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IDAHO PUBLIC  
UTILITIES COMMISSION

*Attorneys for United Water Idaho Inc.*

**BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION**

IN THE MATTER OF THE JOINT	)	<b>Case No. UWI-W-04-02</b>
APPLICATION OF UNITED WATER IDAHO	)	
INC., AND BARBARA V. CHILD, D/B/A	)	<b>APPLICATION AND REQUEST</b>
TERRA GRANDE FOR AN ORDER	)	<b>FOR MODIFIED PROCEDURE</b>
APPROVING THE PURCHASE BY UNITED	)	
WATER IDAHO INC., OF WATER SERVICE	)	
PROPERTIES OWNED BY BARBARA V.	)	
CHILD; FOR AUTHORITY TO EXPAND	)	
UNITED WATER IDAHO INC.'S	)	
CERTIFICATE OF PUBLIC CONVENIENCE	)	
AND NECESSITY NO. 143 AND FOR	)	
APPROVAL OF RATES AND CHARGES	)	

**APPLICATION**

United Water Idaho Inc. (“United”) and Barbara V. Child, d/b/a Terra Grande (“Terra Grande”), collectively referred to as “Applicants”, pursuant to Idaho Code Section 61-526, and Section 52 and 112 of the Rules and Procedures of the Idaho Public Utilities Commission (“Commission”), hereby apply to the Commission for an Order approving the sale and transfer to United of Terra Grande’s property used to provide domestic water service in Ada County, Idaho. United further requests approval of certain rate and rate making matters and an expansion of its Certificate of Public

Convenience and Necessity No. 143 as more fully set forth below. In support thereof, the Applicants respectfully show as follows to wit:

I.

United is a public utility corporation duly organized and existing under the laws of the state of Idaho, and is subject to the jurisdiction of the Commission. United provides service pursuant to Certificate of Public Convenience and Necessity Number 143 as amended. A copy of United's Articles of Incorporation, together with all amendments, is on file with the Commission. United is a subsidiary of United Waterworks, Inc., a Delaware corporation, and has been providing water service to the public in Boise City and the surrounding areas for more than 100 years.

Barbara V. Childs is an individual, doing business under the assumed trade name of Terra Grande. The general location of Terra Grande's area of service is depicted on Exhibit No. 1.

II.

United Provides water service to approximately 74,000 customers within Ada County, Idaho, in and around Boise City. United also provides service to two subdivisions in Canyon County, Idaho. Terra Grande provides water service to approximately 117 residential customers in Ada County, Idaho.

III.

Applicants have negotiated and executed an Agreement for Purchase and Sale pursuant to which Terra Grande will sell and transfer to United its domestic water service properties located in Ada County, Idaho. A copy of the Agreement is attached hereto as Exhibit No. 2. The transfer is subject to and will only become effective upon approval of the transaction by the Commission.

IV.

The purchase price will not be adjusted for taxes, customer deposits, accounts receivable, or accounts payable.

V.

The property to be sold by Terra Grande to United (the "Property") is described in Exhibit No. 3 representing all of the Terra Grande property used and useful in the furnishing of domestic water service by Terra Grande.

VI.

The total purchase price is Forty-Seven Thousand Dollars (\$47,000.00). Additionally, upon approval of the purchase, United will invest up to One Hundred Twenty Two Thousand Dollars (\$122,000.00) in capital improvements for system upgrades. The proposed system upgrades along with approximate costs are described in attached Exhibit 4.

VII.

United requests an Order confirming the right to include in rate base in future rate proceedings the full purchase price and up to \$122,000.00 in capital investment, along with reasonable costs of acquisition which are estimated to be approximately \$5,000.

VIII.

United requests an Order confirming the right to provide service to the Terra Grande customers according to United's current approved rules and regulations including its tariff rates for service immediately upon Commission approval of the transaction. Revenue from Terra Grande customers, at United's rates, will be equal to,

or greater than, the revenue requirement associated with the assets being acquired. The revenue requirement calculation is shown on Exhibit 5, attached hereto.

#### IX.

Contemporaneously with the filing hereof, Terra Grande is providing notice to its customers of the transaction by way of a letter to customers, a copy of which is attached hereto as Exhibit 6. Additionally, United intends to form a Customer Liaison Committee to help insure that customer needs and concerns are understood and addressed.

#### X.

Barbara V. Child desires to convey the Terra Grande domestic water system because she wishes to retire from the water business and she is unwilling to undertake the perceived risks of continued operation arising from increasingly stringent water quality regulations, and increasingly complex operational and technical requirements. Because of its small size Terra Grande has experienced, and in the absence of this sale, would continue to experience, difficulties in maintaining its system and in obtaining adequate financing for operations, maintenance, and expansion.

#### XI.

United possesses the technical, managerial, and financial abilities to provide reliable and adequate service, and accordingly, the proposed transfer is in the public interest.

#### XII.

United requests that all communications and documents filed in this matter be served on United and United's counsel at the following addresses:

Gregory P. Wyatt  
United Water Idaho Inc.  
P.O. Box 190420  
Boise, Idaho 83719-0420  
208-362-7327; 208-362-7069 (fax)  
greg.wyatt@unitedwater.com

Dean J. Miller  
McDevitt & Miller LLP  
420 West Bannock Street  
P.O. Box 2564-83701  
Boise, Idaho 83702  
208-343-7500; 208-336-6912 (fax)  
joe@mcdevitt-miller.com

Terra Grande requests that all communications and documents filed in this matter be served on Terra Grande at the following address:

Terra Grande Water  
Barbara V. Child  
10012 Eshelman  
Boise, Idaho 83704

### **REQUEST FOR MODIFIED PROCEDURE**

#### **XIII.**

United and Terra Grande submit that the public interest requires expeditious review of this Joint Application, and that the public interest does not require a hearing to consider the issues presented herein. Accordingly, United requests that this Application be processed under Modified Procedure pursuant to Commission Rules 201–204. WHEREFORE, Applicants respectfully request an Order of the Commission:

1. Approving the sale of Terra Grande to United;

2. Confirming the right of United to include in rate base in future rate proceedings the net full purchase price of the assets subject to this transaction, up to \$122,000 of investment in system improvements, and to recover reasonable costs of acquisition;

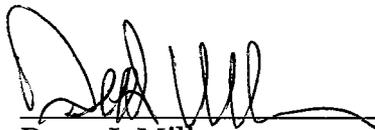
3. Approving the amendment of United's Certificate of Convenience and Necessity;

4. Approve the provision of water service according to United's current approved rules and regulations including its tariff rates for service ; and

5. Granting such other and further relief as the Commission deems appropriate.

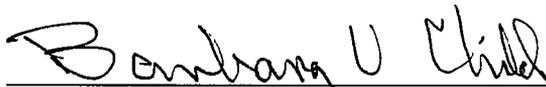
Respectfully submitted this 19<sup>TH</sup> day of FEBRUARY, 2004.

**UNITED WATER IDAHO INC.**



\_\_\_\_\_  
Dean J. Miller  
*Attorney for United Water Idaho Inc.*

**BARBARA V. CHILD d/b/a TERRA GRANDE**



\_\_\_\_\_  
Barbara V. Child

UWI-W-04-01 EXHIBIT 1

**COLORED MAP**

**SEE CASE FILE**

**AGREEMENT FOR PURCHASE AND SALE**

THIS AGREEMENT FOR PURCHASE AND SALE is made by and among **Barbara V. Child**, an individual doing business as **Terra Grande** (hereinafter referred to as "TG" or as "Seller"), and **UNITED WATER IDAHO INC.**, an Idaho corporation (hereinafter referred to as "United" or as "Buyer").

**RECITALS**

A. Seller owns and operates a domestic water system located within and around the Terra Grande Subdivision located in Ada County, and wholly within Buyer's certificated service territory.

B. Seller desires to sell to Buyer, and Buyer desires to acquire the domestic water system assets and related tangible and intangible property described in Section 1 (hereinafter sometimes collectively referred to as the "Property") Under the terms and conditions set forth herein.

C. Contingent upon requisite approval by the Idaho Public Utilities Commission and closing of the sale contemplated by this Agreement it is contemplated that Buyer will furnish uninterrupted, quality domestic water service to the area now served by Seller.

**AGREEMENT**

NOW, THEREFORE, in consideration of the foregoing recitals and of the terms, conditions and mutual covenants herein set forth, the parties hereto mutually covenant and agree as follows:

**1. AGREEMENT FOR SALE AND PURCHASE**

Seller agrees to sell, assign, transfer and convey, by warranty deed, bill of sale, assignments, and other instruments of transfer satisfactory to the parties, and Buyer agrees to purchase, all for a purchase price and subject to and upon each of the terms and conditions hereinafter set forth, the following:

(a) **Domestic Water System.** All tangible personal property and only that tangible personal property used and useful in connection with the operation and maintenance by Seller of Seller's domestic water distribution system and the furnishing of water services including, without limitations, buildings, wells, motors, pumps, reservoirs, appurtenances, equipment, valves, pipes, water lines, meters, meter boxes, machinery, inventory, surveys, maps, records and supplies (all hereinafter collectively referred to as the "Domestic Water System" or as the "Tangible Property"). The Domestic Water System/Tangible Property includes the items listed on attached **EXHIBIT A**. The Domestic Water System pipelines are depicted on the illustrative map attached hereto as **EXHIBIT B**.

(b) **Intangible Property.** All intangible property and only that intangible property used and useful in connection with the operation and maintenance by Seller of the Domestic Water System and the furnishing of water services including, without limitation, all water rights, land rights, permits, easements, rights-of-way, customer lists and records, customer deposits, maintenance records, tariffs and rules and regulations governing the rendering of service and extension of service to future development, franchises, permits, certificates (all hereinafter collectively referred to as "Intangible Property").

(c) **Real Property.** All real property and only that real property used and useful in connection with the operation and maintenance by Seller of the Domestic Water system, which is more fully described in **EXHIBIT B.**

**2. PURCHASE PRICE AND PAYMENT TERMS:**

The purchase price shall be THE SUM OF FOURTY-SEVEN-THOUSAND and NO/100 DOLLARS, (\$47,000.00).

**3. LIABILITIES NOT ASSUMED:**

Purchaser shall neither assume nor be responsible for, nor take any Assets subject to, any liability or obligation of any kind, known or unknown, absolute, contingent, or otherwise, of Seller or any other person whatsoever, whether or not Seller is aware of, or made a reserve for, such liability or obligation. Without limiting the foregoing, it is specifically agreed that Seller shall have sole responsibility for all claims, losses, liabilities, obligations, and damages, whenever arising, which relate to an act, failure to act, or occurrence involving Seller or Seller's property or the operation of the System and taking place on or prior to the Closing Date. Without limiting the foregoing, Purchaser shall not assume:

(a) Any liability or obligation resulting from violations of any applicable laws or regulations by Seller prior to the Closing Date;

(b) Any employee liabilities of Seller, if any, relating to present and past employees of Seller with respect to plans, programs, policies, commitments, and other benefit entitlements established or existing on or prior to the Closing Date (whether or not such liabilities are accrued or payable on the Closing Date, and whether or not such liabilities are contingent in nature).

(c) Any liability or obligation, including, without limitation, for any personal injury or property damage or harm to the environment, resulting from the presence or release of hazardous substances at or from the Real Property prior to the Closing Date or any off-site disposal of hazardous waste prior to the Closing Date.

**4. TITLE MATTERS**

(a) Seller shall deliver or cause to be delivered to Buyer not more than twenty (20) days after the date of execution hereof, complete and current request searches for all Uniform Commercial Code ("UCC") Financing Statements filed with the Secretary of State of Idaho and

with the Recorder of Ada County, Idaho, in the name of Seller as Debtor, evidencing that all items of Domestic Water System/Tangible Property and Intangible Property being sold hereunder are free and clear of all liens, claims and encumbrances; or, if so encumbered, Seller shall cause the same to be terminated or released on or before the Closing Date. Buyer shall pay the cost of such UCC searches and terminations or releases.

(b) Seller shall furnish, not more than twenty (20) days after the date hereof a commitment for a title insurance policy (the "Commitment"), dated after the date hereof, issued by a Title Insurer in the amount of the Purchase Price, showing marketable and insurable title to the Property to be in favor of the Seller subject only to: (i) title exceptions pertaining to liens or encumbrances of a definite or ascertainable amount which may be removed by payment of money or otherwise on the Closing Date and which Seller shall so remove at that time; and (ii) permitted exceptions as set forth herein. If the Commitment shall disclose defects, encumbrances, or exceptions to title not reasonably acceptable to Buyer, Buyer shall disapprove by giving written notice thereof to Seller within thirty (30) days, to remove the same or to have the Title Insurer commit to insure against loss or damage that may be occasioned by such unpermitted exceptions by special endorsement in form and with increased title insurance in an amount equal to the amount of any policy modifications issued thereof, which are satisfactory to Buyer in Buyer's reasonable discretion.

## **5. REPRESENTATIONS, WARRANTIES AND COVENANTS OF SELLER**

Seller hereby represents, covenants and warrants to Buyer that as of the date of execution hereof and as of the Closing Date:

(a) That there shall be no change in the ownership, operation or control of the Property from the execution date to the Closing Date.

(b) None of the following contracts or obligations are outstanding: (i) contracts, agreements or other obligations for the sale, exchange, transfer or encumbrance of all or any portion of the Property, tangible or intangible; or (ii) refundable customer deposits, recapture agreements, contracts, agreements, service contracts, maintenance agreements, leases, licenses, invoices, bills, understandings of any nature, written or oral, formal or informal, affecting or relating to the service, maintenance, revenue collection, use or other functions pertaining to the Property or the operation thereof which may not be terminated upon thirty (30) days' notice.

(c) Seller has no employees engaged in the operation or maintenance of the Domestic Water System.

(d) There has not been any notice or request from any insurance company or board of fire underwriters setting forth any defects or inadequacies in connection with the Property which might affect the insurability thereof or requesting the performance of any work or alteration of the Property. Seller shall promptly comply with any notices received after the date of execution thereof and shall deliver to Buyer a copy of any such notice together with evidence of compliance therewith; provided, however, that the foregoing shall not apply to notices relating to matters occurring on or after the Closing Date.

(e) The premiums due on all fire hazard, liability and other insurance policies held by Seller in connection with the Property have been and shall be paid when due by Seller, and the

policies remain and shall remain uncanceled and in full force and effect through the Closing Date, and that any and all proceeds of any insurance received on account of any damage to the Property shall be applied to the repair of the Property.

(f) There are and shall be no condemnation or judicial proceedings, administrative actions or examinations, claims or demands of any type which have been instituted or which are pending or threatened against Seller, the Property, or any part thereof. In the event Seller receives notice of any such proceeding, action, examination or demand, Seller shall promptly deliver a copy of such notice to Buyer.

(g) There are no actions or proceedings pending or threatened against Seller before any court or administrative agency which would result in any material adverse change in the title to the Property, and no assignment for the benefit of creditors, or voluntary or involuntary proceedings in bankruptcy pending, contemplated or threatened against Seller or the Property.

(h) There are and shall be no liens or claims against the Seller and/or applicable to the Property for federal or state taxes or any other charges whatsoever, and that no portion of the Property is affected by any special assessment, whether or not constituting a lien thereon.

(i) That all debts, liabilities and obligations of Seller arising from the ownership and operation of the Property including, but not limited to, salaries, taxes and accounts payable, have been paid as they become due and mature and will continue to be so paid from the date hereof until the Closing Date.

(j) That all parts of the Domestic Water System wells, pump houses, and appurtenances are situated upon real property owned by Seller, and Seller possesses all easements (if any) necessary for its current access to the facilities. There is currently adequate access to and from the Domestic Water System from the adjoining public streets, highways, roads and ways, and no fact or condition exists which would result in the termination of current access to and from the Domestic Water System to the adjoining public streets, highways, roads and ways.

(k) Seller and the Property, and the use and operation thereof, are in compliance with all applicable governmental laws, ordinances, regulations, certificates, licenses, permits and authorizations, and there are presently in effect all certificates, licenses, permits and other authorizations necessary for the use, occupancy and operation of the Property as it is presently be operated. There exists no condition with respect to the operation, use or occupancy of the Property which violates any public utility, environmental, zoning, building, health, fire or similar law, ordinance or regulation relative to the maintenance, operation, use or occupancy of the Property.

(l) The property (i) constitutes an operating Domestic Water System for which Seller has obtained all necessary permits, licenses and water rights necessary or required to operate such Domestic Water System including Idaho Department Environmental Quality "Approved" status; and (ii) is operated by Seller in compliance with all applicable laws in connection with the operation of a water system and the distribution of water therefrom.

(m) That Seller is a validly existing business enterprise and in good standing under the laws of the State of Idaho, and has full power and authority to own and convey its properties and conduct its business as described herein.

(n) Neither the execution of this Agreement nor the consummation of the transactions contemplated hereby will result in a breach of or a default under any agreement, document or instrument to which Seller is a party or a violation of any order or decree of any court, administrative agency or governmental body to which Seller or the Property is subject.

(o) That Buyer (or representative of Buyer) will be afforded full and complete access to all Property, assets, books, accounts, records, and/or documents in the possession of or under the control of Seller, and Seller will provide all such information in connection with the operation and maintenance of the Property as Buyer may request.

(p) That Seller will assist and cooperate with Buyer in obtaining any and all consents, certificates, licenses, permits and/or approvals required by any governmental agency or body as a condition to the operation and maintenance of the Property.

(q) There is no ground water, surface water, or soil contamination on the Real Property or elsewhere caused by any substance which was released or which migrated from the Real Property which would or could necessitate taking remedial or protective action or that does or could cause harm to persons, property, or the environment; and there are no enforcement actions or any investigations pending by any federal, state, or local governmental agency or any pending claims or complaints by any private third parties regarding spills, leaks, or losses of hazardous wastes, hazardous substances, or hazardous materials on the Real Property. No hazardous wastes, hazardous substances, hazardous materials, oil, or petroleum products or other materials which may pose a risk to human health or the environment (collectively, "Risk Substances") are being generated, used, stored, treated, or otherwise managed at or are located (or are being, are intended to be, or are threatened to be spilled, released, discharged, disposed, placed, or otherwise caused to become located) in, on, under, or upon any of the Real Property or the structures thereon. For purposes of this Agreement, "hazardous wastes," "hazardous substances," "hazardous materials," "oil," and "petroleum products" shall have the meanings set forth in the Federal Resource Conservation and Recovery Act, the Federal Comprehensive Environmental Response Compensation and Liability Act, the Federal Hazardous Materials Transportation Act, the Federal Clean Water Act, and corresponding State and local laws and ordinances, as such acts, laws, or ordinances are currently in effect, or from time to time amended, or as defined in any federal, state, or local regulation currently in effect, or from time to time amended, adopted under such acts, laws, or ordinances; and the term "hazardous waste" shall include, without limiting the generality of the foregoing, polychlorinated biphenyl ("PCBs"), chemicals covered by one or more provisions of the Emergency Planning and Community Right to Know Act of 1986, 42 U.S.C. Sections 11001-11050, and its implementing regulations, and substances or materials which would constitute the basis for the necessity of taking remedial or protective action. There is no asbestos anywhere on, in or under the Real Property; and in any event, there is no asbestos located on the Real Property with respect to which removal, encapsulation, or other preventative action is required by any law, rule, or regulation. There are no devices of any kind or description on the Real Property which contain a PCB concentration of fifty parts per million or greater.

Without limiting the foregoing, Seller has no liability (contingent or otherwise) under, and is presently in compliance with, all federal, state, and local environmental laws, regulations, rules, ordinances, resolutions, and other requirements currently in effect, including, but not limited to, all laws, regulations, rules, ordinances, and other requirements relating to the storage, emission, disposal, spilling, release, discharge, management, control, and reporting of

pollutants, contaminants, hazardous wastes, hazardous materials, hazardous substances, oil, and petroleum products, and other materials which may pose a risk to human health or the environment.

No circumstances exist to support any, and Seller has not received, and has no reason to believe it will receive any:

(1) Notice of violation of any federal, state, or local environmental law, regulation, ordinance, or other requirement currently in effect or which Seller knows will be put into effect or which Seller believes is likely to be put into effect; or

(2) Notice of any suit, action, claim, liability (contingent or otherwise), of legal, administrative, or other proceeding concerning environmental conditions or matters, including, but expressly not limited to, notice of responsibility under the Federal Comprehensive Environmental Response Compensation and Liability Act or any similar state or local law, regulation, or ordinance.

(r) The place of the location of the Assets is not subject to Superfund or Spill Compensation Act Liens and that it is not listed on the National Priorities List under CERCLA or on any similar state list which is the subject of federal, state or local enforcement actions.

(s) The premises are not presently and have not presently been affected in any way by any Hazardous Material. If any such Hazardous Material is found to be present on the property as of the closing, the Purchaser may, at its option, terminate this Agreement. The representations, covenants and warranties contained herein shall survive the Closing Date indefinitely. Seller shall defend, indemnify and hold Buyer harmless from and against any and all claims, losses, liabilities, expenses and damage (including reasonable attorney fees) which Buyer may incur resulting from the breach of any of the representations, covenants and warranties contained herein, including incidental and consequential damages.

(t) The Domestic Water System, including without limitation the real property, is in good working order and in conformity with all laws, regulations, rules, ordinances, and resolutions applicable to the System.

(u) The Real Property complies with all present zoning requirements, and upon conveyance to Buyer will comply in all respects with all applicable zoning (or is an allowable use as a non-conforming use), subdivision, and building code requirements, or will be deemed a valid preexisting use. Seller has not received any notice that the Real Property fails to comply with any applicable zoning or other governmental requirement or other restrictive covenant.

(v) Prior to the Closing Date, Seller shall supply to Purchaser the names and addresses of the System's customers. Such Customer List shall be substantially complete, true and correct in all material respects. Within five days following the Closing Date, Seller shall furnish to Purchaser complete customer history files, including without limitation past consumption records. On the Closing Date, Seller shall provide to Purchaser a list of any customers who, as of the Closing Date, are more than ninety (90) days past due in the payment for water service.

(w) The Purchaser shall be entitled to receive all of the customer charges and rates for service provided from and including the day of closing of title. The Purchaser has no obligation to collect past due utility bills from customers, but in the event said charges are collected, Purchaser shall, after deduction for collection and administration charges, forward same to Seller within a period of six (6) months from closing.

(x) There has not been a material adverse change in the Property or the condition (financial or otherwise), business, properties, affairs, prospects, or results of operation of the Property since April 16, 2003.

(y) Seller makes no representation as to whether Article XV, section 4 of the Constitution of the State of Idaho requires that consent of Seller's customers be obtained as a condition of this transaction.

## **6. REPRESENTATIONS, WARRANTIES AND COVENANTS OF BUYER:**

Buyer hereby represents, covenants and warrants to Seller that as of the date hereof and as of the Closing Date:

- (a) That Buyer is an Idaho corporation which has been duly organized and is validly existing and in good standing as a corporation under the laws of the State of Idaho, and has full power and authority to: (i) acquire title to the Property; (ii) enter into this Agreement; and (iii) carry out and consummate the transactions contemplated by this Agreement.
- (b) That the execution and delivery of this Agreement by the signatories hereto on behalf of Buyer and the performance of this Agreement by Buyer have been duly authorized by Buyer. Neither the execution of this Agreement nor the consummation of the transactions contemplated hereby will: (i) result in a breach of or a default under any agreement, document or instrument to which Buyer is a party or by which Buyer is bound; or (ii) violate any existing statute, restriction, order, writ, injunction or decree of any court, administrative agency or governmental body to which Buyer is subject.
- (c) That there is no action, suit, proceeding, inquiry, or investigation before any court, governmental agency or instrumentality pending or, to the knowledge of Buyer, threatened, against Buyer wherein an unfavorable decision, ruling, or finding would adversely affect the transactions contemplated by this Agreement.

## **7. CONDITIONS PRECEDENT TO CLOSING**

(a) Conditions Precedent to Buyer's Obligations. This Agreement, and Buyer's obligation to close the transaction contemplated herein, are subject to the following express conditions precedent. Notwithstanding anything to the contrary which may be contained herein, each of the conditions precedent may be waived in writing by Buyer, such conditions being for the exclusive protection and benefit of Buyer.

- (i) That there shall not have been any material damage, destruction or loss adversely affecting the Property.
- (ii) That Seller shall have delivered to Buyer the written consent of any third parties, if required, to the assignment of any contracts, leases and/or other executory agreements that constitute part of the Property.
- (iii) That Buyer shall have satisfied itself that the quality of water distributed to the public through the operation of the Property is in conformity with and does not violate any federal or state water quality standards.
- (iv) That Buyer shall have satisfied itself that the Property shall constitute an operating water system that does not have its operations interrupted due to lack of any governmental approvals, certificate, licenses or permits.

(b) Further Condition Precedent. Buyer and Seller agree that consummation of the transaction contemplated by this Agreement is also subject to Buyer obtaining an approval and order from the Idaho Public Utilities Commission (IPUC) that:

- (i) Confirms that Buyer will be permitted in future rate proceedings to earn upon the total purchase price and acquisition costs as herein set forth.
- (ii) Authorizes the issuance of an amendment to Buyer's certificate of convenience and necessity by the Commission indicating approval of the transaction contemplated hereby.
- (iii) Confirms the right of Buyer to provide service to the area being serviced by Seller as of the date hereof; and
- (iv) Confirms the right of Buyer to provide service at rates set forth in an Application that will be or has been filed with the Commission.

Notwithstanding anything contained in this Agreement to the contrary, the parties acknowledge and agree that the conditions precedent set forth in Paragraph 6(b) are paramount. Accordingly, if there is any portion of such ruling by the Commission that, in either Buyer's or Seller's discretion, is substantially inconsistent with this Agreement the parties, or a party, may, within five (5) business days after receipt of such Commission ruling, provide the other party with written notice that this Agreement is null and void, and the parties shall have no further obligations or liabilities hereunder. If neither party provides such notice in the time permitted, the parties agree to amend this Agreement, within thirty (30) days of both parties' receipt of such ruling by the Commission, to the effect that this Agreement, shall be made consistent with the Commission's ruling.

(c) The parties agree to cooperate and will use their best efforts in 1) the preparation of such further documents and instruments as are necessary to complete the transaction contemplated hereby, 2) the processing and prosecuting of the filing for approval by the Idaho Public Utilities Commission, and 3) the notification and communication with the customers of Seller regarding this transaction. The parties agree and understand that while Seller will cooperate and use Seller's best efforts, with respect to item 2) listed above, it shall be the sole effort, expense and obligation of Buyer.

(d) It is understood and agreed by the parties that an appropriate due diligence period consisting of 90 days immediately following the execution of this Agreement for

Purchase and Sale will be established to allow Buyer the opportunity to further investigate all issues regarding the acquisition of the Seller's Domestic Water System. The parties agree to cooperate and make all appropriate documents available in pursuing the due diligence.

(e) Failure of a Condition Precedent. In the event of a failure of any condition precedent set forth herein, Buyer may declare this Agreement null and void, and the parties shall have no further obligations or liabilities hereunder.

## **8. CLOSING RELATED MATTERS; POST-CLOSING**

(a) Closing Date; Time of the Essence. The closing shall take place not later than thirty (30) days after receipt of the regulatory approvals set forth in paragraph 6(b) (the "Closing Date"); provided, however, that if the thirtieth (30<sup>th</sup>) day not be a business day, then the Closing Date shall be the next Tuesday after the thirtieth (30<sup>th</sup>) day.

(b) Conditions to Closing. In the event that Seller fails to perform any of Seller's obligations hereunder Buyer shall have the right to attempt to cure such failure for a period of up to thirty (30) days, charging Seller for any reasonable incurred costs in so doing. After the expiration of said thirty (30) day period, Buyer shall either: (1) proceed to close, deducting all cost of cure incurred by Buyer from the Cash otherwise due at Closing; (ii) terminate this Agreement by written notice to Seller; or (iii) exercise all of Buyer's rights granted pursuant to Paragraph 11.

(c) Closing. The closing of the transaction contemplated herein shall take place at the office of McDevitt & Miller, LLP, 420 West Bannock, Boise, Idaho or at such other place as may be agreed upon by the parties.

(d) Possession. Possession of the Property shall be delivered to Buyer on the Closing Date.

(e) Post-Closing Actions. Subsequent to the Closing and the Closing Date, each party will take such actions and execute and deliver such documents (to convey title or otherwise) as the other party shall reasonably request, or otherwise carry out the transaction and the intentions contemplated by this Agreement. The foregoing will include (without limitation) the following:

(i) Cooperation. The parties will cooperate in coordinating the prompt, orderly transition of supply of domestic water.

(ii) Billing. Upon the closing date, or as soon immediately prior thereto as possible, Seller shall render bills to its customers for water service provided from the time of the last most previous billing date up to but not including the closing date. Seller shall be entitled to receive the revenue and accounts receivable resulting therefrom. Thereafter, Buyer shall render bills for water service provided on and after the closing date and shall be entitled to receive the revenue resulting therefrom.

(f) After Buyer acquires Seller's Domestic Water System, it intends to make the following changes and improvements to the Property. The parties understand and agree that Buyer shall be responsible for any approvals, expenses or costs relating to the following changes and improvements to the system.

1. Install two mainline interconnections with Buyer's contiguous water system in the vicinity in order to provide water supply to the Seller's Domestic Water System.
2. Disconnect and properly abandon the four (4) existing wells currently supplying water to Seller's Domestic Water System as soon as practical after the interconnections with Buyer's system are accomplished.
3. Install meter boxes and meters on all services as necessary in order to accurately measure and bill customers for actual water consumption.
4. Complete various service line renovations in order to accommodate the meter installations.

## 9. CLOSING DOCUMENTS

- (a) Seller's Deposits. On the Closing Date, Seller shall deliver the following documents to the Escrowee.
- (1) Bill of Sale executed by Seller with full warranties of title conveying the Tangible Property to Buyer.
  - (2) General Assignment executed by Seller transferring the Intangible Property to Buyer.
  - (3) Certified copies of all resolutions adopted by Seller's Board of Directors.
  - (4) Warranty Deed executed by Seller.
  - (5) Originals, if available, of all certificates, licenses, permits, authorizations, and approvals required by law, and issued by all governmental authorities having jurisdiction.
  - (6) Such other documents as the Buyer or its attorneys may reasonably require in order to effectuate or further evidence the intent of any provision in this Agreement.
  - (7) Title Insurance Owner's policy for Real Property of Seller's Domestic Water System.

All of the documents and instruments to be delivered by the Seller hereunder shall be in form and substance reasonably satisfactory to counsel for Buyer.

(b) Buyer's Deposit. On the Closing Date, Buyer shall deliver the following documents:

- (1) Cash, official bank check or wire transfer of funds in an amount sufficient to meet Buyer's obligations hereunder.

All of the documents and instruments to be delivered by Buyer hereunder shall be in form and substance reasonably satisfactory to counsel for Seller.

## 10. PRORATIONS AND ADJUSTMENTS

The following items shall be prorated and adjusted as of the Closing Date:

- (a) General real estate taxes, and all other levies and charges against the Property for the year in which the Closing Date shall occur, which are accrued but not yet due and payable. Buyer shall not be liable for any state, county, federal income, excise or sales tax liabilities of Seller.
- (b) All accounts payable and other obligations incurred by Seller prior to the Closing Date shall be caused to be paid or performed by Seller on or before the Closing Date or as soon as possible thereafter, and Buyer assumes no obligations or responsibility for the payment or performance thereof. Bills received after Closing which relate to expenses incurred or service performed allocable to the period prior to the Closing Date shall be paid by Seller.
- (c) Such other items as are customarily prorated in transactions of the type contemplated in this Agreement.

All such prorations shall be based on the most recent ascertainable bills, and be made on the basis of the actual number of days of the year and month which shall have elapsed as of the Closing, and to the extent reasonably practicable such prorations shall be made at the Closing. Such items of income and expenses for the period prior to the Closing date will be for the account of Seller and such items of income and expense for the period on and after the Closing Date will be for the account of Buyer, all as determined by the accrual method of accounting.

## 11. DEFAULT AND REMEDIES

- (a) Default by Buyer. If Buyer should fail to consummate the transaction contemplated herein for any reason, except by default by Seller, Seller may elect any one or more of the following remedies: (i) to enforce specific performance of this Agreement and in such action Seller shall have the right to recover damages suffered by Seller by reason of the delay in the acquisition of the Property; (ii) to bring suit for damages for breach of this Agreement; (iii) to terminate this Agreement whereupon Buyer will reimburse Seller for Seller's out-of-pocket expenses incurred with respect to this transaction, including reasonable attorney fees; or (iv) pursue any and all remedies at law or equity.
- (b) Default by Seller. If Seller should fail to consummate the transaction contemplate herein for any reason, except failure of a condition precedent set forth in paragraph 6 which is not waived by Buyer, or default by Buyer, Buyer may elect any one or more of the following remedies; (i) to enforce specific performance of this Agreement and in such action Buyer shall have the right to recover damages suffered by Buyer by reason of the delay in the acquisition of the Property; (ii) to bring a suit for damages for breach of this Agreement; (iii) to terminate this Agreement whereupon Buyer will reimburse Seller for Seller's out-of-pocket expenses incurred with respect to this transaction, including reasonable attorney fees; or (iv) pursue any and all remedies at law or equity.

## 12. INDEMNIFICATION AND DEFENSE OF CLAIMS

- (a) Sellers Indemnity. Seller will indemnify, defend and hold Buyer harmless against and in respect of:

- (i) All liabilities or obligations of, or claims against the Seller not assumed by the Buyer pursuant to this Agreement.
  - (ii) Any damage or deficiency resulting from any breach of warranty.
  - (iii) All actions, suits, proceedings, demands, assessments, judgments, reasonable court costs and attorney fees and expenses incident or incurred by Buyer in connection with any of the foregoing.
- (b) Buyer's Indemnity. Buyer shall indemnify and hold Seller harmless against and in respect of:
- (i) All liabilities or obligations of, or claims against the Buyer not assumed by the Seller pursuant to this Agreement.
  - (ii) Any damage or deficiency resulting from any breach of warranty.
  - (iii) All actions, suits, proceedings, demands, assessments, judgments, reasonable court costs and attorney fees and expenses incident to or incurred by Seller in connection with any of the foregoing.

### **13. BROKERAGE**

Each of the parties represents and warrants to the other that it has not incurred and will not incur any liability for finders or brokerage fees or commissions in connection with this Agreement.

### **14. INTERVENING DAMAGE OR LOSS**

Seller shall deliver the Property to Buyer in substantially the same condition on the Closing Date as on the date hereof, excepting therefrom ordinary wear and tear. If, prior to the Closing Date, all or a substantial portion of the of the Property having a replacement value in excess of \$1,000.00 is destroyed by fire and other casualty or is taken or made subject to eminent domain proceedings, then Seller shall immediately notify Buyer. Thereupon Buyer shall, at its opinion have the right to:

- (a) Terminate this Agreement.
- (b) Complete this transaction, in which event Seller shall: (i) deliver to Buyer a duly executed assignment of all insurance proceeds or condemnation awards payable as a result of such fire, casualty, or condemnation, in form and substance satisfactory to Buyer and (ii) pay the amount of any deductible thereunder. Seller represents and warrants that Seller shall maintain until the Closing Date full replacement cost insurance for the Property; or
- (c) Complete this transaction, in which event Buyer shall receive a credit on the Closing Date in an amount equal to the cost of repair or replacement of such damage or loss.

### **15. NOTICES**

All notices required or desired to be given under this Agreement shall be in writing and delivered personally or sent by facsimile or by first class United States mail, postage prepaid, addressed as follows:

If to Seller:

Barbara V. Child  
10012 Eshelman  
Boise, ID 83704  
Tel. (208)-322-2509

If to Buyer: General Manager  
Gregory P. Wyatt  
United Water Idaho Inc.  
P.O. Box 190420  
Boise ID 83719-0420  
Tel. (208) 362-1704  
Fax. (208) 362-1479

with a copy to: Dean J. Miller, Esq.  
420 W. Bannock  
P.O. Box 2564-83701  
Boise, Idaho 83702  
Tel. (208) 343-7500  
Fax: (208) 336-6912

or to such other address as either party may from time to time designate by written notice given to the other party in the manner provided herein. Any notice given in accordance with the foregoing shall be deemed to have been given (i) on the date upon which it shall have been delivered or (ii) three (3) days after being deposited in the United States mail, whichever is first. If sent by facsimile transmission, such notice shall be deemed to have been given when received prior to 5:00 p.m. on a business day; otherwise, at 9:00 a.m. on the next business day.

#### **16. MISCELLANEOUS**

- (a) This Agreement may not be assigned by any party without the consent of the other party hereto; provided, however, that Buyer may assign all of its right, title and interest in this Agreement to an affiliate. This Agreement shall be binding upon and inure to the benefit of the successors and permitted assigns of the parties hereto.
- (b) Wherever under the terms and provisions of this Agreement the time for performance falls upon a Saturday, Sunday or Legal Holiday, such time for performance shall be extended to the next business day.
- (c) This Agreement may be executed in counterparts, each of which shall constitute an original, but all together shall constitute one and the same agreement.
- (d) The terms, provisions, covenants (to the extent applicable) and indemnities shall survive the closing and deliver of the bill of sale, and this Agreement shall not be merged therein, but shall remain binding upon and for the parties hereto until fully observed, kept or performed.
- (e) This Agreement embodies the entire agreement between the parties hereto with respect to the subject matter hereof.
- (f) Buyer and Seller shall each respectfully pay any attorney fees they have respectively incurred for the preparation, negotiation and review of this Agreement.
- (g) The captions at the beginning of the several paragraphs, respectively, are for the convenience in locating the context, but are not part of the text.

- (h) In the event any term or provision of this Agreement shall be held illegal, invalid or unenforceable or inoperative as a matter of law, the remaining terms and provisions of this Agreement shall not be affected thereby, but each such term and provision shall be valid and shall remain in full force and effect.
- (i) This Agreement shall be governed by the laws of the State of Idaho.
- (j) By virtue of this Agreement, Buyer does not, in any way or for any purpose, become a partner of Seller in the conduct of its business, or otherwise, or become a joint venturer or a member of a joint enterprise with Seller.

IN WITNESS WHEREOF, the undersigned have executed this Agreement as of the respective dates set forth below, effective as of DECEMBER 23, 2003

SELLER:

By: Barbara U Child

Title: 8-29-03 Owner-operator

\*Date: 8-29-03

BUYER:

UNITED WATER IDAHO INC.  
An Idaho corporation

By: [Signature]

Title: VCE PRESIDENT

\*Date: 12-23-03

\*The last date shown shall be the "effective date" of this Agreement.

## EXHIBIT A

### Tangible Personal Property

Well, well casing and appurtenances, well building, all pumps, motors, valves, meters, piping, electrical and control equipment and appurtenances for each of the following listed Terra Grande Water wells:

- Well No. 1 – located at 1719 Ash Park
- Well No. 2 – located at 1607 Ash Park
- Well No. 3 – located at 1735 Penninger
- Well No. 4 – located at 8111 Lemhi

Note: Complete legal descriptions of real property for well sites to be provided prior to closing.

The entire Terra Grande Water distribution system including all water mains, services, meter boxes, meters, valves, valve boxes, and all other water distribution system appurtenances including:

- Approximately 1,750 feet of 2-inch GIP water line
- Approximately 1,585 feet of 3-inch AC water line
- Approximately 390 feet of 3-inch PVC water line
- Approximately 4,858 feet of 4-inch water line

Approximately 53 single and 26 double service lines

## **EXHIBIT 3**

### **Tangible Personal Property**

Well, well casing and appurtenances, well building, all pumps, motors, valves, meters, piping, electrical and control equipment and appurtenances for each of the following listed Terra Grande Water wells:

- Well No. 1 – located at 1719 Ash Park
- Well No. 2 – located at 1607 Ash Park
- Well No. 3 – located at 1823 Penninger
- Well No. 4 – located at 8111 Lemhi

The entire Terra Grande Water distribution system including all water mains, services, meter boxes, meter setters, meters, valves, valve boxes, and all other water distribution system appurtenances including:

- Approximately 1,750 feet of 2-inch GIP water line
- Approximately 1,585 feet of 3-inch AC water line
- Approximately 390 feet of 3-inch PVC water line
- Approximately 4,858 feet of 4-inch AC water line
  
- Approximately 53 single and 26 double service lines

### **Real Property**

Four (4) parcels of real property associated with the four well sites. Exact descriptions of the parcels to be provided prior to closing.

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# Exhibit 4

**United Water Idaho  
Proposed Capital Investment - Terra Grande**

	<u>Total</u>
<b><u>Abandon Wells:</u></b>	
Seal and abandon 4 wells	\$ 6,700
Cut & cap water lines from wells	\$ 4,900
<b><u>Interties:</u></b>	
Dorian & Ashpark - 180 ft. of 8"	\$ 10,100
Targee & Skillern - 80 ft. of 8"	\$ 7,900
<b><u>Blow-off Replacement:</u></b>	
Replace blow-off at Ashpark & Lemhi (existing blow-off inoperable)	\$ 1,100
<b><u>Service Lines &amp; Meter Boxes:</u></b>	
8 Customer service lines complete- main to house (abandon 2" mains & services in back of homes)	\$ 31,300
47 meter boxes and setters	\$ 46,000
59 meter risers at existing meter boxes	\$ 5,700
<b><u>Meters:</u></b>	
117 Meters installed	\$ 8,300
<b>Total</b>	<b><u><u>\$ 122,000</u></u></b>

## Exhibit 5

**United Water Idaho  
Terra Grande Acquisition  
Revenue Requirement Analysis: Revenue Sufficiency Approach  
2004 Operating Plan Information**

	Assumptions/Descriptions	Amount
<b>Investments:</b>		
Abandon 4 wells and sewer supply lines		\$ 11,600
2 - 8-inch Interties @ Dorian & Ashpark, Targee & Skillern		18,000
Replace blow-off @ Ashpark & Lemhi		1,100
8 Service lines complete - main to house (abandon 2-inch mains & services behind houses)		31,300
Meter box/setter & installation on 47 lots with no meter box		46,000
Install 59 meter risers in existing meter boxes		5,700
117 Meters & installation		8,300
Organization & Legal Cost		5,000
Sub Total PP&E		<u>\$ 127,000</u>
Acquisition Adjustment (Purchase Price)		\$ 47,000
<b>Net Investment</b>		<u><u>\$ 174,000</u></u>
<b>Authorized Rate of Return</b>		8.843%
<b>Revenue Requirement on Rate Base</b>		<u>\$ 15,387</u>
<b>Increase In Operating Expenses:</b>		
Power	2004 cost per customer (\$19.65) for 117 customers	\$ 2,299
Chemicals	2004 cost per customer ( \$3.59) for 117 customers	420
Customer Care including meter reading	2004 cost per customer (\$20.72) for 117 customers	2,424
Water Delivered	2004 cost per customer (\$14.85) for 117 customers	1,737
<b>Subtotal Operations Expense</b>		<u>\$ 6,880</u>
Depreciation	Net PP&E @ 2.25%	\$ 2,858
UPAA Amort	20 year amortization	2,350
Property Tax	Based on 2004 estimated effective rate = 1.178%	2,050
<b>Subtotal Depreciation, Amortization &amp; Property Tax</b>		<u>\$ 7,258</u>
<b>Return on Rate Base</b>		
Debt at 56.93% of net investment and 7.5147% interest rate		7,444
Return on Equity 43.07% of net investment and 10.60%		7,944
Federal & State Income Tax on Return on Equity @ 0.683 times ROE		5,426
<b>Subtotal Return on Rate Base, Grossed up for Income Taxes</b>		<u>\$ 20,814</u>
<b>Total Revenue Requirement</b>		<u><u>\$ 34,952</u></u>
<b>Revenue Generated:</b>		
Average Residential Revenue per 2004 Budget =	\$327	
Number of customers	117	\$ 38,259
<b>Total Revenue Generated</b>		<u>\$ 38,259</u>
<b>Revenue Sufficiency/ (Deficiency)</b>		<u><u>\$ 3,308</u></u>

Date

Customer Name

Address

Address

Re: Sale of Terra Grande Water to United Water Idaho

Dear Customer:

After considerable negotiations, I have agreed to sell and United Water Idaho has agreed to purchase the Terra Grande Water system. Terra Grande Water has been supplying service to the residents in the Terra Grande Subdivision for nearly 50 years and as the owner, I now wish to retire from the water business. Due to the many changes in the business, I can no longer continue to serve the users on a part-time basis. The time and work involved in handling the requirements of testing, monitoring, billing, collections, keeping certified and responding to customer and government agency inquiries and complaints regarding service has created significant stress for me. I no longer desire to remain in the water business.

The proposed agreement will now be filed with the Idaho Public Utilities Commission for review and approval. It is possible that the Commission will hold a public hearing on this purchase agreement, but may not be required to do so. In any event, United Water Idaho and I plan to hold an informational meeting in order that you can be informed of the details, reasons and ramifications of the sale. More information about the date and location of this meeting will be forthcoming.

The water system is not new and I am not in a financial position to make the upgrades, handle repairs, respond to emergencies and provide the service that will be necessary in the future. To remain in business, I believe I would have to request a large rate increase for system repairs and investments that are needed.

United Water Idaho has been in the water supply business in Boise for over 100 years and the company is dedicated to providing quality water service to its customers. They have experienced personnel in engineering, operations, customer service, and system repair. They have trained and knowledgeable staff available during normal business hours and also have the ability to respond to emergencies 24 hours a day, seven days a week. United Water Idaho also has the expertise and financial capability to make any necessary system repairs and improvements.

I truly believe that the best interest of you the water customer will be served with this sale and change of management. I know you may have questions and it is our intent to keep customers fully informed. Please do not hesitate to call me at 322-2509 or plan on attending the informational meeting, which will be scheduled in the near future.

Sincerely,

Barbara V. Child, Owner  
Terra Grande Water