

RESOLUTION NO. 2004-33

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY APPROVING AND CONSENTING TO JEA'S ACQUISITION OF THE ASSETS, TERRITORY AND RIGHTS OF NOCATEE UTILITY CORPORATION; PROVIDING AN EFFECTIVE DATE.

WHEREAS St. Johns County ("the County") and JEA in recent years have established ongoing relationships and entered into interlocal and other agreements in connection with those relationships whereby JEA has acquired certain territory and rights to operate and provide service in the northern portion of St. Johns County on both a wholesale and retail basis for water and wastewater services, to the benefit of the County, JEA, and the citizens they serve; and

WHEREAS, the first of the agreements between the County and JEA concerned the acquisition of the territory formerly served by the Julington Creek Plantation ("JCP") Utility, which led to the negotiation and enactment of an interlocal agreement regarding the Service Territory when JEA was acquiring the JCP utility, titled "St. Johns County/JEA Water and Wastewater Interlocal Agreement," entered July 20, 1999 (the "Interlocal Agreement"); and

WHEREAS, the County and JEA also entered a water and wastewater utility services agreement around that time which was signed by the County on April 13, 1999, and by JEA on April 20, 1999, which addressed various aspects of service down the U.S.1 corridor, including particularly in the area of the Allen D. Nease High School, and residential developments proposed to be established, including the Walden Chase subdivision in that general area, titled "Water and Wastewater Utility Services Agreement between JEA and St. Johns County (the "Utility Services Agreement"); and

WHEREAS, in connection with JEA's acquisition of the territory and assets of the United Water Florida, Inc. ("United Water") utility system, both the foregoing Interlocal Agreement and Utility Service Agreement were amended by a respective addendum, each one dated December 19, 2001; and

WHEREAS, the County and JEA agreed that JEA would have rights to acquire certain private utilities and to provide retail services in a larger area of the northern portion of the County designated as the "Revised Service Territory" in the Addendum to the Interlocal Agreement, and the County and JEA also agreed that the County would have additional rights of access and service in the U.S.1 corridor area in the Addendum to the Utility Services Agreement which the County previously did not have; and

WHEREAS, both the County and JEA intended that JEA would have the right to provide service within the Revised Service Territory without further consent and approval of the County, except as specifically required under the First Addendum to the Interlocal Agreement, and the County and JEA intended and understood that JEA's rights to acquire private utilities within the

northern portion of the County included the Nocatee utility, as that utility is expressly identified as being in the Revised Service Territory by name in Exhibit "A" to the First Addendum to the Interlocal Agreement; and

WHEREAS, the primary purposes in negotiating and executing the addenda to the Interlocal Agreement and the Utility Services Agreement were to approve JEA's acquisition of the portion of the United Water assets located within St. Johns County; to grant JEA the broader service and acquisition rights and areas reflected in the Addendum to the Interlocal Agreement (specified more particularly in Sections 2.1, 3 and in Exhibit "A" of that Addendum); and to grant the County the expanded rights along the U.S.1 corridor identified more particularly in the Addendum to the Utility Services Agreement, and neither the County nor JEA intended to make an in-depth and detailed review and rewriting of the existing Interlocal Agreement and existing Utility Services Agreement so as to clarify or eliminate all provisions which no longer were consistent with the general principles and intention expressed in the addenda, as described above, which could apply in future transactions; and

WHEREAS, as JEA has now negotiated the acquisition of Nocatee Utility Corporation ("NUC"), JEA has become concerned that language remains in the Interlocal Agreement, even after amendment by the First Addendum, which could be interpreted to suggest that the Board of County Commissioners must review and approve various aspects of the transactions contemplated in connection with JEA's acquisition of NUC. For instance, although the Board of County Commissioners and JEA both contemplated that JEA could proceed to acquire the Nocatee utility pursuant to the authority granted in the Addendum to the Interlocal Agreement without further County consent or approval, as described above, it conceivably could be claimed that under Section 3.1 of the Addendum to the Interlocal Agreement, since a portion of the NUC territory lies beyond the "Revised Service Territory", as it lies within Duval County, JEA could be required to request and receive written consent from the Board of County Commissioners since such an extension of service would be "wholly or partially beyond the Revised Service Territory." Further evidence that the parties did not intend that any approval of the St. Johns County Board of County Commissioners would be required as to the services JEA will provide as to the Nocatee customers in Duval County clearly appears in Section 2.1 of the Addendum to the Interlocal Agreement, which provides in pertinent part:

" . . . . the County agrees that this Addendum provides JEA with full authority and consent of the county for JEA to provide services to the Revised Service Territory and that JEA is not obligated to seek any further approval to so operate except where specifically required under this addendum....Nothing contained in this Agreement shall be construed to prevent JEA from providing water or wastewater service within the City of Jacksonville or other counties in the state of Florida. . . . "

and

WHEREAS, in the interests of full transparency, disclosure and good faith, although it believes it is not required to seek the consent or approval of the Board of County Commissioners for the acquisition of Nocatee, JEA values its relationship with the County Commission and the

citizens of St. Johns County, and out of an abundance of caution therefore wishes to request the consent and approval of the Commission; and

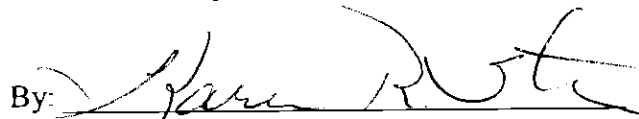
WHEREAS, the County previously has concluded that the development of the Nocatee project is in the best economic interests of the County and its citizens, in that it will provide for extended economic and residential opportunities within the northern portion of the county in a carefully planned and managed series of community and business developments, which will provide expanded infrastructure, jobs, housing, and other quality opportunities; and

WHEREAS, in light of the County's previous approval of the development, and also in light of the Public Service Commission's approval of the transfer of the certificated area of Nocatee Utility Corporation to JEA upon closing of the acquisition transactions, and of other valuable considerations in the public interest, the County believes the acquisition should be approved.

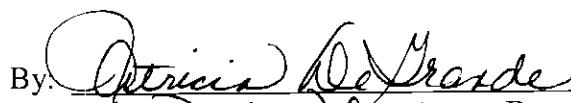
NOW THEREFORE BE IT RESOLVED by the Board of County Commissioners of St. Johns County that the County hereby consents to and approves the JEA acquisition of Nocatee Utility Corporation and its assets and territory, and acknowledges that such acquisition is consistent with and authorized by the County's previous action in the first Addendum to the St. Johns County/JEA Water and Wastewater Interlocal Agreement dated December 19, 2001, and the Addendum to Water and Wastewater Utility Services Agreement between JEA and St. Johns County dated December 19, 2001, pursuant to the purchase agreement and interlocal agreements on file with the staff of the Commission which reflect the particulars of JEA's acquisition of Nocatee Utility Corporation.

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, Florida this 3rd date of November, 2004.

Board of County Commissioners of  
St. Johns County, Florida

By:   
Karen R. Stern, Chair

ATTEST: Cheryl Strickland, Clerk

By:   
Patricia DeGrande, Deputy Clerk

Effective Date: 11-3-04

