

ORTEGA UTILITY COMPANY

905 North Street
Jacksonville, Florida 32211-5793
Phone 904/725-4522

JACKSONVILLE
FLORIDA PUBLIC
SERVICE COMMISSION
SEP 30 AM 9:43
MAIL ROOM

CERTIFIED MAIL #P334 927 234
RETURN RECEIPT REQUESTED

September 29, 1998

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

981241-WS

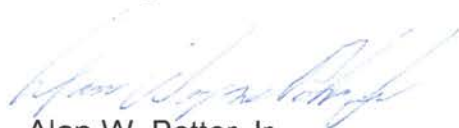
RE: Application for Transfer to Governmental Authority
Water Certificate No. 223-W
Wastewater Certificate No. 167-S

Dear Sir:

Please find enclosed six copies of the Application for Transfer to Governmental Authority for Ortega Utility Company to the Jacksonville Electric Authority. Also enclosed is one copy of the Asset Purchase Agreement for Ortega Utility Company.

Please contact this office if you require additional information.

Sincerely,



Alan W. Potter Jr.
Vice President

DOCUMENT NUMBER-DATE

10773 SEP 30 88

FPSC-RECORDS/REPORTING

APPLICATION FOR TRANSFER TO GOVERNMENTAL AUTHORITY

(Pursuant to Section 367.071(4) (a), Florida Statutes)

TO: Director, Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Blvd.
Tallahassee, Florida 32399-0850

The undersigned hereby makes application for the approval of the transfer of (all or part) of the facilities operated under Water Certificate No. 223-W and/or Wastewater Certificate No. 167-S located in Duval County, Florida, and submits the following:

PART I APPLICANT INFORMATION

A) The full name (as it appears on the certificate), address and telephone number of the seller (utility):

Ortega Utility Company

Name of utility

(904) 725-4616

Phone No.

(904) 725-2130

Fax No.

905 North Street

Office street address

Jacksonville

Florida

32211

City

State

Zip Code

Mailing address if different from street address

wwtp@mail.jax.bellsouth.net

Internet address if applicable

B) The name, address and telephone number of a representative of the utility to contact concerning this application:

Alan W. Potter, Jr (**904**) **725-4616**
Name Phone No.
905 North Street
Street address
Jacksonville, Florida 32211
City State Zip Code

C) The full name, address and telephone number of the governmental authority:

Jacksonville Electric Authority
Name of utility
(**904**) **632-8011** (**904**) **665-7382**
Phone No. Fax No.
21 West Church Street
Office street address
Jacksonville Florida 32202
City State Zip Code

Mailing address if different from street address

Internet address if applicable

D) The name, address and telephone number of a representative of the governmental authority to contact concerning this application:

John Jolly, SAO (**904**) **665-8061**
Name Phone No.
21 West Church Street
Street address
Jacksonville Florida 32202
City State Zip Code

PART II FINANCIAL INFORMATION

- A) Exhibit A - A copy of the contract pursuant to Rules 25-30.037(4)(c) and (d), Florida Administrative Code.
- B) Exhibit B - A statement regarding the disposition of customer deposits and the accumulated interest thereon.
- C) Exhibit C - A statement regarding the disposition of any outstanding regulatory assessment fees, fines or refunds owed.
- D) Exhibit D - A statement that the buyer (governmental authority) obtained from the utility or the Commission the utility's most recent available income and expense statement, balance sheet and statement of rate base for regulatory purposes and contributions-in-aid-of-construction.
- E) Indicate the date on which the buyer proposes to take official action to acquire the utility:

 July 24, 1998

If only a portion of the utility's facilities is being transferred, a revised territory description and map of the utility's remaining territory must be provided, as discussed in PART III, below.

IF THE UTILITY'S ENTIRE FACILITIES ARE BEING TRANSFERRED, PLEASE DISREGARD PART III OF THIS APPLICATION FORM.

PART III CERTIFICATION

- A) **TERRITORY DESCRIPTION** **Entire territory is being transferred.**

Exhibit N/A - An accurate description of the utility's revised territory. If the water and wastewater territory is different, provide separate descriptions.

Note: Use the Survey of Public Lands method (township, range, section, and quarter section), if possible, or a metes and bounds description. Give the subdivision or project name. The description should **NOT** refer to land grants or plat books, but may use geographic boundaries (i.e., road right-of-ways, railroads, rivers, creeks, etc). The object is to make the description as brief, but as accurate as possible.

B) **TERRITORY MAPS**

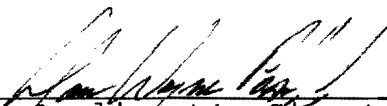
Exhibit N/A - One copy of an official county tax assessment map or other map showing township, range and section with a scale such as 1"=200' or 1"=400' on which the remaining territory is plotted by use of metes and bounds or quarter sections and with a defined reference point of beginning. If the water and wastewater territory is different, provide separate maps.

C) **TARIFF SHEETS**

Exhibit N/A - The original and two copies of tariff sheet(s) revised to show correct service territory. Please refer to Rules 25-9.009 and 25-9.010, Florida Administrative Code, regarding page numbering of tariff sheets before preparing the tariff revisions. (Pages 9-10.) Sample tariff sheets are attached. (Pages 11-14.)

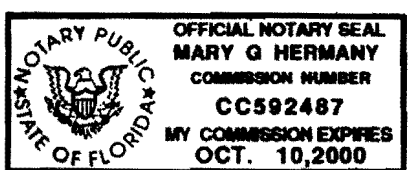
PART IV AFFIDAVIT

I Alan W. Potter, Jr. (applicant) do solemnly swear or affirm that the facts stated in the forgoing application and all exhibits attached thereto are true and correct and that said statements of fact thereto constitutes a complete statement of the matter to which it relates.

BY: 
Applicant's Signature
Alan W. Potter, Jr.
Applicant's Name (Typed)
Vice-president
Applicant's Title *

Subscribed and sworn to before me this 29th day of Sept. 1998 by Alan W. Potter Jr. who is personally known to me or produced identification

Type of Identification Produced



Mary G. Hermany
Notary Public's Signature

Print, Type or Stamp Commissioned
Name of Notary Public

* If applicant is a corporation, the affidavit must be made by the president or other officer authorized by the by-laws of the corporation to act for it. If applicant is a partnership or association, a member of the organization authorized to make such affidavit shall execute same.

Exhibit A

Please refer to the Asset Purchase Agreement (attached).

Exhibit B

Ortega Utility Company has neither collected nor retains any deposits from either customers or developers.

Exhibit C

There are currently no outstanding regulatory assessment fees, fines or refunds payable or owed by Ortega Utility Company.

Exhibit D

JACKSONVILLE ELECTRIC AUTHORITY

21 WEST CHURCH STREET • JACKSONVILLE, FL 32202-3139



July 23, 1998

Mr. Alan W. Potter, Jr.
Ortega Utility Company
905 North Street
Jacksonville, Florida 32211

Re: Transfer of Ortega Utility Company

Dear Mr. Potter:

This is certify that the JEA has received, as represented by the management of Ortega Utility Company, the most recent available income and expense statement, balance sheet, statement of rate base for regulatory purposes and contributions-in-aid-of-construction.

We are looking forward to the transfer of the customers of Ortega Utility Company to JEA.

Sincerely:

Walt Bussells,

Managing Director

ASSET PURCHASE AGREEMENT

ORTEGA UTILITY CO.

This Asset Purchase Agreement (hereinafter referred to as this "Agreement"), made and entered into in duplicate, by and between the Jacksonville Electric Authority, a public body corporate and politic of the State of Florida (hereinafter called the "JEA" or the "Purchaser"), and Ortega Utility Co., a Florida corporation with principal offices and doing business in Duval County, Florida (hereinafter called the "Seller").

W I T N E S S E T H:

WHEREAS, Seller represents that it is the legal owner and holder of the assets hereinafter described (as more particularly defined herein, the "System"); and

WHEREAS, Purchaser desires to acquire the System from the Seller.

NOW, THEREFORE, for and in consideration of the premises and the mutual agreements hereinafter set forth, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Seller and Purchaser hereby agree as follows:

DEFINITIONS

The following terms shall have the meanings established hereinbelow, unless the context otherwise expressly requires:

A. "Purchase Price" shall mean the total amount of \$7,180,000.00 payable and to be paid by Purchaser to Seller at the time and in the manner as provided in Section 1 below.

B. "Ortega Water and Sewer Service Area" shall mean the areas of Duval County described in Schedule A attached hereto, which are the areas wherein the Seller holds certificates of public convenience and necessity to render water and/or sewer services and the areas served by Seller which are not certificated, which areas collectively are sometimes referred to herein as "Seller's service area". Said Schedule A shall be revised as of the date of the Closing referred to in Section 2 below to clearly delineate and designate all such areas which are certificated and non-certificated, and shall be delivered to Purchaser at the Closing.

C. "System" shall mean all the assets and facilities of the water and sewer systems owned by the Seller at the time of the Closing, consisting generally of goodwill, plants, lift stations, lines, material and/or spare parts, equipment and performance warranties, personal and real property, including easements, with buildings and improvements thereon, all as more particularly described in Schedule B attached hereto and made a part hereof, and all being used and in service to the public. "System" also shall include all facilities currently under construction in connection with the Service Agreements for which dedication of facilities has not yet occurred. Said Schedule B shall be revised to provide an inventory and valuation of property and equipment to be sold to the JEA in accordance with the National Association of Regulatory Utility Commissioners (N.A.R.U.C.) chart of accounts, and such revised Schedule B shall be delivered to Purchaser's Finance Department at least fourteen (14) days prior to

Closing. In addition, said Schedule B shall be revised further as aforesaid as of the date of the Closing, and such revised Schedule B shall be delivered to Purchaser at the Closing. Schedule B, as so revised, shall be in sufficient detail and supported by legal and other descriptions necessary to enable the System to be recorded on the books and records of the JEA. Except with respect to real property, sufficient detail shall be deemed to be achieved through reference to "as built" system drawings, cumulative listings of plant items and the general ledger maintained by Seller in accordance with the requirements of the Florida Public Service Commission. Notwithstanding anything to the contrary, "System" shall not include cash, motor vehicles, tools, portable equipment, office furniture and equipment, computer equipment and software, accounts receivable, choses in action, any other intangibles (except goodwill), or liabilities, nor shall it include any assets or properties of Seller not used in connection with the provision of water and sewer service in the Seller's service areas.

D. "Service Agreements" shall mean those agreements listed in Schedule D hereto, pursuant to which Seller has agreed to provide utility service from the System to persons and/or locations not currently served by the System.

1. **PURCHASE AND SALE OF SYSTEM.** - Seller will sell, transfer, assign, and deliver the System to Purchaser free and clear of liens, pledges and encumbrances of any kind, nature or description except as otherwise expressly permitted hereby, and

Purchaser will purchase the System for the aggregate purchase price of \$7,180,000.00. Said Purchase Price shall be payable as follows:

(a) at the Closing, Purchaser shall deliver to Seller a check in the amount of \$7,180,000, less (i) the amount referred to in clause (b) below and (ii) the amount, if any, of ad valorem taxes or assessments for the 1998 tax year attributable to the period through and including the date of the Closing, determined as provided in Section 6C; and

(b) at the Closing, Purchaser shall deliver to SouthTrust Bank, N.A. (the "Escrow Agent") a check in the amount of \$250,000 for deposit in the escrow account (the "Escrow Account") to be established pursuant to the Escrow Agreement to be entered into among Seller, Purchaser and the Escrow Agent simultaneously with the Closing in the form of Exhibit A hereto (the "Escrow Agreement").

Seller and Purchaser acknowledge and agree that (x) the amount so deposited in the Escrow Account shall be held in escrow for a period of two (2) years (except as otherwise permitted by the Escrow Agreement), and shall be used and applied solely as provided in the Escrow Agreement, (y) such amount is to be deposited in escrow as security for the Purchaser, in order to provide funds to compensate it for any costs or losses incurred by Purchaser for which Seller, pursuant to any provision of this Agreement, shall be required to indemnify and hold Purchaser harmless, or to reimburse Purchaser, as a result of the existence or occurrence of any circumstance or event specified herein and (z) all interest earned

on amounts held pursuant to the Escrow Agreement shall be paid to Seller as received. Nothing contained in this Section 1 shall be construed to limit or restrict any right or remedy of Purchaser otherwise existing pursuant to this Agreement or at law or in equity.

2. **CLOSING.** - The closing of the transaction provided for in Section 1 above (hereinafter the "Closing") will take place at the offices of the Purchaser, 21 West Church St., Jacksonville, Florida, on a date to be agreed upon by Seller and Purchaser on or before September 30, 1998. If the parties fail to close this transaction within the time provided, either party may, at its option, terminate this Agreement and the rights and obligations of the parties hereunder shall cease.

3. **ACCESS TO INFORMATION.** - Prior to the date of Closing, Seller will give or cause to be given to the officials of Purchaser and any attorneys, accountants, engineers or other authorized representatives of Purchaser, free and full access during normal business hours to all of the Seller's properties, books, contracts, commitments, files and records relating to the System. At the Closing, Seller will deliver to Purchaser copies of all such books, contracts, commitments, files and records. Copies of "as built" records shall be reproducible. Prior to the date of Closing, Seller shall provide to the Purchaser the most recent information available about the Seller's income and expenses, balance sheet, rate base for regulatory purposes and contributions-in-aid-of-

construction (capacity fees), in each such case, attributable to the System.

4. **CONDITION OF THE SYSTEM AT CLOSING.** -

A. **Status of System.** -

(1) **Property.** - Seller represents and warrants that at the time of Closing the Seller will own all of the assets described on **Schedule B** attached hereto and made a part of this Agreement, as the same shall be revised in accordance with the fourth sentence of the definition of the term "System" herein, being all real property, interests in real property and tangible personal properties utilized in the operation of and constituting a part of the System except for cash, motor vehicles, tools, portable equipment, office furniture and equipment, computer equipment and software, accounts receivable, choses in action, any other intangibles (except goodwill), or liabilities. The Seller warrants that, at the time of Closing, said assets will be free of all liens and encumbrances and shall not have any obligations, liabilities or commitments, whether under contract, lease or otherwise, encumbering said assets or for which Purchaser might be liable or committed, other than (a) Seller's commitments to provide service to the customers listed in **Schedule C** attached hereto, (b) the Service Agreements listed in **Schedule D** attached hereto and (c) the lease to PBM Constructors attached as **Appendix 2** to **Schedule B**, provided that in the event that there should be any such liens or encumbrances, or if there are any such obligations, liabilities or commitments, the Seller is responsible for the same, and for the

additional special consideration of ten and no/100 dollars (\$10.00), receipt and sufficiency of which Seller hereby acknowledges, Seller shall indemnify, defend and hold Purchaser harmless from same as provided in Sections 7 and 8 hereof. With respect to the lease to PBM Constructors, Seller agrees (a) that from and after the Closing, Purchaser shall be entitled to receive all payments by such firm pursuant to such lease and (b) that Seller will convey to such firm certain real property not constituting a part of the System, so as to enable such firm to vacate the properties being leased by it not later than six months following the date of the Closing.

(2) **Accounts and Records.** - At the time of Closing, Seller shall furnish Purchaser copies of all current customer account lists, including street addresses, names, balances, payment history, consumption history, list of uncollectibles and type of service (deduct meters, private meters, fire hydrants, private fire hydrants, sewer surcharge billings, etc.) and all computer files relating to Ortega Utility Co. customer billing, current maps depicting all systems under construction, "as built", including any original tracings, sepias, or other reproducible material in possession of Seller, materially related to the System.

B. Conveyances at Closing. - At Closing, Seller will convey by warranty deed, free and clear of all claims, liens and encumbrances, subject only to ad valorem taxes for 1998, the real property described on Schedule B, as the same shall be revised in

accordance with the fourth sentence of the definition of the term "System" herein. At Closing, Seller also will convey, by assignment subject only to ad valorem taxes for 1998, its rights to all easements in which it has an interest described on said **Schedule B**, as so revised. For the additional special consideration of ten and no/100 dollars (\$10.00), receipt and sufficiency of which Seller hereby acknowledges, Seller shall defend, indemnify and hold Purchaser harmless with respect to any adverse claim or assertion that Purchaser's right to the real property or use of any easement is defective. Nothing contained in this Section **4B** shall be construed to limit or restrict any right or remedy of Purchaser otherwise existing pursuant to this Agreement or at law or in equity.

C. **Title Insurance.** - Prior to the Closing, Seller, at its cost, shall provide Purchaser with a commitment for a title insurance policy in the amount of \$243,594.75 (or such other amount as may be agreed upon by the parties hereto), delineating and indicating title to the real estate held in fee simple described on **Schedule B**, as the same shall be revised in accordance with the fourth sentence of the definition of the term "System" herein, vested in Seller, and, as soon as is reasonably practicable after the Closing, Seller, at its cost, shall provide Purchaser with an Owner's title insurance policy in the same amount as said commitment, showing title in Purchaser to said real estate, free and clear of all liens and encumbrances except for ad valorem taxes for 1998 and easements and restrictions of record, none of which

easements or restrictions will adversely affect the use or enjoyment of said real estate for the purpose contemplated by this Agreement, and subject to zoning in the City of Jacksonville. Seller shall have no obligation to indemnify under the penultimate sentence of Section 4B if such real property is so insured, and such insurance responds to correct any adverse claim or assertion that Purchaser's right to real property is defective, and such corrective action is satisfactory to the Purchaser. It is understood by and between the parties that the easements described in Schedule B shall not be insured by such title insurance. Accordingly, and with respect to such uninsured easements, Seller agrees to indemnify and hold Purchaser harmless from any adverse claim or assertion that Purchaser's right to use any such easement is defective, pursuant to the provisions of Section 4B. Nothing contained in this Section 4C shall be construed to limit or restrict any right or remedy of Purchaser otherwise existing pursuant to this Agreement or at law or in equity.

D. **Representations Regarding Real Property, Easements and Rights-of-Way.** - Seller owns or leases all the real property, easements and rights-of-way, as shown in Schedule B, as the same shall be revised in accordance with the fourth sentence of the definition of the term "System" herein, necessary to operate and maintain the System except for parts of the System (i) located in public rights-of-way, (ii) located in utility easements dedicated to the JEA, the City of Jacksonville or Duval County, Florida, in plats and other documents recorded in the public records of Duval

County, Florida and (iii) described in Appendix 3 to Schedule B that have been acquired by prescription. The System as now constructed is located within said real property, easements and rights-of-way. As for parts located in public rights-of-way, Seller (a) has obtained necessary approvals from appropriate governmental agencies for the use of the same and (b) has the right, power and authority to convey its rights therein to Purchaser as provided herein. As for parts described in clauses (ii) and (iii) of the first sentence of this Section 4D, Seller (a) has full legal right to the use of those properties as is necessary for the operation and maintenance of the System and (b) has the right, power and authority to convey its rights therein to Purchaser as provided herein. Seller shall defend, indemnify and hold Purchaser harmless for the cost of acquiring any real property, easements or rights-of-way or for the relocation of any part of the System, if required as a result of failure of this representation and because said cost is not otherwise compensated by title insurance, pursuant to the provisions of Section 4C. Nothing contained in this Section 4D shall be construed to limit or restrict any right or remedy of Purchaser otherwise existing pursuant to this Agreement or at law or in equity.

5. CONDUCT OF BUSINESS PENDING CLOSING. - Seller covenants and warrants that between the date of the execution by Seller and Purchaser of this Agreement and the date of Closing, the Seller will conduct the utility business of the System in the normal and usual manner; the Seller will preserve intact the organization and

properties of the System; and the Seller will use its best efforts to comply in all material respects with all governing Federal, State and local laws, rules and regulations relating to the System including but not limited to any necessary certificates of public convenience and necessity, licenses, permits, applications and the like, except for certificates of public convenience for the areas specified in **Schedule A** as not having been covered by such certificates. In addition, between such dates, without the prior written consent of Purchaser, Seller will not enter into (a) any new maintenance or construction contracts with respect to the System or (b) any agreements obligating it to provide service from the System to persons and/or locations outside of its current service area, in either such case, whether written or oral, nor will Seller renew any such existing contracts or agreements. Where service requests are made within the existing service area of Seller, Seller will continue to conduct the utility business in the normal and usual manner.

6. ADDITIONAL REPRESENTATIONS AND WARRANTIES OF SELLER. -

Seller represents and warrants to Purchaser as follows:

A. Corporate Existence and Power. - The Seller is a corporation duly organized, validly existing, and in good standing under the laws of the State of Florida, and has corporate power to own all of its properties including, without limitation, those described in **Schedule B** hereto, and to carry on the utility business of the System as now being conducted. A certificate of

good standing from the Florida Secretary of State shall be furnished by Seller to Purchaser at the Closing.

B. Authority. - This Agreement has been duly authorized, executed and delivered by Seller and is a valid and binding obligation of Seller; the sale of the System has been authorized by all necessary corporate action; and the deeds, bills of sale, assignments and other instruments which will be delivered by Seller at Closing will have been duly authorized and executed and will be effective to vest in Purchaser good and valid title to the System.

C. Tax Matters. - The Seller covenants and warrants that the Seller has filed all federal and state tax returns which are required to be filed and has paid all federal, state and local taxes or assessments and all assessments required by law, except for taxes and returns due after the Closing for the taxable year during which the Closing will occur, or any portion thereof (hereinafter called "current tax year"), in each such case, only to the extent that the failure to file or pay the same could result in the imposition of any lien or encumbrance upon any of the properties of the System. In addition, the Seller covenants and warrants that it will prepare and file, or cause to be prepared and filed, all federal, state and local tax returns and reports required to be filed by the Seller for the current tax year, and will make payment in full, when due, of all such federal, state and local taxes for the current tax year and any assessments relating to said tax year. Further, the Seller covenants and warrants that

at the time of Closing there will be no taxes or assessments or any costs and expenses related thereto which will not be fully paid and discharged by the Seller, except for the payment of ad valorem taxes for the current tax year, which taxes shall be prorated as of the date of Closing and deducted from the amount of the Purchase Price payable by Purchaser as provided in Section 1 above. If Closing occurs when 1998 taxes have not been fixed, taxes will be prorated as of the time of Closing based on the taxes paid for the property for 1997 and deducted from the amount of the Purchase Price payable by Purchaser as aforesaid. The Seller covenants and warrants to pay and to be fully responsible for the payment of any and all taxes, costs, expenses and other liabilities under this Section 6C not previously paid by the Seller, whether for its prorated portion of taxes for the current tax year or for any past tax year, and shall fully defend, indemnify and hold the Purchaser harmless against any and all taxes, costs, expenses and other liabilities as provided in and in accordance with the obligations of the Seller under Sections 7 and 8 hereof. Nothing contained in this Section 6C shall be construed to limit or restrict any right or remedy of Purchaser otherwise existing pursuant to this Agreement or at law or in equity.

D. **Service Extensions.** - Seller represents that it has complied with the procedures set forth in Section 367.061, Florida Statutes, in extending its service to any area outside the territory described in any of its certificates. Seller shall defend, indemnify and hold Purchaser harmless with respect to any

claim or assertion that Purchaser is without authority to provide service in any of the areas for which Seller held a certificate of public convenience and necessity at the time of Closing and any areas served by Seller at the time of Closing which were not then certificated. Nothing contained in this Section 6D shall be construed to limit or restrict any right or remedy of Purchaser otherwise existing pursuant to this Agreement or at law or in equity.

E. Service Commitments. -

(1) The Seller represents and warrants that it is not indebted or obligated to its customers for any prepaid service commitment fees or customer deposits and it shall deliver the System to the Purchaser free of all and any service commitments or customer deposits of any type, except for (a) Seller's customers as identified in **Schedule C** hereto, who are receiving service on the date of Closing and (b) the persons that are parties to the Service Agreements listed in **Schedule D** hereto. Accordingly, except for (a) the service commitments referred to in the preceding sentence and (b) the agreements (if any) to provide service approved by Purchaser in accordance with the second sentence of Section 5, Seller agrees to indemnify and hold Purchaser harmless from any claim for service alleged to have arisen prior to Closing.

(2) Purchaser assumes responsibility, except for rates, of providing service to Seller's customers as identified in **Schedule C** who are receiving service at the time of Closing or who are parties to the Service Agreements listed in **Schedule D** hereto

or the agreements (if any) to provide service approved by Purchaser in accordance with the second sentence of Section 5. Seller represents and warrants that there are no outstanding commitments to construct any facilities to serve any of the Seller's customers listed in **Schedule C** or, except for the commitments set forth in the Service Agreements listed in **Schedule D**, any other parties, and that there are no existing commitments, responsibilities or obligations of Seller to provide wastewater reuse service.

(3) Seller shall deliver to Purchaser at the Closing all of the Service Agreements listed in **Schedule D** hereto and all agreements (if any) to provide service approved by Purchaser in accordance with the second sentence of Section 5, together with all deposits and charges, including contributions-in-aid-of-construction (capacity fees), paid to Seller thereunder. Purchaser agrees to assume all such Service Agreements and to accept all such deposits and charges as payment in full of all deposits and charges, including charges similar to contributions-in-aid-of-construction (capacity fees), for the establishment of utility service by Purchaser in accordance with such Service Agreements, other than charges to be imposed by Purchaser in respect of water meter fees. In addition, Purchaser agrees that it will not impose any sewer installation fees with respect to sewer services to be provided pursuant to such Service Agreements.

(4) Purchaser does not assume any existing rate schedules of Seller.

(5) Seller represents and warrants that it is not a party to any cost recovery agreements entered into with third persons, except for such agreements as are identified in **Schedule E** hereto. At the Closing, Seller shall (a) distribute to the persons entitled thereto all proceeds held by it pursuant to such cost recovery agreements and (b) assign all such unexpired agreements to Purchaser. Purchaser agrees that it shall accept such assignment of all such unexpired cost recovery agreements, and that it shall perform all of Seller's obligations thereunder.

F. Warranties. - The Seller represents and warrants that there are no outstanding unexpired material, equipment and performance warranties which relate to the System.

G. Zoning. - Seller covenants and warrants that existing zoning and building codes and governmental regulations applicable to the real estate property described in **Schedule B** do not prohibit the existing operation of the System thereon.

H. Utilities. - Telephone, electric utility and any other utility service used in operation and maintenance of the System shall not be discontinued as of the date of Closing upon request by Purchaser; provided, however, all charges for such services shall be prorated as of the date of Closing. Utility deposits, paid by Seller, shall be the property of Seller.

I. Environmental Matters. -

(1) To the best knowledge of the Seller after due inquiry, (a) the System is, and, at the Closing, shall remain, in full compliance with all applicable local, state, and federal

environmental and occupational health and safety statutes and regulations and (b) no hazardous substance has been, or, at the Closing, will be, improperly stored upon, disposed of, spilled or otherwise released to the environment on or in the said property or easements by the Seller or 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 (a) petroleum (crude oil) and natural gas (whether existing as a gas or a liquid); and (b) any substance defined as hazardous or toxic by any state or local regulatory agency having jurisdiction over the operations of the Seller.

(2) To the best knowledge of the Seller after due inquiry, any tanks (whether above or below ground) in, on or at any of the said property or easements installed or used by the Seller are, and, at the Closing, shall remain, in sound condition, free of corrosion or leaks which could permit any release of stored material.

(3) To the best knowledge of the Seller after due inquiry, none of the said property or easements has been, or, prior to the Closing, will be, used by the Seller or by any other party, for the processing, storing, or other utilization of asbestos, polychlorinated biphenyls ("PCB"), or radioactive substances except for any asbestos contained in AC pipe presently installed as part of the System; however, the water system has been monitored for

asbestos and the reports (and related analyses) did not reflect results which exceed the Maximum Contaminant Limitations (MCL's). The Seller has received no notice that any of the foregoing materials are present on or at any of the said property or easements. In the event that Seller receives any such notice prior to Closing, it shall immediately give notice thereof to Purchaser, in which case, Purchaser shall have the right, at its option, to elect to terminate this Agreement.

(4) To the best knowledge of the Seller after due inquiry, (a) all hazardous waste resulting from the operations of the Seller on or at any of the said property or easements has been, and, prior to Closing, will be, disposed of in an environmentally sound manner and (b) none of those wastes have been, or, prior to Closing, will be, disposed of in any site where they have been, are, or, due to the manner of disposition by the Seller, will be released into the environment requiring corrective action. The Seller has received no notice from any local, state or federal environmental agency of its possible involvement with any disposal site under investigation by such agency. In the event that Seller receives any such notice prior to Closing, it shall immediately give notice thereof to Purchaser, in which case, Purchaser shall have the right, at its option, to elect to terminate this Agreement.

(5) For the additional special consideration of ten and no/100 dollars (\$10.00), receipt and sufficiency of which Seller hereby acknowledges, Seller shall indemnify, defend and hold

the Purchaser harmless for damages suffered or reasonable costs incurred by the Purchaser as a result of Seller's discharge or release of sewage, effluent, waste water, pollutants, contaminants, hazardous wastes, hazardous substances or other substances from its properties or facilities, or for other air or water pollution caused by Seller, in either such case, in violation of Federal, State, or local environmental statutes, laws, ordinances, rules or regulations. Those statutes, laws, ordinances, rules and regulations include, but are not limited to, the Comprehensive Environmental Response, Compensation and Liability Act, the Federal Insecticide, Fungicide, and Rodenticide Act, the Toxic Substances Control Act, the Resource Conservation Recovery Act, the Clear Water Act, the Clean Air Act, the Florida Air and Water Pollution Control Act, City of Jacksonville ordinances, and rules and regulations of the United States Environmental Protection Agency and the Jacksonville Environmental Protection Board. Those damages or costs include, but are not limited to, the requirements of Federal, State, or local laws, ordinances, rules or regulations, to investigate, monitor, assess and evaluate the discharge or release of pollutants, contaminants, hazardous wastes, hazardous substances, or other substances and to take such action as necessary to prevent, minimize, or mitigate the threat to the public or to the environment, including removal of the discharged or released material, and action necessary for a permanent remedy. For purposes of this provision, the terms "remove" or "removal" and "remedy" shall have the same meaning given to those terms in the

Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C., §9601. This indemnification is limited to events and conditions occurring during Seller's operation and ownership of the System, and shall be effective regardless of whether or not Seller had actual knowledge of the occurrence or existence thereof (whether at the time of such occurrence or thereafter). Nothing contained in this Section 6I(5) shall be construed to limit or restrict any right or remedy of Purchaser otherwise existing pursuant to this Agreement or at law or in equity.

J. Compliance with Laws; Governmental Authorizations. -

(1) The Seller is not, and at the Closing will not be, in violation or default under any statute, law, ordinance, rule, regulation, judgment, order, decree, permit, concession, grant, franchise, license or other governmental authorization, approval or requirement applicable to it or its operations with respect to the System.

(2) The Seller has not received any citation or notice of violation of any federal, state or local statute, ordinance or regulation of any kind which is currently outstanding. In the event that Seller receives any such notice prior to Closing, it shall immediately give notice thereof to Purchaser, in which case, Purchaser shall have the right, at its option, to elect to terminate this Agreement.

(3) The Seller has all permits, concessions, grants, qualifications, franchises, licenses, approvals, or other governmental authorizations and approvals necessary for the conduct

of its business relating to the System and all of the foregoing have been duly obtained and are in full force and effect and there are no proceedings pending or, to the best knowledge of the Seller after due inquiry, threatened which may result in the revocation, cancellation; suspension or adverse modification of any thereof.

(4) The Seller is unaware of any reason why all permits, concessions, grants, franchises, licenses, approvals, or other governmental authorizations and approvals issued to the Seller by any local, state, or federal agency or instrumentality will not or cannot be transferred to the Purchaser upon compliance with the applicable regulatory procedures to transfer same. **Schedule F** hereto consists of a list and copies of current or active permits, applications or other documents, together with effective dates and expiration dates (if any) thereof, demonstrating approval of the facilities of the System associated with the production, treatment and pumping of water and the treatment and disposal of wastewater by all applicable governmental authorities, including, but not limited to: (a) Florida Department of Environmental Regulation or the regulatory predecessor, (b) St. Johns River Water Management District, (c) Florida Public Service Commission and (d) the United States Environmental Protection Agency.

7. **ASSUMPTION OF LIABILITIES BY SELLER.** - Except for (a) Purchaser's obligation to serve those customers identified in **Schedule C** and (b) the Service Agreements listed on **Schedule D**, at the Closing, Seller will assume and agree to defend, indemnify and

hold the Purchaser harmless with respect to any and all contracts, obligations, claims, suits, judgments, damages, settlements, taxes, costs, expenses and other liabilities of the Seller and for the breach of any covenant of the Seller under this Agreement, including without limitation any contracts or agreements of the Seller for or relating to utility cut-ins, connections or the provision of utility services, however or whenever arising, whether authorized or unauthorized, in existence at the time of Closing. Nothing contained in this Section 7 shall be construed to limit or restrict any right or remedy of Purchaser otherwise existing pursuant to this Agreement or at law or in equity. Except as provided in the following paragraph with respect to the employees of Seller, at no time and under no circumstances will Purchaser have any obligation or responsibility whatever to the former officers, employees, agents, personal representatives, contractors, consultants or assigns of the Seller. Should any claims, demands, suits, actions or the like be advanced against Purchaser arising from or related to any relationship of any such former officers, employees, agents, personal representatives, contractors, consultants or assigns with the Seller, Seller shall defend, indemnify and save the Purchaser harmless therefrom in accordance with Seller's obligations under Section 6, Section 7 and Section 8 hereof.

Notwithstanding any other provision of this Section 7, Purchaser shall offer the existing employees of Seller listed in Schedule G hereto employment in accordance with the provisions of

this paragraph, at Purchaser's proposed respective rates of remuneration, as set forth on said Schedule G, which offer shall remain open for 60 days following the Closing, after which date it shall expire. Any employees accepting such offer shall have the status of "contract employees" of Purchaser, pursuant to and in accordance with the terms and conditions set forth in the form of the "Special Purpose Employment Agreement - Long Term" to be executed by each such employee in substantially the form set forth as Exhibit B hereto. Such employment shall be for a term of one year, renewable at the sole option of Purchaser for one additional year, it being understood that Purchaser shall have the right, in its sole discretion, to dismiss any such employee for cause at any time.

8. NOTICE AND RIGHT TO DEFEND. - In the event any assessment, claim, demand, proceeding, or suit is brought against the Purchaser for which Seller may be liable or obligated to pay under any agreement, warranty or indemnity contained in this Agreement (including but not limited to Sections 4, 6 and 7 hereof), Purchaser shall give Seller prompt notice thereof in writing and Seller shall have the right and obligation of paying or otherwise causing to be discharged and satisfied such assessment, claim, demand, proceeding, or suit or of defending and contesting the same at the cost of Seller, and at no cost to Purchaser, including without limitation contesting the liability by paying the same and bringing suit for a refund.

9. COLLECTIONS. - At Closing, Seller shall furnish Purchaser with an accurate list of its water and sewer customers, in a form to be agreed upon by and between Purchaser and Seller. At a minimum, Seller shall furnish said customer list showing name and mailing and service address(es) for each water and sewer customer. Any other information shall be agreed upon by the parties hereto. Seller shall assist Purchaser in the transfer of customers from Seller's service lists to Purchaser's service lists. Seller, or its assigns, shall have the right to all accounts for services provided by Seller prior to the date of Closing. On or about the date of Closing, Seller and Purchaser jointly shall cause the meter for each customer's water and/or sewer account to be read. Seller shall promptly thereafter bill and collect its charges for water and sewer service up to the joint meter reading date, as well as its pro forma base facility charges. The Seller shall settle in full with all its customers based upon the joint meter reading and its final billing. Each customer account shall be settled in full at this billing. Seller shall neither bill nor collect any charges for services rendered to customers served by the System after the joint meter reading date.

10. CONDITIONS PRECEDENT TO PURCHASER'S OBLIGATIONS HEREUNDER. - All of the obligations of Purchaser under this Agreement are subject to the fulfillment by Seller of each of the following conditions:

A. There is and shall be no material error, misstatement, or omission in the representations and warranties

made by Seller in this Agreement or pursuant to this Agreement, and in the event any error, misstatement or omission, whether or not material, shall come to the attention of Seller, Seller will promptly cause the same to be remedied at no cost to Purchaser. Nothing contained in this Section 10A shall be construed to limit or restrict any right or remedy of Purchaser otherwise existing pursuant to this Agreement or at law or in equity.

B. Seller's representations and warranties contained in this Agreement are made both at and as of the time of the execution and delivery of this Agreement and at and as of the time of Closing and will be true in all material respects at Closing and shall survive the Closing; and Seller will have performed or complied with all agreements and conditions required by this Agreement to be performed by it prior to or at the Closing.

C. All instruments and documents required to carry out this Agreement or incidental thereto and all other related matters will have been approved as to form by counsel for Purchaser.

D. Seller, on behalf of and with cooperation of Purchaser, shall have filed such applications and taken such other actions as, in the opinion of counsel for Purchaser, are necessary to obtain the approval of the Florida Public Service Commission to the sale and transfer of the System and Seller's certificates under this Agreement pursuant to Section 367.071, Florida Statutes; it being understood and agreed by Seller that, following the Closing, and notwithstanding anything to the contrary herein, Seller shall remain obligated to cooperate with Purchaser and to take such

further actions as Purchaser may reasonably request in order to obtain such approval.

11. PROHIBITION AGAINST ASSIGNMENTS. - Without the consent of Purchaser, which consent shall not unreasonably be withheld, neither this Agreement nor any part hereof may be sold, assigned, pledged or otherwise alienated or encumbered by Seller; nor shall Seller delegate or be relieved of its duties or obligations hereunder; nor shall the right to receive payment under this Agreement be negotiated, transferred or assigned except by operation of law or with the prior written consent of Purchaser, which consent shall not unreasonably be withheld.

12. EXECUTION OF DOCUMENTS AND CLOSING COSTS. - Seller will prepare and submit to counsel for Purchaser for approval as to form and Seller and Purchaser will execute any further instruments, documents, writings and papers as may be necessary or required in the performance of the terms and to effectuate the intent of this Agreement, and Seller will pay all costs incident thereto. Seller and Purchaser will pay all other closing costs, as follows:

Seller shall pay:

- (a) documentary taxes;
- (b) Seller's attorneys' fees;
- (c) Seller's accountants' fees;
- (d) costs of surveys required for title insurance;
- (e) costs of title insurance for all real property other than easements; and
- (f) recording fees for satisfaction of mortgages.

Purchaser shall pay:

(a) recording fees for deeds, and assignment of easements;
and

(b) Purchaser's attorneys' fees.

13. NOTICES. - All notices, requests, demands or other communications hereunder shall be in writing and shall be deemed to have been duly given if delivered or mailed by Certified or Registered Mail, return receipt requested, postage prepaid.

A. If to Seller, to Ortega Utility Co., c/o Alan W. Potter, Jr., 905 North, Jacksonville, Florida 32211, with a copy to Fred H. Steffey, Esq., 6620 S. Point Drive South, Jacksonville, Florida 32216; Counsel for Seller.

B. If to the JEA, to the Strategic Assessment Officer, Jacksonville Electric Authority, 21 W. Church Street, Jacksonville, Florida 32202-3139, with a copy to the Office of General Counsel of the City of Jacksonville at 117 West Duval Street, Suite 480, Jacksonville, Florida 32202.

The person and address to whom notices are to be delivered or sent may be changed by delivering written notice thereof to the other party in the manner provided above not less than ten (10) days prior to the effective date of said change.

14. FLORIDA LAW TO GOVERN. - This Agreement is being delivered and is intended to be performed in the State of Florida and shall be construed and enforced in accordance with the laws of such state.

15. **ENTIRE AGREEMENT.** - This Agreement contains the entire agreement between the parties hereto with respect to the purchase and sale herein described and the other transactions herein contemplated and supersedes all prior agreements between the parties hereto.

16. **GENDER AND DEFINITIONS.** - Where the context requires, the terms "Seller" and "Purchaser" shall include the singular and the plural and shall include the masculine, feminine, and neuter genders.

Plural shall include the singular and singular shall include the plural in all applicable instances.

17. **SEVERABILITY OF INVALID PROVISIONS.** - If any one or more of the covenants, agreements or provisions of this Agreement shall be held contrary to any express provision of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void, and shall be deemed separable from the remaining covenants, agreements or provisions, and shall in no way affect the validity of any of the other provisions of this Agreement.

18. **BINDING EFFECT.** - All rights and obligations hereunder shall inure to the benefit of and be binding upon the parties hereto, their successors and assigns.

19. **COVENANT NOT TO COMPETE.** - Except for businesses in existence and operating as water and/or sewer utilities on the date of the Closing, Seller agrees not to establish or reestablish or

reopen any business or trade similar to the business of the System, the assets of which are hereby being sold, within the incorporated area of the City of Jacksonville, Florida, excluding the Cities of Atlantic Beach, Neptune Beach and Jacksonville Beach and the Town of Baldwin, for a term of five (5) years from the date of the Closing. At the time of Closing, Seller's officers will provide Purchaser with individual covenants not to compete in the following form:

INDIVIDUAL COVENANT

Except for businesses in existence and operating as water and/or sewer utilities on the date hereof, the undersigned agrees not to establish or reestablish or reopen any business, trade or occupation similar to the business of Ortega Utility Co.'s water and sewer system, sold to the JEA by separate agreement, or in any manner to become interested directly or indirectly either as an employee, owner, partner, agent, stockholder, director, officer, consultant or otherwise, in any such business or trade or occupation (other than the practice of engineering, as regulated under Chapter 471, Florida Statutes) within the incorporated area of the City of Jacksonville, Florida, excluding the Cities of Atlantic Beach, Neptune Beach and Jacksonville Beach and the Town

of Baldwin, for a term of five (5) years from the date hereof.

20. **GUARANTY OF SELLER'S OBLIGATIONS HEREUNDER.** - In the event that at the Closing or within two (2) years thereafter, any circumstance exists or event occurs, the result of which is that Seller shall be required to indemnify and hold Purchaser harmless, or to reimburse Purchaser, in respect thereof, in either such case, pursuant to any provision of this Agreement, it is hereby agreed between Seller and Purchaser that each of the stockholders of Seller executing this Agreement (which stockholders, in the aggregate, own at least 75% of the outstanding common stock of Seller) shall severally guaranty such obligations of Seller, in proportion to the respective percentages set forth opposite such stockholders' names on the signature page hereof, and each such stockholder, by its execution of this Agreement, hereby agrees to guaranty such respective percentage of such obligations as aforesaid. It is further understood and agreed that such guaranty is a guaranty of payment and not of collection, is unconditional, will not be discharged except by complete payment and shall not exceed, in the aggregate, \$500,000 (which amount shall be reduced by the amount(s), if any, paid to Purchaser from the Escrow Account established in accordance with Section 1 as a result of the existence of any such circumstance or the occurrence of any such event).

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the undersigned parties have duly executed this Agreement as of the date this Agreement is executed on behalf of the Purchaser as indicated below.

[Corp. Seal]

Samantha Dyer
Syane Howard

Witnesses

SELLER:

ORTEGA UTILITY CO.

By: [Signature]
Its President

PURCHASER:

JACKSONVILLE ELECTRIC AUTHORITY

By: [Signature]
Walter P. Bussells,
Managing Director and
Chief Executive Officer

Attest [Signature]
Staff Support Assistant

Date of Execution by Purchaser:

August 6, 1998

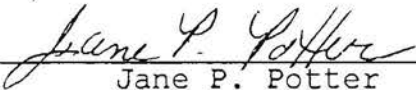
Agreed to:

Percentage
for Purposes of
Section 20



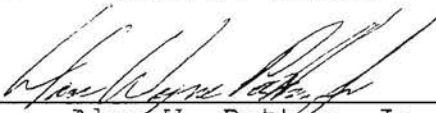
Alan W. Potter, Sr.

36.667%



Jane P. Potter


6.667



Alan W. Potter, Jr.

16.667

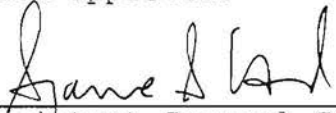
LAKE COUNTY UTILITIES, INC.

By: 

Name:
Title: *President*


40.000

Form approved:



Assistant General Counsel

I hereby certify that the expenditure contemplated by the foregoing contract has been duly authorized, and provision has been made for the payment of the monies provided therein to be paid.



John Wolfel,
Controller
Jacksonville Electric Authority

INDEX OF ATTACHMENTS TO
ASSET PURCHASE AGREEMENT
ORTEGA UTILITY CO.

Schedules:

- A. ___ Service areas of Ortega Utility Co..
- B. ___ Description of assets to be purchased.
 - Appendix 1: Water and sewer facilities.
 - Appendix 2: Lease to PBM Constructors.
 - Appendix 3: List of easements acquired by Ortega Utility Co..
 - Appendix 4: List of fee simple properties acquired by Ortega Utility Co..
- C. ___ List of Ortega Utility Co.'s existing service connections.
- D. ___ List of Ortega Utility Co.'s existing Service Agreements.
- E. ___ List of Ortega Utility Co.'s existing Cost Recovery Agreements.
- F. ___ List and copies of current or active permits, applications or other documents between Ortega Utility Co. and all applicable Federal, State and local governmental authorities.
- G. ___ List of Ortega Utility Co.'s existing employees and their respective rates of remuneration proposed by Purchaser.

Exhibits:

- A. ___ Escrow Agreement among Ortega Utility Co., the Jacksonville Electric Authority and SouthTrust Bank, N.A., as Escrow Agent.
- B. ___ Form of Jacksonville Electric Authority "Special Purpose Employment Agreement - Long Term".