

**RESOLUTION NO. 2002-022**

**A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF NASSAU COUNTY, FLORIDA, FINDING THAT THE ACQUISITION OF THE WATER AND WASTEWATER UTILITY ASSETS OF FLORIDA WATER SERVICES CORPORATION IS IN THE PUBLIC INTEREST; AND AUTHORIZING SUCH ACQUISITION THROUGH THE FLORIDA GOVERNMENTAL UTILITY AUTHORITY IN LIEU OF THE INITIATION OF CONDEMNATION BY THE BOARD OF COUNTY COMMISSIONERS; AND PROVIDING FOR AN EFFECTIVE DATE.**

**WHEREAS**, the Florida Governmental Utility Authority, a legal entity and public body organized and existing under the laws of the State of Florida (the "Authority") was established pursuant to an Interlocal Agreement, dated as of February 1, 1999, among Brevard County, Lee County, Polk County, and Sarasota County, for the purpose of acquiring, owning, improving, operating and maintaining water and wastewater utility facilities within the State of Florida; and

**WHEREAS**, the Authority subsequently acquired the utility assets comprising six (6) separate utility systems owned and controlled by Avatar Holdings, Inc. ("Avatar"), five (5) individual utility systems which were located in Brevard, Collier, Hillsborough, and Sarasota Counties and a sixth (6th) utility system located in both Osceola and Polk Counties; and

**WHEREAS**, Lee County and Brevard County exercised their option to acquire the utility assets and systems located within their boundaries pursuant to the provisions of the Interlocal Agreement and consolidated such systems into their consolidated public utility systems; and

**WHEREAS**, the Authority continues to manage and operate separate utility systems located in Hillsborough, Sarasota and Collier Counties and a consolidated utility system located in Polk and Osceola Counties; and

**WHEREAS**, on or about December 1, 2000, the Authority was reorganized pursuant to the First Amended and Restated Interlocal Agreement establishing Florida Governmental Utility Authority among Sarasota County, Polk County, Nassau County and Citrus County; and

**WHEREAS**, the Authority has been given the exclusive right to determine the feasibility of the acquisition of all of the utility assets and systems owned by Florida Water Services Corporation ("Florida Water") located in the State of Florida under an acquisition approach similar to that previously utilized by the Authority to acquire the utility assets and systems owned by Avatar; and

**WHEREAS**, Florida Water owns and operates one hundred and five (105) water and forty seven (47) wastewater utility systems located in twenty seven (27) counties and municipalities in the State of Florida; and

**WHEREAS**, the collective voluntary acquisition by the Authority of all the Florida utility assets and systems owned by Florida Water in lieu of condemnation by individual local governments of the Florida Water utility assets and systems located within their jurisdiction is in the public interest and serves the paramount public purpose of placing such individual utility assets and systems in public ownership through a negotiated purchase in lieu of condemnation by the individual local governments; and

**WHEREAS**, it is the desire of the Board of County Commissioners of Nassau County (the "County") to assist and cooperate with the Authority in the public acquisition of the utility assets and system of Florida Water located within the County pursuant to the terms of the Interlocal Agreement.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF NASSAU COUNTY, FLORIDA, AS FOLLOWS:**

**SECTION 1. FINDINGS.** It is hereby found and determined that:

(A) Florida Water owns and operates the utility assets and utility system known as the Amelia Island system within the unincorporated areas of the County (the "Amelia Island Systems").

(B) The operation of the Amelia Island System by Florida Water within the County is subject to the regulatory authority granted to the County under section 367.171, Florida Statutes, and implementing regulatory ordinances and regulations adopted by the County.

(C) All Florida local governments must meet the comprehensive planning requirements of Part II, Chapter 163, Florida Statutes, which mandate that Florida counties and municipalities coordinate their plans for future growth within available sources of funding to ensure the availability of essential infrastructure. The provision of water and wastewater utilities is a major element of such infrastructure coordination. Without the public ownership of the water and wastewater utility facilities located within the jurisdiction of the County and specifically the public ownership of the Amelia Island System, it may be

difficult for the County to meet this statutory mandate to adopt a financially feasible utility element within its comprehensive plan.

(D) The County cannot require Florida Water and other investor-owned utilities to adequately plan for the impacts of growth within the County nor provide for water and wastewater utility systems to accommodate existing development and anticipated future growth in a manner concurrent with the demand since the Florida regulatory statutory framework requires only that the County "consider, but not be bound by," the dictates of the local government comprehensive planning requirements of Part II, Chapter 163, Florida Statutes. As a consequence of such local utility regulatory framework, Florida Water, as an investor-owned utility, has not in the past participated in the comprehensive planning process of the County in a manner conducive to the efficient and expeditious performance by the County of its duty under existing growth management and comprehensive planning statutes. Thus, the provision of water and wastewater services through investor-owned utilities does not adequately serve the public interest and operates as a serious impediment to the implementation of a financially feasible local comprehensive plan.

(E) Faced with the need to balance the allocation of vital water supply resources with local government comprehensive planning requirements of Part II, Chapter 163, Florida Statutes, the Florida Legislature has in the past and is expected in the future to consider legislation to add water supply availability to the concurrency requirements of existing local government comprehensive planning requirements. That other states have considered similar legislation is illustrated by the statutory requirement implemented in the

State of California that all home builders produce satisfactory evidence of water supply availability before major subdivision construction permits may be issued.

(F) Public ownership and control of the Florida Water system will provide an opportunity for the County to: (1) further develop a county-wide approach to the comprehensive supply, distribution, and treatment of water and the collection, treatment and disposal of wastewater; (2) achieve economies of scale relative to utility operations, maintenance, customer service and management; (3) provide current and future users of the Amelia Island System with cost efficient services at reasonable rates by a governmental entity; (4) provide that the operation and maintenance of water and wastewater facilities is done in a proactive and environmentally responsible manner; (5) stabilize rates over the long term, reduce inefficient expansion and extension of service capacities and avoid the proliferation of smaller treatment facilities and sites; (6) focus upon the appropriate expansion and interconnection of existing facilities and the construction of future facilities in a coordinated and uniform manner which avoids special or disproportionate benefit to investor-owned utility operators or special interests at the expense of present or future customers; and (7) offer an opportunity for local government to not only coordinate the expansion and extension of facilities consistent with the County's comprehensive plans, but to operate the affected utility system as part of a larger community system.

(G) Florida Water has heretofore determined that it will not entertain any offers to purchase its utility assets or systems on a piecemeal basis but will sell all of its Florida utility assets or none of them. As a consequence, any efforts by the County to acquire

through voluntary acquisition the Amelia Island System will not be entertained by Florida Water and will, as a result, necessitate the commencement of condemnation proceedings by the County. As a consequence, the most cost effective manner of acquiring the Amelia Island System assets is through the cooperative acquisition efforts of the Authority in the manner contemplated in this Resolution.

**SECTION 2. PARTICIPATION IN AUTHORITY IN THE ACQUISITION OF AMELIA ISLAND SYSTEM.** The County hereby agrees to assist and cooperate with the Authority in acquiring the Amelia Island System located within the County. The County Coordinator or his designated representative, is hereby directed to consult and meet with the staff and consultants of the Authority to assist in the acquisition of the Amelia Island System by the Authority under the following acquisition principles: (1) no rate increase for any of the ratepayers of the Amelia Island System will occur as a consequence of the acquisition; (2) the ratepayers of the Amelia Island System will not subsidize improvements required at acquisition or future improvements of any other system; and (3) the financial structure implemented by the Authority will grant to the County the future right to acquire the Amelia Island System in a manner consistent with the Interlocal Agreement.

**SECTION 3. DETERMINATION OF PARAMOUNT PUBLIC USE AND BENEFIT.** Based upon the legislative findings incorporated in Section 1 of this Resolution, the Board hereby determines that the provision of water and wastewater services through facilities owned by the Authority constitutes a paramount public purpose and is in the best interest of the health, safety and welfare of the County and the ratepayers of the Amelia Island System. The Authority's acquisition of the Amelia Island System located within the County

will provide a greater public use and increased public benefit than that provided by Florida Water in its existing capacity as an investor-owned utility. The County possesses the power and authority pursuant to the Florida Constitution to acquire the Amelia Island System owned by Florida Water by the use of eminent domain. In lieu of initiation of the County's powers of eminent domain, the County finds it to be in the public interest to facilitate the Authority's acquisition of the Amelia Island System owned by Florida Water pursuant to the terms of the Interlocal Agreement and reserve to the County a future option to acquire the Amelia Island System in a manner consistent with the Interlocal Agreement and the bond documents issued by the Authority to acquire the Amelia Island System.

#### **SECTION 4. ACQUISITION IN LIEU OF CONDEMNATION.**

(A) Upon receipt of the threat of condemnation of its Florida utility assets by members of the Authority, Florida Water has determined that it is advisable to avoid incurring unnecessary time and expenses in the defense of such proceedings in numerous locations throughout Florida. Florida Water has agreed, in lieu of condemnation, to negotiate an amicable resolution of the threat of condemnation by the County by a voluntary sale of its assets to the Authority.

(B) The Authority, pursuant to section 163.01, Florida Statutes, and the Interlocal Agreement, as amended, possesses the authority to acquire the Florida Water system in lieu of condemnation by constituent local governments and further possesses the power and authority to provide potable water and wastewater infrastructure and service throughout the State of Florida.

**SECTION 5. EFFECTIVE DATE.** This Resolution becomes effective immediately upon its adoption.

**PASSED AND DULY ADOPTED** at the meeting of the Board of County Commissioners of Nassau County on the 14th day of January, ~~2001~~. 2002.

**BOARD OF COUNTY COMMISSIONERS  
NASSAU COUNTY, FLORIDA**

**ATTEST:**

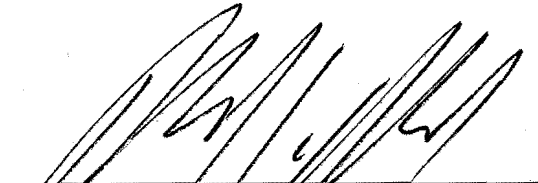


J. M. "Chip" OXLEY, JR.  
Its: Ex-Officio Clerk

BY 

NICK D. DEONAS  
Chairman

Approved as to form by the  
Nassau County Attorney

  
Michael S. Mullin