

McDevitt & Miller LLP

Lawyers

RECEIVED

(208) 343-7500
(208) 336-6912 (Fax)

420 W. Bannock Street
P.O. Box 2564-83701
Boise, Idaho 83702
IDAHO PUBLIC
UTILITIES COMMISSION

Chas. F. McDevitt
Dean J. (Joe) Miller

September 28, 2007

Via Hand Delivery

Jean Jewell, Secretary
Idaho Public Utilities Commission
472 W. Washington St.
Boise, Idaho 83720


Re: Case No. UWI-W-07-05

Dear Ms. Jewell:

Enclosed for filing, please find the original and seven (7) copies of United Water Idaho's Application and Request for Modified Procedure. Also enclosed are nine (9) copies of the Testimony of Gregory P. Wyatt, with a copy designated as "Reporter's Copy". A computer disc containing the testimony and exhibits is also enclosed.

Kindly return a file stamped copy of this letter and Application.

Very Truly Yours,
McDevitt & Miller LLP


Dean J. Miller

DJM/hh
Enclosures

Dean J. Miller (ISB No. 1968)
McDEVITT & MILLER LLP
420 West Bannock Street
P.O. BOX 2564-83701
Boise, Idaho 83702
Tel: 208-343-7500
Fax: 208-336-6912
joe@mcdevitt-miller.com

RECEIVED
2007 SEP 28 PM 1:59
IDAHO PUBLIC
UTILITIES COMMISSION

BEFORE THE IDAHO PUBLIC UTILITIES COMMISSION

IN THE MATTER OF THE APPLICATION
OF UNITED WATER IDAHO INC., FOR AN
AMENDMENT TO ITS CERTIFICATE OF
PUBLIC CONVENIENCE AND NECESSITY
NO. 14³ AND FOR AN ACCOUNTING
ORDER.

Case No. UWI-W-07-05

**APPLICATION AND REQUEST
FOR MODIFIED PROCEDURE**

COMES NOW United Water Idaho Inc., (“United Water”, or “Applicant”)
pursuant to RP 112 and 201 in support of this Application respectfully shows as follows
to wit:

I.

Applicant is a public utility water corporation within the meaning of the Idaho
Public Utility Law, is duly organized and existing under the laws of the State of Idaho
and engaged in conducting a general water business in and about Boise City, Ada
County, Idaho and in Canyon County, having its principal office and place of business at
8248 West Victory Road, P.O. Box 190420, Boise, Idaho 83719-0420.

II.

Communications in reference to this Application should be addressed to:

Gregory P. Wyatt
UNITED WATER IDAHO INC.
P.O. Box 190420
Boise, Idaho 83719-0420
208-362-7327
208-362-7069 (fax)

Dean J. Miller, Esq.
MCDEVITT & MILLER LLP
P.O. Box 2564
Boise, Idaho 83701
208-343-7500
208-336-6912 (fax)

III.

A certified copy of Applicant's Articles of Incorporation, together with all amendments to date, is on file with the Commission.

IV.

For over 100 years, Applicant, together with its predecessors in interest, has owned and operated and now owns and operates an extensive and integrated water system in Boise City, Idaho, and in certain territory within Ada County in the vicinity of, but outside the present corporate limits of said Boise City, and renders general water service within such territory and to the inhabitants thereof. Applicant also provides service to isolated subdivisions in Canyon County, Idaho.

V.

On or about May 15, 2000, in Order No. 28377, Case No. UWI-W-00-02, the Commission approved an expansion of United Water's Certificate of Public Convenience and Necessity to provide service to the Danskin and Saddle Ridge subdivisions in Ada County, Idaho. The expansion was pursuant to a Residential or Multiple Family Housing Non-contiguous Water System Agreement dated December 30, 1999, which Agreement was approved by the Commission, with modifications ("Non-Contiguous Agreement"). The Non Contiguous Agreement established the creation of a separate domestic water

system for the subdivisions (“Danskin-Saddle Ridge System”) which is not connected to United Water’s integrated system.

VI.

The City of Kuna (“Kuna”) is a municipal corporation organized and existing under the laws of the State of Idaho. The Danskin-Saddle Ridge System is located adjacent to but outside the current Kuna municipal boundaries, but within Kuna’s City Area of Impact, as depicted on the map attached hereto as Exhibit A.

VII.

Commencing in 2006, United Water and Kuna entered into a series of negotiations relating to the provision of water service in the vicinity of Kuna. As a result of those negotiations, United Water and Kuna have reached a comprehensive understanding resolving certain water right disputes.

VIII.

As part of the comprehensive understanding, United Water has agreed to sell and Kuna has agreed to purchase the Danskin-Saddle Ridge System providing service to the Danskin, Saddle Ridge, and Iron Horse subdivisions. Attached hereto as Exhibit B, is a true and correct copy of the AGREEMENT FOR PURCHASE AND SALE BETWEEN UNITED WATER IDAHO INC., AND THE CITY OF KUNA (“Agreement”) whereby United Water has agreed to sell and Kuna has agreed to purchase the Danskin-Saddle Ridge System.

IX.

Pursuant to the Agreement, the purchase price is \$375,000 to be paid in cash at closing.

X.

Pursuant to the Agreement, Kuna has agreed to assume United Water's outstanding obligations under the Non-Contiguous Agreement and Main Line Extension Agreements with other third parties and to hold United Water harmless from further obligations there under.

XI.

Acquisition of the Danskin-Saddle Ridge System by Kuna is consistent with the Public Convenience and Necessity because the customers will obtain water service from a dependable municipal supplier (Kuna) at rates that are lower than United Water's rates. In addition, when Kuna connects the Danskin-Saddle Ridge System with their existing municipal system, the customers will experience improved redundancy for both domestic and fire protection flows.

XII.

Exhibit C, attached hereto, sets forth United Water's proposed journal entries to account for the sale proceeds. United Water requests that the Commission approve the proposed accounting entries.

XIII.

For the reasons set forth in the Direct Testimony of Gregory P. Wyatt and the Memorandum in Support of Application, filed herewith, United Water further requests a determination that gain or profit associated with the transfer is the property of United Water and that its customers do not have an interest therein.

XIV.

Contemporaneously with the filing of this Application, United Water is providing notice to the Danskin-Saddle Ridge System customers of the intended sale. A true copy of the customer notification is attached hereto as Exhibit D.

Request for Modified Procedure

United Water does not believe a hearing is required to consider the issues presented herein and pursuant to IPUCRP 201 *et. Seq.* requests that this matter be processed by Modified Procedure. If the Commission determines that a hearing is required, United Water is prepared for immediate hearing, based on the Direct Testimony of Gregory P. Wyatt, filed herewith.

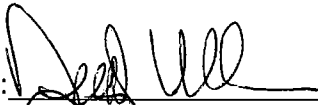
WHEREFORE United Water respectfully requests that the Commission enter its orders:

1. Determining that this matter be processed pursuant to Modified Procedure;
2. Approving the modification of United Water's Certificate of Public Convenience and Necessity by eliminating the Danskin-Saddle Ridge System therefrom;
3. Confirming that after the date of closing of the purchase and sale transaction, United Water will have no further obligation to provide domestic water service to the Danskin-Saddle Ridge System customers;
4. Confirming that following the assumption by Kuna of the Non-Contiguous Agreement and the Main Line Extension Agreements, United Water will have no further obligations there under;
5. Approving the accounting proposal set forth above;

6. Determining that gain arising from the transfer is the property of United Water; and
7. Granting such other further relief as is appropriate in the circumstance.

DATED this 24 day of September, 2007.

UNITED WATER IDAHO INC.

By: 

Dean J. Miller
Attorney for Applicant

Exhibit - A

UWID SYSTEM
Danskin Non-Contiguous System

- Main Valve
- Blowoff Valve
- Hydrants
- ◆ Wells
- Services

Mains

- 4 Inch
- 6 Inch
- 8 Inch
- 12 Inch

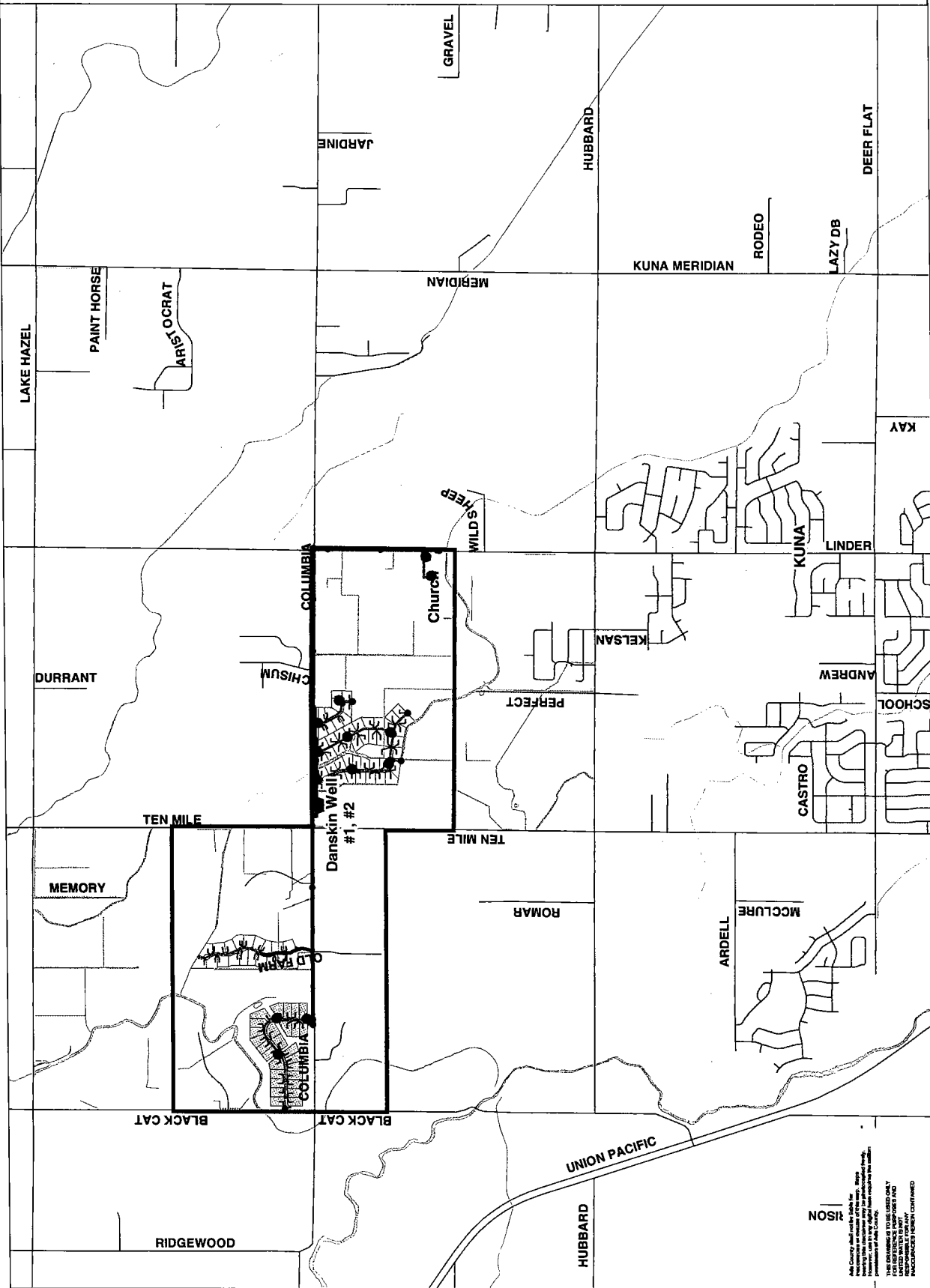
Subdivisions

- DANSKIN #1
- DANSKIN #2
- DANSKIN #3
- DANSKIN #5
- IRONHORSE SUB
- ▨ SADDLE RIDGE
- KUNA City Limits
- UWID Service Area

No Scale

N

Revised Date 09-06-2007



ALL COUNTY MAPS ARE THE PROPERTY OF THE COUNTY ENGINEER. THE INFORMATION IS TO BE USED ONLY FOR THE PURPOSES FOR WHICH IT WAS PROVIDED. THE ENGINEER ASSUMES NO LIABILITY FOR ANY ERRORS OR OMISSIONS. THE USER ASSUMES ALL LIABILITY FOR ANY ERRORS OR OMISSIONS.

AGREEMENT FOR PURCHASE AND SALE
BETWEEN
UNITED WATER IDAHO INC.
AND
THE CITY OF KUNA

TABLE OF CONTENTS

RECITALS..... 1

AGREEMENT 1

1. AGREEMENT FOR SALE AND PURCHASE..... 2

2. PURCHASE PRICE AND PAYMENT TERMS..... 2

3. AS IS..... 2

4. TITLE MATTERS 3

5. REPRESENTATIONS, WARRANTIES AND COVENANTS OF SELLER . 3

6. REPRESENTATIONS, WARRANTIES AND COVENANTS OF BUYER ... 5

7. CONDITIONS PRECEDENT TO CLOSING 5

**8. ASSIGNMENT AND ASSUMPTION OF AGREEMENTS, AND OF-SITE
 MAINLINE REFUNDS OBLIGATION**..... 7

9. CLOSING RELATED MATTERS; POST-CLOSING 8

10. CLOSING DOCUMENTS 8

11. PRORATIONS AND ADJUSTMENTS..... 9

12. DEFAULT AND REMEDIES 10

13. BROKERAGE..... 11

14. INTERVENING DAMAGE OR LOSS..... 11

15. NOTICES..... 11

16. MISCELLANEOUS..... 12

AGREEMENT FOR PURCHASE AND SALE

THIS AGREEMENT FOR PURCHASE AND SALE is made by and among **UNITED WATER IDAHO INC.**, an Idaho corporation (hereinafter referred to as "United Water" or as "Seller") and **THE CITY OF KUNA**, an Idaho municipal corporation, (hereinafter referred to as "Kuna" or as "Buyer").

RECITALS

A. United Water owns and operates a domestic water system located in Ada County, Idaho, located within the Danskin, Saddle Ridge and Iron Horse Estates Subdivisions.

B. United Water desires to sell to Kuna, and Kuna desires to acquire the domestic water system assets and related tangible and intangible property described in Section 1 (the "Domestic Water System") under the terms and conditions set forth herein. The location of the Domestic Water System is depicted on **Exhibit B**.

C. Contingent upon requisite approval by the Idaho Public Utilities Commission ("Commission") and closing of the sale contemplated by this Agreement it is contemplated that Kuna will furnish uninterrupted, quality domestic water service to the aforementioned area now served by United Water.

D. United Water has previously entered into a RESIDENTIAL OR MULTIPLE FAMILY HOUSING NON-CONTIGUOUS WATER SYSTEM AGREEMENT ("Non-Contiguous Agreement") with Stetson Properties, L.P. and Walter T. Sigmont and Ruth A. Sigmont, husband and wife dated December 30, 1999. United Water desires to assign and Kuna desires to assume United Water's obligations under the Non-Contiguous Agreement. United Water has also previously entered into three RESIDENTIAL, MULTIPLE FAMILY HOUSING, COMMERCIAL INDUSTRIAL OR MUNICIPAL DEVELOPMENT WATER MAIN EXTENSION AGREEMENTS; one with Stetson Partners, LP dated October 15, 2003 ("Stetson Agreement"); one with Joseph & Kathryn Guido dated June 21, 2004 ("Guido Agreement"); and one with the Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter-Day Saints dated June 5, 2006 ("LDS Agreement"). United Water desires to assign and Kuna desires to assume United Water's obligations under the Stetson Agreement, the Guido Agreement and the LDS Agreement. The Non-Contiguous Agreement, the Stetson Agreement, the Guido Agreement and the LDS Agreement are all attached hereto as **Exhibit C**.

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

United Water agrees to sell, assign, transfer and convey, by warranty deed, bill of sale, assignments, and other instruments of transfer satisfactory to the parties, and Kuna 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) **Tangible Personal Property.** All tangible personal property and only that tangible personal property used and useful in connection with the operation and maintenance by United Water of the Domestic Water System and the furnishing of water services including, without limitations, buildings, wells, motors, pumps, appurtenances, equipment, valves, pipes, water lines, service lines, fire hydrants, meters, meter boxes and lids, valves, machinery, inventory, surveys, maps, records and supplies (all hereinafter collectively referred to as the "Tangible Property"). The 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 United Water of the Domestic Water System and the furnishing of water services including, without limitation, all leases, ground water rights, land rights, permits, easements, rights-of-way, customer lists and records, well logs, 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 United Water of the Domestic Water system, which is more fully described in **EXHIBIT D** and is referred to as the "Well Lot".

2. PURCHASE PRICE AND PAYMENT TERMS

The purchase price shall be THREE HUNDRED SEVENTY FIVE THOUSAND DOLLARS (\$375,000) payable in full, by cash, certified check or bank wire transfer on the Closing Date.

3. AS IS

Except for the representations and warranties of United Water set forth in this Agreement, it is understood and agreed that Kuna will have completed by the Closing Date Kuna's inspection of the Domestic Water System and that Kuna is purchasing the Domestic Water System "as is" and "where is" as of the Closing Date, and with all faults and defects, latent or otherwise, and that **United Water makes no representations or warranties, either express or implied, by operation of law or otherwise, with respect**

to: the quality, physical condition or value of the Domestic Water System; or the Domestic Water System's suitability or fitness for a particular purpose.

4. TITLE MATTERS

(a) United Water shall deliver or cause to be delivered to Kuna 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 United Water as Debtor, evidencing that all items of Tangible Property and Intangible Property being sold hereunder are free and clear of all liens, claims and encumbrances; or, if so encumbered, United Water shall cause the same to be terminated or released on or before the Closing Date. Kuna shall pay the cost of such UCC searches and terminations or releases.

(b) United Water shall furnish to Kuna, 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 that portion of the Purchase Price allocated to the Well Lot, which is hereby acknowledged and agreed to be Forty Nine Thousand Five Hundred and no/100ths dollars (\$49,500.00), showing marketable and insurable title to the Well Lot 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 United Water shall so remove at that time; and (ii) permitted exceptions as set forth in **Exhibit E**. If the Commitment shall disclose defects, encumbrances, or exceptions to title not reasonably acceptable to Kuna, Kuna shall disapprove by giving written notice thereof to United Water 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 un-permitted 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 Kuna in Kuna's reasonable discretion.

5. REPRESENTATIONS, WARRANTIES AND COVENANTS OF SELLER

United Water hereby represents and warrants to Kuna that as of the date hereof and/or as of the Closing Date:

(a) **Authority**. That United Water is an Idaho corporation that 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) transfer title to the Domestic Water System; (ii) enter into this Agreement; and (iii) carry out and consummate the transactions contemplated by this Agreement.

(b) **Effect of Transactions**. That 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 United Water is a

party or by which United Water is bound; or (ii) violate any existing statute, law, regulation, restriction, order, writ, injunction or decree of any court, administrative agency or governmental body to which United Water is subject.

(c) **Ownership**. That United Water is the owner of the Domestic Water System. That there shall be no change in the ownership, operation or control of the Domestic Water System from the date hereof to the Closing Date.

(d) **Customers**. That United Water shall provide Kuna at Closing a complete list of all United Water's customers' names and addresses included in this transaction.

(e) **Insurance**. That all premiums due on all fire and hazard, liability and other insurance policies held by United Water, if any, in connection with the Domestic Water System have been and shall be paid when due by United Water, and the policies remain and shall remain un-cancelled 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 Domestic Water System shall be applied to the repair of the Domestic Water System.

(f) **Condemnation**. That to United Water's knowledge, there are 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 the Domestic Water System, or any part thereof. In the event United Water receives notice of any such proceeding, action, examination or demand, United Water shall promptly deliver a copy of such notice to Kuna.

(g) **No Liens**. That to United Water's knowledge, there are and shall be no liens or claims against the Domestic Water System for federal or state taxes or any other charges whatsoever, and that no portion of the Domestic Water System is affected by any special assessments, whether or not constituting a lien thereon.

(h) **Liabilities**. That all debts, liabilities and obligations of United Water arising from the ownership and operation of the Domestic Water System 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, and that no debts, liabilities or obligations will be outstanding as of the Closing Date, except for accrued payables incurred in the ordinary course of business that United Water shall pay in a timely manner. To United Water's knowledge, there are and will be no unrecorded mechanics' or materialmen's liens or any claims for such liens affecting the Domestic Water System, and as of the Closing Date, there will be no work or material performed or furnished for which payment will not have previously been made.

(i) **Access**. That to United Water's knowledge, there is currently adequate access to and from the Domestic Water System from adjoining private or public streets, highways, roads and ways, and no fact or condition exists which would result in the

termination of the current access to and from the Domestic Water System to the adjoining public or private streets, highways, roads and ways.

(j) **Maintenance.** That from and after the date hereof and until the Closing, United Water shall maintain or cause to be maintained the Domestic Water System in good condition and repair, and shall continue to make or cause, to be made ordinary repairs, replacements and maintenance between the date hereof and the Closing with respect to the Domestic Water System and shall deliver the same in as good working order and repair as exists on the date hereof, further reasonable wear and tear excepted.

6. REPRESENTATIONS, WARRANTIES AND COVENANTS OF KUNA

Kuna hereby represents, covenants and warrants to United Water that as of the date hereof and as of the Closing Date:

(a) That Kuna is an Idaho municipal corporation which has been duly organized and is validly existing and in good standing as a municipal 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 Kuna and the performance of this Agreement by Kuna have been duly authorized by Kuna. 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 Kuna is a party or by which Kuna is bound; or (ii) violate any existing statute, restriction, order, writ, injunction or decree of any court, administrative agency or governmental body to which Kuna 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 Kuna, threatened, against Kuna 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 Kuna's Obligations.** This Agreement, and Kuna's obligation to close the transaction contemplated herein, is subject to the following express conditions precedent. Notwithstanding anything to the contrary that may be contained herein, each of the following conditions precedent may be waived in writing by Kuna, such conditions being for the exclusive protection and benefit of Kuna.

(i) That there shall not have been any material damage, destruction, or loss adversely affecting the Domestic Water System.

- (ii) All approvals required in connection with the transfer of the Domestic Water System shall have been obtained from the Idaho Department of Environmental Quality (IDEQ) and the Idaho Department of Water Resources (IDWR).

(b) **Condition Precedent to United Water's Obligations.** Kuna and United Water agree that consummation of the transaction contemplated by this Agreement is also subject to United Water obtaining an approval and order from the Idaho Public Utilities Commission (Commission) on terms that are acceptable to United Water, in its sole discretion, that, among other things:

- (i) Confirms that United Water may amend its Certificate of Public Convenience and necessity so as to remove the Domestic Water System from its authorized service territory;
- (ii) Confirms that as of the Closing Date United Water may discontinue service to the Domestic Water System;
- (iii) Approves the accounting and ratemaking treatment of the Purchase Price in the manner to be proposed by United Water in an Application to be filed with the Commission;
- (iv) Confirms that United Water, after the closing date, shall have no further obligations under the Agreements contained in **Exhibit C**.

Notwithstanding anything contained in this Agreement to the contrary, the parties acknowledge and agree that the conditions precedent set forth in Paragraph 7(b) are paramount. Accordingly, if there is any portion of such ruling by the Commission that, in United Water's discretion, is substantially inconsistent with this Agreement or with United Water's Application to the Commission, United Water may, within five (5) business days after receipt of such Commission ruling, provide Kuna with written notice that this Agreement is null and void, and the parties shall have no further obligations or liabilities hereunder. If such notice is not given 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 Commission, and 3) the notification and communication with the customers of United Water regarding this transaction.

(d) It is understood and agreed by the parties that an appropriate due diligence period consisting of fourteen (14) days immediately following the execution of this Agreement will be established to allow Kuna the opportunity to further investigate all issues regarding the acquisition of the United Water's Domestic Water System. The parties agree to cooperate and make all appropriate documents available in pursuing the due diligence.

8. ASSIGNMENT AND ASSUMPTION OF AGREEMENTS, AND OFF-SITE MAINLINE REFUNDS OBLIGATION

(a) The Parties acknowledge and agree that on or before the Closing Date United Water and Kuna shall execute an Assignment and Assumption of the above referenced Non-Contiguous Agreement, the Stetson Agreement, the Guido Agreement, and the LDS Agreement, as referenced above in Paragraph D of the Recitals, in the form attached hereto as **Exhibit F**.

(b) The Parties acknowledge that United Water has extended off-site water mainlines to serve the water systems subject to this Purchase and Sale Agreement. Said off-site mainlines are indicated on attached **Exhibit B**. Pursuant to United Water's Rules and Regulations the cost of the off-site mainlines were contributed by the Original Applicants for service. In this case, the Original Applicants were Stetson Properties, L.P. and Walter T. Sigmont and Ruth A. Sigmont, husband and wife (Non-Contiguous Agreement), Stetson Partners, LP (Stetson Agreement), and the Corporation of the Presiding Bishop of the Church of Jesus Christ of Latter Day Saints (LDS Agreement). Further, pursuant to United Water's Rules and Regulations, additional customers who connect to the off-site mainlines within a specified period are required to deposit with United Water an amount equal to one half of the actual per foot cost of the off-site extension times the front footage of the property to be served. The per-foot cost is determined by dividing the actual cost of the off-site extension by the total serviceable footage along the off-site extension. The amounts so deposited are refunded to the Original Applicant without interest within 30 days of receipt by United Water.

(c) In the Stetson Agreement and the LDS Agreement, the controlling off-site refund language is contained in the individual agreements. In the case of the Guido Agreement there is no off-site refund potential. In the case of the Non-Contiguous Agreement, the entitlement to off-site refunds was contemplated and agreed to by the parties to the Non-contiguous Agreement, but never officially documented in the Non-contiguous Agreement. The entitlement to off-site refunds was subsequently assigned by Stetson Properties, L.P. to Walter T. Sigmont and Ruth A. Sigmont, husband and wife. The refund period for the Non-Contiguous Agreement commenced on December 30, 1999 and is for a period of fifteen (15) years from that date.

(d) Kuna agrees that in the event additional customers are connected to the off-site mainlines within the refund periods for the above referenced Agreements, Kuna will require the additional customers to deposit an amount calculated in accordance with

the foregoing and will refund the amount deposited to the respective Original Applicant, or its assignees, within 30 days of receipt, without interest.

(e) United Water agrees that it, without cost to Kuna, will provide such technical and accounting advice as Kuna may require in determining the eligibility and amount of refunds that are required to be paid to Original Applicants.

9. 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 7(b) (the "Closing Date"); provided, however, that if the thirtieth (30th) day not be a business day, then the Closing Date shall be the next Tuesday after the thirtieth (30th) day.

(b) **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.

(c) **Possession.** Possession of the Domestic Water System shall be delivered to Kuna on the Closing Date.

(d) **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.** On the day of the Closing Date, United Water and Kuna, if Kuna so chooses, shall have all customer meters read so as to avoid any post-closing prorating of accounts receivable and unbilled revenue. All such revenue earned by United Water as determined by the meter readings on the Closing Date shall be due and payable to United Water.

10. CLOSING DOCUMENTS

(a) **Seller's Deposits.** On the Closing Date, United Water shall deliver the following documents:

- (1) Bill of Sale executed by United Water with full warranties of title conveying the Tangible Property to Kuna, in the form attached hereto as **Exhibit G**.
- (2) Certified copies of all resolutions adopted by United Water's Board of Directors.
- (3) Warranty Deed executed by the United Water transferring the Real Property, in the form attached hereto as **Exhibit H**.
- (4) Originals, if available, of all certificates, licenses, permits, authorizations, and approvals required by law, and issued by all governmental authorities having jurisdiction.
- (5) Such other documents as the Title Insurer, Kuna or its attorneys may reasonably require effectuating or further evidencing the intent of any provision in this Agreement.
- (6) Title Insurance Owner's policy for Real Property of United Water's Domestic Water System.
- (7) A United Water approved closing statement.
- (8) Assignment and Assumption of Agreements in the form attached hereto as Exhibit F.

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

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

- (1) Cash, official bank check or wire transfer of funds in an amount sufficient to meet Kuna's obligations hereunder.
- (2) A Kuna approved closing statement.
- (3) Such other documents as the Title Insurer, United Water, or its attorneys may reasonably require effectuating or further evidencing the intent of any provision in this Agreement.

11. PRORATIONS AND ADJUSTMENTS

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

(a) General real estate taxes, and all other levies and charges against the Domestic Water System the year in which the Closing Date shall occur, which are accrued but not yet due and payable. Such taxes shall be prorated on the basis of the most recent ascertainable tax bill. Kuna 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 United Water prior to the Closing Date shall be caused to be paid or performed by United Water on or before the Closing Date or as soon as possible thereafter, and Kuna 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 United Water and such items of income and expense for the period on and after the Closing Date will be for the account of Kuna, all as determined by the accrual method of accounting.

(d) The cost of escrow shall be divided equally between United Water and Kuna.

12. DEFAULT AND REMEDIES

(a) **Default by Buyer.** If Kuna should fail to consummate the transaction contemplated herein for any reason, except by default by Seller, United Water may elect any one or more of the following remedies: (i) to enforce specific performance of this Agreement and in such action United Water shall have the right to recover damages suffered by United Water by reason of the delay in the acquisition of Domestic Water System (ii) to bring suit for damages for breach of this Agreement; (iii) to terminate this Agreement whereupon Kuna will reimburse United Water for United Water'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 United Water should fail to consummate the transaction contemplate herein for any reason, except failure of a condition precedent set forth in paragraph 7 which is not waived by Kuna, or default by Kuna, Kuna may elect any one or more of the following remedies; (i) to enforce specific performance of this Agreement and in such action Kuna shall have the right to recover damages suffered by Kuna by reason of the delay in the acquisition of the Domestic Water System (ii) to bring

a suit for damages for breach of this Agreement; (iii) to terminate this Agreement whereupon Kuna will reimburse United Water for United Water'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.

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 and the transactions contemplated hereby.

14. INTERVENING DAMAGE OR LOSS

United Water shall deliver the Domestic Water System to Kuna 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 Domestic Water System having a replacement value in excess of \$10,000.00 is destroyed by fire and other casualty or is taken or made subject to eminent domain proceedings, then United Water shall immediately notify Kuna. Thereupon Kuna shall, at its opinion have the right to:

(a) Complete this transaction, in which event United Water shall: (i) deliver to Kuna 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 Kuna and (ii) pay the amount of any deductible there under; or

(b) Complete this transaction, in which event Kuna 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:	General Manager Gregory P. Wyatt United Water Idaho Inc. P.O. Box 190420 Boise ID 83719-0420 Tel. (208) 362-7327 Fax. (208) 362-7069
---------------	--

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

And United Water Management & Services Inc.
200 Old Hook Road
Harrington Park, New Jersey 07640
Attention: Legal Department
Tel. (201) 767-9300
Fax. (201) 767-7018

If to Buyer: The City of Kuna
763 W. Avalon
Kuna, ID 83634

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. 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 this Agreement shall not be merged therein, but shall remain binding upon and for the parties hereto until fully observed, kept or performed.