

## **EXHIBIT B**

### **CONTRACT, LEASE, AGREEMENT CONTROL FORM**

**Date: 10/24/2006**

**Contract/Lease Control #: C07-1431-WSI-177**

**Bid #: N/A**

**Contract/Lease Type: AGREEMENT**

**Award To/Lessee: AUBUN WATER SYSTEM**

**Lessor:**

**Effective Date: 10/3/2006 \$0**

**Term: INDEFINITE**

**Description of Contract/Lease: WASTEWATER SERVICE**

**Department Manager: WATER & SEWER**

**Department Monitor: J. LITTRELL**

**Monitor's Telephone #: 651-7172**

**Monitor's FAX #: 651-7193**

**Date Closed:**

## WASTEWATER SERVICE AGREEMENT

THIS AGREEMENT (hereinafter "Agreement") is made and entered into this 3rd day of October, 2006, by and between OKALOOSA COUNTY, a political subdivision of the State of Florida (hereinafter "County"), whose mailing address is 1804 Lewis Turner Boulevard, Suite 100, Ft. Walton Beach, Florida 32547, and the AUBURN WATER SYSTEM, INC., a Community Water System (hereinafter "AWS"), whose mailing address is 3097 Locke Lane, Crestview, Florida 32536.

**WHEREAS**, AWS exclusively provides water service in its service area in Okaloosa County, Florida, as identified in Appendix "A" attached hereto (hereinafter "AWS Water Service Area"); and

**WHEREAS**, the parties had previously entered into a certain Wastewater Service Agreement dated November 16, 2004 (the "November Agreement"), which attempted to establish the provision of water and wastewater services within the AWS Water Service Area; and

**WHEREAS**, pursuant to the November Agreement, AWS would provide water and wastewater treatment collection service in the AWS Water Service Area. The wastewater treatment and disposal service would be provided by the County in the AWS Water Service Area; and

**WHEREAS**, the parties believe that the delivery of wastewater collection, treatment and disposal services as originally contemplated in the November Agreement is no longer viable; and

**WHEREAS**, both AWS and the County desire to cooperate in the provision of water, wastewater and reclaimed water services within the AWS Water Service Area; and

**WHEREAS**, the County provides wastewater and reclaimed water service within Okaloosa County and desires to provide such services within the AWS Water Service Area; and

**WHEREAS**, the County has constructed, owns, and operates the Bob Sikes Wastewater Treatment Plant and associated collection and disposal facilities (hereinafter referred to collectively as the "Bob Sikes Plant") to treat wastewater collected from areas currently served by the County (hereinafter "County Service Area"); and

**WHEREAS**, the Bob Sikes Plant is available to provide wastewater and reclaimed water services to the AWS Water Service Area; and

CONTRACT: WASTEWATER SERVICE  
CONTRACT NO.: C07-1431-WSI-177  
AUBURN WATER SYSTEM  
EXPIRES: INDEFINITE

**WHEREAS**, the County is willing to provide wastewater and reclaimed water services within the AWS Water Service Area concurrent with AWS providing water service within the AWS Water Service Area.

**NOW, THEREFORE**, in consideration of the foregoing and the mutual promises set forth below, the parties, intending to be legally bound, agree as follows:

**SECTION 1. RECITALS.** The recitals set forth above are true and accurate and are adopted and incorporated herein.

**SECTION 2. APPENDICES.** The following Appendix is attached hereto and incorporated herein by reference.

Appendix A - AWS Water Service Area Map

**SECTION 3. TERMINATION OF THE NOVEMBER AGREEMENT.** Pursuant to the provisions of Section 6 of the November Agreement, that Agreement is deemed terminated by the mutual consent of the parties and no longer in force and effect. The execution of this Agreement shall constitute the required mutual written consent of the parties as contemplated by Section 6. By termination of the November Agreement, the parties mutually agree to release, relinquish and waive any claims, rights or privileges that either may have under the November Agreement.

**SECTION 4. PROVISION OF WASTEWATER AND RECLAIMED WATER SERVICES BY THE COUNTY.** Except for portions of the AWS Service Area that have been previously annexed into and/or are currently receiving wastewater service by the City of Crestview as of the Effective Date of this Agreement, AWS agrees that the County shall have the exclusive right to provide wastewater collection, treatment and/or disposal services and reclaimed water services within the AWS Water Service Area as set forth in Appendix "A". Such area shall be deemed to be the County's Wastewater and Reclaimed Water Service Area. AWS agrees that it has no right or privilege to provide for wastewater collection, treatment or disposal and/or reclaimed water services, and will not attempt to provide such services nor grant that right to any other entity, within the AWS Water Service Area without the written consent of the County. Further, AWS may not impose any restrictions or limitations on the provision of such services by the County or its assigns in the AWS Water Service Area. The County shall be the exclusive provider of wastewater and reclaimed water services in the AWS Water Service Area, unless the County authorizes another person or entity to provide such service. The County shall notify AWS of any authorization granted to another person or entity to provide such service within ten (10) business days of granting such authorization.

**SECTION 5. PROVISION OF WATER SERVICE BY AWS.** The County agrees that AWS has the exclusive right to provide water services within the AWS Water Service Area as set forth in Appendix "A". Such area is the AWS Water Service Area. The County agrees that it has no right or privilege to provide water service, and will not attempt to provide potable water nor grant that right to any other entity, within the AWS Water Service Area without the written consent of AWS. Further, the County may not impose any restrictions or limitations on the provision of such services in the AWS Water Service Area. AWS shall be the exclusive provider of water services in the AWS Water Service Area unless AWS authorizes another person or entity to provide such services. AWS shall notify the County of any authorization granted to another person or entity to provide such service within ten (10) business days of granting such authorization. The County agrees that it will not attempt to exercise any eminent domain powers, to the extent such powers exist, relating to AWS or its property.

**SECTION 6. BILLING FOR WASTEWATER AND RECLAIMED WATER SERVICES.** At least sixty (60) days prior to the provision of wastewater service by the County within the AWS Service Area, the County and AWS will mutually determine and establish, in a separate written agreement, the wastewater billing procedures applicable to such service, including but not limited to service disconnection procedures for nonpayment. AWS agrees that AWS will cease the provision of water service to any customer for nonpayment of services provided by the County in accordance with the mutually established wastewater billing procedures.

**SECTION 7. CONNECTIONS.** The County agrees that it will not require any existing improved residential or non-residential property within the AWS Water Service Area that was permitted prior to the execution of this Agreement, or unimproved residential or non-residential property permitted within ninety (90) days thereof (the "Grace Period"), and is not currently served by sewer, to connect to the County's wastewater and reclaimed water system. However, existing improved or unimproved residential or non-residential property within the AWS Water Service Area that was permitted prior to the execution of this Agreement or within the Grace Period, but is required to connect to a wastewater or reclaimed water system by any other governmental entity, shall be required to connect to the County's system or such other County approved system. Any property which receives a permit following the expiration of Grace Period shall be required to connect to the County's wastewater and reclaimed water system, or such other County approved system.

**SECTION 8. PLANNING; EASEMENTS.**

- A. When practicable, the County and AWS will coordinate efforts in the planning, excavation and installation of water, wastewater and/or reclaimed wastewater mains and assorted appurtenances (collectively "Infrastructure") so as to minimize excavation costs and reduce risks of

damage to previously installed Infrastructure. Each party will be responsible for its own costs of planning, excavation and installation of its own Infrastructure, except that the parties may agree to divide the cost of mutually beneficial services, including but not limited to land clearing and excavation costs, in a manner as mutually agreed to by the parties in writing.

- B. The County and AWS will cooperate in the acquisition of necessary easements for the provision of water, wastewater and reclaimed water facilities. Each shall notify the other of efforts to obtain easements within the AWS Water Service Area, and whether any such easements being sought will require monetary compensation. If necessary, the County and AWS will cooperate in the funding of such easement acquisitions, including recording fees. The parties will divide equally the cost of obtaining said easements, and will reimburse the other party for its respective share within a reasonable time from receiving written notice from the other party requesting reimbursement. However, if either party to this Agreement has no intention of utilizing any specific easement to be obtained and utilized by the other party, that party will notify the other party in writing of its intention not to utilize the easement and said party will not be responsible for funding of such easement acquisition. Neither the County nor AWS will be responsible for reimbursing the other for any easements obtained prior to the Effective Date of this Agreement. Furthermore, to the extent that the use of easements currently held by either the County or AWS within the AWS Service Area may be assignable, both parties consent to the other party's use of said easements for the purposes contemplated in this Agreement, except that such use may not interfere with the current or intended use of the easement by the party who obtained the easement.

**SECTION 9. NOTICE.** Any notice or document required to be delivered under this Agreement shall be in writing and shall be deemed delivered at the earlier of (i) the date received, or (ii) five (5) business days after the date deposited in a United States Postal Service depository, postage prepaid, registered or certified mail, addressed to the County or AWS as the case may be, at the addresses set forth below:

**AS TO AWS:**

General Manager  
Auburn Water System, Inc.  
3097 Locke Lane  
Crestview, Florida 32536

**AS TO COUNTY:**

Director  
Okaloosa County Water and Sewer Department  
1804 Lewis Turner Boulevard, Suite 300  
Ft. Walton Beach, Florida 32547

**SECTION 10. ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the parties pertaining to the provision of water, wastewater and reclaimed water services in the AWS Water Service Area, and supersedes all prior oral or written agreements pertaining to the same. All provisions of this Agreement not pertaining to the provision of water, wastewater and reclaimed water services within the AWS Water Service Area remain in full effect and are not changed by this Agreement. No amendment or modification of this Agreement shall be effective unless set forth in writing and executed by both parties.

**SECTION 11. FORCE MAJEURE.** Neither party shall be in default of the terms herein if such action is due to a natural calamity, act of government, or similar cause beyond the control of either party.

**SECTION 12. GOVERNING LAW.** The validity, construction, and performance of this Agreement shall be governed by the laws of the State of Florida.

**SECTION 13. COUNTERPARTS.** 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.

**SECTION 14. CONSTRUCTION.** The parties acknowledge and agree that this Agreement has been drafted jointly by the parties and that no uncertainty or ambiguity as to the proper application or interpretation of the Agreement or any term herein is to be construed against either party as the drafter of the Agreement.

**SECTION 15. VENUE.** Venue for any action arising out of this Agreement shall be in Okaloosa County, Florida.

**SECTION 16. SUCCESSION.** All rights and obligations of the parties to this Agreement shall be binding upon and shall inure to the parties' successors and assigns.

**SECTION 17. INDEMNIFICATION.**

(A) AWS shall indemnify and hold harmless the County from and against any and all third party claims, demands, damages, losses, and expenses,

including attorney's fees and costs, except for those claims, demands, damages, losses, and expenses arising out of the County's negligence, malfeasance, nonfeasance, or misfeasance.

(B) Subject to the limitations provided in section 768.28, Florida Statutes, and without otherwise waiving sovereign immunity, the County shall indemnify and hold harmless AWS from and against any and all third party claims, demands, damages, losses and expenses, including attorney's fees and costs, except for those claims, demands, damages, losses and expenses arising out of AWS's negligence, malfeasance, nonfeasance, or misfeasance.

**SECTION 18. DISPUTES.** In the event that a dispute arises between the parties relating to any provision of this Agreement or its appendices, the parties agree that they must first attempt to settle any dispute or claim by submitting same to non-binding mediation. All costs of mediation shall be born equally by the parties. If mediation is unsuccessful in resolving the dispute, the parties agree to submit the controversy or claim to binding arbitration. The parties will mutually select a neutral arbitrator to conduct the arbitration. If the parties cannot mutually agree on an arbitrator, each party will select a neutral arbitrator. Next, the arbitrators selected by each party will mutually select a third arbitrator and the three arbitrators selected will conduct the arbitration. The arbitrator(s) is(are) directed to award the expenses of the arbitration, including required travel and other expenses of the arbitrators and any costs of the arbitrator's representatives, and all reasonable attorney's fees and costs to the prevailing party in the arbitration. If the parties waive their rights to arbitration by a signed written consent, they agree that any court with jurisdiction shall award the costs of the suit, including reasonable attorney's fees and expenses to the prevailing party. The prevailing party to arbitration may seek satisfaction of the arbitration award by having a judgment entered by a court having subject matter jurisdiction. The parties further agree that jurisdiction and venue for the mediation and/or hearing of the arbitration and entry of judgment upon said arbitration award is proper in Okaloosa County, Florida.

**SECTION 19. TERMINATION.** This Agreement may be terminated by the mutual written consent of both parties.

**SECTION 20. EFFECTIVE DATE.** This Agreement shall be effective on the date it is fully executed.

[SIGNATURES ON NEXT PAGE]

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first above written.

AUBURN WATER SYSTEM, INC.

Witnessed By:

Doug Sims  
Signature

Doug Sims  
Print Name

Stephen Jones  
Signature

Stephen Jones  
Print Name

By: Mary Rankin  
MARY RANKIN

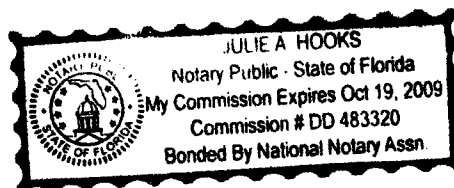
Title: Vice President

STATE OF FLORIDA  
COUNTY OF OKALOOSA

The foregoing instrument was acknowledged before me this 26th day of September, 2006 by MARY RANKIN as Vice President of Auburn Water System, Inc., a Community Water System. He is personally known to me or has produced personally known as identification.

Julie A Hooks  
Signature of person taking acknowledgment

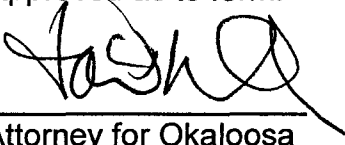
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Name of acknowledger typed, printed or stamped



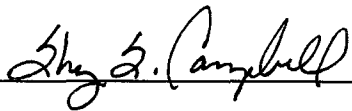


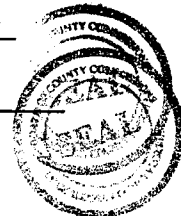
IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date and year first above written.

Approved as to form:


  
Attorney for Okaloosa  
County

OKALOOSA COUNTY, FLORIDA

By:   
Title: Chairman



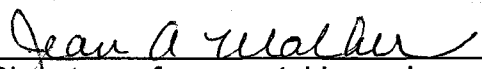
ATTEST:

  
Clerk of Okaloosa County



STATE OF FLORIDA  
COUNTY OF OKALOOSA

The foregoing instrument was acknowledged before me this 5<sup>th</sup> day of Oct, 2006 by Sherry S. Campbell as Chairman of Okaloosa County, a political subdivision of the State of Florida. He/she is personally known to me or has produced \_\_\_\_\_ as identification.

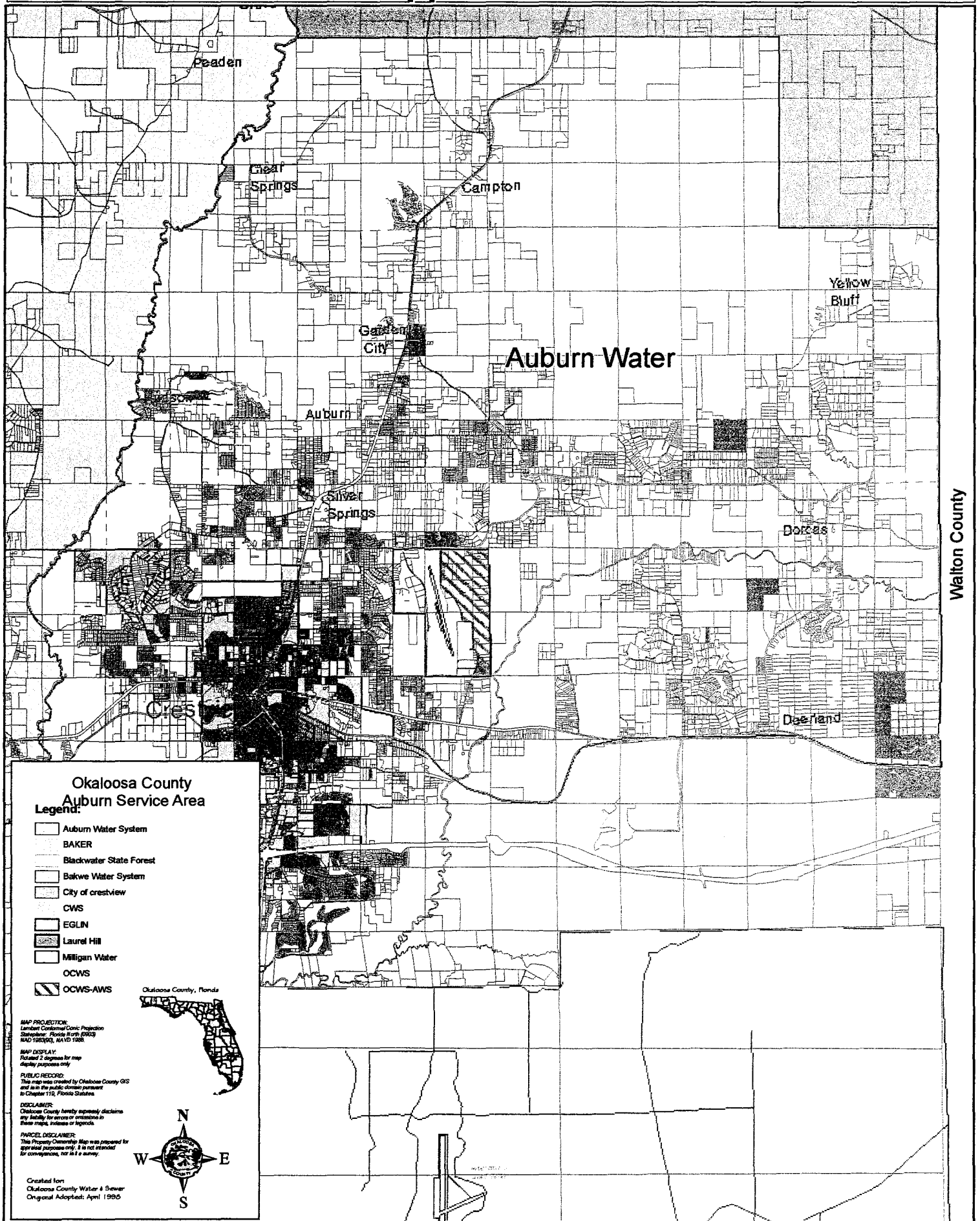
  
Signature of person taking acknowledgment

\_\_\_\_\_  
Name of acknowledger typed, printed or stamped



Jean A. Walker  
MY COMMISSION # DD230003 EXPIRES  
October 27, 2007  
BONDED THRU TROY FAIN INSURANCE, INC.

# Appendix A



Walton County