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July 2, 2003

VIA HAND DELIVERY

030589-WS

Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, Florida 32399-0850

Re: East Pasco Utilities, Inc.;
Joint Application for Transfer of Facilities to Governmental Authority
Our File No.: 36080.01

RECEIVED FPSC
03 JUL -2 PM 2:36
COMMISSION
CLERK

Dear Ms. Bayo:


Pursuant to Rule 25-30.032(1), Florida Administrative Code, enclosed please find an original and two (2) copies of the Joint Application of East Pasco Utilities, Inc. and Pasco County for Transfer of (Water and Wastewater) Facilities to Governmental Authority.

PLEASE OPEN A DOCKET TO PROCESS THIS APPLICATION.

Please also acknowledge receipt of this Application by stamping the extra copy as received.

Should you have any questions in this regard, please let me know.

Sincerely,



Wayne L. Schiefelbein
Of Counsel

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FPSC-BUREAU OF RECORDS

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Enclosures
East Pasco Utilities\Bayo070203ltr

DOCUMENT NUMBER DATE
05914 JUL -2 8
FPSC-COMMISSION CLERK

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Joint Application for Transfer of Water)
and Wastewater Facilities of East Pasco)
Utilities, Inc. To Pasco County, Florida.)

D30589-WS

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

Applicants, EAST PASCO UTILITIES, INC. (the "Company"), a Florida corporation, and PASCO COUNTY, FLORIDA (the "COUNTY"), a political subdivision 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 and Wastewater Facilities of the Company to the County, and say as follows:

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

East Pasco Utilities, Inc.
11838 Tee Time Circle
New Port Richey, FL 34654

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

DOCUMENT NUMBER DATE

05914 JUL-28

FPSC-COMMISSION CLERK

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

John J. Gallagher
Pasco County Administrator
West Pasco Government Center, S-340
7530 Little Road
New Port Richey, FL 34654

Robert D. Sumner
Pasco County Attorney
West Pasco Government Center, S-340
7530 Little Road
New Port Richey, FL 34654
(727) 847-8120
(727) 847-8021 (Fax)

3. The Company provides water and wastewater services in Pasco County, Florida, under Certificates Nos. 137-W and 098-S.

4. The Company and the County expect to enter into a Water and Wastewater System Purchase and Sale Agreement providing for the acquisition by the County of certain assets comprising the Company's water and wastewater utility operations in Pasco County, Florida.

5. On or about August 26, 2003, the County is expected to conduct a public hearing in accordance with § 125.3401, F.S., in which the County will consider (a) the most recent available income and expense statement for the Company's water and wastewater utility operation,

(b) the most recent available balance sheet for the Company's water and wastewater 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 and wastewater 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 impacts of the purchase on the Company's customers, both positive and negative, (g) any additional investment required and the ability and willingness of the County to make that investment, (h) the alternatives to the purchase, and the potential impact on the Company's customers if the purchase is not made, (i) the ability of the County to provide and maintain high-quality and cost-effective utility service, and (j) any and all other relevant issues. The applicants will submit to the Commission a copy of the Resolution adopted by the County in this regard upon its issuance.

6. A copy of the current draft Water and Wastewater System Purchase and Sale Agreement (the "Agreement") expected to be entered into by the Company and the County is attached as Exhibit "A."

7. The transaction is expected to close in September, 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 County has 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 and wastewater utility operations.

10. Pursuant to the Agreement, the liability for all customer deposits and the accumulated interest thereon will be transferred to the County, which shall be given credit therefor on the purchase price.

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 and/or wastewater service to the public for compensation.

13. The Company has undertaken a diligent search but cannot locate original Certificates Nos. 137-W and 098-S.

WHEREFORE, the applicants jointly request that this Commission approve the transfer of water and wastewater facilities of the Company to the County as soon as possible after the County's public hearing held pursuant to §125.3401, F. S, and, upon notification by the applicants that the purchase and sale of the Company's systems has in fact been consummated, cancel the Company's water and wastewater certificates.

ROSE, SUNDSTROM & BENTLEY, LLP
2548 Blairstone Pines Drive
Tallahassee, FL 32301
(850) 877-6555
(850) 656-4029 (fax)

Attorneys for East Pasco Utilities, Inc.

By: *Wayne L. Schiefelbein*
WAYNE L. SCHIEFELBEIN
Of Counsel

and

PASCO COUNTY
West Pasco Government Center, S-340
New Port Richey, FL 34654
(727) 847-8120
(727) 847-8021 (fax)

By: *Wayne L. Schiefelbein, for*
ROBERT D. SUMNER
County Attorney

EXHIBIT “A”

WATER AND WASTEWATER SYSTEM PURCHASE AND SALE
AGREEMENT BETWEEN PASCO COUNTY, FLORIDA,
AND EAST PASCO UTILITIES, INC.

THIS AGREEMENT is made and entered into by and between PASCO COUNTY, a political subdivision of the State of Florida, acting by and through its Board of County Commissioners, the governing body thereof, hereinafter referred to as the "COUNTY," and EAST PASCO UTILITIES, INC., a corporation authorized to do business in the State of Florida, hereinafter referred to as the "UTILITY."

RECITALS:

1. The UTILITY is the owner of a potable water treatment and distribution system and a wastewater transmission and collection system (hereinafter referred to collectively as "East Pasco" or "System") known as East Pasco Utilities Potable Water and Wastewater System located primarily within the boundaries of Pasco County, Florida.

2. Pursuant to its governmental powers pursuant to Chapters 163, 125, and 153, Florida Statutes, and other applicable laws, the COUNTY is authorized to preserve and enhance present advantages, encourage the most appropriate use of land, water, and resources, consistent with public interest, facilitate the adequate and efficient provision of water and sewerage facilities, and conserve, develop, utilize, and protect natural resources within its jurisdiction.

3. The UTILITY wishes to sell the System to the COUNTY.

4. The COUNTY has examined the UTILITY'S Potable Water and Wastewater System Assets, has examined its existing financial structure, has examined the long-range needs and goals of the COUNTY relative to the provision of water and wastewater service to its present and future citizens, and has determined that the execution of a purchase and sale agreement for the acquisition of the Potable Water and Wastewater System Assets is in the public interest at the public hearing pursuant to Chapter 125.3401, Florida Statutes.

5. The COUNTY desires to acquire the said System upon the terms and conditions set forth herein.

ACCORDINGLY, in consideration of the above Recitals and benefits to be derived from the mutual observation of the covenants contained herein, and other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged by the parties, the parties agree as follows:

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

SECTION 2. PURCHASE AND SALE OF WASTEWATER SYSTEM. The UTILITY agrees to sell and the COUNTY agrees to buy the System, consisting of all real, personal, and mixed property used or held for use in connection with the System, hereinafter referred to as the "Purchased Assets" or the "System Assets." The Purchased Assets shall not include any cash derived from monthly rates of the UTILITY received by the UTILITY, except as set forth in SECTIONS 3 and 11 hereof.

SECTION 3. PURCHASED ASSETS. On the closing date, as defined below, the UTILITY shall sell, assign, transfer, convey, and deliver to the COUNTY, and the COUNTY shall purchase, accept, and pay for all of the right, title, and interest, in and to the following property and assets (collectively the "Purchased Assets"):

3.1 Real Property. All real property and interests in real property the ("Property"), owned by the UTILITY, as described in Exhibit 1 attached hereto and made a part hereof, whereupon all wastewater collection lines, lift stations, manholes, potable water wells, water treatment plants, water distribution lines, pumping stations, and all other potable water and wastewater service facilities are located.

3.2 Plant and Other Facilities. The following assets owned by the UTILITY: all water treatment plants, water distribution pipelines, meters, wastewater collection, transmission, and pumping facilities of every kind and description whatsoever, including without limitation, all structures, trade fixtures, leasehold improvements, lift stations, pumps, generators, controls, collection and transmission pipes or facilities, valves, meters, service connections, and all other potable water and wastewater service connections, and all other potable water and wastewater physical facilities and property installations in use in connection with the utility business of the UTILITY.

3.3 Equipment. All equipment, vehicles, tools, parts, laboratory equipment, office equipment, and other personal property owned by the UTILITY located on the real property and/or utilized by the UTILITY including, but not limited to, those items more particularly described in Exhibit 2 attached hereto and incorporated into this agreement.

3.4 Other Rights. All rights, privileges, easements, licenses, prescriptive rights, rights-of-ways, and rights to use public and private roads, highways, streets, and other areas owned or possessed by the UTILITY for the construction, reconstruction, maintenance, and operation of the System of the UTILITY and the Purchased Assets (collectively referred to as the "Easements"). The Easements include, but are not limited to, those easements more particularly described in Exhibit 3 attached hereto and incorporated in this agreement.

3.5 Vendor Contracts. All right, title, and interest of the UTILITY in and to any and all vendor contracts, including any and all applicable warranties. Copies of vendor contracts are attached hereto as Exhibit 4 and incorporated by reference herein. COUNTY shall not be obligated to pay any portion of any vendor contract for services or products provided prior to the closing of this transaction.

3.6 Customer and Supplier Lists. All current customer and supplier lists and records, as-built surveys and sewer plans, plats, engineering and other drawings, designs, blueprints, plans and specifications, accounting and customer records, and all other information and business records in the possession of the UTILITY pertaining to operation of the System.

3.7 Permits and Approvals. All permits, certificates, and other governmental authorizations and approvals necessary to operate and maintain the System in accordance with all applications for permits and supporting information and all governmental requirements, as described in Exhibit 5 attached hereto and incorporated by reference herein.

3.8 Choses in Action. All choses in action including, but not limited to, warranty claims, claims for damages, the right to sue for any past infringement, or other cause of action in favor of UTILITY, except claims for monies due on account arising before closing.

3.9 Customer Deposits. Cash in the amount of _____ and 00/100 Dollars (\$ _____) which represents the customer service security deposits held by the UTILITY and a schedule reflecting the individual security deposits by each named customer which equals the above cash accounts. Actual customer deposits will be adjusted as of the closing date.

SECTION 4. ADDITIONAL RESPONSIBILITIES OF THE UTILITY. The UTILITY shall provide the COUNTY with thirty (30) man-hours of management consulting time from individuals named by the COUNTY over a two (2) year period following the closing date on an as-needed basis. If all time is not utilized within the said two (2) year period, no future obligation with respect thereto shall exist.

SECTION 5. PURCHASE PRICE AND PAYMENT. The COUNTY agrees to pay to the UTILITY a total purchase price in the amount of Two Million Eight Hundred Forty-One Thousand and 00/100 Dollars (\$2,841,000.00), plus an additional amount of One Thousand and 00/100 Dollars (\$1,000.00) for each new ERC added by the Utility between the time of execution of this Agreement and closing. The purchase price shall be paid with a partial payment at closing in the amount of One Million, Two Hundred Thirty-Six Thousand Four Hundred and 00/00 Dollars (\$1,236,400.00) and any additional amount due to added ERC's, in cash; a retainage (escrow) in the amount of One Hundred Thousand and 00/00 Dollars (\$100,000.00), which shall be managed as outlined in Section

33 of this agreement. The balance of the County's payments for this purchase shall be paid as outlined in Paragraph 5.1 below.

SECTION 5.1 TAX EXEMPT BONDS. The COUNTY will issue to UTILITY a bond, the interest on which will be excludable from the gross income of the holder thereof for federal income tax purposes, secured by a junior lien upon the net revenues of the COUNTY's combined water and sewer system, in the amount of One Million Five Hundred Four Thousand Six Hundred and 00/100 Dollars (\$1,504,600.00) with an interest rate of 4.85 percent per annum for thirty (30) years, payable semiannually, in the amount of Forty Seven Thousand Eight Hundred Fifty and 46/100 Dollars (\$47,850.46). The bond shall be redeemable in whole or in part, at the option of COUNTY. The bond shall not be subject to redemption for a period of five (5) years after the closing. After the fifth year, the County may, at its option, redeem the bond, in whole or in part, by paying an amount equal to the face value of the bonds to be redeemed plus a two percent (2%) premium. After the sixth year, the County may, at its option, redeem the bond, in whole or in part, by paying an amount equal to the face value of the bonds to be redeemed plus a one percent (1%) premium. Thereafter, the County may, at its option, redeem the bond, in whole or in part, by paying an amount equal to the face value of the bonds to be redeemed. The bond and the related documents shall be in form and substance as prepared and approved by COUNTY's bond counsel (Judson Freeman, Esq., Livermore, Freeman & McWilliams, P.A., 1301 Riverplace Boulevard, Suite 1825, Jacksonville, Florida 32207-9047); and shall contain covenants that are customary for similar revenue bond issues.

SECTION 6. STATUS OF TITLE. Within sixty (60) days of execution of this agreement, the UTILITY at the UTILITY'S own expense, shall furnish to the COUNTY or its attorney, a title insurance commitment from a reputable title insurance company acceptable to the COUNTY for the said real property described in Exhibits 1 and 3, attached hereto and made a part hereof, in the sum of One Million and 00/100 Dollars (\$1,000,000.00).

6.1 **Exceptions to Title.** The said commitment shall show fee simple title in the name of the UTILITY subject only to:

6.1.1 Taxes and assessments for the Year 2003 and subsequent years.

6.1.2 Restrictions set out in the recorded plats of subdivisions covered by the System.

6.1.3 Easements for utilities and drainage set out in such recorded plats of subdivisions. Easements shall clearly reflect the right of UTILITY to use of same.

Provided, however, that none of the restrictions or easements set out in such recorded plats of subdivisions shall prevent, hinder, or restrict the present or intended use of the property (copies of all such recorded plats shall be attached to such title commitment).

6.1.4 Recorded easements and agreements set forth in Exhibits 3 and 4 hereto.

6.1.5 Zoning restrictions, prohibitions, and other requirements imposed by governmental authority, none of which will prevent or hinder the present or intended use of the property by the COUNTY.

6.1.6 The UTILITY shall further provide, at its own expense, a Uniform Commercial Code (UCC) search and report as to all utility liens and encumbrances as recorded in the office of the Florida Secretary of State and the public records of Pasco County, Florida.

6.2 Status of Title. If the status of title shown on the said title insurance commitment does not reflect the status of title as herein set out then, in that event, upon written notification thereof to the UTILITY which notice shall be given by the COUNTY within thirty (30) days after receipt of the said commitment, the UTILITY agrees to use all due diligence to perfect title and shall have a period of thirty (30) days from notification of such defects within which to do so. If the COUNTY shall fail to notify the UTILITY within the aforesaid thirty (30) days, the COUNTY shall, for the purposes of this agreement, be deemed to have accepted the status of title as set forth in the commitment. In the event that defects are specified and the UTILITY, after exercising all due diligence, cannot clear same within the time provided in this paragraph, then, in that event, the COUNTY shall have the right to purchase the property in its then existing condition of title, or to rescind and terminate this agreement without liability by either party to the other. Notice of such election shall be given by the COUNTY to the UTILITY, in writing, by either registered or certified mail, within the time herein prescribed. It shall be the obligation of the UTILITY to purchase, at its expense, the title insurance policies issuable pursuant to such title commitments. All related costs, including searching, abstracting, attorney fees, and title insurance premiums incurred to issue the policy shall be the UTILITY'S expense.

SECTION 7. SURVEY. The UTILITY agrees, at its expense to prepare and provide, for all the property set out in Exhibits 1 and 3, a current survey prepared by a Florida-licensed surveyor in accordance with applicable law, which survey will be prepared in accordance with, and certified to the COUNTY and the title insurer in accordance with the minimum detail standards adopted by the Florida Society of Professional Land Surveyors. Any defect reflected on such survey including, but not limited to, encroachments of improvements across a boundary line or onto a utility strip, evidence of overlaps along a property line, violation of restrictions, setback lines, possession

inconsistent with the property boundaries, or any other such defect shall be treated as a title defect under Subsection 6.2 above. The UTILITY shall have the survey completed within forty five (45) days. The COUNTY shall then have thirty (30) days after receipt of the said survey to furnish notice to the UTILITY, as appropriate, of any title defect shown on the survey which does not conform to the status of title described in SECTION 6 of this agreement. If the COUNTY shall fail to notify the UTILITY, as appropriate within the aforesaid thirty (30) days, the COUNTY shall be deemed to have accepted the status of title shown on the survey.

SECTION 8. REPRESENTATIONS AND WARRANTIES OF THE UTILITY. To induce the COUNTY to enter into this agreement, the UTILITY represents and warrants that, at time of execution and as of closing date:

8.1 Organization, Standing, and Power. The UTILITY is a corporation, duly organized, validly existing, and in good standing under the laws of the State of Florida, and is authorized to do business in the State of Florida. The UTILITY has all requisite power and authority to own and lease its properties and the system assets, and to conduct its business as it is currently being conducted.

8.2 Authority for Agreement. The UTILITY has the power and authority to execute and deliver this agreement and to carry out its respective obligations hereunder. This agreement has been duly authorized by all action required to be taken by the UTILITY, has been duly executed and delivered by the UTILITY, and constitutes a valid and legally binding obligation of the UTILITY, enforceable in accordance with its terms. An appropriate corporate resolution has been approved and adopted authorizing the execution of this agreement, and the conclusion of this transaction in accordance with its terms.

8.3 Good and Marketable Title. Except for the matters described in Subsection 6.1., and the requisite authorization by the Florida Public Service Commission with respect to the transfer of the certificate of authorization, the UTILITY has good and marketable title to the Purchased Assets.

8.4 No Liens or Encumbrances. Except as otherwise specifically set forth herein, there are no liens, claims, or encumbrances of any type or nature upon or against the Purchased Assets or the revenues derived by UTILITY from the System including, but not limited to, financing statements or security instruments filed under the Uniform Commercial Code either in the county where the land is located or with the Secretary of State.

8.5 Litigation. The UTILITY has no actions, suits, or proceedings at law or in equity, pending or threatened against the UTILITY before any Federal, State, municipal or other court, administrative or governmental agency or instrumentality, domestic or foreign, which affect or

will affect the System or any of the Purchased Assets or the UTILITY'S right and ability to make and perform this agreement; nor is the UTILITY aware of any facts which to its knowledge are likely to result in any such action, suit, or proceeding. The UTILITY is not in default with respect to any order or decree of any court or of any administrative or governmental agency or instrumentality affecting the System or any of the Purchased Assets. The UTILITY agrees and warrants that it shall have a continuing duty to disclose up to and including the closing date, the existence and nature of all pending judicial or administrative suits, actions, proceedings, notices of violation, and orders which in any way relate to the operation of the System. Any such matters now known to the UTILITY shall be initially disclosed, in writing, within ten (10) days following execution of this agreement, and shall be supplemented each thirty (30) days thereafter, as well as on the closing date.

8.6 Appropriate Zoning. The present zoning of the property described in Exhibit 1 does not prohibit the operation of the System on the subject property.

8.7 Contracts and Agreements. Attached hereto as Exhibit 6 and by reference made a part hereof is a complete and accurate listing of the all the contracts, service agreements, developers' agreements, and leases related to the System and to which the UTILITY is a party.

8.8 New Agreements. The UTILITY shall not enter into any extension, developers' agreement, agreement concerning the operation of the Water and Wastewater System, agreement concerning water and/or wastewater service capacity outside the course of ordinary business, or cause any agreement to be modified after the date of execution of this agreement without the prior written approval of the COUNTY.

8.9 Agreements for Construction. With respect to any outstanding agreements for construction under which the UTILITY has previously received cash deposits or contribution in exchange for the UTILITY'S willingness to authorize the planning, permitting, construction, installation, and extension of the Potable Water and Wastewater System located in the East Pasco Utilities service area, the UTILITY has fully discharged all obligations on its part for such planning, permitting, construction, installation, and extension, and the UTILITY has no further obligations, liabilities, or expenses for the future planning, permitting, construction, installation, or extension of the System under any such agreements.

8.10 Leases. None of the System or the Purchased Assets is subject to any interest of any lessor or lessee and will not be so subject as of the closing date.

8.11 Contracts in Default. There are no existing contracts or commitments with respect to the System except for those listed in Exhibit 6 hereof and the UTILITY is not aware of any defaults of any parties to any such agreement.

8.12 No Governmental Violations. The UTILITY is not aware and has not been notified of the existence of any violations of any governmental rules, regulations, permitting conditions, or other governmental requirements applicable to the ownership, maintenance, or operation of the System.

8.13 No Record Violations. The use of the System on the property set out in Exhibit 1 is consistent with and does not violate any restrictions or conditions of record.

8.14 Absence of Changes. At and subsequent to the date of execution of this agreement, the UTILITY shall not and has not:

8.14.1 Undergone any change in its condition (financial or otherwise) of properties, assets, liabilities, business, or operations other than changes in the ordinary course of business which have not been, either in any case or in the aggregate, materially adverse.

8.14.2 Incurred any indebtedness for borrowed money or issued or sold any debt securities.

8.14.3 Suffered any damage, destruction or loss, whether or not covered by insurance, adversely affecting its properties, assets, or business.

8.14.4 Mortgaged, pledged, or subjected to any lien, lease, security interest, or other change or encumbrance any of its properties or assets, including but not limited to, the revenues of the System, tangible or intangible.

8.14.5 Acquired or disposed of any assets or properties of material value except in the ordinary course of business.

8.14.6 Forgiven or canceled any debts or claims, or waived any rights except in the ordinary course of business.

8.14.7 Entered into any material transaction other than in the ordinary course of business.

8.14.8 No employment contracts or obligations with any officer or employee that could become an obligation of the COUNTY.

8.14.9 Incurred any liability or obligation (whether absolute, accrued, contingent or otherwise) except in the ordinary course of business.

8.14.10 Made any prepayment of any obligation or liability.

8.14.11 Received any notice of termination of any contract, lease, or other agreement.

8.14.12 Made any change in accounting policies or practices, including any change in depreciation or amortization policy.

8.15 Financial Statements. Within thirty (30) days of execution hereof, the UTILITY at its expense, agrees to provide to the COUNTY a true, correct, and complete copies of its Annual Report and Financial Statements for the period January 1, 2001, to December 31, 2001, and January 1, 2002, to December 31, 2002. The Financial Statements and the annual reports shall be collectively referred to as the "Reports." The Reports shall fairly present the financial condition and results of operations of the UTILITY at the dates and for the period of time thereof and disclose all of the assets, liabilities, net worth, revenues and expenses of the UTILITY existing as of the dates and for the period of time thereof and were prepared in accordance with generally accepted accounting principles, applied on a basis consistent with all prior periods. Except as set forth in the Report, the UTILITY has no material liability, whether known or unknown, absolute, accrued, contingent or otherwise or whether due or to become due, which was not reflected or reserved against in the Audit.

8.16 Disclosure. No representation or warranty made by the UTILITY, to the best of the UTILITY'S knowledge, in this agreement contains or will contain any untrue statement of material facts or omits or will omit to state any material fact that would make the statements herein contained misleading or untrue.

8.17 Survival of Covenants. The UTILITY agrees that its representations and warranties set forth herein are true and correct as of the date of the execution hereof, shall be true and correct at the time of closing, and shall survive the closing for a period of five (5) years.

SECTION 9. CONDUCT PENDING CLOSING. The UTILITY covenants that pending the closing:

9.1 Business Conduct. Except as otherwise consented to in writing by the COUNTY, for the period beginning on the date of execution of this agreement and ending on the closing date, the UTILITY shall:

9.1.1 Carry on its business in, and only in, the usual, regular, and ordinary course and nevertheless comply with and uphold all applicable governmental requirements and law.

9.1.2 Maintain all of its material structures, equipment, and other tangible personal property in good repair, order, and condition, except for depletion, depreciation, ordinary wear and tear, and damage by unavoidable casualty.

9.1.3 Keep in full force and effect insurance comparable in amount and scope of coverage to insurance now carried by it.

9.1.4 Perform in all material respects all of its obligations under agreements, contracts, and instruments relating to or affecting their properties, assets and business.

9.1.5 Maintain its books of account and records in the usual, regular, and ordinary manner.

9.1.6 Use its best efforts to maximize the profits of its utilities business.

9.1.7 Comply in all material respects with all statutes, laws, ordinances, rules, and regulations applicable to it and to the conduct of its business.

9.1.8 Promptly advise the COUNTY, in writing, of any material adverse change in its operations or business.

9.1.9 Not enter into any transaction, including without limitation, the purchase, sale, or exchange of property with, or the rendering of any service to the UTILITY except in the ordinary course of and pursuant to the reasonable requirements of the business of the UTILITY and upon fair and reasonable terms no less favorable to the UTILITY than it would obtain in a comparable arm's-length transaction with an unrelated third party.

9.1.10 Renew all expired permits or correct system deficiencies in such permits if there is a regulatory order or demand in existence prior to the date of closing.

9.1.11 Cooperate with the COUNTY in obtaining transfer of all permits and governmental authorizations.

9.2 Risk of Loss: The UTILITY shall bear the risk of loss for the property up to and including the closing date.

9.3 No Encumbrances. From and after the date of the execution of this agreement, the UTILITY will not without the prior written consent of the COUNTY, dispose of or encumber any of the Purchased Assets and/or the revenues of the System, except in the ordinary course of business.

9.4 Access to Records. The UTILITY will cooperate by opening records and providing access to records and facilities to assist in acquainting the COUNTY'S operating and administrative personnel in the operation of the System.

9.5 Performance of Closing Conditions. The UTILITY shall perform all of the conditions to closing which should be performed by the UTILITY prior to closing as provided herein.

9.6 Insurance. Prior to closing, the UTILITY shall maintain adequate fire and extended coverage insurance to cover the cost of any repairs to the Purchased Assets that may be necessitated by casualty damage.

9.7 Examination and Inspection. The UTILITY will permit full examination including, but not limited to, physical testing by the COUNTY'S authorized representatives of all existing contractual obligations, physical systems, assets, equipment, real estate, rights-of-way, easements, permits, certificates, and inventories to be utilized by the UTILITY in connection with the

System. Such facilities will be properly maintained by the UTILITY within the custom and usage of the industry up until closing date.

SECTION 10. REPRESENTATIONS AND WARRANTIES OF THE COUNTY. To induce the UTILITY to enter into this agreement, the COUNTY represents as follows:

10.1 Organization, Standing, and Power of the County. The COUNTY is a political subdivision of the State of Florida, and has all requisite home rule power and authority to enter into this agreement, and to carry out and perform the terms and provisions of this agreement.

10.2 Authority for Agreement. The COUNTY has the authority and power to execute and deliver this agreement and to carry out its obligations hereunder. This agreement has been duly authorized by all county action required to be taken by the COUNTY, has been duly executed and delivered by the COUNTY, and constitutes a valid and legally binding special obligation of the COUNTY, enforceable in accordance with its terms.

10.3 Disclosure. No representation or warranty made by the COUNTY, to the best of the COUNTY'S knowledge, in this agreement contains or will contain any untrue statement of material facts or omits or will omit to state any material fact that would make the statements herein contained misleading or untrue.

SECTION 11. ADJUSTMENTS AND PRORATIONS.

11.1 Adjustments. At the time of closing, the parties covenant and agree that the following adjustments shall be made:

11.1.1 Real and personal property taxes on all real and personal property which is being conveyed by the UTILITY to the COUNTY, shall be prorated as of the closing date based on the most current tax bills available, with the understanding that if tax bills for the current year are not available, the proration shall be based on the tax bill for the previous year and the parties will be entitled to a re-proration when the current tax bill becomes available.

11.1.2 Within ten (10) days after closing, the UTILITY will render bills in its name to all customers for service through the closing date. The UTILITY intends to complete reading all account meters by the closing date. All rates, fees, and charges for water and sewer service through the closing date shall be the property of the UTILITY. Any subsequent bills rendered by the UTILITY, shall be rendered in the name of the COUNTY. All rates, fees, and charges for water and sewer service after the closing date shall be the property of the COUNTY. The UTILITY shall be paid all collective revenues received for sales of service provided as of and up to the closing date. Such collection of revenues for service prior to the closing date shall be transferred to the UTILITY for a period of three (3) months after the closing date. Thereafter, all such payments shall cease and any such revenues shall become the property of the COUNTY.

11.1.3 All accounts payable and bills for electricity and services and supplies for the month in which the closing of this transaction takes place will be prorated between the parties.

11.1.4 Any taxes on gross receipts as of the closing date shall be paid by the UTILITY.

11.1.5 All connection, plant capacity, and capital charges (hereafter "connection charges") which have been paid on or before the closing date by customers shall be deemed the property of the Utility. All other connection charges for customers who have not yet connected, together with any escrow fees, shall be rebated to the customers, or the UTILITY shall assume the financial responsibility for the customer connections. Furthermore, the UTILITY assumes all past developer agreements and other agreements involving service. By virtue of this agreement, the COUNTY will not accept or recognize any obligations regarding prepaid or discounted unconnected customers. Nothing contained in this agreement shall be construed to require the COUNTY to exercise the police power in the allocation of service capacity (hereby deemed to be governmental function) other than in accordance with the COUNTY'S current or future service allocation or extension rules.

11.1.6 The date of closing shall, for purposes of adjustments and prorations be deemed to be a seller ownership day.

11.1.7 Proof of Taxes Paid. The UTILITY shall furnish proof that the Florida Public Service Commission gross receipts tax have been paid and shall indemnify the County from any claim for such taxes arising between the date of certification and the closing date.

SECTION 12. EXPENSES. The cost of recording any releases, satisfactions, or corrective instruments, along with the documentary stamps and surtax, if any, on any deeds or corrective instruments shall be paid by the UTILITY. The cost of recording the deed and UCC-1 financing statements shall be paid by the COUNTY. Certified, confirmed, and ratified special assessments or COUNTY liens as of date of closing will be paid by the UTILITY.

SECTION 13. ENVIRONMENTAL MATTERS.

13.1 The UTILITY warrants that to the best of its knowledge, the property described in Exhibits 1 and 3 and the Purchased Assets are in a clean and healthful condition, free of environmental contamination, or potentially harmful physical conditions, other than such contaminants or harmful conditions permitted by law, and no hazardous substance has been improperly stored upon, disposed of, spilled, or otherwise released to the environment on or in the said property or easements by the UTILITY or, to the best of the knowledge of the UTILITY after due inquiry, by any other party. For purposes of this agreement the definition of the term "hazardous

substance" shall be that set out in Section 101(4) of the Federal Comprehensive Environmental Response, Compensation and Liability Act, except that for purposes of this agreement, the term shall also include 1) petroleum (crude oil) and natural gas (whether existing as a gas or a liquid); and 2) any substance defined as hazardous or toxic by any state or local regulatory agency having jurisdiction over the operations of the UTILITY.

13.2 The UTILITY warrants that the operation by the UTILITY of its utility business and the System complies in all material respects with all applicable Federal, State, and local environmental and occupational health and safety statutes and regulations.

13.3 The UTILITY warrants that any tanks (whether above or below ground) on or at any of the said property or easements installed or used by the UTILITY are in sound condition and free of leaks which could permit any release of stored material.

13.4 The UTILITY warrants that none of the property has been used by the UTILITY or by any other party, for the processing, storing, or otherwise utilizing asbestos, polychlorinated byphenyls (PCBs), or radioactive substances. The UTILITY has received no notice that any of the foregoing materials are present on or at any of the said property or easements.

13.5 The UTILITY warrants that all hazardous waste resulting from the operations of the UTILITY on or at any of the said property or easements have been disposed of in an environmentally sound and legal manner, and none of those wastes have been disposed of in any site where there has been, is, or, due to the manner of disposition by the UTILITY, will be released into the environment requiring corrective action, nor has the UTILITY received notice from any State or Federal environmental agency of its possible involvement with any disposal site under investigation by such agency.

13.6 Attached as Exhibit _____ is a copy of the most recent Environmental Survey for the Utility. The Utility warrants that the survey fairly represents the status of the Utility.

SECTION 14. INDEMNITY. The UTILITY shall, and hereby agrees to, indemnify and hold harmless, the COUNTY at all times from and after the closing date against and in respect to any damages, as hereinafter defined, from claims of any person or entity not a party to this agreement which arise out of facts or circumstances occurring on or prior to the time of the closing and not disclosed in Exhibit _____. The COUNTY shall notify the UTILITY of any such claims within thirty (30) days of its receipt of notice thereof. Damages, as used herein, shall include any obligations, losses, costs, expenses, injunctions, suits, fines, liabilities, penalties, and damages, including reasonable attorneys' fees, whatsoever that the COUNTY incurs as a result of any claim, action, proceeding, or any judgment or order rendered by a court or agency of competent jurisdiction, that arise from 1) any materially inaccurate representation made by the UTILITY in or under this

agreement; 2) breach of any of the warranties made by the UTILITY via or under this agreement; 3) breach or default in the performance by the UTILITY of any of the covenants, conditions, commitments, agreements, duties or obligations to be performed by it hereunder; 4) any debts, liabilities or obligations of the UTILITY, whether accrued, absolute, contingent or otherwise, due or to become due, except those obligations specifically assumed by the COUNTY pursuant to this agreement; 5) the breach by the UTILITY or the failure of any act or action to occur that is the subject of any duty, obligation, covenant, condition, commitment, agreement, representation, or warranty undertaken or made by or on behalf of the UTILITY pursuant to this agreement; and 6) the ownership and operation of the water and wastewater utility systems or the System Assets by the UTILITY prior to the closing date. The UTILITY agrees to indemnify and hold the COUNTY harmless from and pay any costs, fees, penalties, or fines that are imposed by, any court or agency of competent jurisdiction, upon the COUNTY or UTILITY by reason of the UTILITY'S failure to fully comply with any Florida Department of Environmental Protection, Southwest Florida Water Management District, or Florida Public Service Commission order, rule, or statute, which may arise before, during, or after the closing out of facts or circumstances occurring on or prior to the closing date. This indemnification shall survive closing for a period of five (5) years from the date of closing

SECTION 15. COVENANT NOT TO ENGAGE IN COMPETING UTILITY BUSINESS. The UTILITY agrees that it shall not engage (the words "shall not" being used in a mandatory definition) in the business of providing water or wastewater service to any land located within the COUNTY for the next five (5) years. This provision will only become effective upon closing.

SECTION 16. COUNTY'S INVESTIGATION. Notwithstanding any investigation or other due diligence heretofore conducted by the COUNTY or its affiliates, the UTILITY agrees that the COUNTY is entering into this transaction in reliance on the representations and warranties of the UTILITY set forth in this agreement, which reliance the UTILITY acknowledges is intended and justified.

SECTION 17. CLOSING. Provided that all conditions precedent to closing have, in fact, been so performed, including obtaining Florida Public Service Commission approval, the place of closing shall be at the Pasco County Public Works/Utilities Building, New Port Richey, Florida, and such closing shall occur after all conditions of the contract have been satisfied which is anticipated to be on or about August 29, 2003 (the closing date), or such earlier date as the parties mutually agree in writing, but not in any case earlier than fifteen (15) days following Public Service Commission approval. Either party shall have the right to extend the closing date fifteen (15) days beyond by sending written notice to the other party prior to August 29, 2003. Notwithstanding anything to the contrary contained in this agreement, the closing date may also be extended

pursuant to mutual written agreement of the parties. Immediately following the closing date, the COUNTY shall have full right to the possession of all of the System Assets wherever the same may be located.

SECTION 18. CLOSING DOCUMENTS AND PROCEDURES.

18.1 Deliveries from the UTILITY. At least fifteen (15) days prior to the closing date, the UTILITY shall deliver copies or drafts of the following documents to the COUNTY:

18.1.1 If applicable, true, correct, and complete copies of the Articles of Incorporation and Bylaws or Corporate Documents of East Pasco Utilities, Inc.

18.1.2 Warranty deeds to all of the property owned by the UTILITY as described in Exhibit 1, conveying to the COUNTY all of the UTILITY'S right, title, and interest in all such property and warranting that such property is free and clear of all liens, claims, and encumbrances other than Permitted Encumbrances, as that term is defined herein. The term "Permitted Encumbrances" as used in this agreement shall mean:

18.1.2.1 Restrictions of record that do not impair, restrict, or inhibit any use of or improvement to the property as permitted by applicable zoning ordinance presently in effect and that are not coupled with a forfeiture or reversionary provision.

18.1.2.2 Rights-of-way over, across, through, or upon the property heretofore dedicated to the public and public utility easements, provided that said rights-of-way and easements do not impair, restrict, or inhibit any use of the property or other interest in real property as permitted by applicable zoning ordinances presently in effect.

18.1.2.3 With respect to easements and dedicated rights-of-way, rights of owners of the property across which such easements and dedicated rights-of-ways exist as do not interfere with the use of such easement or right-of-way for utility purposes.

18.1.3 Instruments of conveyance, in appropriate recordable form, of all the easements as described in Exhibit 3 hereof, and effluent disposal easements, conveying to the COUNTY all of its right, title, and interest in all such property, together with all utility improvements thereto, and warranting that such easement rights and rights to use dedicated rights-of-way are free and clear of all liens, security interests, encumbrances, leasehold interests, charges or options, covenants, or restrictions other than Permitted Encumbrances, as that term is defined herein.

18.1.4 Bills of sale or other documents of assignment and transfer, with full warranties of title, to all System Assets other than those assets covered by Subsections 18.1.2 and 18.1.3 hereof.

18.1.5 Assignments of those vendor accounts which have been specifically requested by the COUNTY at least thirty (30) days prior to the closing date.

18.1.6 All business records sold to the COUNTY hereby.

18.1.7 Title insurance policies in the form called for in Section 6 of this agreement.

18.1.8 All permits, governmental authorizations and approvals as described in Exhibit 5.

18.1.9 Mechanics lien affidavit as to realty and personalty insuring and indemnifying COUNTY against any liens, claims, or encumbrances upon the Purchased Assets.

18.1.10 The surveys required by Section 7 hereof.

18.1.11 A complete billing register and billing information of the customers of the System in File Transfer Protocol (FTP) format. The UTILITY shall cooperate with the COUNTY to integrate the billing information into the COUNTY'S system.

18.1.12 The UTILITY representatives will conduct themselves in an appropriate fashion through transfer, will operate the system in compliance with all regulatory agencies, and will not reduce the value of the UTILITY in any manner through the date of transfer.

18.1.13 The UTILITY representatives will operate the system in compliance with all regulatory agencies, and will not reduce the value of the UTILITY in any manner through the date of transfer. The UTILITY shall provide for a minimum of one (1) month materials, supplies, and consumables to be transferred to the COUNTY at closing to provide for the continued operation of the UTILITY without a change in the level of service or impacting regulatory compliances. The UTILITY shall provide a listing of such materials, supplies, and consumables and the amount of each thirty (30) days prior to closing and the amounts shall be field verified by the COUNTY at closing.

18.2 At closing, the UTILITY shall deliver fully executed originals of all documents listed in Section 18.1.

18.3 COUNTY Deliverables. On the closing date, the COUNTY shall send a wire transfer to the account identified by the UTILITY or shall deliver a cashiers check in the amount due to the UTILITY as provided in Section 5 of this agreement and shall deliver the fully executed bonds and necessarily related bond documents to the Utility.

SECTION 19. RESPONSIBILITY FOR PROFESSIONAL FEES AND COSTS: Each party hereto shall be responsible for its own attorneys' fees, engineering fees, accounting fees, and other costs in connection with the preparation and execution of this agreement.

SECTION 20. PUBLIC SERVICE COMMISSION APPROVAL. The UTILITY accepts the responsibility for applying for approval by the Florida Public Service Commission for transfer of the Purchased Assets from the UTILITY to the COUNTY. The UTILITY agrees to pay all fees and costs

incurred by the UTILITY incident to such dealings with the Florida Public Service Commission. It is agreed that the COUNTY shall apply every reasonable effort to cooperate with the UTILITY to obtain approval from the Florida Public Service Commission and will render all reasonable assistance to the UTILITY necessary to obtain such approval.

SECTION 21. ASSIGNABILITY. This agreement shall not be assignable by the UTILITY or the COUNTY without the prior written consent of the other party hereto. However, the agreement may be assigned as part of an orderly dissolution procedure of the Utility as long as such assignment does not adversely affect title to any assets or the assignee's legal authority to convey the assets under this agreement. Nothing in this agreement, express or implied, is intended to confer upon any person, other than the parties hereto and their successors, any rights or remedies under or by reason of this agreement.

SECTION 22. ACCOUNTS RECEIVABLE. Except as provided in Subsection 11.1 above, the sale contemplated by this agreement shall not include any accounts receivable or other debts and receivables due to the UTILITY in respect of its operation of the System through the closing date. All such amounts received by the COUNTY after the closing date shall be promptly paid or delivered to the UTILITY. If the amounts received by the COUNTY include receivables not sold hereby, but also include receivables due the COUNTY, the amount received shall be prorated between the COUNTY and UTILITY. The COUNTY'S obligation to return accounts receivable shall end twelve (12) months from the closing date.

SECTION 23. COMMISSIONS. The UTILITY and the COUNTY warrant to the other that the transaction contemplated by this agreement is a direct, private transaction between the UTILITY and the COUNTY without the use of a broker or commissioned agent.

SECTION 24. FURTHER ASSURANCES. Each of the parties hereto agrees that, from time to time, upon the reasonable request of the other party and at the expense of the requesting party, without further consideration, it shall execute and deliver to the requesting party any and all further instruments, affidavits, conveyances and transfers as may be reasonably required to carry out the provisions of this agreement.

SECTION 25. NOTICES; PROPER FORM. Any notices required or allowed to be delivered hereunder shall be in writing and be deemed to be delivered when either 1) hand delivered to the person hereinafter designated, or 2) upon receipt of such notice when deposited in the United States mail, postage prepaid, certified mail, return receipt requested, addressed to a party at the address set forth opposite the party's name below, or at such other address as the party shall have specified by written notice to the other party delivered in accordance herewith:

COUNTY: John J. Gallagher
Pasco County Administrator
West Pasco Government Center, S-340
7530 Little Road
New Port Richey, Florida 34654

Copy to: Robert D. Sumner
Pasco County Attorney
West Pasco Government Center, S-340
7530 Little Road
New Port Richey, FL 34654

UTILITY: Jacqueline A. Turco, President
East Pasco Utilities, Inc.
11838 Tee Time Circle
New Port Richey, Florida 34654

Copy to: J. Benjamin Harrill, Esq.
Figurski & Harrill, P.A.
The Holiday Tower, Suite 350
2435 U.S. Highway 19 North
Holiday, Florida 34691

SECTION 26. NO INTERFERENCE WITH EMPLOYMENT. The UTILITY will not interfere with the COUNTY hiring the present operational staff of the System. The COUNTY shall notify the UTILITY thirty (30) days prior to the closing date as to which existing employees of the UTILITY to which the COUNTY will be extending offers of employment.

SECTION 27. ENTIRE AGREEMENT. This instrument constitutes the entire agreement between the parties and supersedes all previous discussions, understandings, and agreements between the parties relating to the subject matter of this agreement.

SECTION 28. AMENDMENT. Amendments to and waivers to the provisions herein shall be made by the parties only in writing by formal amendment.

SECTION 29. DISCLAIMER OF THIRD PARTY BENEFICIARIES. This agreement is solely for the benefit of the formal parties herein, and no right or cause of action shall accrue upon or by reason hereof, to or for the benefit of any third party not a formal party hereto.

SECTION 30. BINDING AFFECT. All of the provisions of this agreement shall be binding upon and inure to the benefit of and be enforceable by legal representatives, successors, and nominees of the COUNTY and the UTILITY.

SECTION 31. TIME OF THE ESSENCE. Time is hereby declared of the essence to the performance of this agreement.

SECTION 32. APPLICABLE LAW. This agreement shall be construed, controlled, and interpreted according to the laws of the State of Florida.

SECTION 33. ESCROW. On the closing date, the UTILITY shall deposit with the COUNTY ("Escrow/Agent") the sum of One Hundred Thousand and 00/100 Dollars (\$100,000.00) in an interest-bearing account to serve as security for payment of (1) sums necessary for repair or replacement of any latent defects in the System (including, but not limited to, damaged pipes or other below-ground facilities not disclosed by UTILITY or revealed in the COUNTY's inspection) as determined by the COUNTY; (2) sums necessary for satisfaction of the UTILITY'S indemnification obligations; and (3) sums necessary for satisfaction of the UTILITY'S warranty obligations which survive the closing. The said escrow account shall be maintained for a period of two (2) years after the closing date, unless all funds therein are expended sooner, or for a longer period should arbitration occur until all such arbitration is final. At the end of the said period, all funds remaining in the said escrow account, including interest shall be distributed to the UTILITY. The escrow sum of \$100,000.00 shall in no way be considered as a cap or limitation on any obligations that may be found to be due to the COUNTY from the UTILITY under the terms of this agreement.

SECTION 34. TERMINATION. Notwithstanding any other provision hereof, the COUNTY may, terminate this agreement without any liability or obligation to the UTILITY if 1) any material default under, material breach of, or failure of any agreement, covenant, condition, or term of this agreement by the UTILITY shall have occurred, or any material misrepresentation or any material breach of any warranty of the UTILITY shall have occurred; or 2) on or before the closing date any party (other than officers or employees of the COUNTY) shall (a) have file a legal challenge to the pending transfer with any Federal, state or local regulatory agency or commission or court and such challenge shall not have been dismissed or withdrawn before the closing date, or (b) have timely taken action to nullify the purchase through the initiative or referendum process; or 3) after conducting a public hearing or hearings under Section 125.3401, Florida Statutes, a referendum or special election is held within the COUNTY to determine the question of acquisition of the System (or the appropriateness of issuing revenue bonds for purposes of the said acquisition) and the voters of the County of Pasco reject the acquisition or issuance of revenue bonds; or 4) after conducting a public hearing or hearings under Section 125.3401, Florida Statutes, the Board of County Commissioners of Pasco County determine that the acquisition shall not occur. The COUNTY agrees to hold any such public hearing or hearings under Section 125.3401, Florida Statutes, within sixty (60) days after the date of execution of this agreement.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the _____ day of _____, 2003.

[SEAL]

BOARD OF COUNTY COMMISSIONERS OF PASCO COUNTY, FLORIDA

ATTEST:

Jed Pittman, Clerk

By:

Theodore J. Schrader, Chairman

WITNESSES:

EAST PASCO UTILITIES, INC.

Name of Witness

By:

Print Name

Print Name of Witness

Title

Name of Witness

Print Name of Witness

STATE OF _____)
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2003, by _____, (name of officer or agent, title of officer or agent acknowledging) of East Pasco Utilities, Inc., and is authorized to execute this document on behalf of the corporation. He/she is personally known to me (or who has produced _____ (type of identification) as identification.

Seal:

NOTARY PUBLIC
STATE OF FLORIDA

APPROVED AS TO LEGAL FORM AND SUFFICIENCY
Office of the Pasco County Attorney

By: _____
Attorney

LIST OF EXHIBITS

<u>EXHIBIT NO.</u>	<u>DESCRIPTION</u>
1	All real property and interests in real property owned by UTILITY.
2	All equipment, vehicles, tools, parts, laboratory equipment, office equipment, and other personal property owned by UTILITY.
3	Easements of UTILITY.
4.	Vendor contracts and warranties of UTILITY.
5.	Permits, certificates, and other governmental authorizations and approvals.
6.	All contracts, services agreements, developers' agreements, and leases related to the system.
7.	New developer's agreement.