

ORIGINAL

STENSTROM, McINTOSH, COLBERT, WHIGHAM & SIMMONS, P.A.
ATTORNEYS AND COUNSELLORS AT LAW

SUNTRUST BANK • SUITE 22
200 WEST FIRST STREET
POST OFFICE BOX 4848
SANFORD, FLORIDA 32772-4848
SANFORD (407) 322-2171
ORLANDO (407) 834-5119
DELAND (386) 668-1479
FAX (407) 330-2379
WWW.STENSTROM.COM

WILLIAM L. COLBERT
FRANK C. WHIGHAM
CLAYTON D. SIMMONS
ROBERT K. McINTOSH
WILLIAM E. REISCHMANN, JR.
CATHERINE D. REISCHMANN
JAMES J. PARTLOW
VIRGINIA CASSADY
SUSAN W. STACY

S. KIRBY MONCRIEF
LONNIE N. GROOT
OF COUNSEL
DOUGLAS STENSTROM
KENNETH W. McINTOSH
RETIRED
THOMAS E. WHIGHAM
(1952-1988)

March 3, 2003

Agency Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: Investigation Into Proposed Sale of Florida Water Services Corporation
Docket No. 021066-WS

Dear Public Service Commission Agency Clerk:

Please find enclosed the City of Palm Coast's Notice of Filing.

We will appreciate your office and the Commission taking appropriate action relative to this Notice.

Please feel free to call with questions and to let me know if I can be of assistance in this matter or in any other way. Thank you for your attention to this matter.

Sincerely,

STENSTROM, McINTOSH, COLBERT,
WHIGHAM & SIMMONS, P.A.


Lonnie N. Groot

cc: Richard Kelton, City Manager
Ms. Clare Hoeni, Acting City Clerk
William L. Colbert, Esquire, City Attorney
Virginia Cassady, Esquire

DOCUMENT NUMBER - DATE
02179 MAR-5 03
FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

Petition to Initiate Rulemaking to Amend)
Rule 25-30.041, F.A.C., Application for)
Approval of Transfer to Governmental)
Agency, by City of Palm Coast.)

Docket No. 021128-WS

Filed: November 27, 2002

CITY OF PALM COAST'S NOTICE OF FILING

COMES NOW the, CITY OF PALM COAST, as a party-intervenor, by and through its undersigned counsel, and gives notice of filing the following with the court:

- 1. Letter to the Honorable Glenda Hood, Secretary of State and the Honorable Charlie Crist, Attorney General with all appendices as stated in the letter.

I HEREBY CERTIFY that a true and correct copy of the foregoing has been provided via U.S. Mail this 3rd day of March 2003 to the following:

Samantha Cibula, Esquire
Division of Legal Services
Florida Public Service Commission
2540 Shumard Oak Boulevard
Room 370
Tallahassee, Florida 32399-0850

Kenneth A. Hoffman, Esquire
RUTLEDGE, ECENIA, PURNELL & HOFFMAN
Post Office Box 551
Tallahassee, Florida 323701-1841



LONNIE N. GROOT, ESQUIRE
Florida Bar No.: 266094
STENSTROM, McINTOSH, COLBERT,
WHIGHAM & SIMMONS, P.A.
200 W. First St., Suite 22
P.O. Box 4848
Sanford, FL 32772
Tel: (407) 322-2171
Fax: (407) 330-2379

DOCUMENT NUMBER-DATE
02179 MAR-5 03
FPSC-COMMISSION CLERK



OFFICE OF THE ATTORNEY GENERAL

THE CAPITOL

TALLAHASSEE, FLORIDA 32399-1050

CHARLIE CRIST
Attorney General
State of Florida.

February 25, 2003

To whom it may concern:

This is a true copy of the documents received from Stenstrom, McIntosh, Colbert, Whigham & Simmons, P.A. by Office of Attorney General Charlie Crist at 4:53 p. m., February 24, 2003.

Zee Galliano

Zee Galliano
Executive Assistant
Correspondence Control

Copy to Reg R

STENSTROM, McINTOSH, COLBERT, WHIGHAM & SIMMONS, P.A.
ATTORNEYS AND COUNSELLORS AT LAW

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OF COUNSEL

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KENNETH W. McINTOSH
RETIRED

THOMAS E. WHIGHAM
(1952-1988)

February 20, 2003

The Honorable Glenda Hood, Secretary of State
Florida Department of State
Collins Building
107 West Gaines Street
Tallahassee, FL 32399-0250

The Honorable Charlie Crist, Attorney General
Office of Attorney General
State of Florida
The Capitol
Tallahassee, FL 32399-1050

Subject: Florida Water Services Authority, Inc., City of Palm Coast

Madame Secretary Hood and General Crist:

I write this letter on behalf of our client, the City of Palm Coast, with regard to what we assert is a sham filing in the Corporations Division of the Florida Department of State. We do not write to you pursuant to Section 617.2003, *Florida Statutes*,¹ but we hereby request that you take action under the inherent powers under the constitutional and statutory powers vested in your offices.² We believe that the Department of State ("DOS") and the Department of Legal Affairs ("DLA") should initiate steps necessary to investigate the Florida Water Services Authority, Inc., incorporated as an alleged not-for-profit corporation on February 4, 2003. A copy of the purported incorporation documents

¹ Although as you will read later in this correspondence, we believe that action may be appropriate under that statutory provision.

² For example, see Section 617.0304, *Florida Statutes*, pertaining to the ultra vires acts of not-for-profit corporations.

The Hon. Glenda Hood, Secretary of State
The Honorable Charlie Crist, Attorney General
February 20, 2003
Page 2

are attached as Appendix A to this letter. Specifically, we request that the DOS and DLA investigate whether the alleged purported corporation is operating on a not-for-profit basis. The bald allegation in Article III of the *Articles of Incorporation* that the purported corporation is organized exclusively for "charitable, non-profit purposes", as presently constituted, flies in the face of the Interlocal Agreement entered between the cities of Gulf Breeze and Milton as of September 16, 2002 ("Interlocal Agreement"), which is referenced in Article IX of the *Articles of Incorporation*. The referenced Interlocal Agreement purportedly authorized the creation of the Florida Water Services Authority by the Cities pursuant to Chapter 163, *Florida Statutes*. A copy of the Interlocal Agreement is attached as Appendix B to this letter.

We believe that when local governments attempt to pervert the not-for-profit corporation statutes of the State of Florida to be used as a means to impose taxation upon the citizens of other local governments located throughout the State and hundreds of miles from the cities of Milton and Gulf Breeze, the DOS and DLA must take action to protect innocent citizens from such actions. Additionally, the cities of Milton and Gulf Breeze are attempting to invade the jurisdictions of other local governments and divert capital investments intended to serve the public from those governments to a private corporation.

We, in particular, draw your attention to Section 7 of the Interlocal Agreement which provides for an annual profit to be shared by the cities of Gulf Breeze and Milton from the operation of the Florida Water Services Authority, now apparently known as Florida Water Services Authority, Inc. Section 7(B) expressly states:

So long as the Authority shall own or operate any public utilities, the Authority shall establish, levy and collection 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

The Hon. Glenda Hood, Secretary of State
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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. (Emphasis added).

Section 7(B) clearly provides that no less than \$1.5 million is to be paid to the City of Gulf Breeze annually "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." This minimum \$1.5 million payment is profit.³

We have included copies of several newspaper articles and other documents in Appendix C to this letter which confirm the purpose and intent of the cities of Gulf Breeze and Milton to purchase the water and wastewater assets of Florida Water Services Corporation through the guise of the purported Florida Water Services Authority or Florida Water Services Authority, Inc.⁴ solely to derive an annual profit from such ownership.

We believe that the information in the appendices hereto constitutes prima facie evidence supporting our belief that the true purpose and intended nature of the Florida Water Services Authority, Inc., is to provide an annual profit for the cities of Gulf Breeze and Milton. It is our understanding that inquiry is now being made as to whether the corporation is entitled to tax exempt status under Federal law.

To further substantiate this claim, attached as Appendix D to this letter is a copy of section 367.022(2), *Florida Statutes*, which provides an exemption for not-for-profit corporations from the regulatory jurisdiction of the Florida Public Service Commission. Florida Water Services Authority, Inc. was incorporated on the date that the Florida Public Service Commission was considering taking action concerning the attempt by the cities of Gulf Breeze and Milton to purchase the assets of Florida Water Services Corporation

³ Section 7(D) of the Interlocal Agreement provides that the City of Gulf Breeze pay twenty percent (20%) of the annual profit to the City of Milton.

⁴ The board of directors of the purported Florida Water Services Authority purportedly created pursuant to Chapter 163 is identical to the board of directors identified in Article VI of the Articles of Incorporation.

The Hon. Glenda Hood, Secretary of State
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through the purported Florida Water Services Authority. The incorporation of Florida Water Services Authority, Inc. is simply the latest maneuver of the cities of Gulf Breeze and Milton, acting through the purported Florida Water Services Authority, to complete an acquisition of water and wastewater assets which bear no relationship to the citizens of the respective cities⁵ for the sole purpose of deriving an annual profit in the minimum amount of \$1.5 million. We request that the DOS and DLA institute and, in due course, collaborate to initiate legal or equitable proceedings as are necessary to revoke the offending articles of incorporation to prevent the improper use of the corporation by the cities of Gulf Breeze and Milton to generate annual profits.

If necessary to proceed under the provisions of Section 617.2003, *Florida Statutes*, we would request the requirement of Section 617.2003, *Florida Statutes*, that an entity filing a request under that statutory provision must provide DLA with money to cover court costs and expenses sufficient to prosecute the requested investigation, be waived as a matter of comity between our local government and your State offices.

Public office is a public trust. We submit that public offices and the laws of the State of Florida relating to not-for-profit corporations should be used only in such ways that provide a public benefit and serve the public interest. The actions of Gulf Breeze, Milton and the purported not-for-profit entity, Florida Water Services Authority, do not serve any benefit for the public and are a sham.

We appreciate your efforts on behalf of the consumers of the State of Florida and your attention paid to the request made in this letter. We look forward to cooperating with your offices by any means necessary to ensure that Florida Water Services Authority, Inc. is not used improperly to produce annual profits for the cities of Gulf Breeze and Milton.

Respectfully,

**STENSTROM, McINTOSH, COLBERT,
WHIGHAM & SIMMONS, P.A.**


Lonnie N. Groot

⁵ No assets and no customers of Florida Water Services Corporation are located within the boundaries of either the City of Gulf Breeze or Milton. In fact, no customer is located within one hundred (100) miles of either City.

The Hon. Glenda Hood, Secretary of State
The Honorable Charlie Crist, Attorney General
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Page 5

cc: James Canfield, Mayor
City Council Members
Harold McLean, General Counsel
Richard Kelton, City Manager
William L. Colbert, Esquire



FLORIDA DEPARTMENT OF STATE
Ken Detzner
Secretary of State

February 4, 2003

AKERMAN SENTERFITT
301 S. BRONOUGH STREET
SUITE 200
TALLAHASSEE, FL

The Articles of Incorporation for FLORIDA WATER SERVICES AUTHORITY, INC. were filed on February 4, 2003, effective January 31, 2003 and assigned document number N03000000895. Please refer to this number whenever corresponding with this office regarding the above corporation. The certification you requested is enclosed.

PLEASE NOTE: COMPLIANCE WITH THE FOLLOWING PROCEDURES IS ESSENTIAL TO MAINTAINING YOUR CORPORATE STATUS. FAILURE TO DO SO MAY RESULT IN DISSOLUTION OF YOUR CORPORATION.

A CORPORATION ANNUAL REPORT/UNIFORM BUSINESS REPORT MUST BE FILED WITH THIS OFFICE BETWEEN JANUARY 1 AND MAY 1 OF EACH YEAR BEGINNING WITH THE CALENDAR YEAR FOLLOWING THE YEAR OF THE FILING DATE NOTED ABOVE AND EACH YEAR THEREAFTER. FAILURE TO FILE THE ANNUAL REPORT/UNIFORM BUSINESS REPORT ON TIME MAY RESULT IN ADMINISTRATIVE DISSOLUTION OF YOUR CORPORATION.

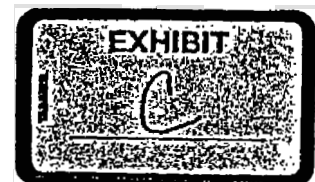
A FEDERAL EMPLOYER IDENTIFICATION (FEI) NUMBER MUST BE SHOWN ON THE ANNUAL REPORT/UNIFORM BUSINESS REPORT FORM PRIOR TO ITS FILING WITH THIS OFFICE. CONTACT THE INTERNAL REVENUE SERVICE TO RECEIVE THE FEI NUMBER IN TIME TO FILE THE ANNUAL REPORT/UNIFORM BUSINESS REPORT AT 1-800-829-3676 AND REQUEST FORM SS-4.

SHOULD YOUR CORPORATE MAILING ADDRESS CHANGE, YOU MUST NOTIFY THIS OFFICE IN WRITING, TO INSURE IMPORTANT MAILINGS SUCH AS THE ANNUAL REPORT/UNIFORM BUSINESS REPORT NOTICES REACH YOU.

Should you have any questions regarding corporations, please contact this office at the address given below.

Claretha Golden, Document Specialist
New Filings Section

Letter Number: 303A00007420



Division [REDACTED] Florida 32314

State of Florida



Department of State

I certify from the records of this office that FLORIDA WATER SERVICES AUTHORITY, INC. is a corporation organized under the laws of the State of Florida, filed on February 4, 2003, effective January 31, 2003.

The document number of this corporation is N03000000895.

I further certify that said corporation has paid all fees due this office through December 31, 2003, and its status is active.

I further certify that said corporation has not filed Articles of Dissolution.

Given under my hand and the
Great Seal of the State of Florida
at Tallahassee, the Capitol, this the
Fourth day of February, 2003



CR2EO22 (1-03)

Ken Detzner

Ken Detzner
Secretary of State

01/31/03

FILED
RECEIVED - 1, 2003

ARTICLES OF INCORPORATION
OF

FLORIDA WATER SERVICES AUTHORITY, INC.
(a Florida corporation not-for-profit)

ARTICLE I: NAME.

The name of the Corporation shall be FLORIDA WATER SERVICES AUTHORITY, INC.

ARTICLE II: PRINCIPAL PLACE OF BUSINESS.

The principal place of business and mailing address of the corporation shall be 315 Fairpoint Drive, Gulf Breeze, Florida 32561.

ARTICLE III: CORPORATE PURPOSES AND POWERS.

The Corporation is organized exclusively for the charitable, non-profit purposes of (i) promoting, planning, establishing, financing, acquiring, constructing, equipping, operating, maintaining, owning, expanding, improving, consolidating, furnishing, managing, diversifying, developing, conserving, and leasing, contracting and disposing, of public utilities, including without limitation, water, wastewater, sewerage, alternative water source, and water reuse utilities; (ii) relieving the burdens of government in developing and managing water resources, providing utility services to the public, and exploring, developing and producing natural resources and their by-products for such purposes; (iii) to assist, cooperate, joint venture or otherwise collaborate with governmental officials and public agencies in connection with public utilities, including, without limitation, water wastewater, sewerage, alternative water source, and water reuse utilities; (iv)

promoting, planning, establishing, financing, acquiring, constructing, equipping, operating, maintaining, owning, expanding, improving, consolidating, furnishing, managing, diversifying, developing, conserving, and leasing, contracting and disposing, of plants, facilities, and resources for production, storage, transmission, distribution, treatment, collection, disposal, reuse, recycling, and environmental management of water and wastewater.

In order to assist in carrying out its purposes, the Corporation shall have the power to borrow the necessary funds to pay for acquisition, construction, renovation and/or other improvements of capital projects, the indebtedness for which borrowed money may be evidenced by securities or obligations of the Corporation of any kind or character issued from time to time, which may either be unsecured or secured by any mortgage, deed of trust, or other lien upon any part or all of the funds, properties and assets, at any time then or thereafter acquired by the Corporation, and to provide (or arrange for the provision of) services necessary for acquisition, construction, renovation, other improvement, operation, management, and maintenance of such affordable housing projects.

Subject to the limitations otherwise set forth in these Articles of Incorporation, the Corporation shall have all of the powers, privileges and rights necessary or convenient for carrying out the purposes for which the Corporation is formed and all the benefits, privileges, rights and powers created, given, extended or conferred by the provisions of all applicable laws of the State of Florida pertaining to not-for-profit corporations and any additions or amendments thereto.

ARTICLE IV: MEMBERSHIP.

The Corporation shall have no members.

ARTICLE V: INITIAL REGISTERED AGENT.

The name and street address of the initial registered agent is Bruce Culpepper, Akerman, Senterfitt & Eidson, P.A., 301 South Bronough, Suite 200, Tallahassee, Florida 32301-1707.

ARTICLE VI: DIRECTORS.

The directors of the Corporation shall be appointed by the Cities of Gulf Breeze, Florida and Milton, Florida, as more particularly described herein. The Corporation shall initially have three (3) directors, two (2) appointed by Gulf Breeze and one (1) appointed by Milton. The number of directors which the Corporation may have shall thereafter be determined by Gulf Breeze, provided (i) there shall never be less than three (3) nor more than seven (7) director positions, and (ii) at least twenty percent (20%) of the director positions shall be appointed by Milton. Directors shall be appointed for such terms as the Gulf Breeze or Milton (whichever appointed the particular director) may determine, and shall be subject to removal by Gulf Breeze.

The names and addresses of the initial directors of the Corporation, who shall hold offices as provided above, are as follows:

<u>Name</u>	<u>Address</u>
Lance Reese	119 Eufaula Avenue Gulf Breeze, Florida 32561
Brenda Pollak	6730 Epping Forest Way North Apartment 107 Jacksonville, Florida 32217
Robert Smith	5579 Stewart Street Milton, Florida 32570

ARTICLE VII: BYLAWS.

Bylaws of the Corporation shall be adopted by the Directors and may be altered, amended or rescinded by the Directors in the manner provided in the Bylaws.

ARTICLE VIII: AMENDMENTS.

These Articles of Incorporation may be amended or repealed, in full or in part, by a majority vote at any duly organized meeting of the Board of Directors; provided, however, to the extent permitted by applicable law, after the issuance of any securities or obligations of the Corporation and while any such securities or obligations may be outstanding, the powers, restrictions and limitations set forth herein may not be amended or rescinded unless necessary to comply with the requirements of applicable law.

ARTICLE IX: RESTRICTIONS AND LIMITATIONS.

1. No dividends shall be paid by the Corporation and no part of the net earnings of the Corporation shall inure to the benefit of or be distributable to its directors, officers, or other private persons, except that the corporation shall be authorized and empowered to pay reasonable compensation for services rendered and to make payments and distributions in furtherance of the provisions set forth in Article III hereof. The Corporation is authorized to make payments to Gulf Breeze and Milton as contemplated in that certain Interlocal Agreement made and entered into by and between Gulf Breeze and Milton as of September 16, 2002, a true and correct copy of which is recorded in Official Records Book 2053, at Page 499, of the Public Records of Santa Rosa County (the "Interlocal Agreement").

2. The Corporation shall be authorize and empowered to reimburse an officer or director for actual, reasonable out-of-pocket expenses incurred by an officer or director while acting in his official capacity on behalf of the Corporation. The Corporation shall be authorized to compensate its officers and directors in the manner contemplated in the Interlocal Agreement.

3. In the event of dissolution, the residual assets of the Corporation shall be distributed to the Cities of Gulf Breeze and Milton, Florida, for public purposes, and none of the assets shall be distributed to any officer or director of the corporation.

4. The Corporation shall not, without the affirmative vote of 100% of the members of its Board of Directors and the prior written consent of Gulf Breeze:

- (a) Institute a proceeding to be adjudicated insolvent, or consent to the institution of any bankruptcy or insolvency case or proceeding against it, or file or consent to a petition under any applicable federal or state law relating to bankruptcy, seeking the Corporation's liquidation or reorganization or any other relief for the corporation as debtor, or consent to the appointment of a receiver, liquidator, assignee, trustee, custodian or sequestrator (or other similar official) of the corporation or a substantial part of its property, or make any assignment for the benefit of creditors, or admit in writing its inability to pay its debts generally as they become due, or take any corporate action in furtherance of any such action;
- (b) Amend, alter, change or repeal Article III hereof or this Article IX;
- (c) Engage in any business or activity other than as authorized by Article III hereof; or
- (d) Consolidate with or merge into any other entity or convey, transfer or lease its properties or assets substantially as an entirety to another entity, or permit any entity to merge into the Corporation or convey, transfer or lease its properties and assets substantially as an entirety to the Corporation.

ARTICLE X: CORPORATE EXISTENCE

As contemplated in Florida Statutes Section 617.0203, the Corporation's existence shall be deemed to have begun on January 31, 2003.

ARTICLE XI: INCORPORATOR.

The incorporator of the Corporation is Bruce Culpepper, Akerman, Senterfitt & Eidson, P.A., 301 South Bronough, Suite 200, Tallahassee, Florida 32301-1707.

IN WITNESS WHEREOF, the undersigned incorporator has executed these Articles of Incorporation on this 4 day of February, 2003.

Bruce Culpepper
BRUCE CULPEPPER

STATE OF FLORIDA :
COUNTY OF LEON :

SWORN TO AND SUBSCRIBED before me this 4 day of February 2003, by BRUCE CULPEPPER, is personally known to me.

Phyllis L. Dunaway
NOTARY PUBLIC

(Name of officer typed, printed or stamped)

My Commission Expires:

Commission/serial number



Phyllis L. Dunaway
MY COMMISSION # CC814593 EXPIRES
March 11, 2003
BONDED THRU TROY FAIN INSURANCE, INC.

CERTIFICATE OF DESIGNATION OF REGISTERED AGENT/REGISTERED OFFICE
FOR
FLORIDA WATER SERVICES AUTHORITY, INC.

Pursuant to the provisions of Section 617.0501, Florida Statutes, FLORIDA WATER SERVICES AUTHORITY, INC., a corporation not-for-profit organized under the laws of the State of Florida, submits the following statement in designating the registered agent/registered office in the State of Florida.

1. The name of the corporation is FLORIDA WATER SERVICES AUTHORITY, INC.
2. The name and address of the registered agent and office is:

Bruce Culpepper
Akerman, Senterfitt & Eidson, P.A.
301 South Bronough, Suite 200
Tallahassee, Florida 32301-1707

Having been named as registered agent and to accept service of process for the above stated corporation at the place designated in this certificate, I hereby certify the appointment as the registered agent and agree to act in this capacity. I further agree to comply with the provisions of all statutes relating to the proper and complete performance of my duties, and I am familiar with and accept the obligations of my position as registered agent.

Dated this 4 day of February, 2003.

AKERMAN, SENTERFITT & EIDSON, P.A.
a Florida corporation

By: Bruce Culpepper
Bruce Culpepper

Its: Attorney / registered agent

STATE OF FLORIDA
CORPORATION

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.

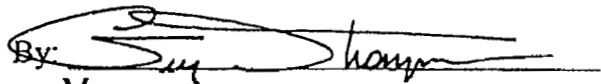
CITY OF GULF BREEZE

By: 
Mayor

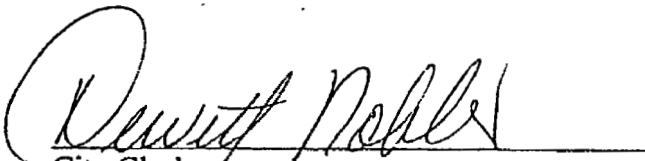
ATTEST:


City Clerk

CITY OF MILTON

By: 
Mayor 9/17/02

ATTEST:


City Clerk

6524

The City Council of the City of Milton met in Special Session Tuesday, September 17, 2002 at 9:00 a.m. (CDT) in the Council Chambers of City Hall, 6738 Dixon Street, Milton, Florida. The following were:

PRESENT:

Guy Thompson, Mayor
Marilyn Jones
Betty Willey
Buddy Jordan
R.L. Lewis
Clayton White
Lloyd Hinote

ABSENT:

George E. Jernigan
Grady Hester

Donna Adams, City Manager
Roy Andrews, City Attorney
Dewitt Nohles, City Clerk
Janet Scott, Deputy Clerk

OTHERS IN ATTENDANCE:

Patsy Lunsford, Michael Mullins, Ed Gray, Derek Pivnik.

Mayor Thompson called the meeting to order at 9:00 a.m.

Mr. Lewis led the invocation and all joined in the Pledge of Allegiance.

Interlocal Agreement with the City of Gulf Breeze

Mayor Thompson stated that this special called meeting is regarding an Interlocal Agreement with the City of Gulf Breeze and the City of Milton. The city's attorney, Roy Andrews, has reviewed the agreement and met with each council member individually.

Mr. Andrews was recognized for an explanation of the agreement:

Mr. Andrews stated that the Florida Legislature amended Chapter 163, which deals with interlocal agreements, to allow a combination of counties, municipalities or other local governments to purchase, in certain circumstances, utility services outside their particular service area.

There is a large private company that is a subsidiary of a company in Minnesota that owns 152 water/wastewater utilities mostly in South Florida. The Minnesota Corporation has announced their intention to sell all of those utilities by the end of this year. There has been another governmental consortium attempting to purchase some, if not all, of those utilities. Because of the relationships the counsel for those governmental entities have with the Gulf Breeze Financial Services, the Gulf Breeze Loan Pool, Ed Gray, and Richard Lott, the bond counsel for the City of Gulf Breeze, there was an overture for a purchase by a local inter-local consortium. That is what this Interlocal Agreement Resolution would establish. It would be a partnership between the City of Gulf Breeze and the City of Milton. The City of Milton would be a 20% owner or partner of Florida Water Services Authority. The Authority will initially be governed by a three person board with the City of Milton being able to appoint one member of the board. That board could be expanded but the city's participation would be never be less than 20% of the membership.

The benefit to the city is that this is a profit making company and under the terms of the interlocal agreement 2% of the gross revenue of the corporation, but not less than \$1,500,000.00 annually, would be remitted to the City of Gulf Breeze. The City of Gulf Breeze is going to undertake to provide administrative services to the authority and will have some pass-through

payments in lieu of taxes. The City of Gulf Breeze would annually remit to the City of Milton 20% of those revenues, or \$300,000.00.

The authority is a stand-alone entity created by the two cities. The cities are not liable, under Chapter 163 and under the documents as they have been prepared, for any obligations of the authority. In other words, there is no monetary contribution required by the City of Milton or the City of Gulf Breeze and none of the contractual obligations and none of the obligations to the bond holders, would be a liability to the City of Milton or the City of Gulf Breeze. Mr. Andrews stated there will be an opinion of counsel, other than himself, to that affect.

There will be a bond issue to fund the acquisition of the Florida Water Services. The purchase is a large purchase. The amount of bonds issued by Florida Water Services Authority will be in excess of \$500,000,000.00. The authority will be purchasing utilities in Hernando County, Pasco County, and Jacksonville. Some of these areas were under the impression that the local utility companies would be purchasing these utilities from the prior prospective buyer. There may be some concern regarding local control. There might be some legislative consternation. Some newspapers around the state may contact us. The economy of scale of running this large operation is such that, to the individual service receiver, there will not be any noticeable change. Rates and service will remain the same. Instead of the net profits from the operation of this utility being sent to a private company in Minnesota it will come to the City of Gulf Breeze and the City of Milton.

These facts are set forth, in detail, in the interlocal agreement and the resolution. This is not a guaranteed or done deal. The asset purchase agreement between the authority and the Florida Water Services Corporation, are still being negotiated. The only major downside to this is some political issues.

Ed Gray addressed the council and stated that there will probably be a lot of press in other areas of the state. He stated he felt the public purpose will be served by the Florida Water Services Authority operating this system at a much more cost efficient manner than proposed by other potential buyers. He reiterated that once the new authority is created, they will take control of the project and there is no liability to the City of Milton or City of Gulf Breeze.

Mr. Jordan inquired if the city can loose any money?

Mr. Gray said that the City of Milton has no responsibility. The board would make the financial decisions. In order to cover operations and debt service, rates would have to be adjusted to cover costs.

Mr. Andrews said the purchase is predicated upon the fact that the only security for these bonds are the revenues of the authority. This is going to be an insured bond issuance. There will be private bond insurance or the bond will not take place.

Mr. Gray stated that bond insurances will not issue bonds unless underwritten properly.

Mr. Hinote inquired if the City would have 20% ownership of the authority?

Mr. Andrews answered that when they set up a separate entity which by the terms of the interlocal agreement the City of Milton gets 20% of the revenues that the City of Gulf Breeze receives. We have 20% governance of the authority. That is the control that the city has.

Mr. Hinote asked if the City of Milton would share in any profit if the authority was sold in the future?

Mr. Andrews said there is a provision for termination but no provision that the City of Milton would be involuntarily terminated. Our share would be transferred, if we agree, to the new partner.

Mr. Gray said he could not speak for the City Council of Gulf Breeze, but he said he could not envision a circumstance where, if there was a sale, the City of Gulf Breeze would not share in that sale.

Mayor Thompson said that he felt this was a phenomenal chance for the City of Milton. He has relied on the city attorney's research in this matter. By entering this interlocal agreement with the City of Gulf Breeze the city would receive at least \$300,000.00 per year to use for

capital expenses. This will save the city's taxpayers and the utility rate payers. Our municipality has a chance to receive income that can boost us with capital projects. He appreciates Gulf Breeze for offering this opportunity to the City of Milton.

Mr. Andrews seconded the resolution.

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 1, FLORIDA STATUTES, IN REGARD TO THE ACQUISITION, OWNERSHIP AND OPERATION OF THE PUBLIC WATER, WASTEWATER AND REUSE WATER UTILITY ON BEHALF OF THE CITY OF MILTON AND 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.

The Interlocal Agreement is an exhibit to the Resolution

Mr. Andrews stated the City of Gulf Breeze will meet this evening at 6:30 p.m. to enact their part of this interlocal agreement. This will not be in effect until their passage of the agreement.

Motion was made by Mr. Jordan to approve Resolution No. 1040-02, as read; seconded by Mrs. Jones. Vote: Mr. Jordan, aye; Mr. Hinote, aye; Mr. White, aye; Mr. Lewis, aye; Mrs. Jones, aye; Mrs. Willey, aye. Motion carried.

APPOINTMENT OF BOARD MEMBER TO AUTHORITY

Mr. Lewis made a motion to appoint Robert Smith to represent the City of Milton on the Florida Water Service Authority board; seconded by Mrs. Jones. Vote: Mrs. Willey, aye; Mrs. Jones, aye; Mr. White, aye; Mr. Hinote, aye; Mr. Lewis, aye; Mr. Jordan, aye. Motion carried.

The first meeting of this board will be Thursday, August 19, 2002, at 10:00 a.m. at the Pensacola Junior College, Downtown Pensacola.

MEETING WITH JUDGES AT COURTHOUSE:

Mayor Thompson said he will meet with the judges at the courthouse today regarding the 1-cent sales tax for the Courthouse. The City of Gulf Breeze has stated that they also support the 1-cent sales tax referendum.

Motion was made to adjourn the meeting at 9:25 a.m.

Guy Thompson, Mayor

ATTEST:

Dewitt Nobles, City Clerk

/jbs

Juno e-mail for eaeddygbrz@juno.com printed on Tuesday, September 17, 2002, 9:12 AM

From: "Richard I. Lott" <rilott@prodigy.net>
To: <MattDannheisser@aol.com>
Cc: "ED, III GRAY (E-mail)" <edgray3@bellsouth.net>, "Roy Andrews (E-mail)" <rva@lalslaw.com>, "Buz Eddy (E-mail)" <eaeddygbrz@juno.com>
Date: Mon, 16 Sep 2002 17:32:50 -0500
Subject: RE: Florida Water Systems - Matt Dannheisser

—Original Message—

From: MattDannheisser@aol.com [mailto:MattDannheisser@aol.com]
Sent: Monday, September 16, 2002 3:18 PM
To: Richard Lott
Cc: edgray3@bellsouth.net; eaeddygbrz@juno.com; rva@lalslaw.com
Subject: Re: Florida Water Systems - Matt Dannheisser

Thank you for your response. I am still not convinced. I agree that a contract may not be enforced by the parties thereto if it is not mutually binding upon those parties. However, the fact that an "out" clause such that I requested is included in the contract does not necessarily mean that the contract is not binding upon the parties. Quite to the contrary, such clauses are common in a large number of real estate or asset purchase agreements. For that matter, I am unfamiliar with legal principals that would allow a legislative body to interfere with such a contract without constituting a taking. As I mentioned in my last email on this subject, I will need for you or Phil to provide me with case law supporting your position before I can recommend the agreement to the Council.

Matt,

I think you would benefit from having a conversation with Terry Crawford. Terry is a corporate m&a lawyer from our Detroit office. He is often involved in these types of transactions and is visiting Pensacola at my request this week to help negotiate with Phil, as the acquisition contract is not an area of my legal practice. Terry has many of the same concerns as you and is working with Phil to reach resolutions. Phil will be in my office, along with Terry, starting tomorrow morning at 8:30 am and it would be immensely beneficial for you to attend the discussions for as long as your schedule permits.

I do not argue that it is possible to include reasonable "out" language that would not make the contract illusory or unenforceable. Terry is working to put such language into the Asset Purchase Agreement. He is also negotiating removal of a number of the "material" and "to our knowledge" limitations on the representations and warranties, with good success. Another one of the MCPS Detroit lawyers is working up language on intellectual property representations, because we have seen acquisitions where the buyer soon went out of business because of copyright infringement on software previously pirated by the Seller.

In that last draft of the agreement, I had requested that the FWS Corp give us representations that all of the facilities not located on property owned and conveyed at closing were properly located in easements recorded in favor of FWS corp. and conveyed to FWSA. They are not willing to give this representation because they are certain, given the nature of utilities and contractors, that there are probably some pipes, lines etc. not placed in easements. However, they point to the definition of 'Remedial Capital Improvements', and note that if it turned out that a facility could not operate because portions had to be removed from illegal easements, we would have right of set-off under the category of set-offs for undisclosed required remediation. Similarly, if their system involved a spray field for which they had no permission to spray, the system would become inoperative and therefore FWSA would have a set off; and additionally the representation about being in compliance with all regulatory requirements would be false.

Juno e-mail for eaeddygbrz@juno.com printed on Tuesday, September 17, 2002, 9:12 AM

since they cannot spray their effluent as provided in their permit. These are the kinds of things that make the transaction complex, but, in my opinion, need not be of any great concern to the FWSA.

We routinely preface our discussions with FWS Corp by mentioning the fact that the Buyer has no assets and the Seller has no recourse. Terry is of the opinion that there is no "piercing the veil" theory of under capitalization for corporations, if the other party knows the capital inadequacies of the party it is dealing with. Neither Terry nor I are aware of ANY authority for piercing a governmental separation, particularly when we are going to put into the agreement a provision that specifically and expressly (i) forbids any liability on the part of Gulf Breeze or Milton, and (ii) limits any liability of FWSA to the revenues realized from the System, junior and subordinate to the payment of the Bonds. The cases upholding system-revenue limitations are legion. See the following:

356 So 2d 251


72 So 2d 28

47 So 2d 601


668 So.2d 196(Fla. 1996)

522 So 2d 355

As you know, the objective we are pursuing is to implement a plan to expand the revenue sources of the City without creating any liability. We share your concerns about the liabilities. I hope you can assist us in the negotiations toward this goal.
Richard

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**Groups vie for Allete utility
Florida authority vows to challenge sale of private water utility to others**
BY PETER PASSI
NEWS TRIBUNE STAFF WRITER



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Duluth-based Allete found itself in hot water this past week over plans to sell the largest privately held water utility in Florida.

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Allete announced Sept. 19 it had struck a \$507 million deal that would transfer ownership of Florida Water Services to an authority formed only two days before by the Panhandle communities of Gulf Breeze and Milton.


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The news came as a shock to Honey Rand, spokeswoman for the Florida Governmental Utilities Authority, a separate group of communities that had been negotiating with Allete for more than 10 months in an attempt to buy Florida Water Services.

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**Knight Ridder
Washington Bureau**

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Unlike Gulf Breeze and Milton, the communities that formed the Florida Governmental Utilities Authority are all customers of Florida Water Services. Many of those customers have pledged to challenge Allete's plans to sell the utility to the Gulf Breeze-Milton authority.

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The formation of both authorities -- the Florida Governmental Utilities Authority and the Gulf Breeze-Milton group -- was made possible by the same statute.

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But Sen. Anna Cowin, R-Leesburg, Fla., said she and other lawmakers had never contemplated the prospect that cities might one day use the statute to form authorities that would speculatively take over utilities that didn't serve their own residents.

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"The Legislature wanted to encourage more *local* utilities," Cowin said.

The creation of the Gulf Breeze-Milton authority may not have been what Cowin envisioned, but she acknowledged in a newspaper paper, this transfer looks to be perfectly legal."

Cowin plans to propose changes to the statute, but if she calls a special session, any amendments will likely come too late to affect the Florida Water Services sale. The deal is scheduled to close in December.

Assuming the purchase goes through, Gulf Breeze City Manager Buz Eddy expects the utility to generate \$1.5 million in annual income for his city. "This is a good solid business decision for us," he said.

But Bill Moss, city manager of Marco Island, one of the communities served by Florida Water Services, objects to local residents being forced to subsidize far-distant governments through their utility bills.

He also questioned the ability of Gulf Breeze and Milton to oversee such a large network of utilities. Florida Water Services provides water to 153,000 Florida residents and wastewater service to 78,000.

"We cannot accept two cities with a combined population of less than 14,000 people owning and managing a system of this size," Moss said.

Lisa Lochridge, a Florida Water Services spokeswoman, believes the authority is quite capable of continuing to run the utility. The chosen buyers have already announced they plan to retain current staff.

She said Gulf Breeze and Milton emerged as Allete's preferred buyer not only because they offered a higher price than the \$450 million proposed by the Florida Governmental Utilities Authority but because they wanted to hold the utility together.

The Florida Governmental Utilities Authority would have allowed local governments to purchase their local systems.

"That was a huge concern for us," Lochridge said. "If the FGUA began to carve out systems, you would lose economies of scale, and many of the smaller customers could be stranded.

"We wanted to do what was best for our customers," she said.

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However, Moss said the cities won't be forced to assume direct ownership of their water systems, and those who remain part of a pool would continue to derive the benefits of being part of a larger whole.

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Moss said Marco Island and other communities -- including Hernando, Citrus and Palm Coast -- are looking at how they can block the Florida Water Services sale to Gulf Breeze and Milton.

Update
Sept
2002

Tonight, he expects the Marco Island City Council to pass a resolution asking councilors in the two Panhandle communities to reconsider their plans. Marco Island also has retained the services of attorneys to pursue an injunction against the sale of Florida Water Services.

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Moss said the city may consider yet another option: wresting the water utility away from Allete through condemnation proceedings.

Stocks

Lochridge, however, believes the negotiated deal is likely to withstand opponents' attacks. She said Marco Island will likely find it tough to justify condemning property that's soon to come under the ownership of another government body.

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As individual cities work to stop Gulf Breeze and Milton from acquiring the utility, the Florida Governmental Utilities Authority continues to pursue a deal with Allete. The body plans to vote Thursday on an offer to buy Florida Water Services.

"Ours is still the only legitimate offer that's on the table," Rand said.

Lochridge contends Florida Water Services already has a bona fide deal in hand from Gulf Breeze and Milton.

Ultimately, the courts will probably determine who is right.

PETER PASSI covers business. Call him at (218) 279-5526 or (800) 456-8282 or e-mail him at ppassi@duluthnews.com.

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Commercial building, industrial plant, or institution, together with any groundwater, surface runoff, or leachate that may be present.

History.—s. 1, ch. 71-278; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 2, 25, 26, ch. 80-99; ss. 2, 3, ch. 81-318; s. 1, ch. 85-85; ss. 4, 26, 27, ch. 89-353; s. 4, ch. 91-429; s. 8, ch. 93-35; s. 183, ch. 94-356; s. 3, ch. 96-407; s. 94, ch. 96-410.

367.022 Exemptions.—The following are not subject to regulation by the commission as a utility nor are they subject to the provisions of this chapter, except as expressly provided:

- (1) The sale, distribution, or furnishing of bottled water.
- (2) Systems owned, operated, managed, or controlled by governmental authorities, including water or wastewater facilities operated by private firms under water or wastewater facility privatization contracts as defined in s. 153.91, and nonprofit corporations formed for the purpose of acting on behalf of a political subdivision with respect to a water or wastewater facility.
- (3) Manufacturers providing service solely in connection with their operations.
- (4) Public lodging establishments providing service solely in connection with service to their guests.
- (5) Landlords providing service to their tenants without specific compensation for the service.
- (6) Systems with the capacity or proposed capacity to serve 100 or fewer persons.
- (7) Nonprofit corporations, associations, or cooperatives providing service solely to members who own and control such nonprofit corporations, associations, or cooperatives.
- (8) Any person who resells water or wastewater service at a rate or charge which does not exceed the actual purchase price of the water or wastewater.
- (9) Wastewater treatment plants operated exclusively for disposing of industrial wastewater.
- (10) The sale of bulk supplies of desalinated water to governmental authority.
- (11) Any person providing only nonpotable water for irrigation or fireflow purposes in a geographic area where potable water service is available from a governmental or privately owned utility or a private well.
- (12) The sale for resale of bulk supplies of water or the sale or resale of wastewater services to a governmental authority or to a utility regulated pursuant to this chapter either by the commission or the county.

History.—s. 1, ch. 71-278; s. 3, ch. 76-168; s. 1, ch. 77-457; ss. 3, 25, 26, ch. 80-99; ss. 2, 3, ch. 81-318; ss. 3, 25, 27, ch. 89-353; s. 1, ch. 90-166; s. 4, ch. 91-429; s. 1, ch. 96-107; s. 10, ch. 96-202; s. 24, ch. 97-236; s. 4, ch. 99-319; s. 2, ch. 2002-296.

367.031 Original certificate.—Each utility subject to the jurisdiction of the commission must obtain from the commission a certificate of authorization to provide water or wastewater service. A utility must obtain a certificate of authorization from the commission prior to being issued a permit by the Department of Environmental Protection for the construction of a new water or wastewater facility or prior to being issued a consumption or drilling permit by a water management district. The commission shall grant or deny an application for a certificate of authorization within 90 days after the official filing date of the completed application, unless an objection is filed pursuant to ss. 120.569 and 120.57, or the application will be deemed granted.

367.045 Certificate of authorization; application and amendment procedures.—

(1) When a utility applies for an initial certificate of authorization from the commission, it shall:

(a) Provide notice of the actual application filed by mail or personal delivery to the governing body of the county or city affected, to the Public Counsel, to the commission, and to such other persons and in such other manner as may be prescribed by commission rule;

(b) Provide all information required by rule or order of the commission, which information may include a detailed inquiry into the ability of the applicant to provide service, the area and facilities involved, the need for service in the area involved, and the existence or nonexistence of service from other sources within geographical proximity to the area in which the applicant seeks to provide service;

(c) File with the commission schedules showing all rates, classifications, and charges for service of every kind proposed by it and all rules, regulations, and contracts relating thereto;

(d) File the application fee required by s. 367.145; and

(e) Submit an affidavit that the applicant has provided notice of its actual application pursuant to this section.

(2) A utility may not delete or extend its service outside the area described in its certificate of authorization until it has obtained an amended certificate of authorization from the commission. When a utility applies for an amended certificate of authorization from the commission, it shall:

(a) Provide notice of the actual application filed by mail or personal delivery to the governing body of the county or municipality affected, to the Public Counsel, to the commission, and to such other persons and in such other manner as may be prescribed by commission rule;

(b) Provide all information required by rule or order of the commission, which information may include a detailed inquiry into the ability or inability of the applicant to provide service, the need or lack of need for service in the area that the applicant seeks to delete or add; the existence or nonexistence of service from other sources within geographical proximity to the area that the applicant seeks to delete or add, and a description of the area sought to be deleted or added to the area described in the applicant's current certificate of authorization;


(c) Provide a reference to the number of the most recent order of the commission establishing or amending the applicant's rates and charges;

(d) Submit an affidavit that the utility has tariffs and annual reports on file with the commission;

(e) File the application fee required by s. 367.145; and


(f) Submit an affidavit that the applicant has provided notice of its actual application pursuant to this section.

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Florida cities move to block utility deal

Last Updated: October 02, 2002 05:37 PM ET

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(Adds comments, details in paragraphs 12-16)

By Kristin Roberts

MIAMI, Oct 2 (Reuters) - Florida's Palm Coast on Wednesday said city attorneys would file suit against Florida Water Services, a unit of Allete Inc. ALENE, to stop the \$507 million sale of a network of water utilities.

That decision follows a similar move on the other side of the state, where Marco Island officials on Monday gave the city manager authority to pursue action to block the same deal.

The councils of both cities have given their city managers broad authority to examine and pursue legal options that would stop a newly created authority from selling nearly \$550 million in revenue bonds to purchase the utility assets and close the deal.

At issue is the proposed sale of utilities by Florida Water Services, a unit of Minnesota-based Allete, whose businesses range from energy services to auto financing.

In September, local governments representing about 80 percent of the customers served by the utilities gave their support to the Florida Governmental Utility Authority to offer \$450 million for those assets.

Under the design of that authority, local governments would be able to negotiate for the purchase of their own utilities, city officials said.

The seller, however, signed a deal to hand the assets over for \$471 million plus \$36 million in future payments to a different authority called the Florida Water Services Authority -- a body formed by the cities of Gulf Breeze and Milton, in Florida's panhandle.

Palm Coast and Marco Island officials have told their attorneys to pursue legal action as well as condemnation, which would allow the municipalities to take control of the utilities in their areas, according to city managers.

"It's a fairly broad granting of authority and powers to take any and all action to block the acquisition," said William Moss, Marco Island city manager.

Marco Island attorneys are preparing to file suit against Gulf Breeze, Milton and those two cities' Florida Water Services Authority. Moss said the city had not decided whether to name Allete's Florida Water Services in the case as well.

Palm Coast, however, does plan to name Florida Water Services, according to Oel Wingo, assistant city manager.

DECEMBER CLOSE

A spokeswoman for Allete's Florida Water Service said the deal with Gulf Breeze and Milton was

moving forward and should close by mid-December. The cities are now conducting their due diligence review, said Lisa Lochridge.

Gulf Breeze's city manager also said he expects to close the deal in December. Milton officials were not available to comment.

The assets in question include more than 150 utility systems across the state, affecting 27 counties.

The utilities serve about 500,000 customers, but none in Gulf Breeze or Milton, according to Edwin Eddy, Gulf Breeze city manager.

"This was a business proposition," he said.

Gulf Breeze and Milton's new water authority is allowed to sell bonds for the acquisition of utilities and the construction of projects. It is permitted as well to own or operate public utilities and level rates, fees and charges, according to local officials.

Allete's Florida Water Services unit had originally been negotiating with Florida Governmental Utility Authority, but the two parties were unable to reach a final deal by May, when the exclusivity agreement expired.

The seller then began looking at other alternatives, starting talks with Gulf Breeze and Milton, Lochridge said.

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Buyer seeks to assure critics of water deal

The Florida Water Services Authority will meet in Orlando and may put customers on its board, says a spokesman.

By BRIDGET HALL GRUMET, Times Staff Writer

© St. Petersburg Times, published October 1, 2002

The Florida Water Services Authority will meet in Orlando and may put customers on its board, says a spokesman.

Florida Water customers won't have to go to the Panhandle to have a say in the utility rates for Sugarmill Woods, Citrus Springs, Pine Ridge and other areas.

Although a deal is in the works to sell Florida Water Services to a pair of towns not far from the Alabama state line, the utility's new governing board will hold its meetings in Orlando, a central location for the utility's 500,000 customers in Citrus County and other parts of the state.

The towns of Gulf Breeze and Milton, which teamed up two weeks ago to create the Florida Water Services Authority, have even thought about including a couple of Florida Water customers on that rate-making board. (Neither town is served by Florida Water, which has its closest system about 100 miles away.)

Both statements came Monday afternoon from Ed Gray, the administrator for the new utility group, as he tried blunting criticism of Florida Water's likely new owners as distant and out of touch.

"We left board memberships open to bring on capable people from the service areas," Gray told about a dozen reporters through a teleconference.

"Through our performance, through the financing plan we have in place, we're going to lead (customers) to the conclusion we know what we're doing, and it's in their best interests," he added.

The concessions didn't do much for Skip Christensen, president of the Sugarmill Woods Civic Association, who said Gulf Breeze and Milton still have no vested interest in Florida Water's 152 systems.

"I think they're just throwing a crumb, a token gesture to make us feel good," Christensen said.

The \$507-million Florida Water purchase is not yet final -- Gray hopes to close the sale before Dec. 15 -- and already the two Panhandle towns face an uphill public relations battle.

Perceptions remain of a deal crafted in stealth to line the pockets of two towns with a combined population of less than 13,000.

As the deal stands, Gulf Breeze would receive at least \$1.5-million a year or 2 percent of the utility giant's profits, whichever is greater. The town's largely silent partner, Milton, gets a fifth of those proceeds, or at least \$300,000.

However, Gray told reporters Monday that the larger goals were to bring the state's largest private water utility into public ownership and to save money by keeping the system intact.

The towns' shares in the profits, he added, were "minimal."

Gray said the towns had complied with the state's public notice requirements by publishing an ad in the Pensacola News Journal announcing the Sept. 19 meeting to discuss the purchase of Florida Water Services.

But he conceded that no Florida Water customers lived within that newspaper's circulation area. The Sept. 19 meeting drew no public comment, according to a tape of the meeting.

"The appearance of it is negative, and I recognize that," Gray said. "But under the circumstances, we had to go the path we went for business purposes. Unfortunately, today, not enough government operates like a business."

In this case, Gray said, the affected communities were lining up behind a competing proposal by the Florida Governmental Utility Authority. The coalition of Citrus, Nassau and Polk counties offered a \$450-million plan to buy Florida Water and let communities take over the systems in their areas.

The FGUA will meet Thursday in Sarasota to discuss its next move.

As for the Florida Water Services Authority, notices of its future meetings in Orlando will be sent to all newspapers covering Florida Water areas, Gray said.

So far, the board has three members: retired Gulf Breeze dentist J. Lance Reese, former Gulf Breeze City Council member Brenda Pollak, who now lives in Jacksonville, and former Santa Rosa County Commissioner Robert Smith. Travis Bowden, the former president of Gulf Power, has been mentioned as a possible nominee.

Eventually the board will expand to five or seven members, possibly including a couple of customers served by Florida Water, Gray said.

"We don't have a profit motive to a stockholder. We don't have any political gains we're seeking," he said. "We're doing this for all the right reasons."

-- Bridget Hall Grumet can be reached at 860-7303 or bhall@sptimes.com.

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Agency executive says notification of utility deal would tip competition

10/01/02

Terry Witt

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The chief executive of an agency that plans to buy Florida Water Services offered no apology Monday for keeping the deal a secret from customers in the Citrus County area.

Ed Gray, who will serve as the administrator for the Florida Water Services Authority, said it's not customary in the private sector to tip off competitors to a business deal.

He said the business deal was concealed from other local governments that were competing to buy Florida Water.

"They were engaged in negotiations with the same entity," Gray said.

The Panhandle towns of Gulf Breeze and Milton have signed an interlocal agreement to purchase Florida Water for \$507 million, but the deal was never disclosed to Citrus County officials until after the ink was dry on the contract.

Citrus County is a member of the Florida Governmental Utility Authority, which offered to purchase Florida Water for \$450 million.

Gray said the sale was advertised only in the Pensacola News Journal, which he conceded has no circulation in most of the communities where Florida Water owns utilities, including Citrus.

Gray is currently the executive director of Gulf Breeze Financial Services, a "subsidiary enterprise" operated by the small Panhandle city.

One of the city's subsidiaries would be the Florida Water Services Authority, which Gray would administer.

The plan is to finalize the deal in December.

Gulf Breeze and the neighboring city of Milton signed an interlocal agreement to buy the Florida Water's 150 utility systems.

More than a dozen reporters from around the state Monday interviewed Gray in a conference call.

Gray said officials from the two towns were careful to comply with the state's Sunshine Law, which among other things requires local governments to conduct their business in open public meetings.

He said he believes the Florida Water's 500,000 customers will be better served by purchasing their water from a government-operated company that has no profit motive and won't be burdened by taxes.

Gray said the fact that Florida Water Services Authority will hire nearly all the existing Florida Water employees should be an advantage to customers, giving the agency an experienced work force.

Responding to reporter questions, Gray said he had not heard about customer complaints in other parts of the state.

One reporter suggested he check with the Florida Public Service Commission, which regulates Florida Water.

The new authority won't be regulated.

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Anatomy of a Deal: Two towns rushed to buy water utility serving Marco

Sunday, September 29, 2002

By MICHAEL PELTIER, mpeltier1234@comcast.net

GULF BREEZE — Nearly lost among the pictures, family photographs and other memorabilia on the walls of Edwin "Buz" Eddy's office is a plaque from the city of Boca Raton.

It's a gift to the city of Gulf Breeze and city manager Eddy for handling a \$77 million bond deal to refurbish a blighted portion of Boca. The framed bond notice would have been unremarkable had it not been for recent events that have pushed this Panhandle town into a statewide water war.

Earlier this month, officials of this bedroom community near Pensacola sent a shock wave across the state by offering nearly \$500 million to buy Florida Water Services 152 water utilities, including Marco Island's. The deal affects nearly 500,000 customers, none of whom live anywhere near Gulf Breeze.

How could a town of 6,200 muster the fiscal savvy and financial resources to pull off a deal a coalition of counties couldn't close after more than a year?

Leaning back in a chair at Gulf Breeze City Hall, former Mayor Ed Gray shrugged his shoulders and chuckled at the shock and firestorm of criticism that has followed the Sept. 19 announcement. Gulf Breeze officials, the affable former commercial banker explains, have been cutting these kinds of deals for years.

Since 1985, Gulf Breeze officials have orchestrated the sale of more than \$1 billion in bonds for a host of projects ranging from small county public works projects to a Hyatt Hotel at the Orlando International Airport.



Edwin "Buz" Eddy

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The motivation? Money. With each transaction, the city takes its cut, a revenue stream that has allowed Gulf Breeze to hold off on property tax increases. For that, city officials are downright proud. The Florida Water deal is especially lucrative, funneling a minimum of \$1.5 million a year into a city with an annual budget of \$14 million.

"You have to understand the background of Gulf Breeze," Gray said last week. "We are very entrepreneurial and have done programs in an enterprising way that most governments never thought about, much less attempted."

The city's first such bond deal came in 1985, when officials shepherded through a \$500 million bond deal. From that pool, the city loaned out smaller amounts to other cities, counties and governmental groups. The mayor? Ed Gray.

"Had that not been the case, I don't think that first money would have ever come," said Brenda Pollak, a council member from 1985 to 1990. "Because of his knowledge of the field, he could approach us with this. Otherwise it wouldn't have made any sense."

Other deals followed. In 1997, the city set up an \$81 million revolving loan program that funded expansion at the Pensacola airport and projects for Okaloosa Gas Co. In 1998, the city loaned \$91 million to the Orlando Airport Authority. Other deals have been brokered for local governments from Miami to Tallahassee.

"Instead of raising property taxes on our residents, we've come up with other ways to raise revenue," Gray said.

If not the most ambitious, the current Florida Water deal is certainly the most controversial. Virtually undetected, the council set up the Florida Water Services Authority to purchase the private water utility company under the noses of another utilities cooperative, Florida Governmental Utility Authority, which had been working unsuccessfully with the company for months.



**Former Gulf
Breeze mayor Ed
Gray**

Community leaders aligned with the FGUA cooperative found out after the fact that a new player had entered the game. No one — apart from those making the deal — saw it coming.

Elected leaders in Citrus County, Hernando County, Nassau County and the city of Palm Coast have passed resolutions declaring that Florida Water's deal with Florida Water Services Authority is not in the interest of the public good. Some elected leaders have authorized their city managers to take whatever action necessary to halt the deal, including legal action against the authority or condemnation, the legal takeover of

their systems.

Marco's elected leaders will meet at 6 p.m. Monday at Mackle Park to consider initiating legal action or condemnation proceedings.

Following the barrage of legal threats and complaints, the newly formed authority has hired a public relations firm to soothe raw nerves.

"I'm sure they are feeling much dismayed and angry because they were told one thing and something else happened," said Pollak, now one of three members of the newly formed Florida Water Services Authority board. "I can understand that. But in hindsight, they will be happy that things went the way they did."

A deal in the making

It started with a phone call.

In late July, Richard Lott, a Pensacola attorney and bond counsel for Gulf Breeze, received a call from Bob Gang, an attorney at Greenberg Traurig, a South Florida law firm that has been representing Florida Water in its ongoing sale talks with an increasingly fragile coalition of counties called the Florida Governmental Utility Authority.

FGUA's exclusive negotiating period had expired in May. Florida Water was looking for options. As its legal representative, Greenberg Traurig had a potential buyer for the system but couldn't represent both clients. Would Lott's firm, Miller Canfield Paddock and Stone, be interested in handling the deal?, Gang asked.

A few weeks later, the deal fell through but Lott told Gang he had another idea. He went to speak to Eddy and Gray, a former commercial banker and executive director of Gulf Breeze Financial Services, the city's financing arm.

"From then on, things moved pretty quickly," Lott recalled.

Over the next few days, Eddy and Gray met with council members individually to talk about the deal.

MARCO ISLAND WATER MANAGEMENT TIMELINE

1989

■ Florida Water Services, then known as Southern States Utilities, acquires both the Marco Island and Marco Shores plants from Deltona Utilities.

1995

■ August — Marco Island residents forms the grass-roots Marco Island Fair Water Rate Defense Fund Committee to fight hefty rate increases proposed by Florida Water Services — then known as Southern States Utilities. The company wanted to raise its rates \$4.7 million per year for Marco Island.

1996

■ August — The committee, led by former Marco City Councilman Kjell Pettersen, successfully fights the rate increase and persuades the state's Public Service Commission to slice the amount to about \$980,000, or one-fifth of what Southern States Utilities wanted. Pettersen starts to push for legal takeover or condemnation of the city's water operations.

By talking to council members one at a time, the meetings could be held in private without violating Florida's open meetings law.

On Aug. 19, Florida Water flew Gray, Eddy, Councilwoman Beverly Zimmern and future Florida Water Services Authority board member J. Lance Reese to its Apopka headquarters to meet with executives. Again, the group was specifically chosen to avoid the need for public notice.

"At that time, things were just too iffy," Gray said. "There was nothing solid yet."

On Aug. 21, Florida Water brought its show to City Hall at a workshop arranged to bring council members up to speed on negotiations.

The agenda for the meeting, released a few days before the meeting, mentioned nothing of Florida Water. The only reference to the workshop was a bold-faced note atop the agenda for the regularly scheduled council meeting.

It read: "There will be a joint workshop of the City Council and the Capital Trust Agency Board at 4:00 p.m. at City Hall. The Council and CTA will discuss the CTA budget for Fiscal Year 2003 as well as upcoming projects. A light meal will be served."

The Florida Water entourage included President Donnie Crandell; Chief Operating Officer Forrest Ludsen, Vice President of Operations Dave Denny, and General Counsel Carlyn Kowalsky. Also attending were

1997

■ February — The Fair Water Rate Defense Fund makes a \$63 million offer for Florida Water Services' water operations on Marco Island in a letter to the chief executive officer of the Florida Water's parent company, then known as Minnesota Power. Florida Water declines.

1998

■ June — The rate case led by the Fair Water Rate Defense Fund is overturned by the 1st District Court of Appeal.

■ December — Marco Island City Council hires a legal firm to study the options available to takeover the island's water operations from Florida Water Services.

1999

■ August — After almost four years of haggling over the proposed increases in rates, Florida Water comes to an agreement with the city. Marco Island, the Public Service Commission and the company, reach a rate settlement in which the utility is allowed to raise rates by \$1.8 million.

■ December — In lieu of pursuing legal takeover, the City Council votes to begin negotiating sessions with Florida Water on how to decrease high water costs. City and Florida Water officials start to develop a 12-year water management plan to stabilize water rates through a water reuse plan.

2001

■ August — The final draft of the city's 12-year water management plan is approved by Collier County's utility regulating board.

■ September — Florida Water announces it's selling Marco Island's water operations and its statewide assets. The company's president sends a letter to Florida Governmental Utility Authority cooperative expressing his interest in selling.

2002

■ February — The Marco Island City Council unanimously votes to pursue legal takeover, or condemnation from Florida Water.

■ March — Florida Water files a lawsuit against Marco Island to void Marco's condemnation vote and to block further takeover attempts.

state Rep. Jerry Maygarden, R-Pensacola, and two Florida Water lobbyists, former House Speaker T.K. Wetherell and Chris Dudley.

Sitting around a huge square conference table, the group made its pitch and took questions for the next two hours. Before plowing into details over rates of return and revenue projects, Crandell outlined why Florida Water was addressing the board in the first place.

"It really doesn't make any sense as (Florida Water's parent compney Allete) continues to grow and get larger in the eyes of Wall Street or the shareholders to keep something that is getting smaller," Crandell told the council. "(Allete is) not trying to dump (Florida Water) because it is a bad asset; it's just becoming a smaller portion of a bigger pie."

Crandell also aired his frustration with the FGUA talks, which began with such promise, but remained unfulfilled.

"If I knew last September I was going to have to be here a year, I would have shot myself," Crandell said. "I wouldn't have taken this assignment. We have made strategic errors by really not exposing this property properly to potential buyers."

Though deferring a final decision, council members told staff to start drawing up a purchase agreement. Notwithstanding city officials, company executives and attorneys, nobody showed up for the meeting. Despite public notice, the public meeting had gone off in secret.

"Gulf Breeze has a history of good efficient government," Gray said. "When the council holds a workshop, nobody comes."

A series of e-mails and proposals followed as negotiators hammered out a new purchase agreement. During the final push, they met face-to-face to hammer out details, a high stakes round of talks lasting three days in September.

During this same period, city officials also began looking for potential board members. While Reese had been involved early on, officials

■ May — Florida Water's exclusive negotiating contract with the Florida Governmental Utility Authority cooperative expires and Florida Water shops around for outside buyers. However, talks between the two sides continue.

■ July — A Collier County judge dismisses Florida Water's lawsuit and Florida Water files an appeal a month later.

■ August — The FGUA co-op makes a final offer of \$450 million, including \$82.9 million for Marco's system, to Florida Water's president, who says he'll take it to the board of Florida Water's parent company. The final offer is \$70 million less than the co-op's earlier offer after Marco and other community leaders with Florida Water assets complained the initial offer was too high. The FGUA waits.

■ September 19 — Florida Water Services announces it's selling its assets for \$471 million plus \$36 million over three years to a Panhandle cooperative, the Florida Water Services Authority, which was formed only two days before after Florida Water pitched the idea to city leaders in the Panhandle.

Source: Daily News Research

needed another board member with Gulf Breeze ties. Gray called Pollak, a former Gulf Breeze councilwoman now living in Jacksonville. Pollak had been involved when the city floated its first bond issue in 1985.

Pollak said she needed more information and time to think. Gray sent background information gleaned from the previous Apopka trip and other documents. After a few days to mull it over, Pollak was on board.

"I was convinced that this was a good project, and not only from a financial perspective," Pollak said. "It will affect the people involved in a positive way. They probably don't believe that at this time, but I do."

On Sept. 9, the first of three legal advertisements appeared in the Pensacola News Journal notifying readers that Florida Water Services Authority, which would not be officially created until Sept. 17, would hold a public hearing to discuss the purchase of Florida Water.

Subsequent notices would change the Florida Water Services Authority's first meeting date from Sept. 16 to Sept. 19, to allow for observance of the Jewish holiday of Yom Kippur.

In order for the deal to work, Gulf Breeze needed a partner to satisfy Florida law. They found one 20 miles away in the town Milton, population 7,300.

For its largely silent participation, the town would receive 20 percent of annual proceeds. If projections were accurate, Milton's cut would be \$360,000 a year. Gulf Breeze would net \$1.8 million.

On Sept. 17, the Gulf Breeze City Council met to formally set up the authority at a public meeting. Council members were concerned about the city's exposure. Zimmern, who would be the deal's lone dissenter, expressed concern over the inevitable firestorm of animosity to come from some affected communities and the deal's long-term ramifications for the city.

"I'm thinking about how I'd feel if this happened to my community," Zimmern said at the meeting. "We are not invisible on this, folks. We are going to be the bogey on that radar screen."

Zimmern was also concerned about the breakneck pace of the deal, which had gone from a phone call to official action in less than seven weeks. Virtually all the information had come from Florida Water, the seller in the deal.

"I'm basing my little bit of knowledge on the little bit of information that has been afforded to me," Zimmern continued. "And I'm very uncomfortable with that, making such a monumental decision with that amount of knowledge."

"It's a business decision," Gray countered. "Whether we want to expose ourselves to fate you're talking about, none of which I disagree with, versus the rewards we would gain by having another enterprise for the city. It really boils down to that."

By a 3-1 vote, the Authority was in business. Again nobody came. Two days later the Authority itself met for the first time. This time only one interested party showed up, an underwriter looking to rustle up some business.

The initial barrage of news stories was not unexpected. Given the stealthy nature of the transaction, charges of conspiracy and open meeting violations followed. City officials countered that they had followed the letter of the law even if the notices never appeared in any newspaper where Florida Water customers lived.

For that, they are unapologetic.

"No. 1: We weren't required to," Gray said of notifying affected customers. "No. 2: All the communities that would have us notice them were the communities involved in a competing proposal. Why would you tell competitors what you are doing?"

Marco Island City Councilman John Arceri, a central player in the talks between the FGUA co-op and Florida Water, said Gray's got it all wrong. As a governmental entity, the Florida Water Services Authority should work with and for other municipal governments, not against them.

"The municipality is not the competitor. Marco Island is not the competitor. FGUA was. If they really wanted to make legitimate public hearings ... they should have gone out of their way to advertise them and anything short of that is just game and chip."

Marco's city manager bristles at the Florida Water Services Authority brazenly admitting it didn't inform the other governments.

"That is utter nonsense. There is a quarter of a million customers affected by it," City Manager Bill Moss said.

Gulf Breeze's city manager said his community simply had to follow the letter of the law, and that it did.

"All we had is the law to follow," Eddy said. "We followed the law."

Several state lawmakers and community leaders aren't so sure. Though the Florida Water Services Authority may have followed the law, critics say the group manipulated the state statute that allowed the Authority to be formed for its own good. That, they say, was not the purpose of the law.

After Florida Water's Sept. 19 announcement of the deal with the Authority, several state lawmakers called upon the state Attorney General's office to look into the deal.

However, as of yet, John Topa, a senior assistant attorney in the Attorney General's Office, said he has not discovered anything unlawful in the Authority's formation.

And because of the eminent threat of lawsuits against the Authority from several communities, Topa said the Attorney General's office will not enter into the picture "unless some information is uncovered or delivered to us that shows us there has been some violation that would require us to get into this mess."

"The Attorney General's office typically does not get embroiled in lawsuits to render an opinion that may appear to be taking sides," he said.

Topa said the Attorney General's office can't interpret what the Legislature intended when adopting the state statute on interlocal agreements.

"We don't know," he said. "This thing is getting more and more complicated with each day. ... And ultimately it will be addressed in the courts what the Legislature meant."

Now the job is to calm fears and do local damage control while further researching the financial feasibility of the purchase proposal. A Dec. 15 deadline has been set.

While underwriters research the financial angles, the Authority has hired a Tallahassee-based public relations firm to make its case to the scores of municipalities and counties that have objected to the deal.

In North Florida, locals are still optimistic that it'll all work out.

"In the end, I think they will be satisfied, but right now they are panicking and I can understand that," Pollak said. "You know, I don't blame them a bit."

However, Marco leaders warn that the Authority should not get too smug in its new role.

Moss warns: "I can tell you that they're going to have second thoughts before this is all over because these governments are not going to let this transaction occur."

Staff writer Janine A. Zeitlin contributed to this report.