



CITY COUNCIL  
ATLANTA, GEORGIA

A RESOLUTION

03-*R*-1716

BY CITY UTILITIES COMMITTEE:

**A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE, ON BEHALF OF THE CITY, AN ASSIGNMENT AND ASSUMPTION AGREEMENT WITH UNITED WATER SERVICES ATLANTA LLC AND UNITED WATER RESOURCES, INC. AND AN AMENDED AND RESTATED SERVICES AGREEMENT FOR THE PROVISION OF INFORMATION TECHNOLOGY SERVICES WITH ELECTRONIC DATA SYSTEMS CORPORATION AND EDS INFORMATION SERVICES L.L.C. FOR AN AMOUNT NOT TO EXCEED \$2,000,000; AND FOR OTHER PURPOSES.**

**BACKGROUND:**

**WHEREAS**, the City owns and operates a water supply system; and

**WHEREAS**, United Water Services Unlimited Atlanta LLC ("UWSA") operated and maintained the water supply system for the time period beginning January 1, 1999, through and including April 28, 2003, pursuant to the terms and conditions of a Twenty-Year Operations and Maintenance Agreement of Water System ("O&M Agreement"); and

**WHEREAS**, certain management related services are required to be provided as part of the operation and maintenance of the City's water supply system, including customer service functions such as billing and collections; and

**WHEREAS**, the City and UWSA have agreed to dissolve the O&M Agreement; and

**WHEREAS**, the O&M Agreement provides that, upon its termination or expiration, the City, if it elects, will be entitled to an assignment of various third-party agreements existing at the time of the termination or expiration, between UWSA and third-parties and relating to the operation and maintenance of the City's water system; and

**WHEREAS**, Electronic Data Systems Corporation ("EDS") is engaged in the provision of information technology services, including but not limited to: consulting, systems development, systems integration, systems management and process management, customer care, enterprise resource management, and training and risk management (the "EDS Services"); and



**WHEREAS**, EDS previously provided to UWSA the EDS Services prior to the dissolution of the O&M Agreement pursuant to that certain Services Agreement (the "Original EDS Agreement"), dated August 1, 1999; and

**WHEREAS**, the City desires to retain EDS to provide the EDS Services, as set forth in the Original EDS Agreement in support of the City's operation and maintenance of its water supply system; and

**WHEREAS**, EDS desires to provide the EDS Services to the City; and

**WHEREAS**, the City has notified UWSA that it desires an assignment from UWSA of the Original EDS Agreement; and

**WHEREAS**, in order to properly effectuate such an assignment by UWSA to the City of the Original EDS Agreement and to appropriately modify the terms of the Original EDS Agreement to suit the transactional relationship proposed between the City and the EDS, the City will need to execute: [i] an Assignment and Assumption Agreement with UWSA and United Water Resources, Inc.; and [ii] an Amended and Restated Services Agreement with EDS and EDS Information Services L.L.C.; and

**WHEREAS**, the City has determined that it is desirable and in its best interests to execute the 2 Agreements to provide it a continued and uninterrupted ability to operate and maintain its water system;

**NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF ATLANTA, GEORGIA THAT**, the Mayor is authorized to execute with UWSA and United Water Resources, Inc. an Assignment and Assumption Agreement, effectuating an assignment to the City of the Original EDS Agreement;

**BE IT FURTHER RESOLVED THAT**, in order to appropriately modify the terms of the assigned Original EDS Agreement to properly reflect the transactional relationship between the City, as a governmental entity, and EDS, the Mayor is authorized to execute with EDS and EDS Information Services L.L.C. an Amended and Restated Agreement for Services, for an initial term of three (3) years, with the option for the City to renew the Agreement, under its same terms and conditions, for two (2) additional one (1) year terms ; and

**BE IT FURTHER RESOLVED THAT**, the compensation payable to EDS during each year of the Amended and Restated Services Agreement may not exceed \$2,000,000, to be based upon the services and price per services set forth in the Agreement;

**BE IT FURTHER RESOLVED THAT**, upon receipt of a monthly invoice from EDS, approved as to form and amount by the City, the Chief Financial Officer is authorized to disburse payments to EDS or identified third parties, pursuant to the



payment provisions of the Amended and Restated Services Agreement, such payment to be made out of Fund and Account Center Number 2J01 523001 Q67101; and

**BE IT FURTHER RESOLVED THAT,** the Assignment and Assumption Agreement and Amended and Restated Services Agreement will not be binding upon the City and the City will incur no liability under them until they have been fully executed by UWSA, United Water Resources, Inc, EDS and EDS Information Services L.L.C., as appropriate, delivered to the City, executed by the Mayor, attested to by the Municipal Clerk, approved as to form by the City Attorney, and delivered to UWSA, United Water Resources, Inc, EDS and EDS Information Services L.L.C., as appropriate.

**BE IT FURTHER RESOLVED THAT,** the Mayor or her designee is hereby authorized and directed to initiate competitive bidding procedures simultaneous with the consideration of renewal of the contract referenced herein.

A true copy,

*Rhonda Dauphin Johnson*  
Municipal Clerk, CMC

ADOPTED as amended by the Council  
APPROVED by the Mayor

OCT 20, 2003  
OCT 28, 2003



## **AMENDED AND RESTATED SERVICES AGREEMENT**

THIS AMENDED AND RESTATED SERVICES AGREEMENT (the "Agreement") documents the business relationship between each of the City of Atlanta ("COA"), a legally created and existing municipal corporation of the State of Georgia, Electronic Data Systems Corporation, a Delaware corporation ("EDS"), and EDS Information Services L.L.C., a Delaware limited liability company ("EIS"), and describes the terms and conditions under which EDS will perform for COA the information technology services described below. The obligations of EDS set forth in this Agreement will be performed by EDS itself and through its affiliates. All references to EDS in this Agreement will be deemed to include all such affiliates, and EDS and COA may be referred to in this Agreement individually as a "party" and together as the "parties."

### **RECITALS:**

WHEREAS, COA operates and maintains a water supply system which supplies more than 100 million gallons of water daily to retail, residential, commercial, and industrial customers;

WHEREAS, United Water Services Unlimited Atlanta, LLC ("UWSA") operated and maintained the water supply system for the time period beginning January 1, 1999 through and including April 28, 2003 pursuant to the terms and conditions of a Twenty-Year Operations and Maintenance Agreement of Water System between UWSA and the City of Atlanta;

WHEREAS, EDS is engaged in the provision of information technology services, including but not limited to: consulting, systems development, systems integration, systems management and process management, customer care, enterprise resource management, and training and risk management;

WHEREAS, UWSA entered into a Services Agreement with EDS dated as of August 1, 1999, pursuant to which EDS provided certain information technology services and customer care services and to provide related goods and services in support of UWSA's operation and maintenance of the COA water supply system (the "Original EDS Services Agreement");

WHEREAS, COA desires to retain EDS to provide certain information technology services and customer care services and to provide related goods as set forth herein in support of COA's operation and maintenance of a water supply system (the "Project");

WHEREAS, EDS desires to provide certain information technology services and customer care services and to provide related goods as set forth herein in support of the Project;

WHEREAS, pursuant to the terms of that certain Assignment and Assumption of EDS Services Agreement by and between UWSA and COA, UWSA assigned to COA certain of its right, title and interest in and to (including but not limited to all rights to indemnification or warranty protection from EDS) the Original EDS Services Agreement on the terms set forth therein;

WHEREAS, EDS consents to the assignment of the Original EDS Services Agreement by UWSA to COA;

WHEREAS, the parties hereto have agreed to amend and restate in its entirety the Original EDS Services Agreement to substitute COA as the recipient of EDS's services as of the Effective Date (defined below) and to set forth the respective rights and obligations of the parties hereto; and

NOW, THEREFORE, in consideration of the following mutual covenants, promises, undertakings and agreements set forth below and other good and valuable consideration, the mutuality, receipt, and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. **Term.** The term of this Agreement ("Term") will commence on the Effective Date (as defined in Section 37) and, unless earlier terminated in accordance with the terms of this Agreement, will continue until the three (3) year anniversary of the Effective Date (the "Anniversary Date"); provided, however, the Term of this Agreement may be extended in COA's discretion for two successive, separate one (1) year periods after such Anniversary Date upon notice to EDS in writing at least three (3) months prior to such Anniversary Date, or at least three (3) months prior to the end of any such one (1) year renewal period, if extended; provided further that, if either party determines that price or cost assumptions are not correct or complete after one (1) year and the EDS Services (as defined in Section 2(a)) as a result appear over or under priced, then such party may require renegotiation of the applicable terms and, if the renegotiation fails, either party may elect to terminate the affected EDS Services for convenience on ninety (90) days written notice.

No extension of the Term of this Agreement will be valid unless, if required by the City of Atlanta's Code of Ordinances or other applicable law, appropriate legislative approval from the City of Atlanta's Council and Mayor is obtained, and sufficient funding by COA exists and is appropriated for the applicable renewal term, prior to expiration of the Anniversary Date or the first renewal term, as applicable. In addition, notwithstanding the expiration or termination of the Agreement, at COA's option, EDS shall complete any services commenced but not completed prior to the date of expiration or termination of the Agreement and COA shall pay the agreed upon price for the completion of such services, and the terms of this Agreement shall continue to govern with regard to such services and payment.

2. **EDS Services.**

- (a) During the Term of this Agreement, EDS shall provide to COA, and COA shall purchase from EDS the services and deliverables described in the Agreement (the "EDS Services"), including without limitation the services and deliverables to be provided by EDS as described in the initial Work Order attached hereto as Exhibit A-1 (the "Initial Work Order"), all in accordance with and pursuant to the terms and conditions of this Agreement. Unless the context otherwise requires, references in this Agreement to a Work Order shall include any Change Order (as

defined in Section 4) pertaining thereto.

- (b) In addition to the EDS Services provided pursuant to the Initial Work Order, EDS will provide to COA such other information technology services as COA may reasonably request in writing from time to time during the term of this Agreement for which a further Work Order is agreed upon pursuant to Section 3 (the "Additional Services"). Unless the context otherwise requires, references in this Agreement to EDS Services shall include any Additional Services when applicable.

**3. Work Orders.**

- (a) The Initial Work Order and each further Work Order shall contain, at a minimum the following information, where applicable:
- (i) a reference to this Agreement, which reference will be deemed to incorporate all of the provisions of this Agreement;
  - (ii) the date as of which the provisions of the Work Order will become effective and, if applicable, the term or period of time during which the services or resources referenced therein will be provided;
  - (iii) a description of the services or resources to be provided by EDS pursuant to the work order and any performance standards applicable to such services or resources;
  - (iv) a description of COA's responsibilities relating to the Work Order, including any facilities, hardware, software or other support that will be required;
  - (v) the amounts payable for the services or resources provided pursuant to the Work Order, including (I) a budget for any services or resources EDS is not providing for a fixed fee, (II) a description and cost estimates for "pass through resources" that EDS may provide, (III) rate schedules and a description of billing practices for any services to be rendered on a "time and materials" basis, (IV) license fees (if any) for any technology or intellectual property provided or licensed by or through EDS, (V) any reimbursable categories of expenses (and provide approval procedures, a budget or other appropriate limitations for such expenses), and (VI) any presently known taxes, assessments, duties, permits, tariffs, fees or other charges which EDS expects to collect and the schedule on which such amounts will be invoiced;
  - (vi) a staffing plan for the services or resources to be provided by EDS;
  - (vii) identification of any co-contractors, subcontractors or interface providers whom EDS is authorized to engage for the services or resources;

- (viii) a description of any existing programs, tools or technology that EDS will use or supply or that COA is required to obtain in order to carry out the services or resources, together with the implementation or release schedule for such items and any required or forecast upgrades or additions;
- (ix) a description of any equipment, devices, communications or network facilities, or other additions or changes that EDS and/or COA is required to procure or install in order for EDS to carry out its work or for the services or resources to operate in production,
- (x) documentation and training requirements of the services or resources;
- (xi) a project plan under which EDS provides the applicable services or resources, including a time schedule for delivery and performance of the services or resources; and
- (xii) any additional provisions applicable to the services or resources to be provided pursuant to the Work Order that are not otherwise set forth in this Agreement or that are exceptions to the provisions set forth in this Agreement.

**(b)** Each Work Order will be effective only if in writing and approved and signed by a legally authorized representative of each party. Further, if required by the City of Atlanta's Code of Ordinances, no Work Order will be valid unless appropriate legislative approval from the City of Atlanta's Council and Mayor is obtained, and sufficient funding by COA exists and is appropriated for the applicable Work Order, prior to the COA's Notice to Proceed concerning that Work Order. EDS is not authorized to provide, or to commit COA to procure, any services or resources except as set forth in this Agreement or any properly executed Work Order. The services described in the Initial Work Order shall be deemed approved by COA, and EDS may commence performance thereunder without a further Notice to Proceed upon the Effective Date of the Agreement.

Each Work Order will be numbered sequentially beginning with the number one and, when executed by the parties, will be attached hereto and made a part hereof for all purposes. In the event of any express conflict or inconsistency between the provisions of a Work Order and the provisions of this Agreement, the provisions of the Work Order will govern and control with respect to the interpretation of that Work Order; provided, however, that the provisions of the Work Order will be so construed to give effect to the applicable provisions of this Agreement to the fullest extent possible. Any changes or modifications made to this Agreement will apply to all Work Orders unless the parties otherwise expressly agree in writing, and any changes or modifications made to any Work Order will apply only to that Work Order, unless the parties otherwise expressly agree in writing.

**(c)** EDS agrees hereafter to review periodically with COA the types of features,

enhancements, modifications, new products, and programming-related services that EDS makes available to other EDS customers who have similar requirements or who have adopted a similar solution (i.e., C \*Star II).

**4. Change Procedures.**

- (a) **Change Orders.** If either party desires to change the scope or nature of any service, resource or deliverable being provided pursuant to any Work Order, the change shall be documented through a written request for a change order ("Change Order"). Within a reasonable period of time after such a Change Order is presented, EDS shall inform COA of the resulting changes in price, budget or schedule (for either the existing or new scope and requirements) expected by EDS. EDS agrees to act in a commercially reasonable manner with regard to price, budget and schedule terms it requires for any proposed change. The Change Order shall not be effective unless in writing and signed by both parties' authorized representatives, subject to any requirement under the City of Atlanta's Code of Ordinances that appropriate legislative approval from the City of Atlanta's Council and Mayor is needed, and sufficient funding by COA exists and is appropriated for the applicable Change Order.
- (b) **Suspension of Services.** COA may by written notice to EDS, suspend at any time the performance of all or any portion of the Services to be performed under this Agreement. Upon receipt of a suspension notice, EDS must, unless the notice requires otherwise:
- (i) immediately discontinue suspended Services on the date and to the extent specified in the notice;
  - (ii) place no further orders or subcontracts for material, services or facilities with respect to suspended Services, other than to the extent required in the notice; and
  - (iii) take any other reasonable steps to minimize costs associated with the suspension.

COA may issue to EDS a written notice to resume suspended Services. Upon receipt of notice to resume suspended Services, EDS will immediately resume performance under this Agreement as required in the notice.

If EDS does not receive a notice to resume on or before ninety (90) days following the date of the written notice to suspend, this Agreement will be deemed terminated or partially terminated for convenience at the end of the ninety (90) day period only as to those services to which the notice to suspend applies.

- (c) **Decreases in Scope of Services.** COA may decrease the EDS Services during the term or any extension or renewal of the Agreement. In the event COA decreases the scope of any EDS Services, COA will provide EDS forty-five (45) days prior

written notice, describing in that notice the specific EDS Services decreased. Upon notification of a decrease in any EDS Services, EDS must:

- (i) immediately discontinue the decreased EDS Services on the date and to the extent specified in the notice and place no further purchase orders or subcontracts to the extent that they relate to the performance of the decreased EDS Services;
  - (ii) inventory, maintain and turn over to COA all data, information, documents, work product and property furnished by EDS or provided by COA for performance of the decreased EDS Services that COA owns or otherwise has a right to have and maintain, including pursuant to Section 14;
  - (iii) cooperate with COA in the transfer of data, information, documents, work product, and property and disposition of decreased EDS Services in progress so as to mitigate damages;
  - (iv) comply with other reasonable requests from COA regarding the decreased EDS Services; and
  - (v) continue to perform, in accordance with all of the terms and conditions of this Agreement, that portion of the EDS Services remaining.
- (d) In the event COA issues a written notice to suspend services, the compensation payable to EDS shall be reduced to reflect the reduction in scope of services; provided, however, EDS shall be entitled to receive equitable compensation for service costs actually incurred by EDS during the suspension period to the extent such costs cannot be avoided, such as guaranteed salary or compensation for dedicated personnel who cannot be redeployed or fixed charges for third-party vendors and subcontractors assigned specifically to the Project which cannot be reutilized, but in no event shall such equitable compensation exceed the service charges otherwise due for the services that are discontinued during the suspension period.

5. **Quality Assurance.** The parties shall promptly report to each other any malfunctions discovered by the reporting party or any cause for delay in the completion of the EDS Services or Additional Services, and EDS shall promptly provide a proposed solution. EDS will also notify COA of discoveries or developments in its other implementations which could reasonably be expected to affect time schedules, performance, completion of interfaces or conversion, or availability of resources in the EDS Services or Additional Services. COA shall have the right to receive and review all quality assurance reports produced by EDS under this Agreement. EDS shall accommodate reasonable COA requests to expand or modify EDS's quality assurance procedures.

6. **Data Retention and Inspection.** EDS shall give COA reasonable access to EDS's



facilities as used to provide the EDS Services for purposes of performing inspections or "walk-throughs," during normal business hours, including review of documentation relating to the services or resources to be provided by EDS hereunder and interviews of personnel. For the duration of this Agreement, all records generated by EDS in the course of performing services in accordance with this Agreement shall be maintained at a central location in the Atlanta metropolitan area, shall remain on file for a minimum of three (3) years and shall be open to inspection and audit by COA, or any person designated by COA, during regular business hours. Upon request of COA, EDS shall provide all records and information under this Section 6 in a format mutually agreed upon by the parties.

7. **Representatives.** During the term of this Agreement, EDS and COA will each designate in writing and maintain a person who will serve as that party's representative and who will be its primary point of contact in dealing with the other under this Agreement. Each party's designated representative will have the authority and power to make decisions with respect to actions to be taken by it under this Agreement; provided, however, COA's representative will have no authority to relieve EDS of any of its obligations under this Agreement or to modify any of COA's obligations under it. The parties designate the following representatives:

For EDS: Cheryll Collier

For COA: Donald P. McCrary

Either party may change its representative by giving prior written notice to the other of the new representative and the date upon which such change will become effective. In performing its obligations under this Agreement, each party will be entitled to rely upon any routine instructions, authorizations, approvals or other information provided to such party by the other party's designated representative. EDS's reliance on the routine instructions, authorizations, approvals or other information provided by COA shall not relieve EDS of responsibility for supervising, testing or correcting work EDS is assigned, or otherwise exercising its duty of reasonable care in the performance of the obligations undertaken by EDS hereunder.

8. **Charges and Payment.** COA will pay EDS on a monthly basis according to the following terms:

- (a) **EDS Services.** In consideration for the performance of the EDS Services, COA will pay to EDS the charges shown in the applicable Work Order, which charges will be subject to periodic adjustment in the manner and to the extent indicated therein.
- (b) **"Pass-Through" Charges.** A Work Order may indicate that EDS will obtain services, software, hardware, network communications, interfaces or other resources ("Third-Party Items or Services") from third-party suppliers, licensors or



contractors ("Third-Party Vendors") for exclusive use of COA or in a fixed proportion. In such a case, unless a different charge structure is negotiated between the parties, COA will pay for such third-party resources based on EDS's direct cost charged by the applicable supplier, licensor or contractor (i.e., on a "pass-through" basis). COA also may request from time to time that EDS obtain, and EDS may, at its sole option, agree to obtain, additional or other Third-Party Items or Services for the use of COA pursuant to the terms and conditions set forth in Exhibit F. In any case where EDS obtains or supplies Third-Party Items or Services (whether or not so designated in the applicable Work Order), COA reserves the right to contract directly with the applicable Third-Party Vendors for such resources and terminate the part of the Work Order that provides for EDS to supply such resources.

- (c) **Time and Materials.** If any product, service or deliverable to be provided by EDS provides for compensation based on "time and materials," payment shall be determined (including any agreed-upon escalator or inflation adjustment) according to the rate schedule set forth in the applicable Work Order or Change Order.
- (d) **Reimbursement of Expenses.**
- (i) Except as provided otherwise in the applicable Work Order, EDS is not entitled to be reimbursed for any expenses, and the pricing indicated in the Work Order shall be the sole compensation of EDS and in lieu of reimbursement for any cost or burden incurred by EDS or applicable personnel (including, without limitation, for occupancy, supplies, utilities, payroll, management, or overhead).
  - (ii) Expenses incurred by EDS for contract preparation and administration, and clerical support are the responsibility of EDS and will not be chargeable to COA. Corrective or duplicative work, and any other services covered by warranty or maintenance terms, will not be chargeable to COA.
  - (iii) If a Work Order provides for reimbursement of expenses, such reimbursement shall be for the actual cost of reasonable, out-of-pocket expenses approved by COA and incurred by EDS in the performance of the EDS Services. If EDS is entitled to reimbursement of expenses in a particular Work Order, EDS shall include with its invoice reasonable documentation to evidence such expenses and receipt of appropriate document substantiation shall be a condition precedent to COA's obligation to reimburse EDS for any such out-of-pocket expenses.
  - (iv) Travel time for personnel of EDS may not be charged to COA unless otherwise agreed to in writing in a particular Work Order. If travel expenses are stipulated to be reimbursable in a Work Order, COA shall reimburse EDS for travel and similar expenses for approved project staff at reasonable



and actual costs, provided that, if long-distance travel for particular staff is anticipated to occur regularly in the project, EDS shall provide a concrete plan for managing associated costs. Per diem expenses shall be in accordance with EDS's generally applicable policies (at actual cost to EDS) and approved in advance. Air travel shall be by coach and economy class only. EDS's policies for reimbursement of employee or contractor travel and living expenses shall be subject to COA's review and approval. EDS shall provide COA with supporting documentation (such as receipts for travel, hotels and rental cars) with regard to such reimbursable items.

- (v) Unless otherwise indicated in the Work Order, when the parties agree that a daily (or longer) rate applies, COA will not be charged extra for longer work days or overtime.
  - (vi) EDS agrees to use the same diligence in controlling reimbursable expenses as it uses in its own business for expenses incurred by EDS.
- (e) **Time of Payment.** EDS will submit a written invoice to COA monthly in arrears reflecting the amount owed to EDS by COA for the services performed during the previous month. The invoice shall include any documentation COA reasonably deems necessary to verify the amount of the invoice and to demonstrate the basis for the amount claimed. So long as EDS is not entitled to direct reimbursement for its actual internal costs, COA is not entitled to require, nor shall COA have access to information relating to those costs, such as profit and loss statements, or other internal financial records. COA will pay the invoiced amount, subject to the Disputes clause in Section 8(f), within thirty (30) days of receipt of the invoice and appropriate substantiating documentation. All amounts will be payable to EDS by check or electronically (either by wire transfer or ACH), in accordance with payment instructions provided by EDS from time to time. If a due date does not fall on a business day, payments must be received by EDS on or before the business day prior to such date. Any undisputed amounts over thirty (30) days past due will bear interest from the date past due until paid at a rate of interest equal to the lesser of (i) the prime rate established from time to time by Citibank of New York plus two percent (2%) or (b) the maximum rate of interest allowed by applicable law.
- (f) **Disputes.** If COA disputes an amount on an invoice in good faith, COA will notify EDS in writing of the specific items in dispute and will describe COA's reason for disputing each such item. Within fifteen (15) days of EDS's receipt of such notice, the parties will negotiate in good faith pursuant to the provisions of Section 15 to reach settlement on any items that are the subject of such dispute. If any portion of an amount due to EDS under this Agreement is subject to a bona fide dispute between the parties as provided above, COA will pay to EDS on the date such amount is due all amounts not disputed in good faith by COA and no interest shall accrue on amounts withheld by COA pursuant to a bona fide dispute.
- (g) **Maintenance and Audit of Books, Records, and Accounts.** EDS shall maintain

complete and accurate books, records and accounts to support and document all charges hereunder in accordance with this Agreement. For a period of up to three (3) years following termination or expiration of this Agreement, COA's representatives shall be entitled, following reasonable notice to EDS, to audit EDS's books and records with respect to the EDS Services and the determination of charges due pursuant to this Agreement. Nothing in this Agreement allows COA access, nor shall EDS provide access, to EDS proprietary internal financial information, such as profit and loss statements, or other such information, provided, however, that if EDS is directly compensated for actual internal costs, COA representatives will be entitled to audit EDS's books and records to verify the amounts of such reimbursed internal costs. Any such audit shall be conducted during regular business hours at EDS's offices located in the Atlanta metropolitan area where records are required to be maintained. Any such audit shall be conducted at COA's expense unless such audit demonstrates that EDS's charges to COA in a given invoice exceed the correct charges by more than five percent (5%), in which event EDS shall reimburse COA for the cost of such audit.

- (h) **Tax Exempt.** The price or prices for the services requested in this Agreement include full compensation for all licenses, permits and taxes that EDS is or may be required to pay to complete this work. COA is a tax-exempt entity. COA may provide EDS with a Tax Exemption certificate so long as EDS agrees to use such certificate only as permitted by law. To the extent COA does not provide EDS with a Tax Exemption certificate, applicable taxes shall be treated on a pass through basis and COA will pay such applicable taxes based on EDS' direct costs.

9. **Employees.**

- (a) **Staffing.** EDS shall secure at its own expense, all personnel required to perform all work to be completed by EDS under this Agreement. All the services required hereunder shall be performed by EDS or under the direct supervision of EDS. All personnel engaged in the EDS Services by EDS shall be fully qualified and shall be authorized or permitted under applicable State and local law to perform such services. None of the services covered by this Agreement shall be transferred, assigned, or subcontracted by EDS without the prior written consent of COA.

Each Work Order shall include a staffing plan produced by EDS and approved by COA that shows the number and job category of staff to be assigned to each task of the Project.

EDS shall provide standards for the qualifications and experience levels for each job category (including, at a minimum, project manager, work team leaders, database administrators and programmer/analysts). EDS shall provide specific individual resumes (showing, among other things, prior utility industry project experience) concerning the manager and key work team leaders proposed to be assigned to the Project and any Work Orders. EDS represents and warrants that all Services will be performed in a professional and workmanlike manner.



Except as specifically addressed in writing in advance, EDS will adhere to its staffing plan and submit personnel changes to COA for approval unless such changes are beyond EDS's control or are necessitated by performance concerns, employee limitations, or similar individual circumstances. COA's right to approve personnel changes will be used to assure continuity in resources, adherence to schedules, and avoidance of duplication or retraining which could result from unplanned breaks in service or "churning" of personnel.

Except with regard to Independent Contractors, as defined in Section 10(a) below, if a replacement or reassignment occurs to any EDS employee or subcontractor assigned to this Project, EDS shall absorb costs of duplication or retraining and shall assure that personnel of at least comparable qualifications and experience are assigned to complete the Project. If COA objects to the classification or assignment of any individual because of questions concerning the individual's skills, performance or behavior, EDS shall either provide information and assurances sufficient to persuade COA to withdraw the objection, reclassify the individual to a skill level agreeable to COA, or reassign the individual so that such individual is no longer working on the Project.

EDS shall have sole responsibility for the supervision and payment of its personnel, agents, subcontractors (as permitted) and other related parties provided that COA will provide work assignments and on-site direction to Independent Contractors (as defined in Section 10(a) below) and, as applicable, other EDS staff resources assigned to the Project. EDS will provide all tools, materials, training, hiring, supervising, hours of work, work policies and procedures, work rules, compensation, payment for expenses and discipline and termination of its employees.

- (b) **Benefits.** The personnel performing the EDS Services are not COA employees. EDS will provide for and pay, or cause its subcontractor to provide for and pay, the compensation and other benefits of such personnel, including salary, health, accident and workers' compensation benefits and all taxes and contributions which an employer is required to pay relating to the employment of employees. EDS shall be responsible for its compliance and for causing its subcontractor to comply with laws, regulations and orders relating to equal employment opportunity, workers' compensation, unemployment compensation and FICA. Upon request, EDS will furnish COA with its EEO policies and procedures, verification of workers' compensation, unemployment compensation and FICA. EDS will obtain and keep current at EDS's expense all governmental permits, certificates and licenses (including professional licenses, if applicable) necessary for EDS to perform the EDS Services.
  
- (c) **Non-Solicitation of Employees.** Except for (I) instances where EDS personnel respond to advertising or other publications of general circulation and are hired as a result of such contact and (II) general hiring practices that occur without the knowledge or benefit of any personnel assigned under any Work Order, or (III) the



decision of COA to hire or contract directly Independent Contractors (as defined in 10(a)) or any of their successors who are not EDS employees, neither party will, while EDS's services under a Work Order are in effect and for a period of six (6) months thereafter, solicit, directly or indirectly, for employment in any capacity concerning the subject of such Work Order, any then-active employee of the other who is, or within the prior six (6) months was, known to be involved in activities carried out under such Work Order, without the prior written consent of the other party.

**10. Independent Contractors.**

- (a) **Hiring.** EDS itself or by and through its subcontractor, ZeroChaos, shall offer to hire or engage for the Project, either as employees or independent contractors, the individuals named in Exhibit A-1 hereto, who were employed by or rendered services to United Water Services Unlimited Atlanta, LLC or its affiliates in connection with the operation and maintenance of COA's water system ("Independent Contractors").
- (b) **Term of Employment.** The Independent Contractors (presently five (5) in number) are expected to accept positions with EDS's subcontractor (ZeroChaos). If they accept, they will be transitioned from United Water Services Unlimited Atlanta, LLC and other contractors and, provided they do not leave and are not terminated due to performance issues, will be employed or contracted by ZeroChaos on an at-will basis until at least November 1, 2003. COA may at any time terminate its obligation to accept and pay for the services of any one or more of these Independent Contractors, provided that if it does so in the first six (6) months after the Effective Date, and if such termination is not for reason of unsatisfactory job performance, either COA will (itself or through another contractor) offer to hire such individual for the remainder of the six (6) month period (ending November 1, 2003) on compensation and other terms substantially similar to those previously obtained by that particular individual, or reimburse EDS for reasonable pre-approved severance, exclusive of any profit or markup by EDS or its subcontractor. It is understood that Eric Griffin is a subcontractor rather than an employee of ZeroChaos, and COA reserves the right to assume his contract directly or terminate the services he provides at any time upon thirty (30) days notice without any obligation of COA to offer job terms or reimburse severance. The Independent Contractors shall, in addition to any other tasks assigned to them in the staffing plan, provide on-site training of and for COA's employees during the term of their employment or engagement.
- (c) **Employment by COA.** COA, within its sole discretion, may at any time solicit, recruit or attempt to hire the Independent Contractors identified in this Section without incurring any liability, expense or other penalty to EDS.

**11. Privacy Laws.** The parties acknowledge and agree that COA will be and remain the

controller of the information relating to COA or its customers (the "COA Data") for purposes of all applicable laws relating to data privacy, personal data, transborder data flow and data protection (collectively, the "Privacy Laws"), with rights to determine the purposes for which COA Data is processed. Nothing in this Agreement will restrict or limit in any way COA's rights or obligations as owner and/or controller of COA Data for such purposes. The parties further acknowledge and agree that EDS will be and remain the processor of COA Data for purposes of the Privacy Laws. As controller of COA Data, COA is directing EDS to process COA Data in accordance with the terms of this Agreement. Nothing in this provision will, however, relieve EDS from cooperating with COA in responding to any request pursuant to the Georgia Open Records Act, or similar laws (state and federal), with respect to any such information in its possession subject to the Act, or similar laws (state and federal), in the event it receives a request for information.

12. **Confidentiality.** EDS and COA will have the confidentiality obligations set forth in Exhibit C.
13. **Warranties and Additional Covenants.** EDS and COA will have the obligations relating to warranties and additional covenants set forth in Exhibit D.
14. **Ownership.**
  - (a) **Definitions.**
    - (i) **EDS Software:** The term "EDS Software" means any Software that (i) is owned or developed by or on behalf of EDS before the Effective Date or (ii) is acquired or developed by or on behalf of EDS after the Effective Date without reference to or use of the confidential information of COA. All EDS Software will be and remain EDS' property, and COA will have no rights or interests therein, except as indicated in Subsections (d), (e) and (f) below.
    - (ii) **EDS-Vendor Software:** The term "EDS-Vendor Software" means any Software that is proprietary to any party other than EDS or COA and is licensed to EDS.
    - (iii) **COA Software:** The term "COA Software" means any Software that (i) is owned or developed by or on behalf of COA before the Effective Date; (ii) is acquired or developed by or on behalf of COA (other than by EDS) after the Effective Date without reference to or use of the confidential information of EDS; or (iii) is owned by a third party (other than EDS) and licensed from that third party by COA.
    - (iv) **Development Tools; Residual Technology:** The term "Development Tools" means all software and other development tools used by EDS in performing the Services which are supplied by EDS, and all improvements thereto that



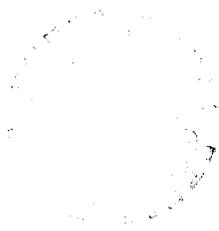
are developed or created by or on behalf of EDS in the course of performing the Services without reference to or use of the confidential information of COA. The term “Residual Technology” means the ideas, concepts, methodologies, processes and know-how that are used, developed or created by either party in connection with the Services and are retained in intangible form by the employees of the party.

- (v) **Software:** computer programs, together with input and output formats, source and object codes, program listings, data models, flow charts, outlines, narrative descriptions, operating instructions and supporting documentation, and includes the tangible media upon which such programs and documentation are recorded, including all authorized reproductions of such programs. Except as otherwise expressly provided in this Agreement, Software includes any corrections, enhancements, translations, modifications, updates, new releases, new versions and other changes (collectively, “Software Changes”).
  - (vi) **C\*STAR II Software (“C\*STAR II Software”):** version 2.1.1 of EDS’s client/server based customer information and billing software system developed for utilities with one or multiple metered or unmetered services. C\*STAR II’s design incorporates a graphical user interface with windows, action bars, pull downs, dialog boxes, “drag and drop” icons, and folders of like data. References to the C\*Star II Software shall include all Software Changes pertaining thereto provided to COA at any time by EDS.
  - (vii) **Documentation:** hard copies of the User’s Guide to the C\*STAR II Software, Version 2.1.1, including any updates and modifications provided to COA at any time by EDS.
- (b) **Rights in Deliverables.** Subject to the other provisions of this Section 14, COA will own the copyright and other intellectual property rights in and to all Deliverables, as defined in this Subsection (b), including the COA Software (except COA Software that is owned by third parties). For all such Deliverables, as well as any other item that COA licenses under this Section 14, EDS shall furnish to COA, at COA’s request, copies of any materials or media containing or relating to such items in such form as indicated in the Work Order. “Deliverables” means any Software, materials, and Software Changes that are specifically developed by EDS for delivery to COA under this Agreement.
- (c) **Third Party Software.** Any third-party software or documentation procured by EDS for and on behalf of COA and charged to COA pursuant to a Work Order will be licensed directly to COA and will be deemed "COA Software" once procured. If any EDS-Vendor Software or documentation, including any third-party software or documentation previously held or used by United Water Services Unlimited Atlanta, LLC or its affiliates transferred or sublicensed to EDS in connection with the EDS



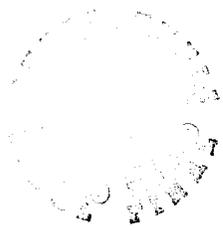
Services (I) is necessary for the operation and delivery of any Deliverable, or (II) is charged to COA pursuant to a Work Order or (III) becomes embedded in a Deliverable, then, unless otherwise provided in the applicable Work Order, EDS shall obtain for COA upon termination or expiration of this Agreement a perpetual, royalty-free, nontransferable, nonexclusive, worldwide license to use such software or documentation, or such other license as EDS and COA agree in writing. All software that is licensed by a party from a third party vendor will be and remain the property of such vendor.

- (d) **Development Tools; Residual Technology;** Subject to the restrictions on the disclosure of confidential information set forth in Exhibit C, EDS will continue to own the Development Tools, but COA will have a license to the Development Tools to the extent they constitute EDS Software (as provided in paragraphs (e) or (f) below) or Third-Party Software (as provided in paragraph (c) above), solely in connection with the use and maintenance of the EDS Software, in the United States, and to meet COA's internal needs and the needs of its customers and business partners. Subject to the restrictions on the disclosure of confidential information set forth in Exhibit C, each party will be free to have and use any Residual Technology. All know-how, intellectual property, methodologies, processes, technologies, algorithms, ideas, concepts and forms, templates and output used by EDS in performing the Services which are supplied by EDS, are, and shall continue to be, owned by EDS, including all improvements thereto that are developed or created by or on behalf of EDS in the course of performing the Services without reference to or use of the confidential information of COA.
- (e) **License Grant to C\*STAR II Software.** EDS grants to COA, and COA accepts from EDS, a perpetual, royalty-free, nontransferable, nonexclusive, worldwide and limited rights license solely in the United States to install the C\*STAR II Software onto COA's network server (or any replacement therefore) and to load, execute, use and display the C\*STAR II Software on any workstations connected to or accessing COA's network(s) and to use the Documentation. The license is subject to the following restrictions:
- (i) Except as specifically permitted under Subsections (ii) and (vi) of this Subsection (e), COA will not, and will not permit its employees, agents, or contractors, (1) to sell, assign, sublicense, lease or otherwise transfer to any third party the C\*STAR II Software or the Documentation, (2) to disclose the C\*STAR II Software or Documentation to anyone other than an employee, agent or contractor of COA, (3) to copy or reproduce the C\*STAR II Software or the Documentation, or (4) to reverse assemble or reverse compile the C\*STAR II Software.
  - (ii) Except as may be expressly set forth in an amendment to this Agreement, (1) the C\*STAR II Software and Documentation will be used only in connection with data of COA, and its customers, including other municipalities in the Metropolitan Atlanta who collaborate with COA with respect to water and sewer services, and (2) the Documentation will be



accessed only by COA employees and by COA's contractors and agents who have executed a nondisclosure agreement.

- (iii) Except as otherwise expressly provided herein or in a separate agreement between COA and EDS, COA accepts responsibility for (1) the selection of the C\*STAR II Software to achieve the desired result, (2) providing at COA's expense all necessary hardware and software (other than the C\*STAR II Software) including, but not limited to, the Operating Environments and Companion Programs identified on Exhibit A hereto, and (3) the use of the C\*STAR II Software and the results obtained therefrom.
- (iv) COA (1) will not remove any copyright or proprietary notices from the C\*STAR II Software, the Documentation or any media containing the C\*STAR II Software or Documentation, and (2) will reproduce any such notices in their exact form on all permitted copies.
- (v) COA acknowledges and agrees that the C\*STAR II Software and the Documentation are the valuable property and trade secrets of EDS or other parties, that any violation by COA of this Section will cause EDS or such other parties irreparable injury for which they will have no adequate remedy at law, and that, in addition to any other remedies which EDS may have, it will be entitled to preliminary and other injunctive relief against any such violation.
- (vi) COA may make non-production copies of the C\*STAR II Software for (1) disaster recovery purposes, and (2) testing of new versions of the C\*STAR II Software to assure conformance with the then current system and operational environment. COA may make copies of the Documentation solely for dissemination to COA employees, agents and contractors to the extent necessary to make beneficial use of the C\*STAR II Software.
- (vii) COA will not export the C\*STAR II Software or Documentation, technical data or products thereof without the prior written approval of EDS and any required prior authorization from the U.S. Government.
- (viii) If any portion of the C\*STAR II Software or the Documentation comes into the possession of unauthorized third parties as a result of COA's breach of this Agreement, COA will, at its expense, take reasonable effort in consultation with EDS to remedy and/or enjoin such violation.
- (ix) Nothing in this Agreement shall require COA to adopt or enforce access or confidentiality restrictions with respect to the normal operation of its customer service center or the use or distribution of input, output, reports or templates used in the operation of the C\*STAR II Software, provided, however, that the normal operation of the customer service center does not



allow access to the EDS Software (other than screen displays, input and output reports, and other user functions under COA's control) by third parties, other than COA's employees, contractors and agents..

- (f) **Licenses.** For any EDS Software other than the C\*STAR II Software addressed in paragraph (e) above, EDS hereby grants to COA, and COA accepts from EDS, a perpetual, royalty-free, nontransferable, nonexclusive, worldwide license to use any EDS Software, including Development Tools and any related documentation, that are embedded in such Deliverables or the C\*STAR II Software or are necessary for the use or maintenance of those Deliverables or the C\*STAR II Software, as listed in the applicable Work Order, solely in the United States, to meet COA's internal needs and the needs of its customers and business partners, to install such EDS Software onto COA's network servers, and to load, execute, use and display such EDS Software on any workstation connected to or accessing COA's networks. To the extent any additional EDS Software exists that is necessary to perform the EDS Services and is not included in the foregoing license, EDS agrees to grant COA a license to such additional EDS Software upon termination of this Agreement provided that EDS and COA enter into a mutually agreeable license agreement. Any Work Order under this Agreement shall list all EDS Software that is necessary for the use or maintenance of any Deliverables in that Work Order.
- (g) **Copies.** COA may make copies of any EDS Software licensed to COA for (1) back-up or disaster recovery purposes, and (2) testing of new versions of the EDS Software to assure conformance with the then current system and operational environment. COA may make copies of the Documentation solely for internal dissemination.
- (h) **Other Activities.** Subject to the restrictions on the disclosure of confidential information set forth in Exhibit C, nothing in this Agreement will impair either party's right to acquire, license, market, distribute, develop for itself or others or have others develop for such party similar technology performing the same or similar functions as the technology and EDS Services contemplated by this Agreement. COA will own all patent rights in business methods and other inventions, created or developed by COA; EDS will own all patent rights in business methods and other inventions related to the Deliverables, created or developed by EDS, provided, however, that EDS grants COA licenses to such EDS-owned patents as part of the Deliverable. The provisions of this Section 14 will survive the expiration or termination of this Agreement for any reason.
- (i) **Further Actions.** EDS and COA agree to sign and record such further instruments and take such further actions as either party may reasonably request to give effect to this Section 14. The provisions of this Section 14 shall also apply to all work of EDS personnel, agents and COA-approved subcontractors. EDS shall take such action as may be reasonably necessary to obtain their commitment to and compliance with the foregoing.

15. **Mediation.** Any dispute, controversy or claim arising under, out of, in connection with or in relation to this Agreement, or the breach, termination, validity or enforceability of any provision hereof (a "Dispute"), if not resolved informally through negotiation between the parties, will be submitted to non-binding mediation; provided that nothing in this Section 15 shall limit a party's right to seek equitable relief including an injunction or other emergency relief from a court of competent jurisdiction. The parties will mutually determine who the mediator will be from a list of mediators obtained from the American Arbitration Association office located in Atlanta, Georgia (the "AAA") or from a private mediation company the parties agree to use in writing. If the parties are unable to agree on the mediator, the mediator will be selected by the AAA or private mediation company as the case may be. Each party will bear its own costs and expenses with respect to the mediation, including one-half of the fees and expenses of the mediator. If any Dispute is not resolved after one day of mediation, the parties may proceed with any suit, action or other proceeding to adjudicate any Dispute, provided that the parties acknowledge, agree and consent to the exercise of exclusive jurisdiction by the Superior Court of Fulton County, Georgia, Atlanta Judicial Circuit for any Dispute. Any mediation conducted pursuant to this Section 15 will take place in Atlanta, Georgia. Nothing in this Section 15 prevents the parties from exercising their right to terminate this Agreement in accordance with Section 16.

16. **Termination.**

- (a) **Termination for Cause.** If either party materially defaults in the performance of any of its duties or obligations hereunder (except for a default in payments to EDS), which default is not substantially cured within sixty (60) days after written notice is given to the defaulting party specifying the default, or with respect to any default which cannot reasonably be cured within sixty (60) days, the defaulting party fails to commence curing said default and thereafter to proceed with all due diligence to substantially cure the same, then the party not in default may, by giving written notice thereof to the defaulting party, terminate this Agreement as of a date specified in such notice of termination.
- (b) **Termination for Nonpayment.** If COA defaults in the payment when due of any amount due to EDS hereunder and does not cure such default within fifteen (15) business days after being given written notice of such default, EDS may, by giving written notice thereof to COA, terminate this Agreement as of a date specified in such notice of termination.
- (c) **Termination for Insolvency.** If either party hereto becomes or is declared insolvent or bankrupt, is the subject of any proceedings relating to its liquidation, insolvency or for the appointment of a receiver or similar officer for it, makes an assignment for the benefit of all or substantially all of its creditors, or enters into an agreement for the composition, extension, or readjustment of all or substantially all of its obligations, then the other party hereto may, by giving written notice thereof to such party terminate this Agreement as of a date specified in such notice of termination.



- (d) **Termination For Convenience.** COA may terminate this Agreement, in whole or in part, without cause in its sole discretion by providing written notice of such termination to EDS at least ninety (90) calendar days prior to the effective date of such termination; provided that termination of services of Independent Contractors is permitted as provided in Section 10(b).
- (e) **Payment Upon Termination for Convenience.** Upon termination for convenience, EDS shall be entitled to approved charges through the termination date, plus an equitable adjustment determined as follows: EDS will notify COA of its decision for redeployment of EDS employees previously dedicated exclusively to providing the EDS Services, including by reassignment to new positions locally, reassignment to new positions at other locations, or termination. In connection with such action, COA shall pay EDS the following: (i) For EDS employees who are assigned to the account as of the termination date, COA shall pay EDS one-half of the applicable monthly support charges for such individuals prorated, as applicable, for the period beginning on the termination date and ending on the earliest of the reassignment or termination of employment of such individual, not to exceed ninety (90) days. In no event shall such charges exceed one-half of three (3) months' support charges for each such individual; (ii) For EDS employees who are released from employment with EDS due to the termination, COA shall pay EDS's actual severance expenses as described in EDS's then current Corporate Severance Policy. In no event shall COA's obligation for such charges exceed two (2) months' base salary for each such individual; (iii) For EDS employees who are relocated in connection with a reassignment to a different EDS account outside the Atlanta metropolitan area as a result of such termination, COA shall pay EDS's actual relocation expenses for each relocated employee, subject to a maximum of two (2) months' base salary for each such individual. In no case shall COA be responsible for more than the following termination charges (whichever is least), in the aggregate, for any termination or partial termination: (A) ninety (90) days' total support charges, or (B) thirty (30) days' total support charges plus severance charges, or (C) thirty (30) days' total support charges plus relocation charges. Termination of Independent Contractors shall not be subject to this Section 16(e) and instead shall be governed by Section 10(b).
- (f) **Disputed Sums.** The Parties agree that COA may withhold payment for disputed invoices for EDS's services. EDS may not terminate this Agreement based on an alleged monetary default which COA in good faith contests, pursuant to Section 8(f).
- (g) **Default and Termination Notices.** In addition to the requirements of Section 20, to be effective and to commence the running of any applicable cure period, any notice given pursuant to this Section 16 must explicitly identify the type of notice being given, whether of default or termination, and reference this Section 16.
- (h) **Survival.** The expiration or termination of this Agreement for any reason will not



release either party from any liabilities or obligations set forth herein which (a) the parties have expressly agreed will survive any such expiration or termination, (b) remain to be performed or by their nature would be intended to be applicable following any such expiration or termination, such as warranties and indemnification rights, or (c) pertain to ownership or licenses of Deliverables, work product, or other matters.

- (i) **Transition Assistance.** If COA decides to discontinue use of any System or Deliverables, in whole or in part, or terminate any EDS Services, or otherwise meet its requirements through other means, EDS will assist and comply with COA's reasonable directions to cause the orderly transition and migration with regard to EDS's Services so that COA or third-party contractor(s) selected by COA are properly equipped to perform such services (the "Termination Assistance"). As part of the Termination Assistance, (a) EDS and COA will work together to develop a transition plan (the "Transition Plan") setting forth the respective tasks to be accomplished by each party in connection with the orderly transition and a schedule pursuant to which the tasks are to be completed; (b) EDS will provide COA with detailed specifications for converting data and reports, unwinding and replacing interfaces, and conducting testing and maintenance procedures incident to such migration; (c) EDS will provide appropriate technical assistance or training for COA employees who will be assuming responsibility for support of the System; and (d) if EDS provides third-party software, EDS will use commercially reasonable efforts to cooperate with COA in order to help COA negotiate license arrangements with such third parties that will minimize the amount of license transfer and assignment fees to be paid by COA. COA may, at its election, participate in or lead the negotiation of such license arrangements. EDS will be compensated for such transition services. Such compensation shall be on commercially reasonable terms consistent with the price structure of the Work Order that is being terminated.

17. **Indemnities.** EDS will have the indemnity obligations set forth in Exhibit E.

18. **Liability.**

- (a) **General Limitation.** In the event that either party shall be held liable to the other, for any matter or matters arising out of, under, or in connection with this Agreement, whether based on an action or claim in contract, equity, negligence, tort or otherwise, the amount of damages recoverable against such party for all events, acts or omissions shall not exceed in the aggregate an amount equal to the total amount paid by COA to EDS under this Agreement.
- (b) **Limitation on Other Damages.** In no event will the measure of damages payable by either party include, nor will either party be liable for, any amounts for loss of income, profit or savings or indirect, incidental, consequential, exemplary, punitive or special damages of any party, including third parties, even if such party has been advised of the possibility of such damages in advance, and all such damages are

expressly disclaimed.

(c) **Exceptions to Limitations.** The limitations set forth in Sections 18(a) and 18(b) will not apply to:

(i) the liability of either party to the extent such liability results from (A) that party's acts of intentional tortious conduct in the performance or nonperformance of its obligations under this Agreement (B) that party's nonperformance of its payment obligations for services rendered to the other expressly set forth in this Agreement (including, with respect to COA, COA's obligation to make payments to EDS during the original term of this Agreement as required hereby, whether in the form of charges or for payment or reimbursement of taxes, out-of-pocket expenses or pass-through expenses);

(ii) the obligations of EDS in Sections E-2 and E-3 of Exhibit E.

(d) **Acknowledgement.** The parties expressly acknowledge that the limitations and exclusions set forth in this Section 18 have been the subject of active and complete negotiation between the parties and represent the parties' agreement taking into account each party's level of risk associated with the performance or nonperformance of its obligations under this Agreement and the payments and other benefits to be derived by each party pursuant to this Agreement. The provisions of this Section 18 will survive the expiration or termination of this Agreement for any reason.

19. **Right to Engage in Other Activities.** COA acknowledges and agrees that EDS may provide information technology services for third parties at any EDS facility that EDS may utilize from time to time for performing the EDS Services. Subject to the restrictions on the disclosure of confidential information set forth in Exhibit C, nothing in this Agreement will impair EDS's right to acquire, license, market, distribute, develop for itself or others or have others develop for EDS similar technology performing the same or similar functions as the technology and EDS Services contemplated by this Agreement.

20. **Notices.** All notices under this Agreement will be in writing and will be deemed to have been duly given if delivered personally or by a nationally recognized courier service, faxed or mailed by registered or certified mail, return receipt requested, postage prepaid, to the parties at the addresses below:

In the case of EDS:

Electronic Data Systems Corporation  
736 Park North Boulevard  
Clarkston, GA 30021  
Attention: Cheryll Collier  
Facsimile: (404) 297-3749

with a copy to:

03-~~8~~-1716

(Do Not Write Above This Line)

A RESOLUTION

BY CITY UTILITIES COMMITTEE:

A RESOLUTION AUTHORIZING THE MAYOR TO EXECUTE, ON BEHALF OF THE CITY, AN ASSIGNMENT AND ASSUMPTION AGREEMENT WITH UNITED WATER SERVICES ATLANTA LLC AND UNITED WATER RESOURCES, INC. AND AN AMENDED AND RESTATED SERVICES AGREEMENT FOR THE PROVISION OF INFORMATION TECHNOLOGY SERVICES WITH ELECTRONIC DATA SYSTEMS CORPORATION AND EDS INFORMATION SERVICES L.L.C. FOR AN AMOUNT NOT TO EXCEED \$2,000,000; AND FOR OTHER PURPOSES.

ADOPTED BY

OCT 2 0 2003

*Stacey K. Abrams*  
STACEY K. ABRAMS  
DEPUTY CITY ATTORNEY

**COUNCIL**  
**AS AMENDED**

- CONSENT REFER
- REGULAR REPORT REFER
- ADVERTISE & REFER
- 1st ADOPT 2nd READ & REFER
- PERSONAL PAPER REFER

Date Referred

Referred To:

Date Referred

Referred To:

Date Referred

Referred To:

First Reading

Committee \_\_\_\_\_  
Date \_\_\_\_\_  
Chair \_\_\_\_\_  
Referred To \_\_\_\_\_

*City Utilities*  
Date *10/1/2003*

*Chair*

*Chair*

Fav, Adv, Hold (see rev. side)  
Other

Members

*Members*

*Members*

*Members*

Refer To

Committee

Date

Chair

Fav, Adv, Hold (see rev. side)  
Other

Members

*Members*

*Members*

*Members*

Refer To

Committee

Date

Chair

Action  
Fav, Adv, Hold (see rev. side)  
Other

Members

Action  
Fav, Adv, Hold (see rev. side)  
Other

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Refer To

FINAL COUNCIL ACTION

2nd  1st & 2nd  3rd

Readings

Consent  V Vote  ERC Vote

CERTIFIED

**CERTIFIED**  
OCT 2 0 2003

*City Utilities*  
MAYOR'S ACTION

**CERTIFIED**  
OCT 2 0 2003

*Paula B. Hamilton*  
MUNICIPAL CLERK

MAYOR'S ACTION

OCT 2 0 2003

*Mayor's Action*