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ROSE, SUNDBSTROM & BENTLEY, LLP

2548 BLAIRSTONE PINES DRIVE
TALLAHASSEE, FLORIDA 32301

(850) 877-6555

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March 12, 1999

ROBERT M. C. ROSE
OF COUNSEL

VIA HAND DELIVERY

Ms. Blanca Bayo, Director
Florida Public Service Commission
Water and Wastewater Division
2540 Shumard Oaks Boulevard
Tallahassee, Florida 32399-0850

Re: Docket No. 981858-WS; AquaSource Utility, Inc.; Transfer of
Rotonda West Utility Corporation
Our File No. 33087.09

Dear Ms. Bayo:

This letter is in response to the Commission Staff's request that we file additional information regarding the above-referenced Application. The responses are as follows:

1. Sales Contract. Due to the voluminous nature of the exhibits to the Agreement for Purchase and Sale of Water and Wastewater Assets, AquaSource Utility, Inc. will provide a copy of those exhibits directly to the Commission Staff in lieu of filing the original and five copies with your office.

2. Proof of Ownership. Enclosed is a copy of the recorded Warranty Deed which includes the exhibit describing the real property, which was omitted from the Warranty Deed in the original filing.

3. Federal Income Taxes. AquaSource Utility, Inc. has obtained or will obtain copies of all Federal Income Tax Returns of Rotonda West Utility Corporation since rate base was last established. Since the Commission Staff is currently conducting a rate base audit, those documents will be available for the auditors at their request.

ACK _____
AFA / _____
APP _____
CAF _____
CMU _____
CTR _____
EAG _____
LEG 2 _____
LIN _____
OPC _____
RCH _____
SEC 1 _____
HFC _____
CT _____

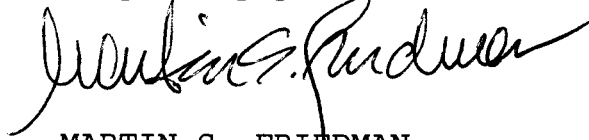
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Ms. Blanca Bayo
March 12, 1999
Page 2

4. Closing Date. The closing on this purchase and sale took place on December 15, 1998. This closing prior to formal PSC approval was necessitated by the Seller's desire that a sale take place prior to the end of 1998. As noted by the Commission Staff, the Agreement recognizes the Commission's jurisdiction regarding the approval of this transaction and has provided for an unwind of the transaction in the unlikely event that the Commission does not approve of this Application.

Very truly yours,



MARTIN S. FRIEDMAN
For the Firm

MSF/brm

cc: Mr. Derek Clow
Samantha McRae, Esquire
Ms. Pat Brady (via hand delivery)

OR BOOK 1665 PAGE 0187

Together with all the tenements, hereditaments and appurtenances thereto belonging or in anywise appertaining.

To Have and to Hold, the same in fee simple forever.

And the grantor hereby covenants with said grantee that it is lawfully seized of said land in fee simple; that it has good right and lawful authority to sell and convey said land; that it hereby fully warrants the title to said land and will defend the same against the lawful claims of all persons claiming by, through or under the said grantor.

In Witness Whereof the grantor has caused these presents to be executed in its name, and its corporate seal to be hereunto affixed, by its proper officers thereunto duly authorized, the day and year first above written.

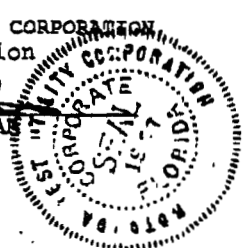
Signed, sealed and delivered in the presence of:

Cari Vogt
Print Name: Cari Vogt

Margaret Howard
Print Name: Margaret Howard

ROTONDA WEST UTILITY CORPORATION
a Florida corporation

BY: [Signature]
GARY LITTLESTAR
Its: President



State of Florida
County of Charlotte

The foregoing instrument was acknowledged before me this day of December, 1998, by Gary Littlestar, as President of ROTONDA WEST UTILITY CORPORATION, a Florida corporation, on behalf of the corporation. He is personally known to me or has produced a driver's license as identification.

(NOTARY SEAL) ~~~~~

~~~~~

Cari Vogt  
Notary Public  
Print Name: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

OR BOOK 1665 PAGE 0188

**SCHEDULE "1"**

**Real Estate Taxes - Account Numbers:**

0076797-000000-7  
0096875-018000-2  
0096877-200100-3  
0096874-127500-7  
0070114-000000-6  
0070115-000000-5  
0096875-019000-0  
0096875-019200-8  
0096868-103600-5  
0096868-103700-4  
0096868-103800-3  
0096868-103900-2  
0096868-104000-9  
0096868-104100-8  
0096868-104200-7  
0096868-104400-5  
0096868-104300-6  
0070199-000000-4

NALBA19406-29FOLIO.#

**EXHIBIT "A"**

OR BOOK 1665 PAGE 0189

**Parcel 1 - Utility Office Site**

Lot 1, Block J, 2nd Addition to Cape Haze East, as recorded in Plat Book 3, page 54, of the Public Records of Charlotte County, Florida, less and except the following described portion thereof:

Commence at the intersection of the southerly side lot line extended with the easterly right-of-way line of County Road 775; thence Northeasterly along said Southerly side lot line extended a distance of 30.00 feet to the Southwest corner of said Lot 1, Block J for a Point of Beginning; thence Northwesterly along the front lot line of said Lot 1 a distance of 100.00 feet; thence Northeasterly along a line parallel to the Southerly side lot line of said Lot 1 a distance of 90.00 feet; thence Southeasterly along a line parallel to the front lot line of said Lot 1 a distance of 100.00 feet to a point on the said Southerly side lot line of Lot 1; thence Southwesterly along said lot line a distance of 90.00 feet to the Point of Beginning.

**Parcel 2 - Sewage Treatment Plant Site**

That unnumbered tract of land located in the Rotonda Shores Subdivision, a subdivision according to the plat thereof, as recorded in Plat Book 10, pages 7A through 7N, inclusive, of the Public Records of Charlotte County, Florida, the east and northerly boundary of which is the rear lot line of Lots 763 through 773, inclusive, and Lots 807 through 819, inclusive, and extensions thereof, between Lots 766 and 767; the west and southwesterly boundary of which is the rear lot line of Lots 820 through 826, inclusive, and Lots 748 through 762, inclusive, and extensions thereof on the north to the rear line of Lot 807 and across Kendall Road; and the southeasterly boundary is the rear lot line of Lots 736 through 745, inclusive, and the extension thereof between Lots 741 and 742;

Less and Except: The right-of-way of Kendall Road in said Rotonda Shores Subdivision;

And Less and Except the following described portion thereof:

A portion of the non-designated tract or parcel of land as shown on plat sheets 7, 8 and 11, Plat of ROTONDA SHORES, as recorded in Plat Book 10, pages 7-A through 7-N, Public Records of Charlotte County, Florida, lying and being in the North half of Section 34, Township 41 South, Range 20 East, Charlotte County, Florida. Being more particularly described as follows:

OR BOOK 1665 PAGE 0190

Commence at the centerline intersection of Cape Haze Drive (80' right-of-way) and Kendall Road (60' right-of-way), as shown on said Plat of ROTONDA SHORES; Thence N 90 degrees 00 minutes 00 seconds E, along the centerline of said Kendall Road, a distance of 265.00 feet; thence S 00 degrees 00 minutes 00 seconds E, a distance of 30.00 feet to the intersection of the Southerly right-of-way of said Kendall Road, also being the Northeast corner of Lot 760 of said ROTONDA SHORES, and the Point of Beginning of this description; thence N 90 degrees 00 minutes 00 seconds E along said right-of-way, a distance of 315.00 feet; thence S 00 degrees 00 minutes 00 seconds W, leaving said right-of-way, a distance of 420.00 feet; thence N 90 degrees 00 minutes 00 seconds W, a distance of 315.00 feet to the Southeast corner of Lot 757, said ROTONDA SHORES; thence N 00 degrees 00 minutes 00 seconds W along the Easterly lot lines of Lots 757 through 760, said ROTONDA SHORES, a distance of 420.00 feet to the Point of Beginning.

**Parcel 3 - Vacant Sands Tract**

Tract W, Rotonda Sands South Replat Unit 2, a subdivision according to the plat thereof, as recorded in Plat Book 11, pages 5A through 5Z13, inclusive, of the Public Records of Charlotte County, Florida.

**Parcel 4 - Oakland Hills Wellfield Site**

Lots 1036 through 1044, inclusive, Oakland Hills Subdivision, Rotonda West, a subdivision according to the plat thereof, as recorded in Plat Book 8, Pages 15A through 15K, inclusive of the Public Records of Charlotte County, Florida, together with that portion of the 25 foot wide utility green belt abutting the rear lot line of Lots 1040, 1041, 1042, 1043, and 1044 of said Oakland Hills Subdivision lying between the westerly extension of the lot line between Lots 1039 and 1040, and the westerly extension of the lot line between Lots 1044 and 1045.

OR BOOK 1665 PAGE 0191

**Parcel 5 - Core Area**

A circular parcel of land lying within the below described subdivisions according to the plats thereof, recorded in the Public Records of Charlotte County, Florida;

| <u>SUBDIVISION</u> | <u>PUBLIC RECORDS OF CHARLOTTE COUNTY, FLORIDA</u> |
|--------------------|----------------------------------------------------|
| Oakland Hills      | Plat Book 8, Pages 15A through 15K, inclusive      |
| Pebble Beach       | Plat Book 8, Pages 13A through 13L, inclusive      |
| Finehurst          | Plat Book 8, Pages 12A through 12K, inclusive      |
| Broadmoor          | Plat Book 8, Pages 18A through 18L, inclusive      |
| Long Meadow        | Plat Book 8, Pages 19A through 19K, inclusive      |
| White Marsh        | Plat Book 8, Pages 17A through 17L, inclusive      |
| Pine Valley        | Plat Book 8, Pages 16A through 16K, inclusive      |
| St. Andrews        | Plat Book 8, Pages 21A through 21L, inclusive      |

which said circular parcel has a radius of 360.00 feet and the center of which is the Point of Beginning of the legal descriptions of each of said plats, being more particularly described as follows:

Commence at the Northeast corner of Section 14, Township 41 South, Range 20 East; thence run true South for a distance of 8450 feet; thence run West a distance of 50 feet to a point, said point being the center of said circular parcel, containing 9.34 acres, more or less.

**PARCEL 6 - INTENTIONALLY DELETED.**



OR BOOK 1665 PAGE 0192

**Parcel 7:**

Tract 15, Being a parcel of land in the Northeast 1/4 of Section 27, Township 41 South, Range 20 East, Charlotte County, Florida.

More particularly described as follows:

Commence at the Northeast corner of the Northwest 1/4 of Section 27, Township 41 South, Range 20 East; thence South  $00^{\circ}16'06''$  West, 333.400 feet to a point on the Easterly boundary of Rotonda West Oakland Hills Subdivision according to the Plat thereof, as recorded in Plat Book 8, Pages 15-A through 15-K, inclusive, and Plat Book 10, Page 3, of the Public Records of Charlotte County, Florida, said point also being the point of beginning; thence Southerly along said Easterly boundary of Oakland Hills being the arc of a curve with a radius of 8405.00 feet, for a distance of 1406 feet, more or less, to its intersection with the northerly plat boundary of Rotonda Shores Subdivision according to the Plat

thereof, as recorded in Plat Book 10, Pages 7A through 7N, inclusive, of the Public Records of Charlotte County, Florida, thence South  $79^{\circ}30'15''$  West along said Northerly plat boundary 541.718 feet to the Northwest corner of said Rotonda Shores Plat; thence North  $00^{\circ}16'06''$  East for a distance of 1401 feet, more or less to the point of beginning.

State of Florida



# Public Service Commission

CAPITAL CIRCLE OFFICE CENTER • 2540 SHUMARD OAK BOULEVARD  
TALLAHASSEE, FLORIDA 32399-0850

## -M-E-M-O-R-A-N-D-U-M-

RECORDS AND  
REPORTING

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**DATE:** AUGUST 26, 1999

**TO:** DIRECTOR, DIVISION OF RECORDS AND REPORTING (BAYÓ)

**FROM:** DIVISION OF WATER AND WASTEWATER (BRADY)  
DIVISION OF LEGAL SERVICES (CIBULA, CROSBY) *pb*

**RE:** DOCKET NO. 981858-WS - APPLICATION FOR AUTHORITY TO TRANSFER FACILITIES OF ROTONDA WEST UTILITY CORPORATION AND CERTIFICATES NOS. 565-W AND 493-S TO AQUASOURCE UTILITY, INC., EXCLUDING A PORTION OF SERVICE TERRITORY. COUNTY: CHARLOTTE

**AGENDA:** 9/7/99 - REGULAR AGENDA - PROPOSED AGENCY ACTION FOR ISSUES NOS. 4 AND 5 - INTERESTED PERSONS MAY PARTICIPATE

**CRITICAL DATES:** NONE

**SPECIAL INSTRUCTIONS:** NONE

**FILE NAME AND LOCATION:** S:\PSC\WAW\WP\981858.RCM

DOCUMENT NUMBER-DATE

10213 AUG 26 99

PSC-RECORDS/REPORTING

**CASE BACKGROUND**

Rotonda West Utility Corporation (Rotonda, utility or seller) is a Class A water and wastewater utility located in Charlotte County. According to its 1998 Annual Report, the utility provided service to an average of 3,105 water and 2,853 wastewater connections with combined operating revenues of \$3,249,329 and a combined net operating income of \$673,599.

The utility was originally established as Cape Haze Water Company, Inc., on June 17, 1957, to provide potable water for the development of lots on Cape Haze Peninsula. In 1969 the utility, along with the land holdings, was acquired by Cavanaugh Communities Corporation which changed the name of the utility in 1972 to Rotonda West Utility Corporation. The stock of the utility was subsequently acquired in 1980 by Rotonda Properties, Inc. Ownership did not change again until December 15, 1998, when the assets of the utility were sold to AquaSource Utility, Inc. (AquaSource or buyer). On December 14, 1998, an application for authority to approve the transfer was filed, opening this docket. Rotonda's apparent violation of Section 367.071, Florida Statutes, for transferring utility facilities prior to Commission approval, will be addressed in Issue 1.

In addition to its complex ownership history, jurisdiction over privately-owned water and wastewater utilities in Charlotte County has transferred back and forth between Charlotte County and the Commission several times. Most recently, jurisdiction was returned to the Commission on September 30, 1994, pursuant to a resolution by the Board of County Commissioners of Charlotte County. By Order No. PSC-95-0780-FOF-WS, issued June 28, 1995, in Docket No. 941131-WS, Rotonda was granted grandfather Certificates Nos. 565-W ad 493-S. Two other Charlotte County utilities were granted grandfather certificates at essentially the same time in 1995, Fiveland Investments, Inc. (Fiveland) and Sandalhaven Utility, Inc. (Sandalhaven).

Upon the utility's notice to local utilities and governmental agencies of the application for transfer, an inquiry was received from the Director of Charlotte County Utilities regarding a potential territory overlap between Rotonda and Fiveland. Staff

determined that a territory overlap did exist among Rotonda, Fiveland and Sandalhaven. On April 22, 1999, AquaSource filed a supplemental petition in this docket for the exclusion of the portion of Rotonda's service territory which overlaps with Fiveland and Sandalhaven. The issue of excluding the overlapping territory in the transfer of certificates will be addressed in Issue 3.

Several letters were also received from customers of the utility in response to notices of the transfer. Staff sent each customer a letter addressing the customers' concerns and requesting verification of whether the customers wished to pursue a hearing on the matter. The customers were not asked to respond if they did not wish to pursue a hearing. No response was received within the time frame specified, nor have any of the customers had any further contact with staff regarding the transfer. Based on the lack of further contact, staff has concluded that the customers do not wish to pursue a hearing on the matter.

This recommendation addresses whether the transfer of Certificates Nos. 565-W and 493-S from Rotonda to AquaSource is in the public interest, the exclusion of a portion of Rotonda's service territory from the transfer of certificates, and the apparent violation of Section 367.071, Florida Statutes, for transferring the utility's facilities without prior Commission approval.

**DISCUSSION OF ISSUES**

**ISSUE 1:** Should Rotonda West Utility Corporation be ordered to show cause, in writing within 21 days, why it should not be fined for its apparent violation of Section 367.071, Florida Statutes?

**RECOMMENDATION:** No. A show cause proceeding should not be initiated. (CIBULA)

**STAFF ANALYSIS:** As stated in the case background, Rotonda closed on the transfer of its facilities to AquaSource on December 15, 1999, prior to obtaining Commission approval. Section 367.071(1), Florida Statutes, states that:

No utility shall sell, assign, or transfer its certificate of authorization, facilities or any portion thereof..., without determination and approval of the commission that the proposed sale, assignment, or transfer is in the public interest...

Section 367.161(1), Florida Statutes, authorizes the Commission to assess a penalty of not more than \$5,000 for each offense, if a utility is found to have knowingly refused to comply with, or to have willfully violated any provision of Chapter 367, Florida Statutes. In closing on the transfer of its facilities prior to Commission approval, the utility's act was "willful" in the sense intended by Section 367.161, Florida Statutes. In Order No. 24306, issued April 1, 1991, in Docket No. 890216-TL, titled In Re: Investigation Into The Proper Application of Rule 25-14.003, Florida Administrative Code, Relating To Tax Savings Refund For 1988 and 1989 For GTE Florida, Inc., the Commission having found that the company had not intended to violate the rule, nevertheless found it appropriate to order it to show cause why it should not be fined, stating that "[i]n our view, 'willful' implies an intent to do an act, and this is distinct from an intent to violate a statute or rule."

Although Rotonda's failure to obtain Commission approval prior to transferring its facilities to AquaSource is an apparent violation of Section 367.071(1), Florida Statutes, according to a letter dated March 12, 1999, there is a provision in the contract

DOCKET NO. 981858-WS  
DATE: August 26, 1999

between Rotonda and AquaSource which states that the sale is subject to this Commission's jurisdiction and if the Commission does not approve the transfer, the parties will "unwind" the transaction.

Staff does not believe that the apparent violation of Section 367.071, Florida Statutes, rises in these circumstances to the level which warrants the initiation of a show cause proceeding. Therefore, staff recommends that the Commission not order Rotonda to show cause for failing to obtain Commission approval prior to transferring its facilities to AquaSource.

DOCKET NO. 981858-WS  
DATE: August 26, 1999

**ISSUE 2:** Should the transfer of Certificates Nos. 565-W and 493-S from Rotonda West Utility Corporation to AquaSource Utility, Inc., be approved?

**RECOMMENDATION:** Yes, the transfer should be approved. The territory being transferred will be addressed in Issue 3. (BRADY, CIBULA, CROSBY)

**STAFF ANALYSIS:** On December 14, 1998, an application was filed for approval of the transfer of Certificates Nos. 565-W and 493-S from Rotonda West Utility Corporation to AquaSource Utility, Inc. The application was completed on August 10, 1999. The closing occurred on December 15, 1998.

Except as indicated in Issue 1, the application as filed and amended is in compliance with the governing statute, Section 367.071, Florida Statutes, and other pertinent statutes and administrative rules pertaining to an application for the sale, assignment, or transfer of a certificate of authorization. The application contained the correct filing fee pursuant to Rule 25-30.020, Florida Administrative Code. And, in response to Rule 25-30.037(2)(t), Florida Administrative Code, which requires the return of the utility's original certificates, the application provided a copy of a letter from staff dated November 19, 1998, in which staff verifies that grandfather certificates had, apparently, never been issued. As for the other requirements for authority to transfer facilities, the application contained the following information.

**Noticing.** The application contained proof of noticing as required by Rule 25-30.030, Florida Administrative Code. However, the notice to customers was not given within the time-frame prescribed by the rule and the notice to local utilities and governmental agencies inadvertently left off several pages. Staff required both notices to be reissued. The notice to customers had to be reissued a third time as the time-frame for customers to respond to the second notice was not adequate.

Mostly as a consequence of the inadequate time for response to the second notice, the Commission received a number of inquiries and complaints from customers of the utility. Staff addressed each

customer's concerns in a written response in which staff requested verification whether the customer wished to pursue a formal hearing. No response was received from any of the customers within the time-frame specified, nor have any of the customers had any further contact with the Commission regarding the transfer. Staff has therefore concluded that the customers do not wish to pursue a hearing on the matter.

The Commission also received a response to the second notice given to local utilities and governmental agencies. The response was from the Director of Charlotte County Utilities in which a potential territory overlap was identified between Rotonda and Fiveland. Staff researched the problem and concluded that the territory for three Charlotte County grandfathers, Rotonda, Fiveland, and Sandalhaven, all overlapped in one section of their territory. On April 22, 1999, the Commission received a supplement to the filing from AquaSource in which it requested that the disputed territory be excluded from the transfer. The matter of the territory exclusion will be addressed in Issue 3.

Finally, another response to the notice given to local utilities and governmental agencies was filed by the Southwest Florida Regional Planning Council (Council). Staff of the Council reviews various proposals, notices, applications, permits and environmental impact statements for compliance with regional goals, objectives and policies determined by the Strategic Regional Policy Plan (Regional Plan). The review of this filing by the staff of the Council designated the filing as "Regionally Significant and Consistent with the Regional Plan."

**Sales Contract, Financing, and Land Ownership.** As required by Rules 25-30.037(2)(g), (h), (i), (k) and (q), Florida Administrative Code, the application was accompanied by the Agreement for Purchase and Sale of Water and Wastewater Assets (sales contract) which contained the provisions required by Commission rules. The agreed upon purchase price was \$20,300,000. This was a cash transaction financed by AquaSource's parent, DQE, Inc. (DQE). A list of customer deposits or advance facility charges and an accounting of the amount of each individual deposit or receivable was to be provided at the closing. According to the application, there are no guaranteed revenue contracts, developer



agreements, customer advances, debt of the utility, and leases that must be disposed of in association with the transfer of the assets of the utility. A copy of the deed transferring ownership of all utility land upon which treatment facilities are located was attached to the sales contract. An executed and recorded copy of this deed was subsequently filed on March 12, 1999.

**Annual Reports and Regulatory Assessment Fees (RAFs).** Staff has confirmed that the utility is current on Annual Reports and RAFs through 1998 and there are no penalties, interest or refunds due. Since the transfer occurred December 15, 1998, the application indicates that AquaSource will be responsible for filing the utility's Annual Reports and RAFs from January 1, 1999 forward.

**Financial and Technical Ability.** Pursuant to Rule 25-30.037(2)(j), Florida Administrative Code, the application provided a statement of AquaSource's financial and technical ability. AquaSource is a wholly owned subsidiary of DQE which is an energy services holding company. DQE's other subsidiaries include Duquesne Light Company and Montauk. Formed on June 1, 1997, AquaSource is now reportedly the largest investor-owned water utility in Texas with experienced staff which has been providing services for municipal and private water utilities for more than 25 years. Recently, AquaSource has acquired a number of water and wastewater systems in Florida and appears to be in the process of acquiring still more. DQE's and AquaSource's financial statements were attached as verification of financial ability. DQE's statements indicate assets exceeding \$4.6 billion with total long-term debt of \$1.4 billion. AquaSource's statements indicate assets in excess of \$123.0 million with long-term debt just under \$18.0 million.

**Environmental Compliance.** Pursuant to Rules 25-30.037(2)(p), Florida Administrative Code, the application contained a statement that, after reasonable investigation, the buyer has determined that the systems being acquired appear to be in satisfactory condition and in compliance with all applicable standards set by the Florida Department of Environmental Protection (FDEP). Staff has confirmed with the FDEP that the utility is currently in satisfactory compliance with its environmental requirements and rules.

DOCKET NO. 981858-WS  
DATE: August 26, 1999

**Public Interest.** As required by Rule 25-30.037(2)(j), Florida Administrative Code, the buyer provided a statement that it intends to fulfill the commitments, obligations and representations of the seller with regard to utility matters. The application indicates that AquaSource is constantly expanding its technical capabilities and is implementing improved quality control, maintenance management, and training and safety programs. These improvements are intended to provide direct and tangible benefits to utilities owned and operated by AquaSource and municipal utilities served by AquaSource. Currently, AquaSource operates water and wastewater systems serving approximately 125,000 customers. AquaSource stated its intent to continue to employ the operations and clerical personnel previously employed by the seller and that no changes in the operations of the system should be readily apparent due to the continuity of operating personnel and operations.

Based on all the above, staff recommends that the transfer of Certificates Nos. 565-W and 493-S from Rotonda West Utility Corporation to AquaSource Utility, Inc., is in the public interest and should be approved. The territory to be transferred will be addressed in Issue 3.

**ISSUE 3:** Should AquaSource Utility, Inc.'s request to exclude the portion of Section 3, Township 42 South, Range 20 East, in Charlotte County, Florida, which overlaps with the service territories of Fiveland Investments, Inc. (now owned by Charlotte County) and Sandalhaven Utility, Inc. (now owned by Utilities, Inc. of Sandalhaven), be approved?

**RECOMMENDATION:** Yes. The territory transferred to AquaSource Utility, Inc. in Section 3, Township 42 South, Range 20 East, in Charlotte County, Florida, should exclude the northwest quarter lying east of Lemon Bay and north and west of an existing canal. A description of the territory to be transferred to AquaSource Utility, Inc., is appended as Attachments A and B. (BRADY)

**STAFF ANALYSIS:** As noted in the Case Background and in Issue 2, during the pendency of this docket, it was learned that there was a territory overlap among three Charlotte County grandfathers, Rotonda, Fiveland, and Sandalhaven. All three utilities were granted grandfather certificates within a few months of each other in 1995. The territory overlap is in Section 3, Township 42 South, Range 20 East, of Charlotte County. Fiveland and Sandalhaven both serve identical territory in Section 3 with Fiveland providing water service and Sandalhaven providing wastewater service.

Fiveland's water certificate and Sandalhaven's wastewater certificate granted the northwest quarter of Section 3 lying east of Lemon Bay and north and west of an existing canal. Rotonda's water and wastewater certificates contain all of Section 3. Based on staff's research, it appears that the error in territory overlap occurred in the granting of Rotonda's grandfather certificates pursuant to Order No. PSC-95-0780-FOF-WS, issued June 28, 1995, in Docket No. 941131-WS. The following summarizes the history of the disputed territory.

As noted in the Case Background, Rotonda was originally established on June 17, 1957, under the name of Cape Haze Water Company, Inc. (Cape Haze). On July 28, 1964, the Board of County Commissioners of Charlotte County adopted a Resolution bringing water and wastewater public utilities in the County under what was then known as the "Water and Sewer System Regulatory Law" pursuant to Section 367.23, Florida Statutes. Apparently, none of the

DOCKET NO. 981858-WS  
DATE: August 26, 1999

affected utilities were issued certificates until after Chapter 71-278, Laws of Florida, became effective on September 1, 1971. Then, by Order No. 5347, issued March 7, 1972, in Docket No. C-71520-WS, Cape Haze was granted Certificates Nos. 60-W and 59-S under its new corporate name of Rotonda West Utility Corporation. Its certificates contained the east half and south half of the northwest quarter of Section 3.

By Order No. 8514, issued October 9, 1978, in Docket No. 780499-W, Fiveland was granted water Certificate No. 312-W under the name of Grove City Realty Corporation. Certificate No. 312-W was later transferred to Fiveland by Order No. 9876, issued March 17, 1981, in Docket No. 800491-W. The territory granted and transferred in Section 3 was the same as it is now, i.e., the northwest quarter of the section lying east of Lemon Bay and north and west of an existing canal. By a 1980 act of the Florida Legislature under Chapter 80-99, Laws of Florida, Charlotte County was excluded from the provisions of Chapter 367, Florida Statutes. As a consequence, Rotonda's and Fiveland's certificates were canceled by Order No. 11496, issued January 10, 1983, in Docket No. 830011-WS.

Sandalhaven was established shortly thereafter on June 29, 1983 under the jurisdiction of Charlotte County with territory essentially duplicating Fiveland's. When Fiveland was originally formed, the developer contemplated both water and wastewater services. For some reason, the services were subsequently split with water provided by Fiveland and wastewater provided by Sandalhaven.

When Charlotte County returned jurisdiction to the Commission on September 30, 1994, Rotonda, Fiveland and Sandalhaven all filed for grandfather certificates. Fiveland's water territory in Section 3, Township 42 South, Range 20 East, was the same as previously certificated under Commission jurisdiction with Sandalhaven's wastewater territory matching. However, the information provided in Rotonda's application contained slightly varying versions of the legal description for said Section 3 from that previously granted by the Commission. In addition, while under Charlotte County jurisdiction, Rotonda was granted additional territory in 1990 and 1993. Pursuant to staff's interpretation of

DOCKET NO. 981858-WS  
DATE: August 26, 1999

supplemental information provided by the utility, the territory in Section 3 was consolidated to include all of Section 3, Township 42 South, Range 20 East. This now appears to have been an error.

At the time staff was made aware of the potential territory overlap Fiveland had a pending application in Docket No. 981930-WU for a transfer of its facilities to Charlotte County and a cancellation of its water certificate and Sandalhaven had a pending application in Docket No. 98121-SU for a transfer of its facilities to Utilities, Inc. of Sandalhaven (UI). By Order No. PSC-99-1220-FOF-WU, issued June 21, 1999, the Commission acknowledged the transfer of Fiveland's facilities to Charlotte County. However, Certificate No. 571-W was to remain active and the docket open pending resolution in this docket of the territory being transferred back to the County. The transfer of Sandalhaven is still pending Commission approval.

Staff informally discussed the matter of the territory overlap with the three affected utilities. Although none of the utilities are serving the territory at this time, both Fiveland and Sandalhaven indicated they were unwilling to delete the overlapping territory from their certificates. On April 22, 1999, AquaSource filed a modification to the application filed in this docket in which it requested that:

In the spirit of cooperation with Charlotte County, AquaSource Utility, Inc. hereby agrees that the description of the service area it is acquiring in connection with its purchase of the assets of Rotonda West Utility Corporation, exclude that portion of its service area in the northwest quarter of Section 3 of Township 42 South, Range 20 East which overlaps with the service areas of the aforementioned utilities.

Staff believes AquaSource's request is appropriate since it appears that the territory overlap was inadvertently granted to Rotonda in its grandfather certificates.

Staff therefore recommends that the northwest quarter of Section 3, Township 42 South, Range 20 East, in Charlotte County, Florida, lying east of Lemon Bay and north and west of an existing

DOCKET NO. 981858-WS  
DATE: August 26, 1999

canal be excluded from the territory transferred to AquaSource from Rotonda. A description of the territory to be transferred from Rotonda to AquaSource is appended as Attachments A and B.

DOCKET NO. 981858-WS  
DATE: August 26, 1999

**ISSUE 4:** What is the rate base of Rotonda West Utility Corporation at the time of transfer?

**RECOMMENDATION:** The rate base is \$2,782,513 for the water system and \$3,814,128 for the wastewater system, as of December 31, 1998, for a combined total rate base of \$6,596,641. (BRADY)

**STAFF ANALYSIS:** According to the application, the net book value of the systems being transferred was \$3,160,778 for the water system and \$2,880,938 for the wastewater system. The values were from the rate base last established for the utility by Order No. PSC-96-0663-FOF-WS, issued May 13, 1996, in Docket No. 950336-WS, using a thirteen month average projected test year ending December 31, 1995.

The transfer from Rotonda to AquaSource occurred on December 15, 1998. Staff requested an audit in which it was determined that no rate base transactions occurred between December 15 and December 31. Therefore, the general ledger as of December 31, 1998, was used as the basis of "per books" audit information. In general, the audit revealed that not all ratemaking adjustments required in Order No. PSC-96-00663-FOF-WS had been posted as of December 31, 1998. Further, some transactions posted to plant-in-service accounts were either incorrect or lacked support. As a consequence, the audit report contained several disclosures.

The disclosures are summarized below. In all instances, AquaSource agreed to make the adjustments recommended by the auditors. However, for plant additions not allowed because the utility did not have adequate support, AquaSource states that it reserves the right to revisit the transactions in a subsequent rate proceeding if it is able to locate adequate documentation. Also, AquaSource states that it reserves the right to argue the reclassification of Disclosure No. 5b in a future rate proceeding if the reclassification would be consistent with other plant treatment in that proceeding. Staff notes that AquaSource is free to argue what it may in future proceedings before this Commission.

DOCKET NO. 981858-WS  
DATE: August 26, 1999

**Disclosure No. 1 -- Utility Sales Agreement.** This disclosure lists the non-transferred utility assets which total \$2,265,238. It also recommends the acquisition adjustment be based on the net audited value of plant assets of \$7,521,230.

**Disclosure No. 2 -- Prior Rate Case Adjustments -- Land.** This disclosure recommends a number of adjustments to land in service based on Orders Nos. PSC-96-0663-FOF-WS and PSC-96-0663A-FOF-WS issued May 13, 1996 and June 12, 1996, respectively, in Docket No. 950336-WS (the utility's last rate case).

**Disclosure No. 3 -- Prior Rate Case Adjustments -- Unsupported Plant.** This disclosure recommends the utility follow the instructions in Order No. 96-0663-FOF-WS to transfer \$86,136 in unsupported plant additions and \$3,340 in related accumulated depreciation to "non-utility" accounts.

**Disclosure No. 4 -- Utility Master Plan.** This disclosure recommends the utility follow the instructions in Order No. 96-0663-FOF-WS to reclassify a utility master plan costing \$125,360 from a deferred asset account to utility plant in service accounts.

**Disclosure No. 5a -- Unsupported Plant Additions.** This disclosure recommends the utility follow the practice in the prior rate case and transfer a net of \$262,206 in unsupported plant addition reclassifications, along with related accumulated depreciation of \$8,750, from plant in service to "non-utility" accounts.

**5b -- Improperly Classified Plant Additions.** This disclosure recommends that a total of \$186,449 had been improperly classified as plant additions instead of expensed as incurred. The corresponding accumulated depreciation was a total of \$16,205.

**Disclosure No. 6 -- Treatment of Gain or Loss on Plant Retirements.** This disclosure relates to the appropriate general ledger treatment of the sale of two trucks and a trailer in 1997 amounting to \$19,600.

**Disclosure No. 7 -- Replacement of Permeators.** This disclosure recommends the removal of permeators purchased in excess of 100% of their replacement value during the five year life specified for



this equipment in the Uniform System of Accounts. The disclosure also recommends the utility establish a permeator sub-account on a going-forward basis using a depreciation life of five years.

**Disclosure No. 8 -- Construction Work in Progress (CWIP).** This disclosure recommends the utility expense \$77,461 for a sludge processing project that will not be completed. The disclosure also recommends that \$52,900 in Plant Held for Future Use (PHFU) related to an uncompleted reuse wastewater project in Disclosure No. 9, below, be transferred to CWIP.

**Disclosure No. 9 -- Plant Held for Future Use (PHFU) and Associated Contributions in Aid of Construction (CIAC).** This disclosure recommends the utility reclassify \$137,585 of PHFU for two reuse projects and several expense items, reclassify \$104,268 in unsupported plant additions for both wastewater and water, and remove \$166,600 for a warehouse and related land which have been sold. The disclosure also recommends an imputation to CIAC and corrections to CIAC on PHFU.

**Disclosure No. 10 -- Accumulated Depreciation and Accumulated Amortization of CIAC.** This disclosure recommends the appropriate amount for "true-up" of depreciation and amortization actually accumulated during the year. At the time of the field audit, the true-up had not been performed.

**Disclosure No. 11 -- Non-Utility Plant.** This disclosure is a summary recommendation on booking the non-utility adjustments in Disclosures Nos. 2 and 3 as well as a recommendation to depreciate the amount based on a twenty-five year service life.

Staff concurs with the audit findings except the recommendation in Disclosure No. 1 that the acquisition adjustment be based on the net audited value of plant assets of \$7,521,230. This value includes a net of \$924,589 in non-utility plant. Non-utility plant is a carry over from Rotonda's last rate proceeding in Charlotte County in which the County Commission ruled that portions of rate base lacked original cost documentation or were considered contributed. The County Commission required the utility to remove these amounts from rate base along with any associated

DOCKET NO. 981858-WS  
DATE: August 26, 1999

CIAC and accumulated depreciation. These amounts were then recorded as non-utility plant.

As of the utility's last rate case, non-utility plant totaled \$10,011,352 along with non-utility CIAC of \$9,316,420 and non-utility accumulated depreciation of \$658,133. The net difference of these amounts was \$36,789 which the utility was amortizing over a ten year period. No amortization had been taken for 1998. The non-utility plant, adjusted to the time of the transfer, has been increased by adjustments in Disclosures Nos. 2, 3, 5 and 9, above. When the amount of non-utility plant was relatively small, the auditors believe that the previous method of amortization was reasonable. Due to the increased amount, the auditors believe that it is now more appropriate to depreciate this amount (net of land) over the utility's composite service life of twenty-five years.

The resulting net non-utility plant is \$924,589. Staff is not recommending the inclusion of non-utility plant in rate base established for purposes of transfer. However, staff does believe that the amount should be considered in evaluating the acquisition adjustment in Issue 5.

The calculation of water rate base is shown on Schedule No. 1, with adjustments set forth on Schedule No. 2. The calculation of wastewater rate base is shown on Schedule No. 3, with adjustments set forth on Schedule No. 4. Based on these schedules, as of December 31, 1998, rate base for Rotonda for purpose of the transfer is \$2,782,513 for the water system and \$3,814,128 for the wastewater system for a combined utility total rate base of \$6,596,641. The numbers in brackets on the adjustment schedules refer to the Disclosure Nos. summarized above.

The rate base calculations are used solely to establish the net book value of the property being transferred. As such, the calculations do not include the normal ratemaking adjustments of working capital calculations and used and useful adjustments. Also, as noted above, staff has excluded net non-utility plant of \$924,589 from rate base calculation.

DOCKET NO. 981858-WS  
 DATE: August 26, 1999

SCHEDULE 1

ROTONDA WEST UTILITY CORPORATION  
 SCHEDULE OF WATER RATE BASE  
 AS OF DECEMBER 31, 1998

| <u>DESCRIPTION</u>                                 | <u>BALANCE<br/>PER UTILITY</u> | <u>STAFF<br/>ADJUSTMENTS</u> | <u>BALANCE PER<br/>STAFF</u> |
|----------------------------------------------------|--------------------------------|------------------------------|------------------------------|
| Utility Plant in Service                           | \$ 8,067,121                   | \$(252,624)                  | \$ 7,814,497                 |
| Land and Land Rights                               | 382,390                        | ( 2,369)                     | 380,021                      |
| Accumulated Depreciation                           | (2,368,608)                    | 108,373                      | (2,260,235)                  |
| Contributions in Advance<br>of Construction (CIAC) | (3,328,953)                    | (251,141)                    | (3,580,094)                  |
| Amortization of CIAC                               | 408,800                        | 4,903                        | 413,703                      |
| Construction Work in Progress                      | 14,070                         | 0                            | 14,070                       |
| Plant Held for Future Use<br>(PHFU)                | 1,524,453                      | ( 74,790)                    | 1,449,663                    |
| PHFU - CIAC                                        | (1,550,781)                    | 101,669                      | (1,449,112)                  |
| PHFU - Amortization                                | <u>0</u>                       | <u>0</u>                     | <u>0</u>                     |
| TOTAL WATER RATE BASE                              | <u>\$ 3,148,492</u>            | <u>\$(365,979)</u>           | <u>\$ 2,782,513</u>          |

SCHEDULE 2

ROTONDA WEST UTILITY CORPORATION  
SCHEDULE OF WATER RATE BASE ADJUSTMENTS  
(Numbers in brackets refer to Disclosure No.)

| <u>EXPLANATION</u>                                         | <u>ADJUSTMENT</u>   |
|------------------------------------------------------------|---------------------|
| <b>Utility Plant in Service</b>                            |                     |
| 1) Prior Rate Case adjustments to land [2]                 | \$ 2,002            |
| 2) Prior Rate Case adjustments to land [2]                 | 367                 |
| 3) Prior Rate Case unsupported plant [3]                   | ( 55,295)           |
| 4) Reclassify plant additions that should be expensed [5]  | ( 81,195)           |
| 5) Current unsupported plant [5]                           | ( 6,246)            |
| 6) Remove permeators that were replaced [7]                | <u>(112,257)</u>    |
| Total                                                      | (252,624)           |
| <b>Land and Land Rights</b>                                |                     |
| 1) Prior Rate Case adjustments to land [2]                 | ( 2,369)            |
| <b>Accumulated Depreciation</b>                            |                     |
| 1) Prior Rate Case unsupported plant [3]                   | 7,852               |
| 2) Current unsupported plant [5]                           | 218                 |
| 3) Adjust depreciation on plant additions expensed [5]     | 7,838               |
| 4) Correct gain on sale [6]                                | ( 6,163)            |
| 5) Remove acc. dep. on replaced permeators [7]             | 112,257             |
| 6) True-up of depreciation expense [10]                    | ( 13,227)           |
| 7) True-up on amortization of franchise fees [10]          | <u>( 402)</u>       |
| Total                                                      | 108,373             |
| <b>Contributions in Advance of Construction (CIAC)</b>     |                     |
| 1) Prior Rate Case adjustments to land [2]                 | ( 95,149)           |
| 2) Correct posting error [9]                               | <u>( 155,992)</u>   |
| Total                                                      | (251,141)           |
| <b>Accumulated Amortization of CIAC [10]</b>               | 4,903               |
| <b>Plant Held for Future Use (PHFU)</b>                    |                     |
| 1) Reclassify utility plant in service assets [9]          | ( 74,790)           |
| <b>PHFU - CIAC</b>                                         |                     |
| 1) Correct posting error [9]                               | 128,669             |
| 2) Impute CIAC for repurchase of previously-owned land [9] | <u>( 27,000)</u>    |
| Total                                                      | 101,669             |
| <b>TOTAL ADJUSTMENT</b>                                    | <u>\$ (365,979)</u> |

DOCKET NO. 981858-WS  
 DATE: August 26, 1999

SCHEDULE 3

ROTONDA WEST UTILITY CORPORATION  
 SCHEDULE OF WASTEWATER RATE BASE  
 AS OF DECEMBER 31, 1998

| <u>DESCRIPTION</u>                                 | <u>BALANCE<br/>PER UTILITY</u> | <u>STAFF<br/>ADJUSTMENTS</u> | <u>BALANCE PER<br/>STAFF</u> |
|----------------------------------------------------|--------------------------------|------------------------------|------------------------------|
| Utility Plant in Service                           | \$ 5,656,138                   | \$(331,072)                  | \$ 5,325,066                 |
| Land and Land Rights                               | 76,308                         | 0                            | 76,308                       |
| Accumulated Depreciation                           | (1,315,222)                    | ( 11,803)                    | (1,327,025)                  |
| Contributions in Advance<br>of Construction (CIAC) | (1,759,083)                    | 0                            | (1,759,083)                  |
| Amortization of CIAC                               | 174,009                        | 3,653                        | 177,662                      |
| Construction Work in<br>Progress                   | 1,204,920                      | ( 24,561)                    | 1,180,359                    |
| Plant Held for Future Use                          | 250,826                        | (100,463)                    | 150,363                      |
| PHFU - CIAC                                        | ( 36,845)                      | 27,323                       | ( 9,522)                     |
| PHFU - Amortization                                | <u>0</u>                       | <u>0</u>                     | <u>0</u>                     |
| TOTAL WASTEWATER RATE BASE                         | <u>\$ 4,251,051</u>            | <u>\$(436,923)</u>           | <u>\$3,814,128</u>           |

DOCKET NO. 981858-WS  
DATE: August 26, 1999

SCHEDULE 4

ROTONDA WEST UTILITY CORPORATION  
SCHEDULE OF WASTEWATER RATE BASE ADJUSTMENTS  
(Numbers in brackets refer to Disclosure No.)

| <u>EXPLANATION</u>                                     | <u>ADJUSTMENT</u>  |
|--------------------------------------------------------|--------------------|
| <b>Utility Plant in Service</b>                        |                    |
| 1) Prior Rate Case unsupported plant [3]               | \$( 30,841)        |
| 2) Prior Rate Case unsupported plant [3]               | (255,961)          |
| 3) Plant additions that should be expensed [5]         | (105,254)          |
| 4) Reclassify reuse project from PHFU [9]              | <u>60,984</u>      |
| Total                                                  | (331,072)          |
| <b>Accumulated Depreciation</b>                        |                    |
| 1) Prior Rate Case unsupported plant [3]               | 3,080              |
| 2) Current unsupported plant [5]                       | 8,532              |
| 3) Reclassify unsupported plant [5]                    | 8,367              |
| 4) To remove gain on sale [6]                          | ( 6,163)           |
| 5) To record acc. dep. on reuse project [9]            | (11,151)           |
| 6) True-up of amortization on franchise fee [10]       | ( 402)             |
| 7) True-up depreciation [10]                           | <u>(14,066)</u>    |
| Total                                                  | (11,803)           |
| <b>Accumulated Amortization of CIAC - True-up [10]</b> | 3,653              |
| <b>Construction Work in Progress</b>                   |                    |
| 1) Reclassify PHFU [8 & 9]                             | 52,900             |
| 2) Remove canceled sludge processing project [9]       | <u>( 77,461)</u>   |
| Total                                                  | ( 24,561)          |
| <b>Plant Held for Future Use (PHFU)</b>                |                    |
| 1) Add back land incorrectly written-off [9]           | 66,600             |
| 2) Remove PHFU [9]                                     | (137,585)          |
| 3) Remove PHFU [9]                                     | <u>( 29,478)</u>   |
| Total                                                  | (100,463)          |
| <b>Plant Held for Future Use-CIAC - True-up [10]</b>   | 27,323             |
| <b>TOTAL ADJUSTMENT</b>                                | <u>\$(436,923)</u> |

**ISSUE 5:** Should a positive acquisition adjustment be approved?

**RECOMMENDATION:** No, the \$13,703,359 positive acquisition adjustment should not be included in the calculation of rate base for transfer purposes. The utility should not be permitted to reserve a right to revisit this issue should Commission practice with regard to acquisition adjustments change in the future. (BRADY, CIBULA)

**STAFF ANALYSIS:** An acquisition adjustment results when the purchase price differs from the original cost calculation adjusted to the time of the acquisition. The acquisition adjustment resulting from the transfer of Rotonda to AquaSource is calculated as follows:

|                                         |                     |
|-----------------------------------------|---------------------|
| Purchase Price                          | \$20,300,000        |
| Rate Base Adjusted to December 31, 1998 | <u>\$ 6,596,641</u> |
| Positive Acquisition Adjustment         | \$13,703,359        |

In the absence of extraordinary circumstances, it is the practice of this Commission that the purchase of a utility at a premium or discount shall not affect the rate base calculation. The circumstances in this case do not appear to be extraordinary. However, as noted in Issue 4, there was a net of \$924,589 in non-utility plant acquired by AquaSource in the transfer as verified during the last rate case and adjusted during this audit. While staff is not recommending that this amount be included in rate base at the time of transfer, the fact that additional, disallowed assets were included in the purchase price makes the transaction somewhat less positive than it would be if AquaSource had not paid for these assets.

Staff would note that, while AquaSource is not requesting an acquisition adjustment at this time, it wishes to reserve the right to revisit the matter should Commission practice with regard to acquisition adjustments change in the future. Staff disagrees that the utility should be permitted to reserve a right to revisit this issue. A decision on whether an acquisition adjustment should be included in the calculation of rate base for transfer purposes

DOCKET NO. 981858-WS  
DATE: August 26, 1999

should be made at the time the Commission makes its decision on the transfer application. While Commission practice may change at a later date, the relevant circumstances should be based on those at the time of the transfer.

Staff therefore recommends that a \$13,703,359 positive acquisition adjustment should not be included in the calculation of rate base. Also, staff recommends that the utility not be permitted to reserve a right to revisit this issue should Commission practice with regard to acquisition adjustments change in the future.



DOCKET NO. 981858-WS  
DATE: August 26, 1999

**ISSUE 6:** Should the rates and charges approved for Rotonda West Utility Corporation be continued?

**RECOMMENDATION:** Yes, the rates and charges approved for the utility should be continued. The tariff reflecting the transfer should be effective for service rendered or connections made on or after the stamped approval date on the tariff sheets. (BRADY)

**STAFF ANALYSIS:** The utility's current water service charges, including fire protection service, were administratively approved pursuant to a 1998 price index effective November 1, 1998. Service availability fees and charges (exclusive of allowance for funds prudently invested (AFPI) described later) were administratively approved pursuant to a miscellaneous tariff filing effective September 30, 1997. These existing water rates and charges are set forth below. In addition, the utility has customer deposits, meter test deposits and miscellaneous service charges.

**WATER TARIFF  
GENERAL, RESIDENTIAL, MULTI RESIDENTIAL SERVICES**

**Monthly Base Facility Charges**

| <u>Meter Size</u> | <u>Charge</u> |
|-------------------|---------------|
| 5/8" x 3/4"       | \$ 17.61      |
| 1"                | 44.03         |
| 1-1/2"            | 88.05         |
| 2"                | 140.89        |
| 3"                | 281.76        |
| 4"                | 440.27        |
| 6"                | 880.54        |
| 8"                | 1,408.85      |
| 10"               | 2,024.97      |

**Gallonge Charge**                      \$4.00 per 1,000 gallons

DOCKET NO. 981858-WS  
DATE: August 26, 1999

**WATER TARIFF  
FIRE PROTECTION SERVICE  
Monthly Charges**

| <u>Meter Size</u> | <u>Charge</u> |
|-------------------|---------------|
| 5/8" x 3/4"       | \$ 1.47       |
| 1"                | 3.67          |
| 1-1/2"            | 7.34          |
| 2"                | 11.74         |
| 3"                | 23.49         |
| 4"                | 36.69         |
| 6"                | 73.38         |
| 8"                | 117.41        |
| 10"               | 168.75        |

**WATER TARIFF  
SERVICE AVAILABILITY FEES AND CHARGES**

| <u>Description</u>              | <u>Amount</u>      |
|---------------------------------|--------------------|
| <u>Inspection Fee</u>           | \$ Actual Cost [1] |
| <u>Service Installation Fee</u> |                    |
| 5/8" x 3/4"                     | \$ 195.00          |
| 1"                              | 370.00             |
| 1-1/2"                          | 685.00             |
| 2"                              | 885.00             |
| 3"                              | 2,210.00           |
| 4"                              | 4,300.00           |
| 6"                              | 6,335.00           |
| 8"                              | Actual Cost [1]    |
| 10"                             | Actual Cost [1]    |
| <u>Plan Review Charge</u>       | \$ Actual Cost [1] |
| <u>Fire Hydrant Charge</u>      |                    |
| Residential                     | \$ 64.00           |
| General Service                 | 110.00             |

| <u>Plant Capacity Charge (per ERC)</u> |             |
|----------------------------------------|-------------|
| 5/8" x 3/4"                            | \$ 1,272.00 |
| 1"                                     | 3,180.00    |
| 1-1/2"                                 | 6,360.00    |
| 2"                                     | 10,176.00   |
| 3"                                     | 20,352.00   |
| 4"                                     | 31,800.00   |
| 6"                                     | 63,600.00   |
| 8"                                     | 101,760.00  |
| 10"                                    | 146,280.00  |

[1] Actual Cost is equal to the total cost incurred for services rendered to a customer.

The utility's existing wastewater residential service charges were administratively approved by tariff correction effective March 31, 1999. General service and multi residential service charges were administratively approved pursuant to a 1998 price index effective November 1, 1998. The reuse service rate was administratively approved pursuant to a 1997 price index/pass through effective June 27, 1997. Service availability fees and charges (exclusive of AFPI described later) were administratively approved pursuant to a miscellaneous tariff filing effective September 30, 1997. The wastewater rates and charges are set forth below. In addition, the utility has customer deposits and miscellaneous service charges.

**WASTEWATER TARIFF  
RESIDENTIAL SERVICE**

|                                                                          |                |
|--------------------------------------------------------------------------|----------------|
| <b>Monthly Base Facility Charge</b>                                      | <b>\$14.31</b> |
| <b>Gallonge Charge (per 1,000 gallons<br/>with a 10,000 gallon cap.)</b> | <b>\$ 3.73</b> |

DOCKET NO. 981858-WS  
DATE: August 26, 1999

**WASTEWATER TARIFF  
GENERAL AND MULTI RESIDENTIAL SERVICES**

**Monthly Base Facility Charges**

| <u>Meter Size</u> | <u>Charge</u> |
|-------------------|---------------|
| 5/8" x 3/4"       | \$ 14.31      |
| 1"                | 35.79         |
| 1-1/2"            | 71.57         |
| 2"                | 114.52        |
| 3"                | 229.03        |
| 4"                | 357.86        |
| 6"                | 715.73        |
| 8"                | 1,145.15      |
| 10"               | 1,646.01      |

**Gallage Charge**                      \$4.47 per 1,000 gallons

**WASTEWATER TARIFF  
REUSE SERVICE**

**Monthly Base Facility Charges**                      \$ N/A

**Gallage Charge (per 1,000 gallons)**                      \$0.35

**WASTEWATER TARIFF  
SERVICE AVAILABILITY FEES AND CHARGES**

| <u>Description</u>                     | <u>Amount</u>      |
|----------------------------------------|--------------------|
| <u>Inspection Fee</u>                  | \$ Actual Cost [1] |
| <u>Plan Review Charge</u>              | \$ Actual Cost [1] |
| <u>Plant Capacity Charge (per ERC)</u> |                    |
| 5/8" x 3/4"                            | \$ 1,716.00        |
| 1"                                     | 4,290.00           |
| 1-1/2"                                 | 8,580.00           |
| 2"                                     | 13,728.00          |
| 3"                                     | 27,456.00          |

DOCKET NO. 981858-WS  
DATE: August 26, 1999

|     |            |
|-----|------------|
| 4"  | 42,900.00  |
| 6"  | 85,800.00  |
| 8"  | 137,280.00 |
| 10" | 197,340.00 |

[1] Actual Cost is equal to the total cost incurred for services rendered to a customer.

As noted above, in addition to water and wastewater service availability charges, the utility's service availability tariffs also include approved AFPI charges. These charges were established in prior Charlotte County rate case dockets in which they were called carrying cost recovery charges. The charts of AFPI charges are shown on Attachments C through F. Staff notes that the escalation of the AFPI charges has expired and the charges are now capped at the maximum rate where they still apply. Reorganization of AFPI charges into the applicable service availability tariffs will be addressed in later tariff proceeding.

Staff recommends that AquaSource continue to charge the utility's existing rates and charges. AquaSource has filed water and wastewater tariffs reflecting the transfer. The tariffs reflecting the transfer should be effective for services rendered or connections made on or after the stamped approval date on the tariff sheets.

DOCKET NO. 981858-WS  
DATE: August 26, 1999

**ISSUE 7:** Should this docket be closed?

**RECOMMENDATION:** Yes, if no timely protest is received to the proposed agency action issues, upon the expiration of the protest period, the order should become final and effective upon the issuance of a consummating order and the docket should be closed.  
(CIBULA)

**STAFF ANALYSIS:** If no timely protest is received to the proposed agency action issues, upon the expiration of the protest period, the order should become final and effective upon the issuance of a consummating order and the docket should be closed.

ATTACHMENT A

**TERRITORY DESCRIPTION**  
**AQUASOURCE UTILITY, INC.**  
**CHARLOTTE COUNTY**

**WATER SERVICE AREA**

Township 41 South, Range 20 East, Charlotte County, Florida

|            |                                                                                                                                                                                                                                                                                                                                                                  |
|------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| SECTION 13 | All of said Section.                                                                                                                                                                                                                                                                                                                                             |
| SECTION 14 | All of said Section.                                                                                                                                                                                                                                                                                                                                             |
| SECTION 15 | All of said Section.                                                                                                                                                                                                                                                                                                                                             |
| SECTION 21 | Commence at the SE corner of Section 21, thence N 00°32'57" E, a distance of 215.11 feet to the <u>Point of Beginning</u> , thence N 89°46'02" W, a distance of 1,254.80, thence N 00°32'57" E, a distance of 118.46 feet, thence S 89°46'02" E, a distance of 1,254.80 feet, thence S 00°32'57" W, a distance of 118.46 feet to the <u>Point of Beginning</u> . |
| SECTION 22 | All of said Section.                                                                                                                                                                                                                                                                                                                                             |
| SECTION 23 | All of said Section.                                                                                                                                                                                                                                                                                                                                             |
| SECTION 24 | All of said Section.                                                                                                                                                                                                                                                                                                                                             |
| SECTION 25 | All of said Section.                                                                                                                                                                                                                                                                                                                                             |
| SECTION 26 | All of said Section.                                                                                                                                                                                                                                                                                                                                             |
| SECTION 27 | The East 1/2.                                                                                                                                                                                                                                                                                                                                                    |
| SECTION 34 | The East 1/2.                                                                                                                                                                                                                                                                                                                                                    |
| SECTION 35 | All of said Section.                                                                                                                                                                                                                                                                                                                                             |
| SECTION 36 | All of said Section.                                                                                                                                                                                                                                                                                                                                             |

**ATTACHMENT A**

Township 41 South, Range 21 East, Charlotte County, Florida

SECTION 17 That portion lying west of S.R. 771 together with that portion of Section 17 lying east of the Seaboard Coastline Railroad being described as follows:

Commence at the SW corner of Section 17, thence N 88°26'07" E, along the south line of Section 17, a distance of 38.1 feet to the Point of Beginning, thence N 24°30'00" E, a distance of 400 feet more or less to the south R/W line of Rotonda Blvd., East, thence S 89°59'53" E, a distance of 624.69 feet, thence, S 00°09'34" E, a distance of 344.69 feet, thence S 88°26'07" W, along the south line of said Section 17, a distance of 849.10 feet to the Point of Beginning.

SECTION 18 All of said Section.

SECTION 19 That portion lying west of the Seaboard Coast Line Railroad together with that portion of Section 19 lying east of the Seaboard Coast Line Railroad being described as follows:

Commence at the NE corner of said Section 19, thence S 00°07'14" W, along the east line of said Section 19, a distance of 78.5 feet to a point, said point being the Point of Beginning, thence continue S 00°07'14" W, a distance of 382.15 feet to a point, thence S 89°58'47" W, a distance of 177.27 feet to a point, thence N 24°43'08" E, a distance of 428.0 feet more or less to the Point of Beginning.



**ATTACHMENT A**

- SECTION 20 Commence at the NW corner of Section 20, thence N 88°26'20" E, along the north line of said Section 20, a distance of 40.10 feet to the Point of Beginning, thence continue N 88°26'20" E, along said north line, a distance of 807 feet to a point, thence S 00°09'34" E, a distance of 481.6 feet to a point, thence N 89°58'47" W, a distance of 849.1 feet to the east line of said Section 20, thence N 00°07'14" E, along said east line a distance of 460.65 feet to the Point of Beginning.
- SECTION 29 That portion lying west of S.R. 771.
- SECTION 30 All of said Section.
- SECTION 31 All of said Section 31 lying west of the west R/W line of S.R. 771.
- SECTION 32 Commence at the NE corner of Section 32, Township 41 South, Range 21 East, said point also being the Point of Beginning, thence S 00°48'48" E, along the east line of said section to the SE corner, thence N 89°35'44" W, along the South line of said section, a distance of 2,900 feet more or less to a point on a curve concave to the NE, said curve having a central angle of 22°47'51", a radius of 5,779.58 feet, and arc of 4,000 feet, thence continue westerly along said curve an arc distance of 3,000 feet more or less to a point that intersects the west line of said Section 32, thence N 00°09'16" E, along the west line of said Section 32 to the east R/W of S.R. 771, thence continue N 00°09'16" E, to the NW corner of said Section 32, thence easterly along the north line of the section to the NE corner thereof being also the Point of Beginning.
- SECTION 33 All of said Section.

**ATTACHMENT A**

SECTION 34 All of said Section.  
SECTION 35 All of said Section.

Township 42 South, Range 20 East, Charlotte County, Florida

SECTION 1 All of said Section, less the south 1,275 feet.

SECTION 2 That portion of Section 2 being bounded by the north, south, and west section lines of said Section 2, and being bounded on the east by the west shoreline of the west branch of Coral Creek together with:

Commence at the NE corner of Section 2, Township 42 South, Range 20 East, said point also being the Point of Beginning, thence southerly along the east section line a distance of 2,900 feet more or less, thence N 89°31'30" W, a distance of 1,800 feet more or less to the east bank of the west branch of Coral Creek, thence northerly along the east bank of Coral Creek to the north line of said Section 2, thence east along said north line to the NE corner of Section 2 and the Point of Beginning.

SECTION 3 All of said Section 3, less the northwest quarter lying east of Lemon Bay and north and west of an existing canal.

SECTION 4 All that portion of Don Pedro Island lying in Section 4, less the north 812 feet thereof.

SECTION 10 The easterly 2,200 feet of the N 1/2 of the NE 1/4 of said Section 10, together with all that portion of Don Pedro Island lying within said Section 10.

SECTION 11 That portion of Section 11 lying north of the inland waterway and south of Coral Creek.

**ATTACHMENT A**

Township 42 South, Range 21 East, Charlotte County, Florida

SECTION 1 Commence at the NW corner of Section 1, Township 42 South, Range 21 East, thence S 01°36'56" W, a distance of 190 feet to the Point of Beginning, thence S 89°50'49" E, a distance of 40 feet, thence S 01°36'57" E, a distance of 106.46 feet, to the PC of a curve concave to the NW, said curve having a central angle of 09°44'42", a radius of 2,772.09 feet, and arc of 471.48 feet, thence continue southerly along said curve to a point that intersects with the west line of said Section 1, thence N 00°32'16" E, along the west line of said Section 1 to the Point of Beginning.

SECTION 2 All of Section 2, Township 42 South, Range 21 East, less the following described portion.

Commence at the SE corner of said Section 2, said point also being the Point of Beginning, thence S 89°12'54" W, along the south section line a distance of 700 feet more or less, thence N 00°30' W, a distance of 1,800 feet to the PC of a curve concave to the NW, said curve having a central angle of 34°56'57", a radius of 2,772.04 feet, and arc of 1,690.91 feet, thence continue northerly along said curve to a point that intersects the east line of Section 2, thence S 01°36'56" E, along the east line of Section 2 to the SE corner and Point of Beginning.

SECTION 3 All of said Section.

ATTACHMENT A

SECTION 4 All of Section 4, Township 42 South, Range 21 East, less the following described property:

Commence at the SW section corner of said Section 4, said point also being the Point of Beginning, thence N 00°17'22" E, along the west line of Section 4, a distance of 200 feet, thence S 45° E, a distance of 300 feet more or less to the south line of Section 4, thence S 89°56'12" W, along the south line of Section 4 to the SW corner and the Point of Beginning.

SECTION 5 Commence at the NE corner of Section 5, said point also being the Point of Beginning, thence S 00°17'22" W, along the east line of said Section 5, a distance of 4,850 feet, thence S 45° W, a distance of 700 feet more or less to the south line of said Section 5, thence N 89°54'50" W, along said south line, a distance of 4,600 feet, thence N 48°28'41" W, a distance of 550 feet more or less to the west line of Section 5, thence N 00°25'49" W, along said west line a distance of 1,000 feet to a point on a curve concave to the NW, said curve having a central angle of 39°30'00" a radius of 1,940 feet, and arc of 1,311.12 feet, thence continue northerly along said curve and arc a distance of 1,311.12 feet, thence N 12°47'16" E, a distance of 440 feet to the PC of a curve concave to the SE, said curve having a central angle of 33°10'00", a radius of 2,060 feet, and arc of 1,192.4 feet, thence N 45°57'16" E, a distance of 2,377.12 feet, thence N 45° W, a distance of 350 feet more or less to the north section line of Section 5, thence S 89°35'44" E, along the north section line a distance of 2,700 feet more or less to the Point of Beginning.

**ATTACHMENT A**

SECTION 6 That portion of Section 6, Township 42 South, Range 21 East, bounded on the north by the north line of Section 6, on the west by the west section line and the east by the west R/W of S.R. 771.

SECTION 8 That portion of Section 8, Township 42 South, Range 21 East, being more particularly described as follows:

Commence at the NE corner of said Section 8; thence N 89°54'50" W, along the north line of said section a distance of 1,500 feet more or less to a point on a curve concave to the NE having a radius of 5,500.00 feet, a central angle of 05°00'00", and arc distance of 440.70 feet which said point is also the Point of Beginning, thence southwesterly along said curve 440.70 feet to its PT, which PT is the PC of a circle concave to the NE having a radius of 5,050.00 feet, a central angle of 12°00'00", and arc distance of 1,057.67 feet, thence southwesterly along said curve a distance of 1,057.67 feet to its PT, thence N 43°00'00" W, a distance of 50.00 feet, thence S 53°00'00" E, a distance of 40.00 feet, thence N 43°00'00" W, a distance of 850.00 feet to a point, thence S 47°00'00" E, a distance of 140.00 feet to a point, thence N 43°00'00" W, a distance of 620 feet more or less to the north line of said Section 8, thence easterly along said north line a distance of 2,400 feet more or less to the Point of Beginning.

**ATTACHMENT A**

SECTION 9

Commence at the NE corner of Section 9, said point also being the Point of Beginning, thence S 00°35'03" W, along the east line of said Section 9, a distance of 3,124.40 feet more or less, thence N 85° W, a distance of 1,819.58 feet to the PC of a curve concave to the NE, said curve having a central angle of 72°00'00", a radius of 1,060 feet, and arc of 1,332.04 feet, thence northerly along said curve an arc distance of 1,332.04 feet, thence N 13° W, a distance of 500 feet to the PC of a curve concave to the SW, said curve having a central angle of 33°11'25", a radius of 940 feet, and arc of 544.52 feet, thence northerly along said curve an arc distance of 544.52 feet to a point, thence N 43°48'35" E, a distance of 60.00 feet to the PC of a curve concave to the SW, said curve having a central angle of 35°48'35", a radius of 1,000.00 feet, and arc of 625.00 feet, thence along said curve a distance of 625.00 feet, thence N 82°00'00" W, a distance of 135.00 feet to a point on a curve concave to the NE, said curve having a central angle of 42°00'00", a radius of 1,000.00 feet, and arc of 733.04 feet, thence along said curve a distance of 580 feet more or less to the intersection with the north line of said Section 9, thence N 89°56'12" E, along the north line of said Section 9, 4,500 feet more or less to the Point of Beginning.

DOCKET NO. 981858-WS  
DATE: August 26, 1999

**ATTACHMENT A**

SECTION 10 Commence at the NE corner of Section 10, said point also being the Point of Beginning, thence S 0°05'37" W, along the east line of said Section 10, a distance of 4,697.27 feet, thence S 89°30'00" W, a distance of 987 feet to the PC of a curve concave to the NE, said curve having a central angle of 40°29'59", a radius of 2,060 feet, and arc of 1,456.13 feet, thence westerly along said curve an arc distance of 1,456.13 feet, thence N 50° W, a distance of 750 feet to the PC of a curve concave to the SW, said curve having a central angle of 35°, a radius of 1,950 feet, and arc of 1,185 feet, thence N 85° W, a distance of 1,380 feet, to the west line of said Section 10, thence N 00°35'03" E, along the west line of said section a distance of 3,124.40 feet, to the NW corner, thence N 89°25'14" E, along the north line of said section to the Point of Beginning.

**TERRITORY DESCRIPTION**  
**AQUASOURCE UTILITY, INC.**  
**CHARLOTTE COUNTY**  
  
**WASTEWATER SERVICE AREA**

Township 41 South, Range 20 East, Charlotte County, Florida

- SECTION 13           All of said Section.  
SECTION 14           All of said Section.  
SECTION 15           All of said Section.
- SECTION 21           Commence at the SE corner of Section 21, thence N 0°32'57" E, a distance of 215.11 feet to the Point of Beginning, thence N 89°46'02" W, a distance of 1,254.80 feet, thence N 0°32'57" E, a distance of 118.46 feet, thence S 89°46'02" E, a distance of 1,254.80 feet, thence S 0°32'57" W, a distance of 118.46 feet to the Point of Beginning.
- SECTION 22           All of said Section.  
SECTION 23           All of said Section.  
SECTION 24           All of said Section.  
SECTION 25           All of said Section.  
SECTION 26           All of said Section.  
SECTION 27           The East 1/2.  
SECTION 34           The East 1/2.  
SECTION 35           All of said Section.  
SECTION 36           All of said Section.

Township 41 South, Range 21 East, Charlotte County, Florida

- SECTION 17           That portion lying west of S.R. 771 together with that portion of Section 17 lying east of the Seaboard Coastline Railroad being described as follows:



**ATTACHMENT B**

Commence at the SW corner of Section 17, thence N 88°26'07" E, along the south line of Section 17 a distance of 38.1 feet to the Point of Beginning, thence N 24°30'00" E, a distance of 400 feet more or less to the south R/W line of Rotonda Blvd., East, thence S 89°59'53" E, a distance of 624.69 feet, thence, S 00°09'34" E, a distance of 344.69 feet, thence S 88°26'07" W, along the south line of said Section 17 a distance of 849.10 feet to the Point of Beginning.

SECTION 18 All of said Section.

SECTION 19 That portion lying west of the Seaboard Coast Line Railroad together with that portion of Section 19 lying east of the Seaboard Coast Line Railroad being described as follows:

Commence at the NE corner of said Section 19, thence S 00°07'14" W, along the east line of said Section 19, a distance of 78.5 feet to a point, said point being the Point of Beginning, thence continue S 00°07'14" W, a distance of 382.15 feet to a point, thence S 89°58'47" W, a distance of 177.27 feet to a point, thence N 24°43'08" E, a distance of 428.0 feet more or less to the Point of Beginning.

SECTION 20 Commence at the NW corner of Section 20; thence N 88°26'20" E, along the north line of said Section 20 a distance of 40.10 feet to the Point of Beginning, thence continue N 88°26'20" E, along said north line a distance of 807.0 feet to a point, thence S 00°09'34" E, a distance of 481.6 feet to a point, thence N 89°58'47" W, a distance of 849.1 feet to the east line of said Section 20, thence N 00°07'14" E, along said east line a distance of 460.65 feet to the Point of Beginning.

**ATTACHMENT B**

- SECTION 29 That portion lying west of S.R. 771.
- SECTION 30 All of said Section.
- SECTION 31 All of said Section 31 lying west of the west R/W line of S.R. 771.
- SECTION 32 Commence at the NE corner of Section 32, Township 41 South, Range 21 East, said point also being the Point of Beginning, thence S 00°48'48" E, along the east line of said section to the SE corner, thence N 89°35'44" W, along the south line of said section a distance of 2,900 feet more or less to a point on a curve concave to the NE, said curve having a central angle of 22°47'51", a radius of 5,779.58 feet, and arc of 4,000 feet, thence continue westerly along said curve an arc distance of 3,000 feet more or less to a point that intersects the west line of said Section 32, thence N 00°09'16" E, along the west line of said section to the east R/W of S.R. 771, thence continue N 00°09'16" E, to the NW corner of said Section 32, thence easterly along the north line of the section to the NE corner thereof being also the Point of Beginning.
- SECTION 33 All of said Section.
- SECTION 34 All of said Section.
- SECTION 35 All of said Section.

Township 42 South, Range 20 East, Charlotte County, Florida

- SECTION 1 All of said Section, less the south 1,275 feet.
- SECTION 2 That portion of Section 2 being bounded by the north, south, and west section lines of said Section 2, and being bounded on the east by the west shoreline of the west branch of Coral Creek together with:

**ATTACHMENT B**

Commence at the NE corner of Section 2, Township 42 South, Range 20 East, said point also being the Point of Beginning, thence southerly along the east section line a distance of 2,900 feet more or less, thence N 89°31'30" W, a distance of 1,800 feet more or less to the east bank of the west branch of Coral Creek, thence northerly along the east bank of Coral Creek to the north line of said Section 2, thence east along said north line to the NE corner of Section 2 and the Point of Beginning.

SECTION 3 All of said Section 3, less the northwest quarter lying east of Lemon Bay and north and west of an existing canal.

SECTION 4 All that portion of Don Pedro Island lying in Section 4, less the north 812 feet thereof.

SECTION 10 The easterly 2,200 feet of the N 1/2 of the NE 1/4 of said Section 10, together with all that portion of Don Pedro Island lying within said Section 10.

SECTION 11 That portion of Section 11 lying north of the inland waterway and south of Coral Creek.

SECTION 12 That portion of Section 12 lying north of the inland waterway and south of Coral Creek.

Township 42 South, Range 21 East, Charlotte County, Florida

SECTION 1 Commence at the NW corner of Section 1, Township 42 South, Range 21 East, thence S 01°36'56" W, a distance of 190 feet to the Point of Beginning, thence S 89°50'49" E, a distance of 40 feet, thence S 01°36'57" E, a distance of 106.46 feet, to the PC of a curve concave to the NW, said curve having a central angle of 09°44'42", a radius of 2,772.09

**ATTACHMENT B**

feet, and arc of 471.48 feet, thence continue southerly along said curve to a point that intersects with the west line of said Section 1, thence N 00°32'16" E, along the west line of said Section 1 to the Point of Beginning.

SECTION 2 All of Section 2, Township 42 South, Range 21 East, less the following described portion.

Commence at the SE corner of said Section 2, said point also being the Point of Beginning, thence S 89°12'54" W, along the south section line a distance of 700 feet more or less, thence N 00°30' W, a distance of 1,800 feet to the PC of a curve concave to the NW, said curve having a central angle of 34°56'57", a radius of 2,772.04 feet, and arc of 1,690.91 feet, thence continue northerly along said curve to a point that intersects the east line of Section 2, thence S 01°36'56" E, along the east line of Section 2 to the SE corner and Point of Beginning.

SECTION 3 All of said Section.

SECTION 4 All of Section 4, Township 42 South, Range 21 East, less the following described property.

Commence at the SW corner of said Section 4, said point also being the Point of Beginning, thence N 00°17'22" E, along the west line of Section 4 a distance of 200 feet, thence S 45° E, a distance of 300' more or less to the south line of Section 4, thence S 89°56'12" W, along the south line of Section 4 to the SW corner and the Point of Beginning.

**ATTACHMENT B**

- SECTION 5 Commence at the NE corner of Section 5, said point also being the Point of Beginning. Thence S  $0^{\circ}17'22''$  W, along the east line of said Section 5, a distance of 4,850 feet. Thence S  $45^{\circ}$  W, a distance of 700 feet more or less to the south line of said Section 5. Thence N  $89^{\circ}54'50''$  W, along said south line a distance of 4,600 feet. Thence N  $48^{\circ}28'41''$  W, a distance of 550 feet more or less to the west line of Section 5. Thence N  $00^{\circ}25'49''$  W, along said west line a distance of 1,000 feet to a point on a curve concave to the NW, said curve having a central angle of  $39^{\circ}30'00''$ , a radius of 1,940 feet, and arc of 1,311.12 feet, thence continue northerly along said curve an arc distance of 1,311.12 feet, thence N  $12^{\circ}47'16''$  E, a distance of 440 feet to the PC of a curve concave to the SE, said curve having a central angle of  $33^{\circ}10'00''$ , a radius of 2,060 feet, and arc of 1,192.4 feet, thence N  $45^{\circ}57'16''$  E, a distance of 2,377.12 feet, thence N  $45^{\circ}$  W, a distance of 350 feet more or less to the north section line of Section 5, thence S  $89^{\circ}35'44''$  E, along the north section line, a distance of 2,700 feet more or less to the Point of Beginning.
- SECTION 6 That portion of Section 6, Township 42 South, Range 21 East, bounded on the north by the north line of Section 6, on the west by the west section line and the east by the west R/W of S.R. 771.
- SECTION 8 That portion of Section 8, Township 42 South, Range 21 East, being more particularly described as follows:

**ATTACHMENT B**

Commence at the NE corner of said Section 8, thence N 89°54'50" W, along the north line of said Section 8, a distance of 1,500 feet more or less to a point on a curve concave to the NE having a radius of 5,500.00 feet, a central angle of 05°00'00", and arc distance of 440.70 feet, which said point is also the Point of Beginning, thence southwesterly along said curve 440.70 feet to its PT, which PT is the PC of a circle concave to the NE having a radius of 5,050.00 feet, a central angle of 12°00'00", and arc distance of 1,057.67 feet, thence southwesterly along said curve a distance of 1,057.67 feet to its PT, thence N 43°00'00" W, a distance of 50.00 feet; thence S 53°00'00" E, a distance of 40.00 feet; thence N 43°00'00" W, a distance of 850.00 feet to a point, thence S 47°00'00" E, a distance of 140.00 feet to a point, thence N 43°00'00" W, a distance of 620 feet more or less to the north line of said Section 8, thence easterly along said north line a distance of 2,400 feet more or less to the Point of Beginning.

SECTION 9

Commence at the NE corner of Section 9, said point also being the Point of Beginning, thence S 0°35'03" W, along the east line of said Section 9 a distance of 3,124.40 feet more or less, thence N 85° W, a distance of 1,819.58 feet to the PC of a curve concave to the NE, said curve having a central angle of 72°00'00", a radius of 1,060 feet, and arc of 1,332.04 feet, thence northerly along said curve an arc distance of 1,332.04 feet, thence N 13° W, a distance of 500 feet to the PC of a curve concave to the SW, said curve having a central angle of 33°11'25", a radius of 940 feet, and arc of 544.52 feet, thence northerly along said curve an arc distance of 544.52 feet to a point, thence N 43°48'35" E, a distance of 60.00 feet to the PC of a curve concave to the SW, said curve having a

**ATTACHMENT B**

central angle of  $35^{\circ}48'35''$ , a radius of 1,000.00 feet, and arc of 625.00 feet, thence along said curve a distance of 625.00 feet, thence  $N 82^{\circ}00'00'' W$ , a distance of 135.00 feet to a point on a curve concave to the NE, said curve having a central angle of  $42^{\circ}00'00''$ , a radius of 1,000.00 feet, and arc of 733.04 feet, thence along said curve a distance of 580 feet more or less to the intersection with the north line of said Section 9, thence  $N 89^{\circ}56'12'' E$ , along the north line of said Section 9, 4,500 feet more or less to the Point of Beginning.

SECTION 10

Commence at the NE corner of Section 10, said point also being the Point of Beginning, thence  $S 0^{\circ}05'37'' W$ , along the east line of said Section 10 a distance of 4,697.27 feet, thence  $S 89^{\circ}30'00'' W$ , a distance of 987 feet to the PC of a curve concave to the NE, said curve having a central angle of  $40^{\circ}29'59''$ , a radius of 2,060 feet, and arc of 1,456.13 feet, thence westerly along said curve an arc distance of 1,456.13 feet, thence  $N 50^{\circ} W$ , a distance of 750 feet to the PC of a curve concave to the SW, said curve having a central angle of  $35^{\circ}$ , a radius of 1,950 feet, and arc of 1,185 feet, thence  $N 85^{\circ} W$ , a distance of 1,380 feet to the west line of said Section 10, thence  $N 0^{\circ}35'03'' E$ , along the west line of said section a distance of 3,124.40 feet to the NW corner, thence  $N 89^{\circ}25'14'' E$ , along the north line of said Section 10 to the Point of Beginning.

ATTACHMENT C

ROTONDA WEST UTILITY CORPORATION  
 WATER TREATMENT PLANT (WTP)  
 ALLOWANCE FOR FUNDS PRUDENTLY INVESTED (AFPI)

| 1993 WTP AFPI |        |         |        | 1994 WTP AFPI |        |         |        |
|---------------|--------|---------|--------|---------------|--------|---------|--------|
|               | New    | Present | Total  |               | New    | Present | Total  |
|               | 1      | 2       |        |               | 1      | 2       |        |
| January       | 11.41  | 39.42   | 50.83  | January       | 148.75 | 39.42   | 188.17 |
| February      | 22.83  | 39.42   | 62.25  | February      | 160.55 | 39.42   | 199.97 |
| March         | 34.24  | 39.42   | 73.66  | March         | 172.34 | 39.42   | 211.76 |
| April         | 45.65  | 39.42   | 85.07  | April         | 184.14 | 39.42   | 223.56 |
| May           | 57.06  | 39.42   | 96.48  | May           | 195.93 | 39.42   | 235.35 |
| June          | 68.48  | 39.42   | 107.90 | June          | 207.73 | 39.42   | 247.15 |
| July          | 79.89  | 39.42   | 119.31 | July          | 219.53 | 39.42   | 258.95 |
| August        | 91.30  | 39.42   | 130.72 | August        | 231.32 | 39.42   | 270.74 |
| September     | 102.71 | 39.42   | 142.13 | September     | 243.12 | 39.42   | 282.54 |
| October       | 114.13 | 39.42   | 153.55 | October       | 254.91 | 39.42   | 294.33 |
| November      | 125.54 | 39.42   | 164.96 | November      | 266.71 | 39.42   | 306.13 |
| December      | 138.95 | 39.42   | 178.37 | December      | 278.51 | 39.42   | 317.93 |

| 1995 WTP AFPI |        |         |        | 1996 WTP AFPI |        |         |        |
|---------------|--------|---------|--------|---------------|--------|---------|--------|
|               | New    | Present | Total  |               | New    | Present | Total  |
|               | 1      | 2       |        |               | 1      | 2       |        |
| January       | 291.20 | 39.42   | 330.62 | January       | 444.52 | 39.42   | 483.94 |
| February      | 303.89 | 39.42   | 343.31 | February      | 458.20 | 39.42   | 497.62 |
| March         | 318.59 | 39.42   | 358.01 | March         | 471.89 | 39.42   | 511.31 |
| April         | 329.28 | 39.42   | 368.70 | April         | 485.57 | 39.42   | 524.99 |
| May           | 341.98 | 39.42   | 381.40 | May           | 499.25 | 39.42   | 538.67 |
| June          | 354.67 | 39.42   | 394.09 | June          | 512.94 | 39.42   | 552.36 |
| July          | 367.36 | 39.42   | 406.78 | July          | 526.62 | 39.42   | 566.04 |
| August        | 380.06 | 39.42   | 419.48 | August        | 540.31 | 39.42   | 579.73 |
| September     | 392.75 | 39.42   | 432.17 | September     | 553.99 | 39.42   | 593.41 |
| October       | 405.45 | 39.42   | 444.87 | October       | 567.67 | 39.42   | 607.09 |
| November      | 418.14 | 39.42   | 457.56 | November      | 581.36 | 39.42   | 620.78 |
| December      | 430.83 | 39.42   | 470.25 | December      | 595.04 | 39.42   | 634.46 |

| 1997 WTP AFPI |        |         |        |
|---------------|--------|---------|--------|
|               | New    | Present | Total  |
|               | 1      | 2       |        |
| January       | 609.82 | 39.42   | 649.24 |
| February      | 624.59 | 39.42   | 664.01 |
| March         | 639.37 | 39.42   | 678.79 |
| April         | 654.15 | 39.42   | 693.57 |
| May           | 668.92 | 39.42   | 708.34 |
| June          | 683.70 | 39.42   | 723.12 |
| July          | 698.47 | 39.42   | 737.89 |
| August        | 713.25 | 39.42   | 752.67 |
| September     | 728.02 | 39.42   | 767.44 |
| October       | 742.80 | 39.42   | 782.22 |
| November      | 757.58 | 39.42   | 797.00 |
| December      | 772.35 | 39.42   | 811.77 |

- 1) The AFPI shown above in the column labeled "New" are assessed for only the first 1,844 ERC's connected after the commencement of the AFPI on January 1, 1993.
- 2) The AFPI shown above in the column labeled "Present" are recognize the carrying costs of the Cape Haze Water Treatment Plant through December 31, 1992. These charges are assessed for only the first 889 ERC's connected after January 1, 1993.



DOCKET NO. 981858-WS  
DATE: August 26, 1999

ATTACHMENT D

ROTONDA WEST UTILITY CORPORATION  
WATER TRANSMISSION AND DISTRIBUTION SYSTEMS  
ALLOWANCE FOR FUNDS PRUDENTLY INVESTED (AFPI)

The Following AFPI will be assessed per all ERC's connected after the commencement of the AFPI

|           | 1991  | 1992  | 1993  | 1994   | 1995   | 1996   | 1997   | 1998   |
|-----------|-------|-------|-------|--------|--------|--------|--------|--------|
| January   | 2.40  | 31.36 | 62.78 | 96.93  | 134.08 | 174.54 | 218.65 | 266.78 |
| February  | 4.79  | 33.96 | 65.81 | 100.00 | 137.43 | 178.19 | 222.63 | 271.13 |
| March     | 7.19  | 36.56 | 68.43 | 103.08 | 140.77 | 181.84 | 226.61 | 275.47 |
| April     | 9.59  | 39.16 | 71.26 | 106.15 | 144.12 | 185.48 | 230.59 | 279.82 |
| May       | 11.98 | 41.76 | 74.08 | 109.22 | 147.47 | 189.13 | 234.57 | 284.17 |
| June      | 14.38 | 44.36 | 76.91 | 112.30 | 150.81 | 192.78 | 238.55 | 288.51 |
| July      | 16.77 | 46.96 | 79.73 | 115.37 | 154.16 | 196.43 | 242.53 | 292.86 |
| August    | 19.17 | 49.56 | 82.56 | 118.44 | 157.51 | 200.08 | 246.51 | 297.21 |
| September | 21.57 | 52.16 | 85.38 | 121.52 | 160.85 | 203.72 | 250.49 | 301.58 |
| October   | 23.96 | 54.76 | 88.21 | 124.59 | 164.20 | 207.37 | 254.47 | 305.90 |
| November  | 26.36 | 57.36 | 91.03 | 127.66 | 167.55 | 211.02 | 258.45 | 310.25 |
| December  | 28.76 | 59.96 | 93.86 | 130.74 | 170.89 | 214.67 | 262.43 | 314.60 |

**ATTACHMENT E**

**ROTONDA WEST UTILITY CORPORATION  
 SEWER (WASTEWATER) TREATMENT PLANT (STP)  
 ALLOWANCE FOR FUNDS PRUDENTLY INVESTED (AFPI)**

| 1993 STP AFPI |      |         |        | 1994 STP AFPI |       |         |        |
|---------------|------|---------|--------|---------------|-------|---------|--------|
|               | New  | Present | Total  |               | New   | Present | Total  |
| January       | 0.65 | 293.53  | 294.18 | January       | 8.53  | 452.33  | 460.86 |
| February      | 1.31 | 306.67  | 307.98 | February      | 9.22  | 466.58  | 475.80 |
| March         | 1.96 | 319.81  | 321.77 | March         | 9.90  | 480.82  | 490.72 |
| April         | 2.62 | 332.96  | 335.58 | April         | 10.59 | 495.07  | 505.66 |
| May           | 3.27 | 346.10  | 349.37 | May           | 11.28 | 509.32  | 520.60 |
| June          | 3.92 | 359.24  | 363.16 | June          | 11.96 | 523.56  | 535.52 |
| July          | 4.58 | 372.38  | 376.96 | July          | 12.65 | 537.81  | 550.46 |
| August        | 5.23 | 385.52  | 390.75 | August        | 13.33 | 552.06  | 565.39 |
| September     | 5.89 | 398.66  | 404.55 | September     | 14.02 | 566.30  | 580.32 |
| October       | 6.54 | 411.80  | 418.34 | October       | 14.70 | 580.55  | 595.25 |
| November      | 7.19 | 424.94  | 432.13 | November      | 15.39 | 594.80  | 610.19 |
| December      | 7.85 | 438.08  | 445.93 | December      | 16.07 | 609.04  | 625.11 |

| 1995 STP AFPI |       |         |        | 1996 STP AFPI |       |         |          |
|---------------|-------|---------|--------|---------------|-------|---------|----------|
|               | New   | Present | Total  |               | New   | Present | Total    |
| January       | 16.82 | 624.51  | 641.33 | January       | 25.78 | 811.45  | 837.23   |
| February      | 17.56 | 639.98  | 657.54 | February      | 26.59 | 828.27  | 854.86   |
| March         | 18.30 | 655.44  | 673.74 | March         | 27.39 | 845.08  | 872.47   |
| April         | 19.04 | 670.91  | 689.95 | April         | 28.20 | 861.89  | 890.09   |
| May           | 19.78 | 686.38  | 706.16 | May           | 29.00 | 878.70  | 907.70   |
| June          | 20.53 | 701.84  | 722.37 | June          | 29.81 | 895.51  | 925.32   |
| July          | 21.27 | 717.31  | 738.58 | July          | 30.61 | 912.32  | 942.93   |
| August        | 22.01 | 732.78  | 754.79 | August        | 31.42 | 929.13  | 960.55   |
| September     | 22.75 | 748.24  | 770.99 | September     | 32.22 | 945.95  | 978.17   |
| October       | 23.50 | 763.71  | 787.21 | October       | 33.03 | 962.76  | 995.79   |
| November      | 24.24 | 779.18  | 803.42 | November      | 33.83 | 979.57  | 1,013.40 |
| December      | 24.98 | 794.64  | 819.62 | December      | 34.63 | 996.38  | 1,031.01 |

| 1997 STP AFPI |       |          |          |
|---------------|-------|----------|----------|
|               | New   | Present  | Total    |
| January       | 35.51 | 1,014.67 | 1,050.18 |
| February      | 36.38 | 1,032.97 | 1,069.35 |
| March         | 37.26 | 1,051.26 | 1,088.52 |
| April         | 38.13 | 1,069.56 | 1,107.69 |
| May           | 39.00 | 1,087.85 | 1,126.85 |
| June          | 39.88 | 1,106.15 | 1,146.03 |
| July          | 40.75 | 1,124.44 | 1,165.19 |
| August        | 41.62 | 1,142.73 | 1,184.35 |
| September     | 42.50 | 1,161.03 | 1,203.53 |
| October       | 43.37 | 1,179.32 | 1,222.69 |
| November      | 44.24 | 1,197.62 | 1,241.86 |
| December      | 45.12 | 1,215.91 | 1,261.03 |

\* The AFPI shown above are assessed for only the first 884 ERC's connected after the commencement of the AFPI on January 1, 1993

ATTACHMENT F

ROTONDA WEST UTILITY CORPORATION  
WASTEWATER COLLECTION SYSTEMS  
ALLOWANCE FOR FUNDS PRUDENTLY INVESTED (AFPI)

The following AFPI will be assessed per all ERC's connected after the commencement of the AFPI

|           | 1991 | 1992  | 1993  | 1994  | 1995  | 1996  | 1997  | 1998   |
|-----------|------|-------|-------|-------|-------|-------|-------|--------|
| January   | 0.79 | 10.39 | 20.79 | 32.09 | 44.38 | 57.75 | 72.32 | 88.21  |
| February  | 1.59 | 11.25 | 21.73 | 33.11 | 45.48 | 58.95 | 73.64 | 89.65  |
| March     | 2.38 | 12.11 | 22.66 | 34.12 | 46.59 | 60.16 | 74.95 | 91.08  |
| April     | 3.18 | 12.97 | 23.60 | 35.14 | 47.70 | 61.37 | 76.26 | 92.52  |
| May       | 3.97 | 13.83 | 24.53 | 36.16 | 48.80 | 62.57 | 77.58 | 93.95  |
| June      | 4.76 | 14.69 | 25.47 | 37.17 | 49.91 | 63.78 | 78.89 | 95.39  |
| July      | 5.56 | 15.55 | 26.40 | 38.19 | 51.01 | 64.98 | 80.21 | 96.82  |
| August    | 6.35 | 16.41 | 27.34 | 39.21 | 52.12 | 66.19 | 81.52 | 98.26  |
| September | 7.15 | 17.28 | 28.27 | 40.22 | 53.23 | 67.39 | 82.84 | 99.69  |
| October   | 7.94 | 18.14 | 29.21 | 41.24 | 54.33 | 68.60 | 84.15 | 101.13 |
| November  | 8.73 | 19.00 | 30.14 | 42.26 | 55.44 | 69.80 | 85.47 | 102.56 |
| December  | 9.53 | 19.86 | 31.08 | 43.27 | 56.54 | 71.01 | 86.78 | 104.00 |

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for Authority )  
to Transfer the Facilities of )  
ROTONDA WEST UTILITY CORPORATION )  
and Certificate Nos. 565-W and )  
493-S in Charlotte County, Florida) )  
to AQUASOURCE UTILITY, INC. )  
\_\_\_\_\_ )

Docket No. 981858-WS

RECEIVED-PPSC  
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REGULATORY AND  
REPORTING

APPLICATION OF AQUASOURCE UTILITY, INC.  
FOR AUTHORITY TO TRANSFER FACILITIES AND  
CERTIFICATE NOS. 565-W AND 493-S

AQUASOURCE UTILITY, INC. (hereinafter referred to as "AquaSource" or "Buyer") by and through its undersigned attorneys and pursuant to the provisions of Rule 25-30.037, Fla. Admin. Code and Section 367.071, Fla. Stat., files this Application for authority to transfer its utility facilities and Certificate Nos. 565-W and 493-S currently held by Rotonda West Utility Corporation ("Seller" or "Utility") to Buyer. In support of this Application, Seller states:

1. The complete name and address of the Seller, is:

Rotonda West Utility Corporation  
9494 Placida Road  
Cape Haze, Florida 33946

2. The complete name and address of the Buyer is:

AquaSource Utility, Inc.  
16810 Barker Springs, Suite B-215  
Houston, TX 77084

3. The name and address of the person authorized to receive notices and communications in respect to this application is:

Martin S. Friedman, Esquire  
Rose, Sundstrom & Bentley, LLP  
2548 Blainstone Pines Drive  
Tallahassee, Florida 32301

Check received with filing and forwarded to Fiscal for deposit. Fiscal to forward a copy of check to RAR with proof of deposit.

Initials of person who forwarded check:  
MBM

DOCUMENT NUMBER-DATE

14037 DEC 14 88

PPSC-RECORDS/REPORTING

4. Buyer is a Texas corporation authorized to do business in Florida on August 25, 1998.

5. The names and addresses of Buyer's corporate officers and directors are as follows:

Roy H. Moore, President  
Edward R. Wallace, Vice-President/Director  
Michael J. Miller, Vice President  
Carmela Laurella, Vice President  
Cary Thomas, Secretary  
Linda C. Law, Secretary  
Carol Marine, Assistant Secretary  
Ann Reitmeyer, Assistant Secretary  
16810 Barker Springs, Suite B 215  
Houston, Texas 77084

6. Buyer currently owns no water or wastewater utilities in Florida although it has several transfer applications pending before the Commission. The names of other water or wastewater utilities owned by Buyer are as follows:

AquaSource Utility, Inc.  
AquaSource Services and Technologies, Inc.  
AquaSource Whisenant, Inc.  
AquaSource/AU, Inc.  
AquaSource/CB, Inc.  
AquaSource/DWC, Inc.  
AquaSource/GWS, Inc.  
AquaSource/HCUC, Inc.  
AquaSource/HCUW, Inc.  
AquaSource/IWS, Inc.  
AquaSource/MMS, Inc.  
AquaSource/S&B, Inc.  
Britmore Utility, Inc.  
Buffalo Creek Utility, Inc.  
Creekside Utilities, Inc.  
Lakeside Utilities, Inc.  
Sandy Creek Utilities, Inc.  
Peek Road Utilities, Inc.  
Redwood Utilities, Inc.  
Rivercrest Water Systems, Inc.  
Suburban Austin Water Systems, Inc.  
The Reynolds Group, Inc.  
Hendricks County Wastewater, LLC  
Country View Sewage Plant Inc.  
Chimney Wood Sewage Works, Inc.

Wastewater One, LLC  
Water One, Inc.  
Wildwood Shores Utilities Corp.  
Wymberley Sanitary Works, Inc.  
Woodcreek Utilities, Inc.

7. A copy of the Asset Purchase Agreement, which includes the purchase price, terms of payment, and a list of the assets purchased and liabilities assumed and not assumed and disposition of customer deposits and interest thereon is attached hereto as Exhibit "A".

8. There are no guaranteed revenue contracts, developer agreements, customer advances, debt of the utility, and leases that must be disposed of in association with the transfer of the assets of the Utility.

9. Buyer will purchase Seller's water and wastewater systems in a cash transaction financed by its parent, DQE, Inc. A copy of DQE's financial statement is attached hereto as Exhibit "B".

10. The transfer of the water and wastewater facilities of Seller to Buyer is in the public interest for the following reasons:

(i) Although AquaSource is a relatively new corporation in Florida, its experienced staff has been providing operation, maintenance and management services for municipal and private water utilities for more than 25 years. It is constantly expanding its technical capabilities and are implementing improved quality control, maintenance management, and training and safety programs. These improvements provide direct tangible benefits to utilities owned and operated by AquaSource and municipal utilities served by

AquaSource. It currently operates water and wastewater systems serving approximately 125,000 customers.

(ii) The Buyer will continue to employ the operations and clerical personnel currently employed by the Seller after the purchase. While the Buyer has not previously owned or operated any other water or wastewater utilities in Florida, the continued employment of the personnel who operate the utility on a day to day basis will ensure that water and wastewater services will continue with the same high quality of service that has existed under the previous ownership. No changes in the operation of this system will be readily apparent.

(iii) Buyer has the financial resources to provide real and significant benefits to the utility customers as the utility's capital or operational needs demand. See attached Exhibit "C". Therefore, the Buyer has the technical capability and the financial ability to efficiently and effectively provide high quality water and sewer service to the utility service area and the customers therein. Buyer will fulfill the commitments, obligations and representations of the Seller with regard to utility matters. For all the above stated reasons, it is in the public interest to grant approval of the transfer to Buyer.

11. Attached hereto as Composite Exhibit "D" is a copy of Buyer's financial statement.

12. Pursuant to PSC Order No. PSC-96-0663-FOF-WS, the Utility has a rate base as of December 31, 1995 of \$3,610,778 for its water system and \$2,880,938 for its wastewater system.

13. There is no proposal for inclusion of an acquisition adjustment resulting from the current transfer.

14. The books and records of the Seller are available for inspection by the Commission and are adequate for the purposes of establishing rate base of the water and wastewater systems.

15. Seller will cooperate with Buyer in providing to the Florida Public Service Commission any information necessary in order for the Commission to evaluate the Utility's rate base as of the date of transfer.

16. After reasonable investigation, the Buyer has determined that the system being acquired appears to be in satisfactory condition and in compliance with all applicable standards set by Florida Department of Environmental Protection ("DEP"). The water and wastewater systems are not the subject of any outstanding Notice of Violation or Consent Order issued by the DEP.

17. As part of the transfer of the utility assets, ownership of all Utility land upon which its treatment plants are located will be transferred to the Buyer pursuant to the Asset Purchase Agreement. A copy of the deed transferring this property to Buyer is attached hereto as Exhibit "E". An executed and recorded copy of the Deed will be filed subsequent to Closing.

18. All outstanding regulatory assessment fees due as of March 31, 1998 for the year ended December 31, 1997 have been paid by Seller. Seller will be responsible for payment of all regulatory assessment fees through Closing and Seller will make payment for those fees within three months of the date of Closing.



Buyer will be responsible for payment of all regulatory assessment fees due for revenues received subsequent to Closing. No fines or refunds are owed.

19. The original and two copies of revised Tariffs reflecting the change in ownership are attached hereto as Composite Exhibit "F".

20. Water Certificate Number 585-W and Wastewater Certificate Number 503-S were not returned to Rotonda West Utility Corporation after amendment Order No. PSC-95-0780-FOF-WS. See Exhibit "G" attached.

21. An Affidavit that the actual notice of the application was given to the entities on the list provided by the Commission in accordance with Section 367.045(1)(a), Florida Statutes, and Rule 25-30.030, Florida Administrative Code, will be filed as Exhibit "H".

22. An Affidavit that the actual notice of the application was given to the each customer in accordance with Section 367.045(1)(a), Florida Statutes, and Rule 25-30.030, Florida Administrative Code, will be filed as Late Filed Exhibit "I".

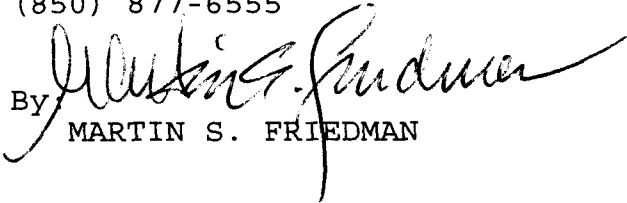
23. An Affidavit that the notice of the application was published once in a newspaper of general circulation in the territory in accordance with Rule 25-30.030, Florida Administrative Code, will be filed as Late Filed Exhibit "J".

24. Rotonda West Utility Corporation serves approximately 3,400 water ERCs and 2,800 wastewater ERCs. Pursuant to Rule 25-30.020(c), Florida Administrative Code, the appropriate filing fee

is \$4,500 (\$2,250 for the water system and \$2,250 for the wastewater system).

Respectfully submitted on this  
14th day of December, 1998, by:

ROSE, SUNDSTROM & BENTLEY, LLP  
2548 Blairstone Pines Drive  
Tallahassee, Florida 32301  
(850) 877-6555

By   
MARTIN S. FRIEDMAN

aqua\rotonda\transfer.app

**AFFIDAVIT**

STATE OF Texas

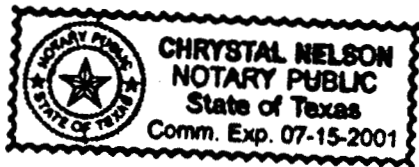
COUNTY OF Travis

I, Michael J. Miller, 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 constitute a complete statement of the matter to which it relates.

FURTHER AFFIANT SAYETH NAUGHT.

Michael J. Miller  
Michael J. Miller  
Vice-President

Sworn to and subscribed before me this 25 day of November, 1998,  
by Michael J. Miller, who is personally known to me or who provided  
Driver's License as identification.



Chrystal Nelson

Print name: Chrystal Nelson  
NOTARY PUBLIC  
My commission Expires: 7-15-2001

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

**By and Between**

**ROTONDA WEST UTILITY CORPORATION**

**Seller**

**and**

**AQUASOURCE UTILITY, INC.**

**Purchaser**



**TABLE OF CONTENTS**

|                                                                                | <u>Page</u> |
|--------------------------------------------------------------------------------|-------------|
| 1. <u>RECITALS</u> .....                                                       | 1           |
| 2. <u>COVENANT TO PURCHASE AND SELL; DESCRIPTION OF PURCHASED ASSETS</u> ..... | 1           |
| 3. <u>PURCHASE PRICE</u> .....                                                 | 3           |
| 4. <u>REPRESENTATIONS AND WARRANTIES OF SELLER</u> .....                       | 4           |
| 5. <u>REPRESENTATIONS AND WARRANTIES OF PURCHASER</u> .....                    | 10          |
| 6. <u>TITLE INSURANCE AND PERMITTED ENCUMBRANCES</u> .....                     | 10          |
| 7. <u>CONDITIONS PRECEDENT TO CLOSING</u> .....                                | 12          |
| 8. <u>PRE-CLOSING CONDUCT; COVENANTS</u> .....                                 | 13          |
| 9. <u>TERMINATION OF AGREEMENT</u> .....                                       | 15          |
| 10. <u>CLOSING DATE AND CLOSING</u> .....                                      | 17          |
| 11. <u>POST CLOSING COOPERATION</u> .....                                      | 20          |
| 12. <u>FLORIDA PUBLIC SERVICE COMMISSION MATTERS</u> .....                     | 22          |
| 13. <u>MISCELLANEOUS PROVISIONS</u> .....                                      | 22          |

ATTACHMENTS

- Schedule "A" (Real Property)
- Schedule "B" (Easements, licenses, etc.)
- Schedule "C" (Treatment plants, etc.)
- Schedule "D" (Certificates, permits, etc.)
- Schedule "E" (Developer Agreements Assumed by Purchaser)
- Schedule "F" (Contracts, Consent Orders, and Leases Assumed by Purchaser)
- Schedule "G" (Permitted Encumbrances)
- Schedule "H" (Disclosures)
- Exhibit "A" (Escrow Agreement)

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

**THIS AGREEMENT FOR PURCHASE AND SALE OF WATER AND WASTEWATER ASSETS** ("Agreement") is made as of the \_\_\_\_ day of November, 1998, by and between Rotonda West Utility Corporation, a Florida corporation (hereafter "Seller"), whose address is 9494 Placida Road, Cape Haze, Florida 33946, and AquaSource Utility, Inc. ("Purchaser"), whose address is 16810 Barker Springs, Suite B215, Houston, Texas 77084.

**WHEREAS**, Seller owns and operates a potable water production, treatment, storage, transmission, and distribution system ("Water System") and a sanitary wastewater collection, treatment and effluent disposal system ("Wastewater System"), collectively, the Utility System, all of which are located in Charlotte County, Florida, and commonly known as Rotonda West Utility Corporation;

**WHEREAS**, the Utility System operates under Certificate of Public Necessity and Convenience ("Certificates") Nos. 565-W and 493-S issued by the Florida Public Service Commission ("Commission" or "PSC"), which authorize it to provide water and wastewater service to certain territories in unincorporated Charlotte County, Florida;

**WHEREAS**, Seller has indicated to Purchaser a condition to entering into this Agreement was Purchaser's willingness to close the transaction by December 15, 1998, subject to satisfaction of the condition set forth in Section 7d;

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

1. **RECITALS**. The foregoing recitals are true and correct and are incorporated herein.

2. **COVENANT TO PURCHASE AND SELL; DESCRIPTION OF PURCHASED ASSETS**.

a. Purchaser shall buy from Seller, and Seller shall sell to Purchaser, the Purchased Assets (as defined below) upon the terms, and subject to the conditions, set forth in this Agreement.

b. "Purchased Assets" shall include all assets, business properties, and rights, both tangible and intangible, that Seller owns, or in which it has an interest, regarding the "Utility

System," including, but not limited to:

(1) The real property owned by Seller, and all buildings and improvements located thereon, as identified in Schedule "A" to this Agreement ("Real Property").

(2) All easements, licenses, prescriptive rights, rights-of-way and rights to use public and private roads, highways, streets and other areas owned or used by Seller for the construction, operation and maintenance of the Utility System, as identified in Schedule "B" to this Agreement.

(3) All water treatment plants, water supply and distribution facilities, wastewater collection, treatment and disposal facilities of every kind and description whatsoever, including but not limited to pumps, plants, tanks, lift stations, transmission mains, distribution mains, supply pipes, collection pipes or facilities, irrigation quality water and effluent disposal facilities, valves, meters, meter boxes, service connections and all other physical facilities, equipment and property installations owned by Seller and used primarily in connection with the Utility System, together with all additions or replacements thereto, as identified in Schedule "C" to this Agreement (all of which are included in the definition of "Tangible Personal Property").

(4) All certificates, immunities, privileges, permits, license rights, consents, grants, ordinances, leaseholds, and all rights to construct, maintain and operate the Utility System and its plants and systems for the procuring, treatment, storage and distribution of potable water and the collection and disposal of wastewater and every right of every character whatever in connection therewith, and the obligations thereof; all agencies for the supply of water to the Utility System or others; all water rights, flowage rights and riparian rights and all renewals, extensions, additions or modifications of any of the foregoing; together with all rights granted to Seller under the Certificates, as identified in Schedule "D" to this Agreement; to the extent that Seller's rights to the foregoing are transferable.

(5) All items of inventory owned by Seller on the Closing Date (all of which are included in the definition of "Tangible Personal Property").

(6) All supplier lists, customer records, prints, plans, engineering reports, surveys, specifications, shop drawings, equipment manuals, and other information reasonably required by Purchaser to operate the Utility System in Seller's possession.

(7) All sets of record drawings, including as-built drawings, showing all facilities of the Utility System.

including all original tracings, sepias or other reproducible materials in Seller's possession.

(8) All rights of Seller under the Developer Agreements assumed by Purchaser, as identified in Schedule "E" to this Agreement.

c. The following assets are excluded from the Purchased Assets:

(1) All cash, accounts receivable, bank accounts, equity and debt securities of any nature, deposits maintained by Seller with any governmental authority, utility deposits and prepaid expenses of Seller that (a) are Seller's sole property and (b) are not subject to refund to customers, including Developers or others.

(2) Escrow and other Seller provisions for payment of federal and state income taxes.

(3) The name and the Florida corporation known as Rotonda West Utility Corporation.

d. Other than the obligations arising subsequent to the Closing under the agreements listed in Schedules "E" and "F" to this Agreement, which Purchaser shall assume, Purchaser shall not assume and not be obligated to pay, perform or discharge any debts, liabilities, or obligations of Seller, whether or not related to the Purchased Assets (the "Excluded Liabilities").

### 3. PURCHASE PRICE.

a. Purchaser shall pay to Seller, subject to the adjustments and prorations referenced herein, a total purchase price in the amount of \$20,300,000. Payment shall be made to Seller as follows:

(1) Purchaser shall deposit \$500,000 upon the execution of this Agreement, to be held in escrow pursuant to the Escrow Agreement attached as Exhibit "A";

(2) At Closing, Purchaser shall pay Seller \$19,800,000 in immediately available federal funds, by wire-to-wire transfer to an account designated by Seller.

b. Title to the Purchased Assets shall be delivered by the Seller to the Purchaser at Closing, free and clear of all liens, encumbrances, debts, liabilities, or third party claims whatsoever ("Encumbrances"), other than Permitted Encumbrances (as defined in Section 6 hereof).



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

a. Seller is duly organized, validly existing and its status is active under the laws of the State of Florida. Seller has all requisite corporate power and authority to carry on its business as now being conducted, to enter into this Agreement, and to carry out and perform the terms and conditions of this Agreement. This Agreement has been duly executed and delivered by Seller and is the valid and binding obligation of the Seller enforceable against it in accordance with its terms.

b. The Board of Directors and Shareholders of Seller have, or prior to Closing will have, approved this Agreement.

c. Since October 1, 1998 and except as disclosed in Schedules "E", "F" and "H", Seller has not:

(1) Incurred any obligations or liabilities, whether absolute, accrued, contingent, or otherwise, for which Purchaser would have any liability or obligation;

(2) Mortgaged, pledged, or subjected to lien or any other encumbrances or charges, any of its tangible or intangible assets, that will not be discharged at or prior to Closing;

(3) Sold or transferred any of its assets, except in the ordinary course of business; or

(4) Entered into any transaction other than in the ordinary course of business.

d. Except as set forth in Schedule "H," there are no legal actions, suits, mediations, arbitrations, or other legal or administrative proceedings, and to Seller's President's actual knowledge without inquiry pending or threatened against Seller that could affect it or its properties, assets, or business; and Seller is unaware of any facts that might result in any action, suit, mediation, arbitration, or other proceedings that might result in any adverse change in the business or condition (financial or otherwise) of Seller or its properties or assets. Seller is not in default with respect to any judgment, order, or decree of any court or any governmental agency or instrumentality.

e. Except as set forth in Schedule "H," to Seller's President's actual knowledge without inquiry, the business

operations of Seller have been and are being conducted in all material respects in accordance with all applicable laws, rules, and regulations of all authorities. Except as set forth in Section 12 and Schedule "H," Seller is not in violation of, or in default under, any term or provision of its Articles of Incorporation or By-Laws, as amended (if applicable), or any lien, mortgage, lease, agreement, instrument, order, judgment, or decree, or subject to any restriction of any kind or character contained in the foregoing, which would prohibit Seller from entering into this Agreement or prevent consummation of the purchase and sale of assets contemplated by this Agreement and such entering into or consummation will not cause such violation or default. Neither such entering or consummation requires Seller to obtain the consent of any private non-governmental third party.

f. Except as set forth in Schedule "H," to Seller's President's actual knowledge without inquiry, Seller has not received written notification of any material violation of any governmental rules, regulations, permitting conditions, or other governmental requirements of any type or nature applicable to the ownership, maintenance, construction or operation of the Utility System nor is Seller's President aware of any conditions, which by reason of the passing of time or the giving of notice, would constitute such a violation.

g. Schedule "A" to this Agreement identifies all parcels of land, together with all existing buildings and improvements erected thereon, that Seller owns or to which Seller has title. Seller has exclusive possession, control, and, to its actual knowledge, ownership and good and marketable title to all Real Property, including without limitation, those used or located on property controlled by Seller in its business. The Real Property is subject to no mortgage, pledge, lien, charge, security interest, encumbrance, or restriction except Permitted Encumbrances and liens, mortgages and other encumbrances that will be discharged by Seller at Closing (the "Seller Encumbrances"). At Closing, Seller shall deliver title to such Real Property free and clear of all debts, liens, pledges, charges or encumbrances, whatsoever, other than Permitted Encumbrances. SELLER MAKES NO REPRESENTATION AS TO THE CONDITION OF THE REAL PROPERTY, AND PURCHASER ACKNOWLEDGES THAT IT IS ACCEPTING THE REAL PROPERTY IN "AS IS" CONDITION, WITH ALL FAULTS, WITH NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE, EXCEPT FOR (I) THE REPRESENTATIONS SET FORTH IN THIS SUBSECTION, AND (II) THE ENVIRONMENTAL LAW COMPLIANCE REPRESENTATIONS SET FORTH IN SUBSECTION I. BELOW.

h. Seller has exclusive ownership, possession, control, and good and marketable title to all Tangible Personal Property, (except for leased items disclosed in Schedule "F", and

those that may have been sold, or otherwise disposed of, by Seller in the ordinary course of business), in its business. The Tangible Personal Property is subject to no mortgage, pledge, lien, charge, security interest, encumbrance, or restriction except Permitted Encumbrances. At Closing, Seller shall deliver title to the Tangible Personal Property free and clear of all debts, liens, pledges, charges or encumbrances, whatsoever. Buyer shall be solely responsible for expenses associated with the transfer of vehicle titles. SELLER MAKES NO REPRESENTATION AS TO THE CONDITION OF THE TANGIBLE PERSONAL PROPERTY, AND PURCHASER ACKNOWLEDGES THAT IT IS ACCEPTING THE TANGIBLE PERSONAL PROPERTY IN "AS IS" CONDITION, WITH ALL FAULTS, WITH NO WARRANTY OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE OR USE OR AVAILABLE CAPACITY IN THE UTILITY SYSTEM, EXCEPT AS PROVIDED FOR IN THIS SECTION.

i. To Seller's President's actual knowledge without inquiry, Seller has received no written notice of any threatened action or proceeding under any building or zoning ordinance, regulation, or law.

j. A complete list of Seller's Contracts, Consents, Orders, and Leases being assumed by Purchaser is set forth in Schedule "F" to this Agreement. Seller is not in default under any such document and, to Seller's Presidents actual knowledge without inquiry, no other party to any such document is in default thereunder. In addition, there are no third party consents required to assign such contracts to the Purchaser, other than as provided for herein.

k. Except as listed on Schedule "H," to Seller's President's actual knowledge without inquiry, Seller has not received written notice of Seller's default with respect to any order, writ, injunction, or decree of any court or federal, state, municipal or other governmental department regarding the ownership, operation or maintenance of the Purchased Assets or businesses comprising or relating to the Utility System. To Seller's President's actual knowledge without inquiry, Seller has received no written notice of any pending or threatened litigation or governmental action that could prohibit or interfere with the performance of this Agreement.

l. Environmental Law Compliance.

(1) Definitions.

(a) "Environmental Law" means any federal, state, or local statute, order, regulation, or ordinance, or common law or equitable doctrine relating to the protection of human health or the environment in effect as of the Closing Date and includes, but is not limited to, The Florida Air and Water

Pollution Control Act (Chapter 403, Florida Statutes), the Comprehensive Environmental Response, Compensation and Liability Act ("CERCLA") (42 U.S.C. § 9601 et seq.); the Resource Conservation and Recovery Act (42 U.S.C. § 6901 et seq.), the Clean Water Act (33 U.S.C. § 1251 et seq.), the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.), and the Safe Drinking Water Act, (42 U.S.C. § 300f et seq.), as such have been amended or supplemented as of the Closing Date, and the regulations promulgated pursuant thereto, and in effect as of the Closing Date.

(b) "Hazardous Material" means petroleum or any substance, material, or waste which is regulated under any Environmental Law in the jurisdictions in which Seller conducts its business including, without limitation, any material or substance that is defined as or considered to be a "hazardous waste," "hazardous material," "hazardous substance," "extremely hazardous waste," "restricted hazardous waste," "pollutant," "toxic waste," or "toxic substance" under any provision of Environmental Law, with the exception of the reverse osmosis discharge as referenced in the Consent Order identified in Schedule "H" ("Discharge").

(c) "Release" means any release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, or dispersal into the environment, at or from any property owned or operated by Seller or related to Hazardous Materials generated by Seller, other than the Discharge.

(d) "Remedial Action" means all actions required to (1) clean up, remove, or treat any Hazardous Material; (2) prevent the Release or threat of Release, or minimize the further Release of any Hazardous Material so it does not endanger or threaten to endanger public health or welfare or the environment; or (3) perform pre-remedial studies and investigations or post-remedial monitoring and care directly related to or in connection with any such remedial action.

(2) Representations. Except as set forth in Schedule "H" hereto, to Seller's President's actual knowledge without inquiry (other than such non-compliance as is not likely to have a material adverse effect on Seller):

(a) Seller is in compliance with all applicable Environmental Laws and has no material liability thereunder, and there is no reasonable basis for any such liability.

(b) Seller has obtained all permits required, or has submitted applications for such permits in a timely manner, under applicable Environmental Laws necessary for the operation of its business as presently conducted.

(c) Other than the Discharge, Seller has not received within the last three years any communication from, and is not aware of any pending communication from, any governmental authority or other party with respect to (1) the actual or alleged violation of any Environmental Laws; (2) any actual or proposed Remedial Action; or (3) any Release or threatened Release of a Hazardous Material.

(d) No polychlorinated biphenyl or asbestos-containing materials, in material violation of Environmental Law are, or have been, present at any property when owned, operated, or leased by Seller, nor are there any underground storage tanks, active or abandoned, at any property owned, operated, or leased by Seller.

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

(f) No written notification of a Release of a Hazardous Material has been filed by or on behalf of Seller or with respect to any property when owned, operated, or leased by Seller. No such property is listed or proposed for listing on the National Priority List promulgated pursuant to CERCLA, or CERCLIS, or any similar state list of sites requiring investigation or clean up.

(g) No Hazardous Material has been released in material violation of Environmental Law at, on, or under any property now or when formerly owned, operated, or leased by Seller; and no Hazardous Material has been released in material violation of Environmental Law at, on, or under any such property before such property was owned, operated, or leased by Seller.

(3) Inspection and Remedies. Purchaser shall engage a Florida licensed engineer to perform a Phase I Environmental Survey (and a subsequent Phase II, if necessary) of the Real Property. Copies of each such Environmental Survey shall be promptly provided by Purchaser to Seller. Without limiting the effect of the representations set forth in Section 4.1.(2), Purchaser shall satisfy itself that the Real Property being

3) are accurate and complete and do not contain or reflect any material discrepancies.

q. The representations and warranties of Seller contained in this Agreement, the Schedules to this Agreement and all other documents and written information furnished to Purchaser and its representatives pursuant hereto do not and will not include any untrue statement of material fact.

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

a. Purchaser has (i) been duly organized, and is a validly existing corporation under the laws of the State of Texas, and (ii) has all requisite power and authority to enter into this Agreement and to perform the terms and provisions of this Agreement and the transactions contemplated hereby.

b. The execution, delivery and performance of this Agreement by Purchaser, and the consummation by Purchaser of the transactions contemplated hereby, have been duly authorized by all necessary action on the part of Purchaser. This Agreement has been duly executed and delivered by Purchaser, and is the valid and binding obligation of the Purchaser, enforceable against it in accordance with its terms.

c. Purchaser has not dealt with either a broker, salesman, or finder in connection with any part of the transaction contemplated by this Agreement, and, in so far as it knows, no broker, salesman or other person is entitled to any commission or fee with respect to such transaction.

6. TITLE INSURANCE AND PERMITTED ENCUMBRANCES.

a. At least fifteen (15) days prior to the Closing, Seller shall cause to be issued and delivered a current title insurance commitment issued by a title company licensed to do business in the State of Florida, covering the Real Property, which shall be in an amount equal to \$5,000,000 (the agreed upon value of the Real Property). The cost of the title insurance commitment and policy shall be borne one-half by Seller and one-half by Purchaser. The title insurance commitment shall commit the insurer to issue at Closing an ALTA owner's policy of title insurance to Purchaser covering the Real Property, subject only to the Permitted Encumbrances. The Seller shall cause the title insurance company to delete the standard exceptions customarily deleted for such items as materialman's liens, survey (upon receipt of a satisfactory survey), and mechanic's liens. Seller shall execute at or prior to

Closing, in favor of the title insurance company, the appropriate mechanic's lien affidavit and "Gap" affidavit sufficient to allow the title insurance company to delete all standard exceptions addressed by such affidavits.

The standard form survey exception and easements or claims of easements not shown by the Public Records exception, contained on the title insurance commitment and to be included on the title policy, shall be deemed to be Permitted Encumbrances. If Purchaser desires to have the above exceptions modified or deleted, it shall be Purchaser's sole responsibility to deliver to the title company, issuing the title commitment, at Purchaser's sole cost and expense, a survey or surveys with the proper certifications acceptable to such title company in order to remove the survey exceptions, within five (5) days after issuance of the title insurance commitment. If Seller initiates the survey, Purchaser shall pay Seller at the Closing the cost of such survey.

Purchaser shall notify Seller in writing no less than five (5) days after receipt of such title insurance commitment, of any alleged material defect in Seller's title to the Real Property, other than the Permitted Encumbrances. Any objections to title to the extent not shown on the notice furnished by Purchaser in accordance with the provisions of this paragraph shall be deemed to have been waived by Purchaser and Purchaser shall not be entitled to any damages or other remedies. Seller shall have five (5) days after receipt of Purchaser's notice, to eliminate all of the material objections to title set forth in Purchaser's notice. However, in no event shall Seller be required to bring suit or expend any sum in excess of \$100,000 in the aggregate to cure title defects, exclusive of mortgages against the Property, which are in a liquidated amount or Seller has an obligation to discharge on or before Closing pursuant to the terms of this Agreement. In the event Seller fails to cure any title defects contained in Purchaser's notice to Purchaser's reasonable satisfaction, then Purchaser may:

(1) Accept whatever title Seller is able to convey with no abatement of the Purchase Price; or

(2) Reject title and terminate this Agreement with no liability for damages from either Purchaser or Seller, and Seller shall retain \$100,000 of the \$500,000 deposit referenced in Section 9.f. hereof, and the remainder of the deposit shall be immediately payable to Purchaser.

b. If Purchaser rejects title as provided above, neither party shall have any further liability under this Agreement. Purchaser shall not object to title by reason of the existence of any mortgage, lien, encumbrance, covenant, restriction or other matter that (a) may be satisfied with a payment of money

and Seller elects to do so by paying same at or prior to the Closing Date; (b) any mechanic's lien or other encumbrance which can be released of record, bonded or transferred of record to substitute security so as to relieve the real estate from the burden thereof and Seller elects to do so at or prior to Closing; or (c) the title insurance company issuing the title insurance commitments affirmatively insures-over.

c. As used above, "Permitted Encumbrances" mean and include the following:

(1) All present and future building restrictions, zoning regulations, laws, ordinances, resolutions, regulations and orders of any governmental authority having jurisdiction over the Real Property and the use thereof as represented herein.

(2) Easements, restrictions, reservations, rights-of-way, conditions and limitations of record, if any, which are not coupled with any reverter or forfeiture provisions, including (without limitation) any drainage, canal, mineral, road, or other reservations of record in favor of the State of Florida or any of its agencies or governmental or quasi-governmental entities, or as may be set forth in any "Murphy Deeds", none of which, however, shall impair or restrict the use of the Real Property for the operation of the Utility Systems.

(3) The matters listed in Schedule "G".

(4) Such other matters as are permitted under the terms of this Agreement.

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

a. There shall not be commenced or pending on the Closing Date any legal action or proceeding that prohibits Seller from closing the transaction.

b. Each party shall have performed all of the undertakings required to be performed by it under the terms of this Agreement prior to or at Closing.

c. All warranties and representations of the other party shall be true in all material respects as of the Closing Date, except to the extent they specifically refer to another date.

d. The waiting period under the Hart-Scott-Rodino Antitrust Improvements Act (the "HSR Act") shall have expired or early termination thereof shall have been granted.



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

a. Within five (5) days after the execution of this Agreement, Seller shall either furnish to Purchaser, or provide Purchaser with ready access to the following, to the extent they are in the possession of Seller, its employees, representatives, or agents:

(1) Copies of all plans and specifications showing the Utility System as now constructed (as-built), including any under construction, together with a detailed engineering map showing the water transmission lines, wastewater collection lines, lift stations, effluent disposal facilities, and appurtenances as now constructed, and all other facilities constituting the Utility System.

(2) Copies of all Certificates of Public Necessity and Convenience issued by the Florida Public Service Commission with respect to the Utility System, and any correspondence within the last two years between Seller and the Commission with respect thereto.

(3) A schedule and copies of all developer agreements entered into between Seller and owners or developers of property with respect to water and wastewater service, including a schedule of the number of connections reserved by each Developer Agreement for which there has been no connection as of the date hereof.

(4) A schedule and copies of all other agreements entered into between Seller and other parties in connection with Seller's operation of the Utility System, including but not limited to, leasehold agreements, operator and vendor contracts, and construction contracts. Such schedule shall also reflect the terms of any oral agreements, if any.

(5) A schedule and copies of documents reflecting the rates, fees, charges and tariffs of Seller.

(6) Copies of permits, applications, or other documents, together with effective dates and expiration dates (if any), demonstrating approval of the facilities of the Utility System by all applicable governmental authorities, including, but not limited to: (a) the Florida Department of Environmental Protection, (b) the United States Environmental Protection Agency, (c) the PSC, and (d) the South Florida Water Management District.

(7) A list of customer deposits or advance facility charges and accounts receivable by name and account

number, setting forth the amount of each individual deposit or receivable and the their aggregate totals.

(8) A map on which there is outlined the present and anticipated PSC certificated service area of Seller.

(9) A copy of the annual reports filed by Seller with the PSC for the calendar years 1996 and 1997, after filed.

(10) A copy of all warranties held by Seller with respect to completed, or in progress, construction work with respect to the Utility System, in addition to, a copy of all warranties relating to the Purchased Assets.

(11) Copies of any and all effective insurance policies with respect to Seller, Purchased Assets, and Utility System.

(12) A schedule that details plant, property, equipment, and other Purchased Assets.

(13) A legal description of any real estate owned or used by Seller in connection with the operation or expansion of the Utility System.

(14) Any existing survey of the Real Property, as prepared by a Florida licensed surveyor, in accordance with the minimum technical standards adopted by the Florida Society of Professional Land Surveyors in accordance with § 472.027, Florida Statutes.

(15) Copies of all recorded and unrecorded easements, licenses, prescriptive rights and rights-of-way owned and used by Seller for the construction, operation and maintenance of the Utility System.

b. During the period between the date of this Agreement and the Closing Date, Seller shall:

(1) Operate and maintain the Utility System and Purchased Assets in a normal and usual manner, or in accordance with Seller's budget supplied to Purchaser (the "Budget"), to ensure that the condition of the Utility System and the Purchased Assets shall not be materially diminished or depleted, normal wear and tear excepted;

(2) Promptly notify Purchaser of any notification received by Seller from any person, business, or agency of any existing, or potential, Environmental Law violation;

(3) Make or agree to make no capital expenditures

not provided for in the Budget in excess of \$100,000 without the prior written consent of Purchaser;

(4) Provide Purchaser, or its designated agent(s), with uninhibited access to the business premises, Utility System, Purchased Assets, Seller's books and records, employees, agents, or representatives, on reasonable advance notice and during business hours.

(5) Promptly notify Purchaser of any event, activity or occurrence that has, or may have, a material adverse effect on Seller or this transaction.

c. During the period of time between the date of this Agreement and the Closing Date, Seller shall maintain its existing levels of insurance.

d. From the date of execution of this Agreement until Closing (other than the agreement with Cape Haze Golf and Country Club d.b.a. Long Marsh Golf Club, relating to an effluent purchase agreement), Seller shall not, without the prior written consent of Purchaser, enter into or terminate any new developer agreements other than in the ordinary course of business or amend any existing developer agreements or acquire or dispose of any of the Purchased Assets, other than in the ordinary course of business. Copies of any new or amended developer agreements shall be promptly delivered to Purchaser.

e. Neither Purchaser nor Seller shall transfer or assign this Agreement or the duties or obligations created herein.

#### 9. TERMINATION OF AGREEMENT.

a. This Agreement may be terminated (i) by mutual written consent of the parties or (ii) as provided in paragraphs b. and c. below.

b. Purchaser may terminate this Agreement upon the occurrence of any of the following:

(1) The failure of Seller to satisfy, in any material respect, prior to December 15, 1998, its condition(s) precedent to closing set forth in Section 7, or failure of the conditions described in Section 7.

(2) Within 10 days from the date of this Agreement ("Inspection Period"), Purchaser shall conduct such additional due diligence of Seller as, in its sole discretion, it deems appropriate including but not limited to, upon reasonable notice to Seller, entering upon the property of Seller to inspect the Purchased Assets and Utility System, to familiarize itself with

day-to-day operations, and to review the practices of Seller with respect to the terms and conditions of this Agreement, and to determine Seller's compliance with any and all federal, state, and local regulatory requirements. Purchaser may also review any and all records of Seller as it deems appropriate including the schedules to this Agreement, which shall be provided by Seller to Purchaser within five (5) days of the date of this Agreement. At the conclusion of its additional due diligence, Purchaser shall, if it elects to terminate this Agreement in accordance with this Section 9.b.(2), return all assets, documents, and other materials to the same location and condition as the same were provided to Purchaser while conducting its additional due diligence. Seller shall cooperate with Purchaser in all respects as to Purchaser's exercise of additional due diligence. After conducting its additional due diligence, Purchaser shall have the right to terminate this Agreement, in its sole discretion, upon delivery of written notice to that effect to Seller within five (5) days of the expiration of the Inspection Period.

(3) Any material breach of this Agreement by Seller, including, but not limited to, a material breach of any representation or warranty, if Seller has not cured such breach within 10 days after notice from Purchaser, provided, however, such breach must in any event be cured prior to the Closing Date unless the date for cure has been extended by Purchaser.

(4) Any other basis for termination on behalf of Purchaser otherwise set forth in this Agreement.

c. Seller may terminate this Agreement upon the occurrence of any of the following:

(1) The failure of Purchaser to satisfy, in any material respect, prior to December 15, 1998 its conditions precedent to closing set forth in Section 7, or failure of the conditions described in Section 7.

(2) Any material breach of this Agreement by Purchaser, including, but not limited to, a material breach of any representation or warranty, if Purchaser has not cured such breach within 10 days after notice from Seller, provided, however, such breach must in any event be cured prior to the Closing Date unless the date for cure has been extended by Seller.

(3) Any other basis for termination on behalf of Seller otherwise set forth in this Agreement.

d. Following the occurrence of any of the bases for termination of this Agreement, the party seeking to terminate this Agreement shall provide written notice of its termination of this Agreement to the other by delivering the same as provided in Section 14.b.

e. Upon the termination of this Agreement, the following shall occur:

(1) Each party shall return all documents, including copies, in its possession, or in the possession of its agents and consultants to the other, as the case may be. Each party, its agents and consultants, shall treat any information previously received as confidential, and shall not disclose or use such information.

(2) Except as otherwise set forth in this Agreement, each party shall be responsible for payment of its own attorney and other professional fees and other costs of any nature whatsoever incurred prior to the termination of this Agreement.

f. If Purchaser terminates this Agreement other than pursuant to Section 9.b.(2) of this Agreement, \$100,000 of the \$500,000 deposit paid into escrow on the execution of this Agreement shall become non-refundable and immediately payable to Seller without any further claim thereto by Purchaser. Each party agrees that the other party shall have the remedy of specific performance to compel the other party's adherence hereto. If Purchaser terminates this Agreement pursuant to Section 9.b.(2), all such deposit shall be immediately payable to Purchaser. If Seller terminates this Agreement, or if the condition set out in Section 7d shall not be fulfilled before December 15, 1998 (other than as a result of Seller's failure to file timely its notification form under the HSR Act or its failure to respond in a timely manner to any requests from the Federal Trade Commission or the Department of Justice), the \$500,000 deposit shall be immediately payable to Seller.

g. In the event of termination of this Agreement, this Agreement shall forthwith become void and (except for the willful breach of this Agreement by any party hereto) there shall be no liability on the part of Purchaser or Seller, or their respective officers or directors, other than as provided for herein.

10. CLOSING DATE AND CLOSING.

a. Subject to satisfaction of the condition set out in Section 7d, this transaction shall be closed on or before December 15, 1998 ("Closing Date"), unless advanced or extended by mutual agreement of the parties, at Seller's office, or a location mutually acceptable to both parties.

b. At Closing:

(1) Title to the Real Property shall be conveyed to the Purchaser by special warranty deed free of all claims.

liens, or encumbrances, whatsoever, other than Permitted Encumbrances.

(2) Title to the Tangible Personal Property shall be conveyed to Purchaser by Bill of Sale free of all claims, liens, or encumbrances, other than Permitted Encumbrances.

(3) Seller's right, title and interest in and to its easements shall be assigned to Purchaser.

(4) All documentary stamps, if required, on the deeds of conveyance of the Real Property included in the Purchased Assets shall be paid by Purchaser.

(5) Real property and personal property taxes on the Purchased Assets and Utility System, and any other applicable taxes, shall be prorated as of the Closing Date and Seller shall be required to pay its share at or prior to Closing. All other taxes and assessments accrued or owed by Seller as of the date of Closing, with respect to the Purchased Assets, shall be and remain the obligation of Seller. All other taxes and assessments imposed or attempted to be imposed from and after the Closing Date, with respect to the Purchased Assets, shall be the obligation of Purchaser.

c. The parties recognize that the Closing may be established during the normal billing cycle of Seller. The gross revenues from water and wastewater services rendered, but not yet billed ("Unbilled Revenue") as of the Closing Date, shall be paid to Seller within ten (10) days of Purchaser's collection thereof. Purchaser shall utilize the same methods of collecting the Unbilled Revenue as it would if such Unbilled Revenue was its own. Except as set forth above, Purchaser shall be entitled to all Utility System revenue earned from the Closing Date forward.

d. Connection Charges (defined as connection, plant capacity, main extension, capital or other charges paid for the availability of utility services) received by Seller prior to the date of execution of this Agreement, shall be retained by Seller. Further, all Connection Charges received by Seller after the date of execution of this Agreement, but prior to Closing, shall be retained by Seller. Connection Charges paid after the Closing Date shall be the property of Purchaser.

e. All transfers required or necessary hereunder shall take place, unless extended by mutual consent.

f. Each of the parties shall pay the fees of its own attorneys, bankers, engineers, accountants, and other professional advisers or consultants in connection with the negotiation, preparation and execution of this Agreement, and any documents associated

with the Closing.

g. All bills for services, materials and supplies rendered in connection with the operation of the Utility System prior to Closing, including but not limited to electricity for a period up to and including the Closing Date, shall be paid by Seller.

h. All prorations required under this Agreement shall be made.

i. Purchaser shall assume Seller's liability for customer deposits, and credit shall be given to the Purchaser on the Purchase Price therefor.

j. Purchaser shall assume Seller's liability to provide service under all developer agreements assumed by Purchaser. However, Purchaser, to the extent permitted by law, shall have the right to impose its own rates, charges and fees.

k. Purchaser, at Closing, shall reimburse or credit Seller for the cost of all additional capital improvements made to the Utility System by or on behalf of Purchaser prior to the Closing Date provided Purchaser has requested such improvements, unless any such improvements have been provided for in the Budget.

l. Each party shall deliver to the other party a certificate stating that:

(1) Subject to Section 13. of this Agreement, the party is not prohibited by decree or law from consummating the transaction contemplated hereby.

(2) There is not commenced or pending on the Closing Date any legal action or proceeding that hinders the ability of either party to close the transaction.

(3) All warranties and representations of such party contained in this Agreement are true and correct as of the Closing Date, except that representations regarding financial statements are as of the date of the financial statement.

m. Seller shall deliver to Purchaser, in a form reasonably acceptable to Purchaser, an opinion of Seller's counsel substantially to the effect that:

(1) Seller is validly organized, existing and its status active under the laws of the State of Florida.

(2) This Agreement has been duly and validly executed and approved by Seller and is a valid and binding

agreement upon Seller;

(3) Except as set forth in Schedule "H," to counsel's knowledge without inquiry, the execution, delivery and performance of this Agreement will not violate any agreement of or binding on, or any law applicable to, Seller.

n. Purchaser shall deliver to Seller in a form acceptable to Seller, an opinion of Purchaser's counsel substantially to the effect that:

(1) Purchaser is validly organized and existing under the laws of the State of Texas.

(2) This Agreement has been duly and validly executed and approved by Purchaser and is a valid and binding agreement upon Purchaser;

(3) To counsel's knowledge without inquiry, the execution, delivery and performance of this Agreement will not violate any agreement of, or binding on, or any law applicable to, Purchaser.

#### 11. POST CLOSING COOPERATION.

a. Seller and Purchaser shall, at any time and from time to time after the Closing Date, upon reasonable request of the other party, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, all such further documents, acts, deeds, assignments, transfers, powers of attorney and assurances as may be required in order to implement and perform any of the obligations, covenants and agreements of the parties.

b. Each of the parties hereto shall provide the other with such assistance as reasonably may be requested in connection with the preparation of any tax return, audit or other examination by any taxing authority or any judicial or administrative proceedings relating to liability for taxes relating to the transactions contemplated by this Agreement. Subject to the provisions of subsection e. hereof, each party shall retain and provide the other with any records or information that may be relevant to such return, audit or examination, proceedings or determination. Such assistance shall include making employees available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder and shall include providing copies of any relevant tax returns and supporting work schedules. The party requesting assistance hereunder shall reimburse the other for reasonable out-of-pocket expenses incurred in providing such assistance.

c. In the event that, after the Closing Date, either



of the parties hereto shall require the participation of the other or of commissioners, directors, officers and employees employed by the other to aid in the defense or prosecution of litigation or claims, and so long as there exists no conflict of interest between the parties, each party shall use its best efforts to be available or to make such officers and employees reasonably available to participate in such defense or prosecution, provided that the party requiring the participation of such officers or employees shall pay all reasonable out-of-pocket costs, charges and expenses arising from such participation.

d. Where there is a legitimate purpose not injurious to the other party and not related to prospective competition by such party with another party hereto, or if there is an audit by the IRS, other governmental inquiry, or litigation or prospective litigation to which Purchaser or Seller is or may become a party, making necessary any access to the records of or relating to Seller held by Purchaser or making necessary Purchaser's access to records of or relating to the operations of Seller, each of them shall allow representatives of the other party access to such records during regular business hours at such party's place of business for the sole purpose of obtaining information for use as aforesaid.

e. Following the Closing, and to the extent transferred to Purchaser, Purchaser shall retain the books and records of Seller for the benefit of Seller and, unless otherwise consented to in writing by Seller, Purchaser shall not destroy or otherwise dispose of such books and records of Seller.

f. Purchaser shall, subsequent to Closing, and consistent with prudent business practices, industry standards applicable thereto, and subject to the requirements of the appropriate governmental agencies having jurisdiction over the assets and businesses of the Utility System, provide water and wastewater services in a uniform and nondiscriminatory manner consistent with the past practice of the Seller.

## 12. FLORIDA PUBLIC SERVICE COMMISSION MATTERS.

a. The parties acknowledge that this transaction is subject to the jurisdiction of the PSC and Section 367.071 of the Florida Statutes. The parties also acknowledge that Seller would not enter into this Agreement if the transaction was not closed on or before December 15, 1998. Recognizing that PSC approval of the transaction and transfer of the water and wastewater certificates may not be accomplished on or before December 15, 1998, this Agreement shall be subject to modification, including rescission by

mutual agreement, in the event the PSC fails to approve the transfer.

b. Furthermore, it is the understanding of each party that the Purchaser is assuming all of the risk and expenses (including Seller's) of the regulatory approval process, or lack thereof, and as such, Seller agrees to fully cooperate with Purchaser to obtain such regulatory approvals. In the event the PSC fails to approve the transaction, the Seller agrees to cooperate with the Purchaser to the maximum extent reasonably possible in Purchaser's efforts to sell the purchased assets to another entity.

13. MISCELLANEOUS PROVISIONS.

a. This Agreement, the Schedules hereto, and the documents referred to herein, collectively embody the entire agreement and understandings between the parties and there are no other agreements or understandings, oral or written, with reference to this Agreement that are not merged into and superseded by this Agreement. This Agreement may be executed in one or more counterparts, each of which shall be considered an original.

b. Subject to the provisions of Section 13d and 13e, Purchaser shall indemnify and hold harmless Seller, its directors, officers, employees and affiliates, and its permitted successors and assigns ("Seller Indemnified Parties") from and against any claim, liability, loss, cost, damage, or expenses (including, without limitation, court costs and reasonable attorney's fees and expenses) (a "Claim") arising out of, resulting from or in any way related to the breach of, or the failure to perform or satisfy any of, the representations, warranties and covenants made by Purchaser in this Agreement, and shall reimburse Seller Indemnified Parties for any legal or other expenses reasonably incurred by Seller Indemnified Parties in connection with investigating or defending any such Claim as such expenses are incurred.

c. Subject to the provisions of Section 13d and 13e, Seller and Parent shall jointly and severally indemnify and hold harmless Purchaser, its directors, officers, employees, affiliates and its permitted successors and assigns ("Purchaser Indemnified Parties") from and against any Claim arising out of, resulting from or in any way related to (a) a breach by Seller of any of the representations and warranties contained I Section 4 or any covenants contained in Section 11, or (b) the Excluded Liabilities. Seller and Parent shall jointly and severally reimburse Purchaser Indemnified Parties for any legal or other expenses reasonably incurred by Purchaser Indemnified Parties I connection with investigating or defending any such expenses are incurred.

d. Seller shall have no indemnification obligation hereunder unless the aggregate of all claims for indemnification shall exceed \$100,000 and, thereafter, Seller shall be liable only for the amount of such claims that shall exceed \$100,000. Notwithstanding any other provisions hereof, the aggregate liability of Seller or Parent under this Agreement for breach of any representation, warranty or covenant herein shall not exceed \$700,000.

e. The representations, warranties and covenants of the parties contained in this Agreement shall survive the Closing, provided that the rights of Purchaser to initiate any claim for indemnification hereunder shall survive only if notice of such claim shall be given to Seller by the close of business on the date that is one year after the Closing Date, and that proceedings relating to such claim shall have been commenced within two months after the end of such one year period.

f. Any notice or other document required or allowed to be given pursuant to this Agreement and the Escrow Agreement by either party to the other shall be in writing and shall be delivered personally, or by recognized overnight courier or sent by certified mail, postage prepaid, return receipt requested, or by facsimile transmission with written confirmation. A single notice delivered to Seller shall be sufficient notice.

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

Rotonda West Utility Corporation  
c/o Gary Littlestar, President  
9494 Placida Road  
Cape Haze, Florida 33946

with a copy to

Rose, Sundstrom & Bentley, LLP  
c/o William E. Sundstrom, P.A.  
2548 Blairstone Pines Drive  
Tallahassee, Florida 32301

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

AquaSource Utility, Inc.  
c/o Richard Zieren  
Vice President and General Counsel  
16810 Barker Springs  
Suite B215  
Houston, Texas 77084

with a copy to:

James F. Garner, Esq.  
Pavese, Garner et al.  
1833 Hendry Street  
Ft. Myers, Florida 33902

g. The headings used are for convenience only, and they shall be disregarded in the construction of this Agreement.

h. The drafting of this Agreement constituted a joint effort of the parties, and in the interpretation hereof it shall be assumed that no party had any more input or influence than any other. All words, terms, and conditions herein contained are to be read in concert, each with the other, and a provision contained under one heading may be considered to be equally applicable under another heading in the interpretation of this Agreement.

i. Other than with respect to filings with the PSC or under the HSR Act, Purchaser shall maintain in strict confidence, and shall not disclose to anyone other than its employees, attorneys and consultants who have a need to know in order to consummate the transactions contemplated by this Agreement (and who shall be bound by a similar obligation of confidentiality), any information regarding Seller, its business, this Agreement and the transactions, unless and until the Closing shall have occurred.

j. This Agreement is solely for the benefit of the parties hereto and no other causes of action shall accrue upon or by reason hereof to or for the benefit of any third party, who or which is not a formal party hereto.

k. In the event any term or provision of this Agreement is determined by appropriate judicial authority to be illegal or otherwise invalid, such provision shall be given its nearest legal meaning or be construed as deleted, as such authority determines, and the remainder of this Agreement shall be construed to be in full force and effect.

l. In the event of any litigation that arises between the parties with respect to this Agreement, the prevailing party shall be entitled to reasonable attorney fees and court costs at all trial and appellate levels.

m. This Agreement may be amended or modified only if executed in writing and in the same manner as the original.

n. This Agreement shall be governed by, and construed and interpreted in accordance with, the laws of the State of Florida.

o. This Agreement shall be binding upon and inure to the benefit of the parties' successors and assigns.

p. This Agreement may be executed in one or more counterparts each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. This Agreement may be delivered by facsimile transmission.

[SIGNATURES ON NEXT PAGE]

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

AQUASOURCE UTILITY, INC.  
(PURCHASER)

*[Signature]*  
Secretary

*[Signature]*  
By:  
President

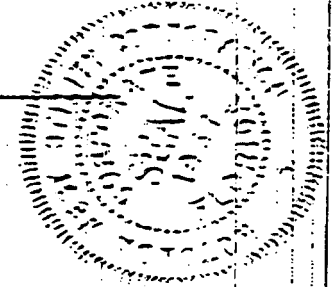
(SEAL)

ROTONDA WEST UTILITY CORPORATION  
(SELLER)

*[Signature]*  
Secretary

*[Signature]*  
By: Gary Littlestar  
President

(SEAL)



Rotonda Properties, Inc. ("Parent") hereby agrees to be bound jointly with Seller to perform Seller's covenants contained in Section 13b, provided that the limitations contained in Sections 13d and 13e shall apply to Parent, mutatis mutandis. Parent warrants to Purchaser that (a) it is duly organized, validly existing and its status is active under the laws of the State of Florida, (b) it has all requisite corporate power and authority to enter into this Agreement and to carry out and perform the terms contained in this paragraph, and (c) the Agreement has been duly executed and delivered by Parent and is the valid and binding obligation of Parent, enforceable against it in accordance with its terms.

ROTONDA PROPERTIES, INC.  
(PARENT)

*[Signature]*  
Secretary

*[Signature]*  
By: \_\_\_\_\_  
President

(SEAL)

