

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint Application for Transfer of Water )  
Facilities of Florida Public Utilities Company )  
to City of Fernandina Beach, Florida. )

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**JOINT APPLICATION FOR TRANSFER OF FACILITIES  
TO GOVERNMENTAL AUTHORITY**

Applicants, FLORIDA PUBLIC UTILITIES COMPANY (the "Company"), a Florida corporation, and the CITY OF FERNANDINA BEACH, FLORIDA (the "City"), a municipal corporation of the State of Florida, by and through their undersigned counsel, and pursuant to §367.071(4)(a), F.S., and Rule 25-30.037(4), F.A.C., file this Joint Application for Transfer of Water Facilities of the Company to the City, and say as follows:

1. The names and addresses of the Company, and its authorized representative for purposes of this joint application, are:

Florida Public Utilities Company  
401 South Dixie Highway  
West Palm Beach, FL 33401

Wayne L. Schiefelbein  
Of Counsel  
Rose, Sundstrom & Bentley, LLP  
2548 Blainstone Pines Drive  
Tallahassee, FL 32301  
(850) 877-6555  
(850) 656-4029 (Fax)  
[wschiefelbein@rsbattorneys.com](mailto:wschiefelbein@rsbattorneys.com)

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2. The names and addresses of the City, and its authorized representative, for purposes of this joint application, are:

City of Fernandina Beach  
204 Ash Street  
Fernandina Beach, FL 32034

Debra A. Braga  
City Attorney  
204 Ash Street  
Fernandina Beach, FL 32034  
(904) 491-2044  
(904) 491-2046 (Fax)  
[dbraga@fbfl.org](mailto:dbraga@fbfl.org)

3. The Company provides water service on Amelia Island, Nassau County, Florida, under Certificate 001-W.

4. The Company and the City have entered into an Agreement for Purchase and Sale of Water Assets (the "Agreement") dated as of December 3, 2002, providing for the acquisition by the City of certain assets comprising the Company's water utility operation on Amelia Island, Nassau County, Florida.

5. On December 3, 2002, the City conducted a public hearing in accordance with § 180.301, F.S., in which the City considered (a) the most recent available income and expense statement for the Company's water utility operation, (b) the most recent available balance sheet for the Company's water utility operation, listing assets and liabilities and clearly

showing the amount of contributions-in-aid-of-construction and the accumulated depreciation thereon, (c) a statement of the existing rate base of the Company's water utility operation for regulatory purposes, (d) the physical condition of the Company's facilities being purchased, (e) the reasonableness of the purchase price and terms, (f) the impact of the purchase on the Company's customers, both positive and negative, (g) any additional investment required and the ability and willingness of the City to make that investment, (h) alternatives to the purchase, and the potential impact on the Company's customers if the purchase is not made, (i) the ability of the City to provide and maintain high-quality and cost-effective utility service, and (j) any and all other relevant issues. The City found the transaction to be in the public interest, and as a result, issued Resolution No. 2002-165, approving the City's acquisition of the assets comprising the Company's water utility operation. A copy of that resolution is attached hereto as Exhibit "A."

6. A copy of the Agreement for Purchase and Sale of Water Assets (the "Agreement") entered into by the Company and the City is attached as Exhibit "B."

7. The transaction closed on March 27, 2003.

8. This transaction must be approved by the Commission as a

matter of right, pursuant to §367.071(4)(a), F.S..

9. The City obtained from the Company the most recent available income and expense statement, balance sheet, statement of rate base for regulatory purposes, and contributions-in-aid-of-construction for the Company's water utility operations.

10. Pursuant to the Agreement, the liability for all customer deposits was transferred to the City, which was given credit therefor on the purchase price. The Company will refund all accumulated interest accrued as of closing directly to customers.

11. The Company will pay all outstanding regulatory assessment fees and file the final Regulatory Assessment Fee Return with the Division of Administration of the Commission as soon as is reasonably possible, but in any event, within the time period required by the rules of the Commission. The Company owes no fines or refunds.

12. Subsequent to the closing of this transaction, the Company will retain no assets that would constitute a system providing or proposing to provide water service to the public for compensation.

13. After diligent search, the Company has been unable to locate Certificate No. 001-W. A copy obtained from PSC Staff is attached.

WHEREFORE, the applicants jointly request that this Commission

approve the transfer of water facilities of the Company to the City, and  
cancel the Company's water certificate.

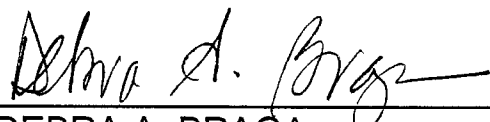
ROSE, SUNDSTROM & BENTLEY, LLP  
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(850) 877-6555  
(850) 656-4029 (fax)

Attorneys for Florida Public Utilities  
Company

By:   
\_\_\_\_\_  
WAYNE L. SCHIEFELBEIN  
Of Counsel

and

CITY OF FERNANDINA BEACH  
204 Ash Street  
Fernandina Beach, FL 32034  
(904) 491-2044  
(904) 491-2046 (fax)

By:   
\_\_\_\_\_  
DEBRA A. BRAGA  
City Attorney

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**EXHIBIT A**



# City of Fernandina Beach

OFFICE OF THE CITY CLERK

## CERTIFICATE

STATE OF FLORIDA)  
COUNTY OF NASSAU)  
CITY OF FERNANDINA BEACH)

I, CASSANDRA P. MITCHELL, City Clerk of the City of Fernandina Beach, Florida, do hereby certify that the attached is a true and correct copy of:

Resolution Number 2002-165 as adopted by the City Commission of the City of Fernandina Beach, Florida at its Regular Meeting of December 3, 2002.

IN WITNESS WHEREOF, I hereunto set my hand and affix the Seal of the City of Fernandina Beach, Florida, this 20th day of March, A.D., 2003.



Cassandra P. Mitchell  
City Clerk  
City of Fernandina Beach, Florida

## RESOLUTION NO. 2002-165

A RESOLUTION OF THE CITY COMMISSION OF THE CITY OF FERNANDINA BEACH, FLORIDA, HOLDING A PUBLIC HEARING AS REQUIRED BY 180.301 FLORIDA STATUTES, MAKING A DETERMINATION THAT THE PROPOSED PURCHASE IS IN THE PUBLIC INTEREST; AUTHORIZING THE EXECUTION OF THE CONTRACT BETWEEN FLORIDA PUBLIC UTILITIES COMPANY, A FLORIDA CORPORATION AND THE CITY OF FERNANDINA BEACH FOR THE PURCHASE AND SALE OF WATER ASSETS; AUTHORIZING THE MAYOR AND CITY CLERK TO EXECUTE SAME SUBJECT TO FINAL LEGAL REVIEW, AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the City Commission authorized the City Manager to gather information regarding the purchase of Florida Public Utilities Company's water assets; and

WHEREAS, the City Manager, the City's authorized consultant, and representatives of FPUC have meet regarding the terms and conditions of a proposed transaction; and

WHEREAS, pursuant to Florida Statute 180.301, a public hearing is required, and the governing body must take public input and make a determination that the proposed acquisition is in the public interest; and

WHEREAS, said public hearing has been properly advertised in the Fernandina Beach News Leader, a newspaper of general circulation in the area; and

WHEREAS, Florida Public Utilities has presented a contract for the purchase and sale of the water assets at a sale price of eighteen million nine hundred fifty thousand dollars (\$18,950,000), and other terms and conditions set forth therein.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COMMISSION OF THE CITY OF FERNANDINA BEACH, FLORIDA, that:

SECTION 1. In accordance with the requirements of Florida Statute 180.301, a public hearing has been duly noticed.

SECTION 2. The City Commission has considered the factors required by statute, including but not limited to:

- a. The most recent available income and expense statement for the utility;
- b. The most recent available balance sheet for the utility, listing assets and liabilities and clearly showing the amounts of contributions in aid of construction and the accumulated depreciation thereon;
- c. A statement of the existing rate base of the utility for regulatory purposes;
- d. The physical condition of the utility facilities being purchased;
- e. The reasonableness of the purchase contract price and terms;
- f. The impacts of the purchase on utility customers, both positive and negative;



g. Any additional investment required, and the ability and willingness of the purchaser to make that investment;

h. Alternatives to the purchase, and the potential impact on utility customers if the purchase is not made;

i. The ability of the purchaser to maintain high quality and cost efficient utility service;

j. Any and all other relevant issues.

SECTION 3. Based upon the above, the City Commission hereby approves the Contract with Florida Public Utilities Company (FPUC) for the purchase and sale of water assets, contingent upon the final review and approval by the City Attorney. The Mayor and City Clerk are further authorized to execute any and all documents as may be necessary to close the acquisition of Florida Public Utilities Company, Fernandina Beach Water Division.

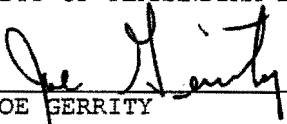
SECTION 4. The City Commission hereby authorizes the Mayor and the City Clerk to execute the Contract, and any and all closing documents required, on behalf of the City, contingent upon the final review and approval by the City Attorney.

SECTION 5. This action is being undertaken in lieu of the initiation of condemnation proceedings by the city, and under threat of condemnation by the city of the assets of Florida Public Utilities Company, Fernandina Beach Water Division.

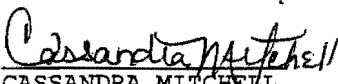
SECTION 6. This Resolution shall become effective immediately upon passage.

ADOPTED this 3rd day of December, 2002 with a quorum present and voting.

CITY OF FERNANDINA BEACH

  
\_\_\_\_\_  
JOE GERRITY  
Commissioner-Mayor

ATTEST:

  
\_\_\_\_\_  
CASSANDRA MITCHELL  
City Clerk

**EXHIBIT B**

**AGREEMENT FOR PURCHASE AND SALE OF  
WATER ASSETS**

**By and Between**

**FLORIDA PUBLIC UTILITIES COMPANY**

**Seller**

**and**

**CITY OF FERNANDINA BEACH**

**Purchaser**

**December 3, 2002**

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**ATTACHMENTS**

**Schedule "A" (Real Property)**

**Schedule "B" (Easements, licenses, etc.)**

**Schedule "C" (Treatment plants, etc.)**

**Schedule "D" (Certificates, permits, etc.)**

**Schedule "E" (Developer Agreements Assumed By Purchaser)**

**Schedule "F" (Contracts and Leases Assumed by Purchaser)**

**Schedule "G" (Futures Calculations)**

**Schedule "H" (Permitted Encumbrances)**

**Schedule "I" (Closing Documents and Responsible Party)**

**AGREEMENT FOR PURCHASE AND SALE OF  
WATER ASSETS**

**THIS AGREEMENT FOR PURCHASE AND SALE OF WATER ASSETS ("Agreement") is made as this 3<sup>rd</sup> day of December 2002, by and between Florida Public Utilities Company ("FPUC"), a Florida corporation (hereafter "Seller"), whose address is 401 South Dixie Highway, West Palm Beach, Florida 33401, and the City of Fernandina Beach, Florida, a municipal corporation of the State of Florida, (hereinafter "Purchaser" or "City") whose address is 204 Ash Street, Fernandina Beach, Florida 32034.**

**WHEREAS, Seller owns and operates a potable water treatment and distribution system ("Water System") located in Nassau County, Florida, and commonly known as Florida Public Utilities Company, Fernandina Beach Water Division;**

**WHEREAS, the Seller operates under Certificate of Public Necessity and Convenience No. 1-W (the "Certificate") issued by the Florida Public Service Commission ("Commission" or "PSC"), which authorizes Seller to provide water service in Nassau County, Florida; and**

**WHEREAS, all of the water assets referenced above are collectively known herein as the "Utility System" of the Seller; and**

**WHEREAS, the acquisition of the Utility System by Purchaser has been determined by Purchaser to serve a public purpose and be in the best interest of the City. Seller is willing to sell the Utility System to Purchaser without the necessity of Purchaser instituting an eminent domain proceeding; and Purchaser has agreed to purchase the Utility System from Seller in lieu of eminent domain proceedings and in settlement of this matter upon the terms and conditions as set forth in this Agreement;**

**NOW, THEREFORE, in consideration of the foregoing recitals and benefits to be derived from the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Seller and Purchaser hereby agree to sell and purchase the Utility System in lieu of condemnation, upon the following terms and conditions:**

- 1. RECITALS. The foregoing recitals are true and correct and are incorporated herein.**
- 2. COVENANT TO PURCHASE AND SELL; DESCRIPTION OF PURCHASED ASSETS.**
  - a. Purchaser shall buy from Seller, and Seller shall sell to Purchaser, the Purchased Assets (as defined below) upon the terms, and subject to the conditions**

precedent set forth in this Agreement.

- b. "Purchased Assets" shall include all assets, business properties, and rights, both tangible and intangible, of the Utility System that Seller owns, or in which it has an interest, excluding any such assets, business properties and rights jointly used in the Seller's electric or propane divisions (unless specifically itemized in the attached schedules), including, but not limited to:
  - i. The real property and interests in real property owned and held by Seller, and all buildings and improvements located thereon, as identified in Schedule "A" to this Agreement ("Real Property").
  - ii. All easements, licenses, prescriptive rights, rights-of-way and rights to use public and private roads, highways, streets and other areas owned or used by Seller for the construction, operation and maintenance of the Utility System, as identified in Schedule "B" to this Agreement.
  - iii. All water treatment plants, water supply and distribution facilities, of every kind and description whatsoever, including but not limited to pumps, plants, tanks, transmission mains, distribution mains, supply pipes, irrigation quality water facilities, valves, meters, meter boxes, service connections and all other physical facilities, equipment and property installations owned by Seller and used primarily in connection with the Utility System, together with all additions or replacements thereto, as identified in Schedule "C" to this Agreement.
  - iv. All authorizations, immunities, privileges, permits, license rights, consents, grants, ordinances, leaseholds, and all rights to construct, maintain and operate the Utility System and its plants and systems for the procuring, treatment, storage and distribution of potable water and every right of every character whatever in connection therewith, and the obligations thereof; all agencies for the supply of water to the Utility System or others; all water rights, flowage rights and riparian rights and all renewals, extensions, additions or modifications of any of the foregoing; together with all rights granted to Seller under the Certificate, as identified in Schedule "D" to this Agreement; to the extent that Seller's rights to the foregoing are transferable.
  - v. All items of inventory owned by Seller on the Closing Date. In this

regard, Seller shall provide one-month's materials, supplies, and consumables to be transferred to the Purchaser at Closing. Seller shall provide a listing of such materials, supplies and consumables, and amounts of each fifteen (15) days prior to Closing, and the amounts thereof shall be field verified by the Purchaser at Closing. The parties hereto acknowledge that Seller will have at Closing a substantial stock of materials and supplies over and above that required in order to provide one-month's supply thereof to Purchaser at Closing. Prior to the Due Diligence Expiration Date, Purchaser shall advise Seller as to whether it wishes to also acquire, at Closing, the inventory of the Seller over and above one-month's post-closing supplies. If so, Purchaser and Seller shall agree as to the extent thereof, and the price to be paid, as an adjustment to the Closing Statement.

- vi. All supplier lists, customer records, prints, plans, engineering reports, surveys, specifications, shop drawings, equipment manuals, and other information reasonably required by Purchaser to operate the Utility System in Seller's possession. Such information shall be provided by Seller to Purchaser in such format as Purchaser and Seller shall agree.
  - vii. All sets of record drawings, including as-built drawings, showing all facilities of the Utility System, including all original tracings, sepias or other reproducible materials in Seller's possession.
  - viii. All rights of Seller under any Developer Agreements assumed by Purchaser, as identified in Schedule "E" to this Agreement.
  - ix. All rights of Seller under the Contracts and Leases assumed by Purchaser, as identified in Schedule "F" to this Agreement. This information shall be provided to Purchaser at least sixty days prior to Closing.
  - x. All accounts receivable and customer deposits, subject to the conditions of Article 10(b)(viii) and 10(b)(xiii) hereof.
- c. The following assets are excluded from the Purchased Assets:
- i. Cash, bank accounts, equity and debt securities of any nature, deposits maintained by Seller with any governmental authority, any non-refundable deposits and any prepaid expenses of Seller, which are Seller's sole property as of the Closing Date. Seller shall provide



to the Purchaser, at Closing, a listing of the non-refundable deposits and prepaid expenses referenced herein.

- ii. Escrow and other Seller provisions for payment of federal and state income taxes, and which shall be the Seller's responsibility through the Closing Date. Seller shall indemnify and hold harmless Purchaser from obligations of the Seller to its employees that have accrued prior to Closing with respect to unpaid compensation, income tax, FICA, Medicare withholding, union dues, health insurance payments, and the like.
- iii. All assets, business properties, and rights, both tangible and intangible, owned and used by the Seller in common with Seller's electric or propane divisions, unless specifically itemized in the attached Schedules. In this regard, the parties hereto acknowledge that there may be items of property, which will be delineated prior to Closing, which will be utilized after Closing by both Seller and Purchaser. To the extent of any such items, they will be specifically delineated on the schedule to be created between the parties hereto prior to Closing, and approved at Closing.
- iv. The name and Florida corporation known as Florida Public Utilities Company.

**3. PURCHASE PRICE FOR CLEAR TITLE.**

- a. Purchaser shall pay to Seller, subject to the adjustments and prorations referenced herein, a total cash purchase price in the amount of \$18,950,000, as well as a contingent "futures" consideration as referenced in paragraph "c" below ("Futures" or "Futures payments"). At Closing, Purchaser shall pay Seller \$18,950,000 in immediately available federal funds, by wire-to-wire transfer to an account designated by the Seller therefor.
- b. If either Purchaser or Seller elects to terminate this Agreement, in any manner which is not provided for in this Agreement, said party shall deliver within five (5) days of the Due Diligence Expiration Date a \$100,000 non-refundable payment to the other party (the "Penalty") which said party may retain, as well as pursue any other remedies contained herein, or otherwise allowed by law.
- c. Purchaser shall also pay to the Seller, no later than each February 15th

from the year 2004 to the year 2010 (the “Futures Period”), the amount of \$1,500 for each new Equivalent Meter Connection (“EMC”) added to the Utility System in the previous calendar year. For purposes of this paragraph, Purchaser and Seller agree to the following equivalent meter calculations, as promulgated by the American Waterworks Association and adopted by the Florida Public Service Commission pursuant to Rule 25-30.055, Florida Administrative Code.

<u>Meter Size</u>	<u>Meter Type</u>	<u>EMCs</u>
5/8 “	Displacement	1.0
3/4"	Displacement	1.5
1"	Displacement	2.5
1½”	Displacement or Turbine	5.0
2"	Displacement, Compound or Turbine	8.0
3"	Displacement	15.0
3"	Compound	16.0
3"	Turbine	17.5
4"	Displacement or Compound	25.0
4"	Turbine	30.0
6"	Displacement or Compound	50.0
6"	Turbine	62.5
8"	Compound	80.0
8"	Turbine	90.0
10"	Compound	115.0
10"	Turbine	145.0
12"	Turbine	215.0

All Futures calculations shall be in accord with Schedule “G” hereto. The Purchaser’s obligation to pay futures, however, shall cease at such time as \$7,500,000 in futures payments have been made to the Seller hereunder. If, at the conclusion of the year 2009, Seller shall have received from Purchaser less than the said amount of \$7,500,000, Purchaser shall, no later than February 15, 2010, pay to the Seller the difference between the total amount of futures paid to the Seller during the futures period hereof, and \$7,500,000. Failure of Seller to pay that amount, on or before February 15, 2010, shall entitle Seller to interest at the highest rate

allowed by law until so paid, plus recovery of all related legal, accounting and other fees incurred in recovering such amount.

In addition to any other remedies afforded to Seller herein, Seller shall have the right to send in its own auditors to examine the books and records of the Purchaser and to perform any reasonable accounting functions required by Seller, in Seller's sole discretion and expense, in order to satisfy itself that it is receiving proper futures consideration as contemplated hereby. Purchaser shall cooperate in every reasonable way with Seller in this regard. The Purchaser agrees that its books and records pertaining to the operation of the Utility System shall be open and available during regular business hours to Seller's representatives for purposes of inspection in order to verify the matters contained herein.

Seller shall have the right to convey, sell, transfer or assign its rights in and to the Futures Payments. Upon doing so, Seller shall provide written notice thereof to Purchaser, which thereafter, shall deliver Futures Payments as directed by the entity or persons acquiring the right to such Futures Payments.

- d. In the event Purchaser sells the Purchased Assets to a third party during the Futures Period referenced herein, Purchaser shall promptly notify Seller and the then unpaid balance of the total futures payments due from Purchaser to Seller shall accelerate and be due and payable upon the closing thereof.
- e. Title to the Purchased Assets shall be delivered by the Seller to the Purchaser at closing, free and clear of all liens, encumbrances, debts, liabilities, or third party claims whatsoever, other than Permitted Encumbrances.

4. REPRESENTATIONS AND WARRANTIES OF SELLER. As a material inducement to Purchaser to execute this Agreement and perform its obligations hereunder, Seller represents and warrants to Purchaser as follows:

- a. Seller is a duly organized, validly existing corporation, and its status is active under the laws of the State of Florida. Seller has all requisite corporate power and authority to (i) enter into this Agreement, and (ii) perform all of the terms and conditions of this Agreement.
- b. The Board of Directors of Seller has approved Seller entering into this Agreement.

- c. This Agreement constitutes, and all other agreements to be executed by Seller with respect to this Agreement, will constitute when executed and delivered, valid and binding obligations of Seller, enforceable in accordance with their terms.
- d. The execution, delivery and performance of this Agreement will not violate any provision of law, order of any court or agency of government applicable to Seller, the Articles of Incorporation or By-Laws of Seller, nor any indenture, agreement, or other instrument to which Seller is a party, or by which it is bound, except for the requirement of obtaining consents from third parties to the assignment of Contracts and Leases identified in Schedule "F," to the extent necessary.
- e. Seller has exclusive possession, control, and, to its actual knowledge, ownership and good and marketable title to all Real Property, including without limitation, those used or located on property controlled by Seller in its business on the date of this Agreement. To Seller's knowledge, the Real Property is subject to no mortgage, pledge, lien, charge, security interest, encumbrance, or restriction except Permitted Encumbrances. At Closing, Seller shall deliver title to such Real Property free and clear of all debts, liens, pledges, charges or encumbrances, whatsoever, other than Permitted Encumbrances. Seller makes no representation as to the condition of the Real Property, and Purchaser acknowledges that it is accepting the Real Property in an "as is" condition, with no warranty of merchantability or fitness for a particular purpose or use, except for (i) the representations set forth in this paragraph, and (ii) the Environmental Law Compliance representations set forth in subsection g. below.
- f. Seller has exclusive ownership, possession, control, and good and marketable title to all Purchased Assets other than the Real Property, including without limitation, those reflected in the Audited Financial Statements (except as may have been sold, or otherwise disposed of, by Seller in the ordinary course of business), and those used or located on property controlled by Seller in its business on the date of this Agreement. The Purchased Assets other than the Real Property are subject to no mortgage, pledge, lien, charge, security interest, encumbrance, or restriction except Permitted Encumbrances. At Closing, Seller shall deliver title to the Purchased Assets other than the Real Property free and clear of all debts, liens, pledges, charges or encumbrances, whatsoever. Seller makes no representation as to the condition of the Purchased Assets other than the Real Property, and Purchaser acknowledges that it is accepting the Purchased Assets other than the Real Property in an "as is" condition, with no warranty of merchantability or fitness for a particular purpose or

use, except the Purchased Assets other than the Real Property, at Closing, shall be free and clear of all debts, liens, pledges, charges or encumbrances, whatsoever, other than Permitted Encumbrances.

**g. Environmental Law Compliance.**

**i. Definitions.**

1. "Environmental Law" means any federal, state, or local statute, order, regulation, or ordinance, or common law or equitable doctrine relating to the protection of human health or the environment in effect as of the Closing Date and includes, but is not limited to, The Florida Air and Water Pollution Control Act (Chapter 403, Florida Statutes), the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA")(42 U.S.C. § 9601 et seq.), the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), the Clean Water Act (33 U.S.C. § 1251 et seq.), the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.), and the Safe Drinking Water Act, (42 U.S.C. § 300f et seq.), as such have been amended or supplemented as of the Closing Date, and the regulations promulgated pursuant thereto, and in effect as of the Closing Date.
2. "Hazardous Material" means petroleum or any substance, material, or waste which is regulated under any Environmental Law in the jurisdictions in which Seller conducts its Utility System business including, without limitation, any material or substance that is defined as or considered to be a "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," "restricted hazardous waste," "pollutant," "toxic waste," or "toxic substance" under any provision of Environmental Law.
3. "Release" means any release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, or dispersal into the environment, at or from any property owned or operated by Seller or related to Hazardous Materials generated by Seller in its Utility System.
4. "Remedial Action" means all actions required to (i) clean up, remove, or treat any Hazardous Material; (ii) prevent the Release or threat of Release, or minimize the further Release

of any Hazardous Material so it does not endanger or threaten to endanger public health or welfare or the environment; or (iii) perform pre-remedial studies and investigations or post-remedial monitoring and care directly related to or in connection with any such remedial action.

- ii. **Representations.** To the actual knowledge of the Seller, which shall be defined as the actual knowledge of the officers of the Seller:
  - 1. The Utility System is in material compliance with all applicable Environmental Laws and has no material liability thereunder, and there is no reasonable basis for any such liability.
  - 2. The Utility System has obtained all permits required, or has submitted applications for such permits in a timely manner, under applicable Environmental Laws necessary for the operation of its business as presently conducted as of the date of this Agreement.
  - 3. The Utility System has not received within the last three years and is not aware of any pending communication from any governmental authority or other party with respect to (i) the actual or alleged violation of any Environmental Laws; (ii) any actual or proposed Remedial Action; or (iii) any Release or threatened Release of a Hazardous Material.
  - 4. No polychlorinated biphenyl or asbestos-containing materials, in material violation of Environmental Law are, or have been, present at any property when owned, operated, or leased by Seller as part of the Utility System, nor are there any underground storage tanks, active or abandoned, at any property owned, operated, or leased by Seller as part of the Utility System. Purchaser specifically acknowledges that the Utility System does contain a given quantity of concrete asbestos water piping. The existence of such concrete asbestos pipe shall not be considered, by the parties hereto, a material violation of the Environmental Law or a hindrance to the quality or use of the Utility System being acquired by the Purchaser hereunder.
  - 5. There is no Hazardous Material in material violation of Environmental Law located at any site that is owned, leased,

operated, or managed by Seller as part of the Utility System other than chemicals used for treatment (such as chlorine); no site that is owned, leased, operated, or managed by Seller as part of the Utility System is listed or formally proposed for listing under CERCLA, the Comprehensive Environmental Response, Compensation Liability Information System ("CERCLIS") or on any similar state list that is the subject of federal, state, or local enforcement actions or other investigations that may lead to claims against Seller for clean-up costs, remedial work, damages to natural resources, or for personal injury claims, including, but not limited to, claims under CERCLA; and there is no reasonable basis for Seller to be named in such claims or for any similar action to be brought against Seller in connection with any such site.

6. No written notification of a Release of a Hazardous Material has been filed by or on behalf of Seller as part of the Utility System or with respect to any property when owned, operated, or leased by Seller in connection with the Utility System. No such property is listed or proposed for listing on the National Priority List promulgated pursuant to CERCLA, or CERCLIS, or any similar state list of sites requiring investigation or clean up.
7. No Hazardous Material has been released in material violation of Environmental Law at, on, or under any property now owned, operated, or leased by Seller, as part of the Utility System.

iii. All representations and warranties of the Seller shall expire as of and be merged into the Closing, except as to paragraphs 4.a., b., and c. hereof.

5. REPRESENTATIONS AND WARRANTIES OF PURCHASER. As a material inducement to Seller to execute this Agreement and to perform its obligations thereunder, Purchaser represents and warrants to Seller as follows:

- a. Purchaser has been duly organized, and is a validly existing municipal corporation under the laws of the State of Florida. Purchaser has all requisite power and authority to (i) enter into this Agreement, and (ii) carry out and perform the terms and conditions of this Agreement.
- b. The City Commission of Purchaser has approved Purchaser entering into

this Agreement.

- c. This Agreement constitutes, and all other agreements to be executed by Purchaser with respect to this Agreement, will constitute, when executed and delivered, valid and binding obligations of Purchaser, enforceable in accordance with their terms.
- d. The execution, delivery and performance of this Agreement will not violate any provision of law, order of any court or agency of government applicable to Purchaser, the Charter of Purchaser, nor any indenture, agreement, or other instrument to which Purchaser is a party, or by which it is bound.
- e. Purchaser will authorize the issuance of the indebtedness to be issued by Purchaser necessary to ensure Purchaser's performance hereunder, subject to the conditions precedent for Closing and as set out herein.
- f. All necessary public hearings required to authorize Purchaser's purchase of the Utility System and Purchaser entering into this Agreement will have been duly held prior to Closing and all appropriate governmental actions required to be taken by Purchaser will have been duly taken prior to the Closing Date.
- g. Purchaser shall, subsequent to Closing, and consistent with prudent business practices, industry standards applicable thereto, and the requirements of the appropriate governmental agencies having jurisdiction over the assets and businesses of the Utility System, provide water services to all properties, improvements thereon and the occupants thereof, located within the Seller's service area after connection has been made, in a uniform and nondiscriminatory manner with other property and property owners served by Purchaser. This representation and warranty shall survive Closing hereof, for the duration of the limitations period at Florida Law for Contracts.
- h. Purchaser has the lawful power to acquire the Utility System through condemnation and it has advised Seller that it would take those steps necessary to condemn the Utility System if a voluntary sale did not otherwise take place.

6. TITLE INSURANCE AND PERMITTED ENCUMBRANCES.

- a. Prior to the Due Diligence Expiration Date Seller shall cause to be issued and delivered a current title insurance commitment issued by a title



company licensed to do business in the State of Florida, covering the Real Property (but not the easements), which shall be in an amount equal to \$5,000,000. The cost of the title insurance commitment and title insurance shall be borne by Seller. The title insurance commitment shall commit the insurer to issue owner's title insurance policies to Purchaser covering the Real Property (substantially in accordance with the ALTA Standard Owner's Form B), with Florida modifications, reflecting title to the Real Property to be marketable or insurable, except for the Permitted Encumbrances (as defined in Section 6.d. below), the standard printed exceptions usually contained in an owner's title insurance policy, and the standard exclusions from coverage; provided, however, that the title insurance company shall delete the standard exceptions customarily deleted for such items as materialman's liens, survey, and mechanic's liens. Seller shall execute at, or prior to, Closing, in favor of the title insurance company, the appropriate mechanic's lien affidavit and "Gap" affidavit sufficient to allow the title insurance company to delete all standard exceptions addressed by such affidavits.

- b. Purchaser shall notify Seller in writing no less than ten (10) days after receipt of the title insurance commitment of any alleged material defect in Seller's title to the Real Property, other than those accepted herein and the Permitted Encumbrances (such written notice to include all exceptions, encumbrances, liens, easements, covenants, restrictions or other defects in Seller's title to the Real Property (other than the Permitted Encumbrances), which render or may render Seller's title to the Real Property unmarketable in accordance with standards adopted by The Florida Bar or uninsurable. Any objections to title to the extent not shown on the notice furnished by Purchaser in accordance with the provisions of this paragraph shall be deemed to have been waived by Purchaser and Purchaser shall not be entitled to any damages or other remedies. Seller shall have thirty (30) days after receipt of Purchaser's notice, to eliminate all of the material objections to title set forth in Purchaser's notice. However, in no event shall Seller be required to bring suit or expend any sum in excess of \$100,000 in the aggregate to cure title defects, exclusive of mortgages against the Real Property, which are in a liquidated amount or Seller has an obligation to discharge on or before Closing pursuant to the terms of this Agreement. If Seller fails to deliver title as herein provided, then Purchaser may:
  - i. Accept whatever title Seller is able to convey with no abatement of the Purchase Price; or
  - ii. Reject title and terminate this Agreement with no further liability to

either Purchaser or Seller.

- c. Purchaser may not object to title by reason of the existence of any mortgage, lien, encumbrance, covenant, restriction or other matter that (i) may be satisfied with a payment of money and Seller elects to do so by paying same at or prior to the Closing Date; (ii) any mechanic's lien or other encumbrance that can be released of record, bonded or transferred of record to substitute security so as to relieve the Real Property from the burden thereof and Seller elects to do so at or prior to Closing; or (iii) the title insurance company issuing the title insurance commitments affirmatively insures-over.
- d. Any survey performed shall be updated as necessary in order to eliminate survey exceptions from the title insurance policy.
- e. Purchaser shall deliver, promptly after Closing, the title insurance policy issued on the binder.
- f. As used above, "Permitted Encumbrances" include the following:
  - i. All present and future building restrictions, zoning regulations, laws, ordinances, resolutions, regulations and orders of any governmental authority having jurisdiction over the Real Property and the use thereof.
  - ii. Easements, restrictions, reservations, rights-of-way, conditions and limitations of record, if any, which are not coupled with any reverter or forfeiture provisions, including (without limitation) any drainage, canal, mineral, road, or other reservations of record in favor of the State of Florida or any of its agencies or governmental or quasi-governmental entities, or as may be set forth in any "Murphy Deeds," none of which, however, shall impair or restrict the use of the Real Property or the operation of the Utility Systems.
  - iii. The matters listed in Schedule "H," (the "Permitted Encumbrances"), including the exceptions appearing in the title report.
  - iv. Such other matters as are permitted under the terms of this Agreement, including but not limited to the Developer Agreements.

7. CONDITIONS PRECEDENT TO CLOSING. The obligations of each party to close the transaction contemplated by this Agreement are subject to the conditions that, at or before the Closing Date:

- a. Neither Party shall be prohibited by decree or law from consummating the

transaction.

- b. There shall not be pending on the Closing Date any legal action or proceeding that prohibits the acquisition or sale of the Purchased Assets or prohibits Purchaser or Seller from closing the transaction or Purchaser from paying the Purchase Price, or that inhibits or restricts in any material manner Purchaser's use, title, or enjoyment of the Purchased Assets.
- c. Seller shall have delivered copies of the resolutions evidencing its ratification and approval of this Agreement and the sale of the Purchased Assets.
- d. Seller shall have received a release of lien as to those assets comprising the Utility System from the existing first mortgage bonds.
- e. Purchaser shall have obtained and approved a plan of finance from the Purchaser's independent financial advisor.
- f. Purchaser shall have received from engineering and financial consultants reports demonstrating the feasibility of the acquisition contemplated herein, the condition of the Purchased Assets, and if appropriate, a comparison of the rates of the Seller to those of the Purchaser. It shall be the sole discretion of the Purchaser to determine if the acquisition is feasible.
- g. Purchaser shall have held a public hearing as required pursuant to Section 180.301 Florida Statutes, and shall have ratified and approved the execution of this Agreement and authorized the acquisition of the Purchased Assets and copies of the Resolutions evidencing such ratification and approval have been delivered to Seller.

Purchaser shall have authorized the indebtedness to be issued by Purchaser with respect to this transaction and copies of the Resolutions evidencing such ratification and approval have been delivered to Seller.

Purchaser shall have obtained the consent of the City Commission to all aspects of the transaction. Seller acknowledges and agrees that all Resolutions and approvals required herein are within the authority of the City Commission, and are subject to its sole judgment and discretion as to the feasibility and advisability of proceeding with the transaction.

- h. Each of the other parties hereto shall have performed all of the undertakings required to be performed by them under the terms of this Agreement

prior to or at Closing.

- i. All warranties and representations of the other party shall be true in all material respects as of the Closing Date, except to the extent they specifically refer to another date.
- j. Purchaser's receipt of a satisfactory commitment for bond insurance.
- k. Purchaser shall have executed a Bond Purchase Agreement with Purchaser's underwriters for Purchaser's bonds.
- l. The prevailing rate for 30 year, tax-exempt and insured governmentally-issued water utility revenue bonds shall not be greater than six percent (6%) as of the Closing Date.

The above conditions precedent to Closing, with the exceptions of paragraphs 7a., b., c., i., j., k., and l., shall expire on the Due Diligence Expiration Date at the end of the due diligence period referenced in Article 9(b)(ii).

**8. PRE-CLOSING CONDUCT; COVENANTS.** Prior to the Closing Date, the parties covenant to each other, and shall conduct themselves, as follows:

- a. Within five (5) days after the execution of this Agreement, Seller shall either furnish to Purchaser, or provide Purchaser with ready access to the following, to the extent they are in the possession of Seller, its employees, representatives, or agents:
  - i. Copies of all plans and specifications showing the Utility System as now constructed (as-built), including any under construction, together with a detailed engineering map showing the water treatment plants, water supply and distribution facilities, and appurtenances as now constructed, and all other facilities constituting the Utility System.
  - ii. Copies of the Certificate of Public Necessity and Convenience issued by the Florida Public Service Commission with respect to the Utility System, and any correspondence within the last two years between Seller and the Commission with respect thereto.
  - iii. Copies of the developer agreements identified in Schedule "E."
  - iv. Copies of the contracts and leases identified in Schedule "F."

- v. Depreciation and amortization schedules identifying substantially all equipment, computers, software, vehicles, tools, parts, laboratory equipment, office equipment, and all other personal property owned or used by Seller in connection with the operation of the Utility System.
- vi. A schedule and copies of documents reflecting the rates, fees, charges and tariffs of Seller.
- vii. Copies of permits, applications, or other documents, together with effective dates and expiration dates (if any), demonstrating approval of the facilities of the Utility System by all applicable governmental authorities, including, but not limited to: (a) the Florida Department of Environmental Protection, (b) the United States Environmental Protection Agency, (c) the PSC, and (d) the St. John's River Water Management District.
- viii. A list of customer deposits or advance facility charges and accounts receivable by name and account number, setting forth the amount of each individual deposit or receivable and their aggregate totals. The list referenced in this subparagraph shall be updated as of the date of Closing, and all customer deposits held by Seller shall be paid over to Purchaser as an adjustment on the Closing statement, so that Purchaser may consummate customer deposit refunds pursuant to its internal policies and procedures. Further, Seller shall provide to Purchaser a listing of all non-refundable and pre-paid items, together with any indication as to whether Seller intends that those items will not be transferred to Purchaser at Closing, in accordance with Article 2 hereof.
- ix. A map on which there is outlined the present and anticipated Service Area of Seller.
- x. A copy of the annual reports filed by Seller with the PSC for the calendar years 1999 and 2000.
- xi. A copy of all warranties held by Seller with respect to completed, or in progress, construction work with respect to the Utility System, in addition to, a copy of all warranties relating to the Purchased Assets.
- xii. Audited Balance Sheets and Income Statements of Seller as of December 31, 2001.

- xiii. Copies of any and all effective insurance policies with respect to the Purchased Assets and Utility System.
  - xiv. If not set forth in Schedule "A," a legal description of the Real Property owned by Seller in connection with its operation or use of the Utility System.
  - xv. A survey of the Real Property, as prepared by a Florida licensed surveyor, and certified to Purchaser and Seller, in accordance with the minimum technical standards adopted by the Florida Society of Professional Land Surveyors in accordance with § 472.027, Florida Statutes. The survey(s) shall set forth the area contained in each parcel of property, together with all existing easements, alleys, streets and roads thereon; show any encroachments upon or protrusions from the property; show all existing improvements constructed thereon and distances to boundary lines; specify thereon all dedicated public streets providing access to the property; and stating whether the property is within any area determined by the Department of Housing and Urban Development to be flood prone under the Federal Flood Protection Act, as amended, except, however, if the title insurer will accept an existing survey plus a "gap" or "bring down" affidavit in lieu of a new survey.
  - xvi. Copies of the easements, licenses, prescriptive rights and rights-of-way owned and used by Seller for the construction, operation and maintenance of the Utility System, as identified in Schedule "B."
  - xvii. A list of Seller's 2002 capital expenditures up through and including January 31, 2003.
  - xviii. A copy of all environmental permits and applications related thereto for Seller's facilities.
  - xix. Copies of all data relating to the employees of the Utility System, including, but not limited to salary, payroll records, pay schedules, benefits and entitlements, length of service, union affiliation, union dues and union contracts, pensions, insurance (including Worker's Comp. and Worker's Comp. history) personnel manuals and/or policy and procedure manuals.
- b. During the period between the date of this Agreement and the Closing Date, Seller shall:

- i. Operate and maintain the Utility System and Purchased Assets in a normal and usual manner, or in accordance with Seller's business plan, to ensure that the condition of the Utility System and the Purchased Assets shall not be materially diminished or depleted, normal wear and tear excepted;
  - ii. Promptly notify Purchaser of any notification received by Seller from any person, business, or agency of any existing, or potential, Environmental Law violation;
  - iii. Make no unbudgeted capital expenditures in excess of \$100,000 without the prior written consent of Purchaser;
  - iv. Provide Purchaser, or its designated agent(s), with uninhibited access to the business premises of the Utility System, Purchased Assets, Seller's books and records related to the Utility System, employees, agents, or representatives, on reasonable advance notice and during business hours. For its part, Purchaser agrees that its activities in this regard shall not unreasonably interfere with Seller's business operations.
  - v. Promptly notify Purchaser of any event, activity or occurrence that has, or may have, a material adverse effect on Seller or this transaction.
- c. During the period of time between the date of this Agreement and the Closing Date, Seller shall maintain its existing levels of insurance on the Purchased Assets and Utility System.
- d. From the date of execution of this Agreement until Closing, Seller shall not, without the prior written consent of Purchaser, enter into any new developer agreements other than in the ordinary course of business or modify any existing developer agreements other than in the ordinary course of business. Copies of any such developer agreements shall be promptly delivered to Purchaser.
- e. Seller shall not accept payment for Connection Charges at a rate lower than the applicable tariffs require in order to receive early payment of those Connection Charges. If Seller violates this covenant, the Purchase Price shall be reduced accordingly by the amount of any such Connection Charges that are paid in advance as the result of offering a discount. Furthermore, Seller shall not enter into any new developer agreements from the date of this Agreement through Closing, except in the ordinary

course of business.

- f. Purchaser shall cause to be performed, at its sole expense, a Phase I Environmental Survey (and a subsequent Phase II, if necessary) of each parcel of real property owned by Seller. The Phase I Environmental Survey shall be completed by Purchaser prior to the Due Diligence Expiration Date as referenced herein. If a Phase II Environmental Survey is deemed necessary as a result of the Phase I Survey, the Phase II Survey shall be completed and the Environmental Report prepared therefrom shall be delivered to Seller no later than fifteen days after the Due Diligence Expiration Date. If such Phase I or Phase II Survey discloses the presence of any Hazardous Material, Seller shall have the right to perform such clean-up and remediation as is necessary thereunder. Upon Seller's failure to perform such clean-up and remediation, prior to the Closing Date, Purchaser may elect to either (i) terminate this Agreement, in which event neither party shall have any liability to the other; or (ii) proceed to Closing without abatement of the Purchase Price. To the extent allowed by law, purchaser agrees to indemnify, save harmless and defend Seller, its officers, directors, shareholders, partners, employees, agents and assigns from and against any and all liabilities, claims, penalties, forfeitures, suits, and the costs and expenses incident thereto (including costs of defense, settlement and reasonable attorneys' fees), which Seller, or its officers, directors, shareholders, partners, employees, agents and assigns may hereinafter incur, become responsible for or pay out as a result of the death or bodily injuries to any person, destruction or damage to any property, contamination of or adverse effects on the environment, or any violation of governmental laws, regulations or orders, caused by any negligent or willful act or omission of the Purchaser, or of any consultant, subcontractor, employee or agent of Purchaser in the performance of the Phase I and Phase II Environmental Surveys. The terms and provisions of this indemnification paragraph shall survive the termination of this Agreement or the closing of the transaction contemplated herein.
- g. Neither Purchaser nor Seller shall transfer or assign this Agreement or the duties or obligations created herein, without the prior written consent of the other.
- h. Purchaser and Seller acknowledge that Seller's Water Plant No. 3 (a/k/a No. 3 Waterworks) is located upon property owned by the Purchaser and leased by the Seller. Seller also utilizes a portion of that property for utility endeavors unrelated to the Utility System being acquired by the Purchaser hereunder. Prior to the Due Diligence Expiration date, Purchaser and Seller shall agree upon an appropriate division of the



subject property, such that Seller may continue its propane operations on an adequate portion of such property, and a new lease agreement will be prepared, and which will be executed by the parties hereto at Closing in this regard, under terms and conditions favorable to the Seller for the Seller's continued operation of its propane division, provided, however, that the lease terms shall be substantially identical to the terms in the existing lease, dated February 1, 2000 (City Ordinance 99-51), for such property and at the same, or a substantially similar, pro-rata rate per square foot as Seller is now paying to Purchaser as consideration for such lease, provided further, however that said new lease shall be for a thirty year term, to run concurrently with the franchise agreement referenced in Article 10.b.xvii hereof.

- i. At Seller's Water Plant No. 3, which will be acquired by the Purchaser hereunder, there is an existing storeroom and meeting room which Purchaser acknowledges that Seller may continue to utilize, at no additional consideration, for a period of two years from and after the date of Closing hereon. If Seller completes construction of its new office building prior to the expiration of the subject two-year period, Seller will abandon its right to utilize the existing storeroom and meeting room referenced herein. If such construction is not completed within the subject two-year period, Purchaser will grant to Seller an additional six month extension of the usage rights referenced herein.
- j. As to Seller's Water Treatment Plant No. 3, because of the division of the site between waterworks purposes, to be acquired by the Purchaser hereunder, and the continued operation of the propane facilities of the Seller, City will, at its expense, construct a fence on the Seller's side of the water catchment area in order to clearly delineate the Seller's propane operations from the Purchaser's waterworks operations.
- k. Prior to the Due Diligence Expiration Date, the parties will agree upon the terms of a lease for land upon which the City will make available to Seller a new location upon which Seller may construct an office building to replace the office facility being transferred from Seller to Purchaser hereunder. Seller will, at Closing, execute a thirty year lease with Purchaser for such office building site, upon mutually acceptable favorable terms and conditions, substantially identical to those contained in the existing leasehold agreement between the parties, dated February 1, 2000 (City Ordinance No. 99-51) and at substantially the same rate per square foot as Seller is now paying Purchaser for the lease of similar property.

9. TERMINATION OF AGREEMENT.

- a. This Agreement may be terminated (i) by mutual written consent of the parties, (ii) by either party if the transactions contemplated hereby have not closed by April 1, 2003, or (iii) as provided in paragraphs b. and c. below.
- b. Purchaser may terminate this Agreement, in its sole discretion, upon the occurrence of any of the following:
  - i. The failure to satisfy, in any material respect, prior to Closing of any of the condition(s) precedent to Closing remaining in effect set forth in Section 7.
  - ii. Commencing as of the date of this Agreement and continuing for a 45 day period (the last day of which being January 23, 2003) which shall herein be defined as the "Due Diligence Expiration Date"), Purchaser shall conduct such due diligence of the Purchased Assets and Utility System, as, in its sole discretion, it deems appropriate including, but not limited to, upon reasonable notice to Seller, entering upon the property of Seller to inspect the Purchased Assets and Utility System, to familiarize itself with day-to-day operations, and to review the practices of Seller, and to determine Seller's compliance with any and all federal, state, and local regulatory requirements. Purchaser may also review any and all records of Seller as it deems appropriate. Seller shall cooperate with Purchaser in all respects as to Purchaser's exercise of due diligence. After conducting its due diligence, Purchaser shall have the right to terminate this Agreement, in its sole discretion, upon delivery of written notice to that effect to Seller within 5 days of the expiration of the 45 day inspection period. In the alternative, if Purchaser fails to provide such termination notice, Purchaser shall be deemed to have accepted the Purchased Assets as is.
  - iii. Except as modified herein, any material breach of this Agreement by Seller, including, but not limited to, a material breach of any representation or warranty, if Seller has not cured such breach within 30 days after notice from Purchaser; provided, however, such breach must in any event be cured prior to the Closing Date unless the date for cure has been extended by Purchaser.
  - iv. Any other basis for termination on behalf of Purchaser otherwise set forth in this Agreement.

- c. Seller may terminate this Agreement, in its sole discretion, upon the occurrence of any of the following:
  - i. The failure to satisfy, in any material respect, prior to Closing any of the conditions precedent to closing remaining in effect set forth in Section 7.
  - ii. Any material breach of this Agreement by Purchaser, including, but not limited to, a material breach of any representation or warranty, if Purchaser has not cured such breach within 30 days after notice from Seller, provided, however, such breach must in any event be cured prior to the Closing Date unless the date for cure has been extended by Seller.
  - iii. The failure of the Purchaser to secure a commitment for bond insurance on or before Closing or completion of marketing and sale of the subject bonds on or before Closing or failure to close this transaction, through the fault of the Purchaser, on or before Closing.
  - iv. Any other basis for termination on behalf of Seller otherwise set forth in this Agreement.
- d. Upon the occurrence of any of the bases for termination of this Agreement, the party seeking to terminate this Agreement shall provide written notice of its termination of this Agreement to the other by delivering the same as provided in Section 14.b.
- e. Upon the termination of this Agreement, the following shall occur:
  - i. Each party shall return all documents, including copies, in its possession, or in the possession of its agents and consultants to the other, as the case may be. Each party, its agents and consultants, shall treat any information previously received as confidential, and shall not disclose or use such information, unless required by law.
  - ii. Except as otherwise set forth in this Agreement, each party shall be responsible for payment of its own attorney and other professional fees and other costs of any nature whatsoever incurred prior to the termination of this Agreement.
  - iii. This Agreement shall forthwith become void and (except for the willful breach of this Agreement by any party hereto) there shall be no liability on the part of Purchaser or Seller, or their respective

officers or directors, other than as provided for herein.

10. CLOSING DATE AND CLOSING.

- a. This transaction shall be closed on or before March 31, 2003 ("Closing Date"), unless advanced or extended by mutual agreement of the parties, at a location mutually acceptable to both parties.
- b. At Closing:
  - i. Purchaser shall pay the Purchase Price, subject to any adjustment as provided for herein.
  - ii. Title to the Real Property shall be conveyed to the Purchaser by special warranty deed free of all claims, liens, or encumbrances, whatsoever, other than Permitted Encumbrances. Title to the remaining Purchased Assets shall be conveyed to Purchaser by Bill of Sale free of all claims, liens, or encumbrances, whatsoever, other than Permitted Encumbrances.
  - iii. Seller shall assign its right, title and interest in those easements, licenses, etc. identified in Schedule "B."
  - iv. Seller and Purchaser shall enter into separate Assignment and Assumption Agreements with respect to the (i) developer agreements identified in Schedule "E", and (ii) contracts and leases identified in Schedule "F."
  - v. Pursuant to the decision of the Supreme Court of Florida in the matter of Florida Department of Revenue v. Orange County, 620 So.2d 991 (Fla. 1993), the parties hereto are of the opinion and belief that this transaction is immune from the requirement of payment of documentary stamp taxes upon the recordation of any deeds pursuant hereto. The parties hereto will jointly challenge any attempted imposition of documentary stamp payments. All documentary stamps, if required, however, on the deeds of conveyance of the Real Property included in the Purchased Assets shall be paid by the Purchaser.
  - vi. Real property and personal property taxes on the Purchased Assets and Utility System, and any other applicable taxes, shall be prorated as of the Closing Date and Seller shall be required to pay its pro rata share at Closing. All other taxes and assessments accrued or owed

by Seller as of the date of Closing with respect to the Purchased Assets shall remain the obligation of Seller. All other taxes and assessments imposed or attempted to be imposed from and after the date of Closing with respect to the Purchased Assets shall be the obligation of Purchaser.

- vii. Current employees of Seller engaged in the operation of the Utility System shall be offered employment by Purchaser at the same rate of pay and with approximately the same benefits as each employee was receiving from Seller as of January 1, 2003, or, if Purchaser contemplates entering into a long-term Operating Agreement for the Purchased Assets, Purchaser shall require its Contract Operator to offer such employment to the current employees of the Seller for a term of at least one (1) year with approximately the same benefits as provided by Seller.
- viii. Monies due to Seller for service rendered and billed prior to the Closing Date shall remain the property and entitlement of the Seller. Gross revenues from water services rendered, but not yet billed (“unbilled revenue”) as of the Closing Date, shall be calculated by the parties at Closing, and 92% thereof shall be paid by the Purchaser to the Seller at Closing. Purchaser shall then be entitled to bill and collect for such revenues as its own. Purchaser shall be entitled to all Utility System revenues earned from the Closing Date forward.
- ix. Connection Charges (defined as connection, plant capacity, main extension, capital or other charges paid for the availability of utility services) received by Seller prior to the date of execution of this Agreement, shall be retained by Seller. Connection charges received by the Seller after the date hereof, but prior to the Closing Date, shall also be retained by the Seller. Connection Charges paid after the Closing Date shall be the property of Purchaser.
- x. All transfers required or necessary to carry out the intent and purpose of this Agreement shall take place, unless waived or extended by mutual consent.
- xi. Each of the parties shall pay the fees of its own attorneys, bankers, engineers, accountants, and other professional advisers or consultants in connection with the negotiation, preparation and execution of this Agreement, and any documents associated with the Closing.

- xii. All bills for services, materials and supplies rendered in connection with the operation of the Utility System prior to Closing, including but not limited to electricity for a period up to and including the Closing Date, shall be paid by Seller. Any bills received by City for services, materials and supplies rendered in connection with the operation of the Utility System prior to Closing shall be promptly forwarded by Purchaser to Seller, and Seller shall then promptly pay for same.
- xiii. Seller shall transfer and Purchaser shall assume the liability for customer deposits, and credit shall be given to the Purchaser therefor.
- xiv. Each party shall deliver to the other party a certificate stating that:
  - 1. The party is not prohibited by decree or law from consummating the transaction contemplated hereby.
  - 2. There is not pending on the Closing Date any legal action or proceeding that hinders the ability of either party to close the transaction.
  - 3. All warranties and representations of such party contained in this Agreement are true and correct as of the Closing Date, except that representations regarding financial statements are as of the date of the financial statement.
- xv. Seller shall deliver to Purchaser, in a form reasonably acceptable to Purchaser, an opinion of Seller's counsel substantially to the effect that:
  - 1. Seller is validly organized, existing and its status is active under the laws of the State of Florida.
  - 2. This Agreement has been duly and validly executed and approved by Seller and is a valid and binding agreement upon Seller.
  - 3. To Seller's counsel's actual knowledge, the execution, delivery and performance of this Agreement will not violate any agreement of or binding on, or any law applicable to, Seller.

- xvi. Purchaser shall deliver to Seller in a form acceptable to Seller, an opinion of Purchaser's counsel substantially to the effect that:
  - 1. Purchaser is validly organized and existing as a municipal corporation under the laws of the State of Florida.
  - 2. This Agreement has been duly and validly executed and approved by Purchaser and is a valid and binding agreement upon Purchaser.
  - 3. To Purchaser's counsel's knowledge, the execution, delivery and performance of this Agreement will not violate any agreement to which Purchaser is a party (or which is binding upon Purchaser), or any law applicable to Purchaser.
  
- xvii Purchaser acknowledges that it has, within the last six years, entered into a renewed thirty-year franchise with Seller relative to its Electric Utility Division (the "Franchise"). As additional consideration to the Seller hereunder, Purchaser shall, at Closing, reissue the subject Franchise, under the same terms and conditions as currently exist, for a new total franchise term of thirty years. This provision shall not be construed, however, so as to prohibit Purchaser from increasing the public utility tax authorized by Section 166.231, Florida Statutes, up to the statutory limit or from increasing the franchise fee referenced in the Franchise to match the amount imposed by any other governmental entity wherein Seller, in its electric utility operations, provides electric service in connection with a franchise issued by such other governmental entity. This "most favored nation" provision shall be limited to Seller's electric utility operations, wherever situated, regardless of the actions of unrelated municipalities and electric utilities. If, for any reason, Seller is prohibited from passing through any such increases directly to its customers, Seller may oppose such increases.
  
- xviii. The parties will execute and deliver the leases referenced in Article 8 hereof.

11. INDEMNIFICATION.

- a. Seller shall save and hold Purchaser and its elected and appointed officials, directors, officers, employees, and agents (hereafter "Purchaser Indemnified Parties"), harmless from, and indemnify the Purchaser Indemnified Parties against, any and all losses or damages, claims, demands, deficiencies, liabilities, obligations, costs and/or expenses (including, but not limited to reasonable administrative, trial, and appellate attorney fees and costs incurred in connection with investigating, preparing to defend, or defending any action, suit or proceeding commenced, or threatened, or any claim whatsoever) suffered by any of the Purchaser Indemnified Parties, whether accrued, absolute, contingent or otherwise, and which result from:
- i. Any material misrepresentation by Seller of a material fact contained in this Agreement, or a material breach of a representation or warranty, with respect to which Purchaser notifies Seller in writing within the applicable survival period as set forth in paragraph e. below, specifying the breach in detail; or
  - ii. Any material breach by Seller of its covenants or obligations;
  - iii. Any and all material claims by developers actually known to Seller that are not disclosed to Purchaser, for acts or promises other than as set out in the developer agreements;
  - iv. Any material promise made by Seller that was not disclosed by Seller and that Seller or Purchaser is forced, by action of law or otherwise, to honor; or
  - v. The operation or activities of Seller with respect to the Purchased Assets or Utility System prior to the Closing Date.
- b. Notwithstanding the foregoing, and subject to (i) the Environmental Law Compliance representations in Section 4.g. and (ii) Seller's liability that may otherwise be imposed by law, Seller shall have no liability to Purchaser for (a) title to, and encumbrances upon, the Real Property; provided, however, that title to the Real Property is insured by a title company licensed to issue title commitments in the State of Florida, subject only to the Permitted Encumbrances; and (b) violation of Environmental Law, the presence of Hazardous Substances, and the existence of Releases.
- c. Seller shall indemnify Purchaser and hold it harmless against any claim, cost, expense, liability or loss (including reasonable trial and appellate



attorneys fees and costs) incurred or suffered as a result of any broker's or salesman's commission or finders fee alleged to be payable because of any statements, act or omissions of the indemnifying party. Similarly, to the extent provided for by Florida law, Purchaser shall indemnify Seller and hold it harmless against any claim, cost, expense, liability or loss (including reasonable trial and appellate attorneys fees and costs) incurred or suffered as a result of any broker's or salesman's commission or finders fee alleged to be payable because of any statements, act or omissions of the indemnifying party.

- d. Purchaser shall save and hold Seller, and its directors, officers, employees and agents (hereinafter "Seller Indemnified Parties") harmless from and indemnify the Seller against any and all losses or damages, claims, demands, deficiencies, liabilities, obligations, costs and/or expenses (including, but not limited to reasonable administrative, trial and appellate attorney fees and costs) incurred in connection with investigating, preparing to defend or defending any action, suit or proceeding commenced, or threatened, or any claim whatsoever suffered by any of the Seller Indemnified Parties, subject to the limitations as set forth in Section 768.28, Florida Statutes, as may be revised or amended from time to time, and which result from:
  - i. Any material misrepresentation by Purchaser of a material fact contained in this Agreement, or a material breach of a representation or warranty, with respect to which Seller notifies Purchaser in writing within the applicable survival period as set forth in paragraph e. below, specifying the breach in detail;
  - ii. Any material breach by Purchaser of its covenants or obligations herein; or
  - iii. The operation or activities of Purchaser on or after the Closing Date.
- e. The respective representations and warranties of the parties contained in this Agreement shall survive the consummation of the transactions contemplated hereby and continue for a period of one year from the Closing Date, and thereupon shall terminate.
- f. The amount for which an indemnified party shall receive indemnification hereunder shall be reduced by any insurance proceeds or other payments received by the indemnified party in respect of the indemnified matter.
- g. Each party hereto shall give the indemnifying party prompt written notice

of any claim, assertion, event or proceeding by or in respect of a third party of which it has knowledge concerning any liability or damage as to which it may request indemnification hereunder. The party providing indemnification shall have the right at all times to control the defense or settlement of any such claim or proceeding through counsel of its own choosing, and to settle any and all such claims made.

- h. Any party claiming indemnification hereunder with respect to the falsity of any representations or warranties herein must give notice to the other party of its claim for indemnification within the time period herein for the survival of the applicable representation or warranty.
- i. Seller shall not have any obligation to make indemnification payments hereunder unless and until its total indemnification obligations hereunder exceed \$100,000, whereupon Seller shall make payments with respect to its indemnification obligations in excess of \$100,000 up to the limits specified in the following sentence. The obligation of Seller to make an indemnification payment shall be limited to paying not more than a total of \$500,000. Similarly, Purchaser shall not have any obligation to make indemnification payments hereunder unless and until its total indemnification obligations hereunder exceed \$100,000, whereupon Purchaser shall make payments with respect to its indemnification obligation in excess of \$100,000 up to the limit specified in the following sentence. The obligation of purchaser to make indemnification payments shall be limited to paying not more than a total of \$500,000, excluding payment of the purchase price consideration as referenced in Article 3 hereof.

12. POST CLOSING COOPERATION.

- a. Seller and Purchaser shall, after the Closing Date, upon reasonable request of the other party, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, all such further documents, acts, deeds, assignments, transfers, powers of attorney and assurances as may be required in order to implement and perform any of the obligations, covenants and agreements of the parties.
- b. Each of the parties hereto shall provide the other with such assistance as reasonably may be requested in connection with the preparation of any tax return, audit or other examination by any taxing authority or any judicial or administrative proceedings relating to liability for taxes relating to the transactions contemplated by this Agreement. Subject to the provisions of paragraph e. below, each party shall retain and provide the other with any

records or information that may be relevant to such return, audit or examination, proceedings or determination. Such assistance shall include making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder and shall include providing copies of any relevant tax returns and supporting work schedules. The party requesting assistance hereunder shall reimburse the other for reasonable out-of-pocket expenses incurred in providing such assistance.

- c. If, after the Closing Date, any of the parties hereto shall require the participation of the other or of officers and employees employed by the other to aid in the defense or prosecution of litigation or claims, and so long as there exists no conflict of interest between the parties, each party shall use its best efforts to be available or to make such officers and employees reasonably available to participate in such defense or prosecution, provided that the party requiring the participation of such officers or employees shall pay all reasonable out-of-pocket costs, charges and expenses arising from such participation.
- d. Where there is a legitimate purpose not injurious to the other party and not related to prospective competition by such party with another party hereto, or if there is an audit by the IRS, other governmental inquiry, or litigation or prospective litigation to which Purchaser or Seller is or may become a party, making necessary any access to the records of or relating to Seller with respect to the Utility System held by Purchaser or making necessary Purchaser's access to records of or relating to the operations of Seller with respect to the Utility System held by any entity other than Seller, each of them shall allow representatives of the other party access to such records during regular business hours at such party's place of business for the sole purpose of obtaining information for use as aforesaid.
- e. Any party at any time, upon not less than 90 days' prior written notice to the other party hereto, may dispose of the records in its possession relating to the Purchased Assets and the business related thereto, in accordance with its respective record retention policies and subject to applicable law; provided, however, that a party may, at its own cost and expense, retain, or make arrangements for the retention of, records in the possession of another party to which it would have a right of access under paragraph d, if it notifies, in writing, such party that it desires to retain such records.
- f. Purchaser acknowledges and agrees that it will, in the future, cooperate and assist the Seller, as may be reasonably required, in Seller's activities

relative to delivery of propane and electric utility services within and about the Purchaser's territorial area.

13. FLORIDA PUBLIC SERVICE COMMISSION MATTERS.

Immediately after the Closing Date, the Seller shall petition the Florida Public Service Commission, for cancellation of the Certificate previously issued to Seller. Seller shall file any reports, if required, and satisfy its outstanding Florida gross receipts tax obligations through the Closing Date. All costs and expenses relative to terminating the relationship of the Utility System with the Florida Public Service Commission shall be borne by Seller.

14. MISCELLANEOUS PROVISIONS.

- a. This Agreement, the Schedules hereto, and the documents referred to herein, collectively embody the entire agreement and understandings between the parties and there are no other agreements or understandings, oral or written, with reference to this Agreement that are not merged into and superseded by this Agreement. This Agreement may be executed in one or more counterparts, each of which shall be considered an original.
- b. In addition to any other remedy available to the parties hereto, the parties stipulate and agree that the remedy of specific performance shall be available to enforce the obligations of each party set forth in this Agreement.
- c. Any notice or other document required or allowed to be given pursuant to this Agreement by either party to the other shall be in writing and shall be delivered personally, or by recognized overnight courier or sent by certified mail, postage prepaid, return receipt requested, or by facsimile transmission with written confirmation.

If to Seller such Notice shall be addressed to Seller at:

Florida Public Utilities Company  
c/o John T. English, President  
401 South Dixie Highway  
West Palm Beach, Florida 33401  
email: jenglish@fpuc.com

with a copy to

Rose, Sundstrom & Bentley, LLP  
c/o William E. Sundstrom, P.A.  
2548 Blairstone Pines Drive  
Tallahassee, Florida 32301  
email: wes@rsbattorneys.com

If to Purchaser, such notice shall be addressed to Purchaser at:

City of Fernandina Beach  
c/o Robert T. Mearns, City Manager  
204 Ash Street  
Fernandina Beach, Florida 32034  
email: rmearns@FBFL.org

with a copy to:

Office of the City Attorney  
Debra Braga, Esquire  
204 Ash Street  
Fernandina Beach, Florida 32034  
email: dbraga@FBFL.org

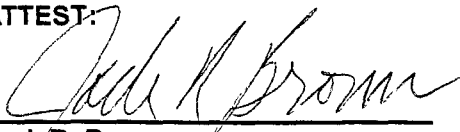
- d. The headings used are for convenience only, and they shall be disregarded in the construction of this Agreement.
- e. The drafting of this Agreement constitutes a joint effort of the parties, and in the interpretation hereof it shall be assumed that no party had any more input or influence than any other. All words, terms, and conditions herein contained are to be read in concert, each with the other, and a provision contained under one heading may be considered to be equally applicable under another heading in the interpretation of this Agreement.
- f. This Agreement is solely for the benefit of the parties hereto and no other causes of action shall accrue upon or by reason hereof to or for the benefit of any third party, who or which is not a formal party hereto.
- g. In the event any term or provision of this Agreement is determined by appropriate judicial authority to be illegal or otherwise invalid, such provision shall be given its nearest legal meaning or be construed as deleted, as such authority determines, and the remainder of this Agreement shall be construed to be in full force and effect.

- h. In the event of any litigation that arises between the parties with respect to this Agreement, the prevailing party shall be entitled to reasonable attorney fees at all trial and appellate levels.
- i. This Agreement may be amended or modified only if executed in writing and with the same formality as the original.
- j. This Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the State of Florida.
- k. If properly assigned, this Agreement shall be binding upon and inure to the benefit of the parties' successors and assigns.
- l. Seller maintains a communications antenna on the main elevated water storage tank being conveyed from Seller to Purchaser hereunder, as well as a repeater and related communications equipment on the ground in the vicinity of said water storage tank. Purchaser acknowledges and agrees that Seller is not hereby conveying said antenna and related equipment to the Purchaser, and that Seller may continue to utilize the water storage tank as a site for such communication antenna and related equipment at no cost in the future. At Closing, Purchaser will execute a thirty year lease agreement to Seller in this regard, to run concurrently with the Franchise Agreement referenced in Article 10.b.xvii. hereof. If Seller is receiving payments from any other party for utilization of the main elevated water storage tank for communication antenna purposes, Seller shall assign the right to such payments from such third party to Purchaser at Closing.
- m. Upon Closing of this Agreement, the existing Water Franchise and any amendments thereto by and between the parties hereto shall be extinguished and of no further force and effect.

[SIGNATURES ON NEXT PAGE]

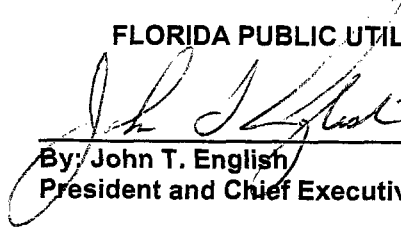
IN WITNESS WHEREOF, the parties have hereunto caused this Agreement to be executed the day and year aforesaid in counterparts, each counterpart to be considered an original.

ATTEST:

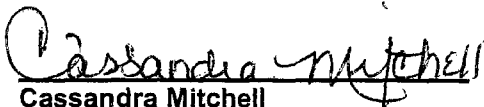
  
\_\_\_\_\_  
Jack R. Brown  
Secretary

(SEAL)

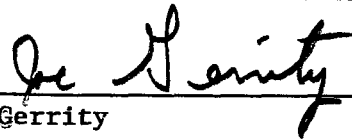
FLORIDA PUBLIC UTILITIES COMPANY

  
\_\_\_\_\_  
By: John T. English  
President and Chief Executive Officer

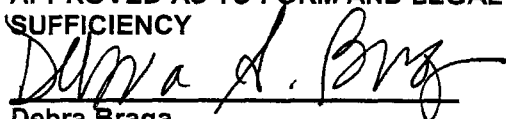
CITY OF FERNANDINA BEACH

  
\_\_\_\_\_  
Cassandra Mitchell  
Clerk

(SEAL)

  
\_\_\_\_\_  
By: Joe Gerrity  
Mayor

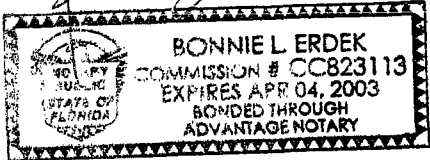
APPROVED AS TO FORM AND LEGAL SUFFICIENCY

  
\_\_\_\_\_  
Debra Braga  
Office of the City Attorney

STATE OF FLORIDA  
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 2<sup>nd</sup> day of ~~November~~ December, 2002 by John T. English, as President and Chief Executive Officer of Florida Public Utilities Company, a Florida corporation, on behalf of the corporation. He is personally known to me.

*Bonnie L. Erdek*



Notary Public  
My Commission Expires: April 04, 2003

STATE OF FLORIDA  
COUNTY OF NASSAU

The foregoing instrument was acknowledged before me this 4<sup>th</sup> day of December, 2002, by Joe Gerrity as Mayor of the City of Fernandina Beach, Florida, a political subdivision of the State of Florida, on behalf of the City. He is personally known to me.

*Joe Gerrity*

*Pamular D. Bell*

Notary Public  
My Commission Expires:



Pamular D Bell  
My Commission DD041598  
Expires July 11 2005

Florida Public Utilities\purchase and sale agreement -December 2-final  
12\02\02



# EXHIBIT C



September 2, 1971

# FLORIDA PUBLIC SERVICE COMMISSION

## CERTIFICATE NUMBER

1-W

Upon consideration of the record it is hereby ORDERED that authority be and is hereby granted to

FLORIDA PUBLIC UTILITIES COMPANY

Whose principal address is

338 Datura Street

West Palm Beach, Florida 33402 (Nassau County)

to provide water service in accordance with the provisions of Chapter 367, Florida Statutes, the Rules, Regulations and Orders of this Commission in the territory described by the Orders of this Commission.

This Certificate shall remain in force and effect until suspended, cancelled or revoked by Orders of this Commission.

ORDER 3798 DATED Apr. 28, 1965 DOCKET 7848-W

ORDER \_\_\_\_\_ DATED \_\_\_\_\_ DOCKET \_\_\_\_\_

ORDER \_\_\_\_\_ DATED \_\_\_\_\_ DOCKET \_\_\_\_\_

ORDER \_\_\_\_\_ DATED \_\_\_\_\_ DOCKET \_\_\_\_\_

BY ORDER OF THE  
FLORIDA PUBLIC SERVICE COMMISSION

(SEAL)

\_\_\_\_\_  
Administrative Secretary

\_\_\_\_\_  
Chairman