has to facilitate the development, transfer, consolidation, financing, ownership, management, improvement, expansion and operation of the essential public purpose utilities authorized herein; and**

**WHEREAS, pursuant to all of the privileges, benefits, powers and terms of Section 163.01, as amended, together with all of the home rule powers granted by the Constitution and laws of the State of Florida, and all other applicable provisions of law (the "Act"), the parties are duly authorized to enter into this Agreement on behalf of themselves and any future Participating Governmental Unit; and**

**WHEREAS, the parties have determined that for administrative convenience and efficiencies, and to reduce duplication of efforts and improve services, it is desirable to create a**

separate legal entity (the "Authority" hereinafter described), for the public purpose of promoting, planning, establishing, financing, acquiring, constructing, equipping, owning, operating, maintaining, repairing, managing, expanding, consolidating, improving, leasing and disposing of Projects (as hereinafter defined) and establishing, implementing, financing and administering Programs (as hereinafter defined) in furtherance of such purposes; and

**WHEREAS**, the creation of a special-purpose administrative entity for the ownership, operation and management of the public utilities referred to herein will provide economies of scale, increase bargaining power, attract employees with specialized talents and abilities, reduce overhead and provide other financial advantages to the utility operations of the parties, and will improve the level of protection of the environment improve and enhance service to customers; and

**WHEREAS**, it is the intent of the parties hereto that the Authority shall have all possible powers which may be conferred upon the Authority pursuant to law which may be necessary or desirable to enable the Authority to implement, acquire, construct, finance, own, manage, operate and dispose of Projects and Programs and to fulfill the objectives and purposes of this Interlocal Agreement and to provide for promoting, planning, establishing, financing, acquiring, constructing, equipping, owning, operating, maintaining, repairing, managing, expanding, consolidating, improving, leasing and disposing of any public utility or improvement or expansion thereof that is lawful for acquisition, ownership, operation or management by administrative agencies created under Chapter 163, Florida Statutes (the "Projects"); and

**WHEREAS**, neither Milton nor Gulf Breeze shall incur any legal or financial obligation as a result of the activities of the Authority; all bonds issued by the Authority, shall be issued in its own name, and not in the name of either Milton nor Gulf Breeze; and every bond of the Authority, shall contain an express provision that such bonds are not an obligation of the State of Florida or any political subdivision or municipality thereof;

**NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF MILTON, FLORIDA, AS FOLLOWS:**

**Section 1. Approval and Adoption of Interlocal Agreement.**

The form of Interlocal Agreement attached hereto as Exhibit "A" and made a part hereof, with such changes not inconsistent herewith as may be approved by the Mayor, together with any other instruments, documents and matters referred to therein or necessary to complete the transactions contemplated thereby, as may be approved by the Mayor, are hereby approved and adopted, and the Mayor is authorized to execute the same on behalf of Milton, such execution to be deemed to conclusively establish his approval thereof.

**Section 2. Authorization of all Other Necessary Action.**

The Mayor, or in his absence the City Manager, the City Clerk, or in his absence the Assistant or Deputy City Clerk, and the City Attorney are each designated agents of Milton in connection with the Interlocal Agreement, and the actions or efforts required of Milton as

contemplated therein, and are authorized and empowered, collectively or individually, to take all actions and steps to execute and delivery any and all instruments, documents or contracts on behalf of Milton which are necessary and desirable for purposes of fulfilling the purposes and intentions of the matters set forth in and contemplated by the Interlocal Agreement.

**Section 3. Appointment of Members.**

There being initially three members of the Board of Directors of the Florida Water Services Authority, the person named on Schedule I attached hereto is hereby designated by the City of Milton as its member of the Board of Directors of the Authority.

**Section 4. Limited Liability.**

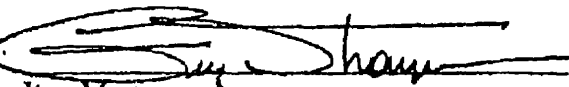
Neither the adoption of this Resolution and the execution and delivery of the Interlocal Agreement, nor any other action taken pursuant thereto, shall be deemed to authorize, commit or allow the expenditure of any funds of the City of Milton, or create any obligation or liability on the part of the City of Milton for the payment of any liabilities, obligations or bonds of the Authority under any circumstances whatsoever.

**Section 5. Effective Date.**

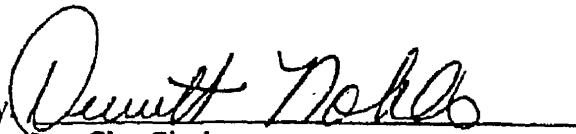
This Resolution shall take effect immediately upon its adoption by the City Council of the City of Milton.

ADOPTED ON THIS 17th DAY OF SEPTEMBER, 2002.

CITY OF MILTON, FLORIDA  
CITY COUNCIL

By:   
Its: Mayor



By:   
Its: City Clerk

**EXHIBIT A**  
**FORM OF INTERLOCAL AGREEMENT**