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**MERGER OR SHARE EXCHANGE**

**SWWC Utilities, Inc. (DE Corporation)**

Certificate of Status	0
Certified Copy	1
Page Count	14
Estimated Charge	\$78.75

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Corporate Filing Menu

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**ARTICLES OF MERGER**  
**(Profit Corporations)**

The following articles of merger are submitted in accordance with the Florida Business Corporation Act, pursuant to Section 607.1105, Florida Statutes.

**First:** The name and jurisdiction of the surviving corporation:

<u>Name</u>	<u>Jurisdiction</u>	<u>Document Number</u>
SWWC Utilities, Inc.	Delaware	4362102

**Second:** The name and jurisdiction of each merging corporation:

<u>Name</u>	<u>Jurisdiction</u>	<u>Document Number</u>
Southwest Water Florida, Inc.	Florida	P04000077693

**Third:** The plan of merger is attached as Exhibit A.

**Fourth:** The merger shall become effective on the date the Articles of Merger are filed with the Florida Department of State.

**Fifth:** The plan of merger was adopted by the shareholders of the surviving corporation on November 1, 2007.

**Sixth:** The plan of merger was adopted by the shareholders of the merging corporations on November 1, 2007.

**Seventh: SIGNATURES FOR EACH CORPORATION**

**SWWC UTILITIES, INC.**

By: Michael O. Quinn  
Michael O. Quinn, President

By: William K. Dix  
William K. Dix, Secretary

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**SOUTHWEST WATER FLORIDA, INC.**

By: Michael O. Quinn  
Michael O. Quinn, President

By: William K. Dix  
William K. Dix, Secretary

Apr. 10. 2008 9:19AM

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**Exhibit A**  
**Plan of Merger**

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## **AGREEMENT AND PLAN OF MERGER**

**THIS AGREEMENT AND PLAN OF MERGER** (the "Agreement"), dated as of November 1, 2007, is made by and between **SWWC UTILITIES, INC.**, a Delaware corporation ("Utilities") and **SOUTHWEST WATER FLORIDA, INC.**, a Florida corporation ("SWWF"). Utilities and SWWF are hereinafter together referred to as the "Constituent Corporations".

### **Recitals**

**WHEREAS**, Utilities and SWWF desire to merge; and

**WHEREAS**, the respective boards of directors and stockholders of the Constituent Corporations have approved this Agreement, the Merger, and the related transactions contemplated hereby;

**NOW, THEREFORE**, the parties hereto agree as follows:

### **Agreement**

## **ARTICLE I THE MERGER**

### **1.1 The Merger**

(a) Subject to the terms and conditions hereof, at the Effective Time (defined below), SWWF shall merge with and into Utilities (the "Merger") in accordance with the laws of the State of Delaware and, so far as applicable, the laws of the State of Florida, whereupon the separate existence of SWWF shall cease and Utilities shall be the surviving corporation (the "Surviving Corporation").

(b) At the Closing (defined below), Utilities and SWWF shall cause a duly executed certificate of merger to be filed with the Secretary of State of the State of Delaware (the "Certificate of Merger") and make all other filings or recordings required by Delaware and Florida law to effect the Merger. The Merger shall become effective at such time as the Certificate of Merger is duly filed with the Secretary of State of the State of Delaware or at such other time as the Constituent Corporations shall agree and specify in the Certificate of Merger (the "Effective Time").

(c) At the Effective Time, Utilities shall succeed to all the assets, rights, privileges, powers, and franchises and be subject to all of the liabilities, restrictions, disabilities, and duties of SWWF, all as provided under Delaware law.

**1.2 Conversion of Capital Stock.** At the Effective Time, by virtue of the Merger, and without any action on the part of the holders thereof:

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(a) Each share of SWWF Stock issued and outstanding immediately prior to the Effective Time shall be converted into and become one validly issued, fully paid, and nonassessable share of Utilities Stock.

(b) Each share of SWWF Stock held immediately prior to the Effective Time by SWWF as treasury stock shall be cancelled and no payment shall be made with respect thereto.

**1.3 Articles of Incorporation.** The articles of incorporation of Utilities, as in effect immediately prior to the Effective Time, shall be the articles of incorporation of the Surviving Corporation until amended in accordance with applicable law.

**1.4 Bylaws.** The Bylaws of Utilities in effect at the Effective Time shall be the Bylaws of the Surviving Corporation until amended in accordance with the provisions thereof, the provisions of the articles of incorporation of the Surviving Corporation, and applicable law.

**1.5 Directors and Officers.** At the Effective Time, until successors are duly elected or appointed in accordance with applicable law, the directors of Utilities at the Effective Time shall be the directors of the Surviving Corporation. At the Effective Time, until successors are duly elected or appointed in accordance with applicable law, the officers of Utilities at the Effective Time shall be the officers of the Surviving Corporation.

## **ARTICLE II THE CLOSING**

**2.1 The Closing.** The closing of the transactions contemplated by this Agreement (the "Closing") shall take place at the office of Musick, Peeler & Garrett LLP located at 624 South Grand Avenue, Suite 2000, Los Angeles, California, at the Effective Time, or on such other date as is mutually agreeable to the Constituent Corporations. The date of the Closing are referred to herein as the "Closing Date".

**2.2 The Closing Transactions.** Subject to the terms and conditions set forth in this Agreement, the parties hereto shall consummate the following transactions on the Closing Date:

(a) The Constituent Corporations shall cause a duly executed Certificate of Merger to be filed with the Secretary of State of the State of Delaware.

(b) The Constituent Corporations shall cause duly executed articles of merger to be filed with the Department of State of the State of Florida.

(c) Southwest Water Company, a Delaware corporation ("Southwest"), shall surrender certificates evidencing SWWF Stock for cancellation by Utilities, and Utilities shall deliver certificates evidencing the number of shares of Utilities Stock to the stockholders of SWWF entitled thereto pursuant to Section 1.2(a) above.

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### ARTICLE III CONDITIONS TO CLOSING

**3.1 Conditions to Utilities' Obligations.** The obligations of Utilities to consummate the transactions contemplated by this Agreement are subject to the satisfaction of the following conditions as of the Closing Date:

(a) The representations and warranties set forth in Article IV (other than those representations and warranties that address matters as of particular dates) shall be true and correct as of the Closing Date as though then made and on and as the Closing Date.

(b) SWWF shall have performed and complied in all material respects with all of the covenants and agreements required to be performed by it under this Agreement at or prior to the Closing.

(c) No judgment, decree, or order shall have been entered which would prevent the performance of this Agreement or the consummation of any of the transactions contemplated hereby, declare unlawful the transactions contemplated by this Agreement, or cause such transactions to be rescinded.

(d) SWWF shall have delivered (or caused to be delivered) to Utilities each of the following:

(i) Certified copies of the articles of incorporation and bylaws (or similar organizational documents) of SWWF;

(ii) Certified copies of resolutions of the requisite stockholders of SWWF approving the consummation of the transactions contemplated by this Agreement;

(iii) Certified copies of the resolutions duly adopted by SWWF's board of directors authorizing the execution, delivery, and performance of this Agreement and the other agreements contemplated hereby to which SWWF is a party, and the consummation of all transactions contemplated hereby and thereby; and

(iv) The Certificate of Merger, duly executed by an authorized officer of SWWF.

(e) SWWF shall have obtained consents to assign all those contracts and agreements listed on Schedule 3.1 attached hereto, in a form acceptable to Utilities.

(f) SWWF shall have executed and delivered to Utilities all such other documents and instruments as in Utilities' judgment are reasonably required to give effect to the Merger.

If the Closing occurs, all closing conditions set forth in this Section 3.1 which have not been fully satisfied as of the Closing shall be deemed to have been waived by Utilities.

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**3.2 Conditions to SWWF's Obligations.** The obligation of SWWF to consummate the transactions contemplated by this Agreement is subject to the satisfaction of the following conditions as of the Closing Date:

(a) The representations and warranties set forth in Article V (other than those representations and warranties that address matters as of particular dates) shall be true and correct as of the Closing Date as though then made and on and as the Closing Date.

(b) Utilities shall have performed and complied in all material respects with all the covenants and agreements required to be performed by it under this Agreement at or prior to the Closing.

(c) No judgment, decree, or order shall have been entered which would prevent the performance of this Agreement or the consummation of any of the transactions contemplated hereby, declare unlawful the transactions contemplated by this Agreement, or cause such transactions to be rescinded.

(d) Utilities shall have executed and delivered certified copies of the resolutions duly adopted by Utilities' stockholders and board of directors authorizing the execution, delivery, and performance of this Agreement.

If the Closing occurs, all closing conditions set forth in this Section 3.2 which have not been fully satisfied as of the Closing shall be deemed to have been waived by SWWF.

#### **ARTICLE IV REPRESENTATIONS AND WARRANTIES OF SWWF**

SWWF represents and warrants to Utilities that:

**4.1 Organization and Corporate Power.** SWWF is a corporation duly organized, validly existing, and in good standing under the laws of the State of Florida and has all requisite corporate power and authority and all authorizations, licenses, and permits necessary to own and operate its properties and to carry on its businesses as now conducted, except where the failure to hold such authorizations, licenses, and permits would not have a Material Adverse Effect. SWWF is qualified or licensed to do business and is in good standing in every jurisdiction in which its ownership of property or the conduct of business as now conducted requires it to qualify or be licensed, except where the failure to be so qualified or be licensed would not have a Material Adverse Effect. SWWF has made available to Utilities a complete and correct copy of the articles of incorporation and bylaws, each as in effect on the date hereof, of SWWF.

**4.2 Subsidiaries.** SWWF has no subsidiaries. SWWF does not own or hold the right to acquire any stock, partnership interest, or joint venture interest or other equity ownership interest in any other corporation, organization, or entity.

#### **4.3 Authorization; No Breach; Valid and Binding Agreement**

(a) SWWF has all necessary corporate power and authority to execute and deliver this Agreement and to perform its obligations hereunder. The execution, delivery, and



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performance of this Agreement by SWWF and the consummation of the transactions contemplated hereby have been duly and validly authorized by all requisite corporate action (including requisite stockholder approval of this Agreement and the actions contemplated hereby), and no other corporate proceedings on its part are necessary to authorize the execution, delivery, or performance of this Agreement.

(b) The execution, delivery, and performance of this Agreement by SWWF and the consummation of the transactions contemplated hereby do not conflict with or result in any breach of, constitute a default under, result in a violation of, result in the creation of any lien upon any material assets of SWWF under, or require any authorization, consent, approval, exemption or other action by or notice to any court or other governmental body under, the provisions of SWWF's articles of incorporation or bylaws or any material indenture, mortgage, lease, loan agreement, or other material agreement or material instrument to which SWWF is a party or by which SWWF's assets or property are bound, or any material law, statute, rule, or regulation or order, judgment, or decree to which SWWF is subject. Assuming that this Agreement is a valid and binding obligation of the other party hereto, this Agreement constitutes a valid and binding obligation of SWWF, enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy laws, other similar laws affecting creditors' rights, and general principles of equity affecting the availability of specific performance and other equitable remedies.

**4.4 Capital Stock.** As of the date hereof, the authorized number of shares of capital stock of SWWF is 1,000, consisting of 1,000 shares of SWWF common stock, of which 1,000 shares are issued and outstanding, all of which are owned of record by Southwest. There are no rights, subscriptions, warrants, options, conversion rights, or agreements of any kind outstanding to purchase or otherwise acquire any shares of capital stock or other equity securities of SWWF of any kind. There are no agreements or other obligations (contingent or otherwise) which require SWWF to repurchase or otherwise acquire any shares of SWWF's capital stock or other equity securities.

**4.5 Litigation.** There are no actions, suits, claims, or proceedings or, to SWWF's knowledge, investigations, pending or, to SWWF's knowledge, threatened against SWWF or its assets or properties, at law or in equity, or before or by any federal, state, municipal or other governmental department, commission, board, bureau, agency, or instrumentality, domestic or foreign, and SWWF is not subject to any outstanding judgment, writ, injunction, order, or decree of any court or governmental body.

**4.6 Governmental Consents.** No material permit, consent, approval, or authorization of, or declaration to or filing with, any governmental or regulatory authority is required in connection with any of the execution, delivery, or performance of this Agreement by SWWF or the consummation by SWWF of any other transaction contemplated hereby.

**4.7 Employee Benefit Plans.** SWWF does not maintain, contribute to, or have any obligation or liability (contingent or otherwise) with respect to (i) any "pension plan" (as defined under Section 3(2) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA") (29 U.S.C. § 1002(2))), (ii) any "welfare plan" (as defined under Section 3(1) of ERISA (29 U.S.C. § 1002(1))), and (iii) any other material employee benefit plans, policies,

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agreements, or arrangements, including but not limited to employment, consulting, or other compensation agreements, or bonus or other incentive compensation, stock purchase, equity, or equity-based compensation, deferred compensation, change in control, severance, sick leave, vacation, loans, salary continuation, health, life insurance, and educational assistance plan, policies, agreements, or arrangements.

**4.8 Compliance with Laws.** SWWF is in compliance with all applicable laws and regulations of foreign, federal, state, and local governments and all agencies thereof in all material respects. SWWF holds and is in compliance in all material respects with all permits, licenses, certificates, accreditations, or other authorizations or consents of a Governmental Entity required for the conduct of its business.

## **ARTICLE V REPRESENTATIONS AND WARRANTIES OF UTILITIES**

Utilities represents and warrants to SWWF that:

**5.1 Organization and Corporate Power.** Utilities is a corporation duly organized, validly existing, and in good standing under the laws of the State of Delaware, with full corporate power and authority to enter into this Agreement and perform its obligations hereunder.

**5.2 Authorization.** The execution, delivery, and performance of this Agreement by Utilities and the consummation of the transactions contemplated hereby have been duly and validly authorized by all requisite corporate action, and no other proceedings on its part are necessary to authorize the execution, delivery, or performance of this Agreement. This Agreement has been duly executed and delivered by Utilities, and assuming that this Agreement is a valid and binding obligation of SWWF, this Agreement constitutes a valid and binding obligation of Utilities, enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy laws, other similar laws affecting creditors' rights, and general principles of equity affecting the availability of specific performance and other equitable remedies.

**5.3 No Violation.** Utilities is not subject to or obligated under its articles of incorporation, its bylaws (or similar organizational documents), any applicable law, or rule or regulation of any governmental authority, or any material agreement or instrument, or any material license, franchise, or permit, or subject to any order, writ, injunction, or decree, which would be breached or violated in any material respect by Utilities' execution, delivery, or performance of this Agreement or the consummation of the transactions contemplated hereby.

## **ARTICLE VI COVENANTS OF SWWF**

**6.1 Conduct of the Business.** From the date hereof until the Effective Time, SWWF shall use commercially reasonable efforts to (i) conduct its business in the ordinary course of business and (ii) preserve the present business operations, organization, goodwill, and relationships with customers and suppliers.

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**6.2 Conditions.** SWWF shall use all commercially reasonable efforts to cause the conditions set forth in Section 3.1 to be satisfied and to consummate the transactions contemplated herein as soon as reasonably possible after the satisfaction of the conditions set forth in Article III (other than those to be satisfied at the Closing). In addition, SWWF will use commercially reasonable efforts to obtain the consents set forth in Schedule 3.1.

#### **ARTICLE VII COVENANTS OF UTILITIES**

**7.1 Conditions.** Utilities shall use all commercially reasonable efforts to cause the conditions set forth in Section 3.2 to be satisfied and to consummate the transactions contemplated herein as soon as reasonably possible after the satisfaction of the conditions set forth in Article III (other than those to be satisfied at the Closing).

**7.2 Communications with Customers and Suppliers.** Prior to the Closing, Utilities may communicate with the employees, customers, and suppliers of SWWF in connection with the transactions contemplated hereby in cooperation with SWWF as necessary to facilitate the Merger.

#### **ARTICLE VIII AMENDMENT OR ABANDONMENT OF MERGER**

**8.1 Amendment.** The boards of directors of the Constituent Corporations may amend this Agreement at any time prior to the Effective Time in accordance with applicable law, provided that an amendment made subsequent to the adoption of the Agreement by the stockholders of either Constituent Corporation shall not (a) alter or change the amount or kind of shares, securities, cash, property, or rights to be received in exchange for or on conversion of all or any of the shares of any class or series thereof of such Constituent Corporation, (b) alter or change any term of the articles of incorporation of the Surviving Corporation to be effected by the merger, or (c) alter or change any of the terms and conditions of this Agreement if such alteration or change would adversely affect the holders of any class or series thereof of such Constituent Corporation.

**8.2 Abandonment.** The board of directors of either Constituent Corporation may terminate this Agreement at any time prior to the Effective Time in accordance with applicable law, notwithstanding approval of the Agreement by the stockholders of both or either of the Constituent Corporations.

#### **ARTICLE IX DEFINITIONS**

**9.1 Definitions.** For purposes hereof, the following terms when used herein shall have the respective meanings set forth below:

(a) "Commercially reasonable efforts" means the efforts that a commercially reasonable Person desirous of achieving a result would use in similar circumstances to achieve that result as expeditiously as reasonably practicable; provided, however, that a Person required to use commercially reasonable efforts under this Agreement will not be thereby required to take

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any action that would result in a material adverse change in the benefits to such Person of this Agreement or the transactions contemplated hereby, to make any change to its business, to incur any fees or expenses (other than normal and usual filing fees, processing fees, and incidental expenses), to commence any litigation or to incur any other material burden.

(b) "Governmental Entity" means any (i) nation, region, state, province, county, city, town, village, district, or other jurisdiction, (ii) federal, state, local, municipal, foreign, or other government, (iii) governmental or quasi-governmental authority of any nature (including any governmental agency, branch, department, or other entity), (iv) multinational organization, or (v) body entitled to exercise any judicial, administrative, executive, or regulatory power of any nature.

(c) "Material Adverse Effect" means any change, effect, event, occurrence, state of facts, or development that is or with the passage of time will be materially adverse to the assets, properties, financial condition, or results of operations of SWWF or the ability of SWWF to consummate the transactions contemplated hereby; provided, however, that none of the following shall be deemed in themselves, either alone or in combination, to constitute, and none of the following shall be taken into account in determining whether there has been or will be, a Material Adverse Effect: any adverse change, effect, event, occurrence, state of facts, or development attributable to (i) the announcement of this Agreement or the closing of the transactions contemplated hereby; (ii) general conditions affecting the industry in which SWWF participates, the United States economy as a whole, or the capital markets in general other than any adverse change, effect, event, occurrence, state of facts, or development which disproportionately affects SWWF; (iii) compliance with the terms of, or the taking of any action required by, this Agreement; (iv) any change in applicable laws or the interpretation thereof; (v) any change in GAAP or other accounting requirements or principles or any change in applicable laws, rules, or regulations or the interpretation thereof; or (vi) the commencement, continuation, or escalation of a war, material armed hostilities, or other material international or national calamity or act of terrorism directly or indirectly involving the United States of America.

(d) "Person" means an individual, a partnership, a corporation, a limited liability company, an association, a joint stock company, a trust, a joint venture, an unincorporated organization, or a Governmental Entity or any department, agency, or political subdivision thereof.

(e) "SWWF Stock" means the common stock, \$0.01 par value per share, of SWWF.

(f) "SWWF's knowledge" means the actual knowledge of its Chief Executive Officer, Chief Financial Officer, and any Vice President, and "notice to SWWF", "notified SWWF", and other phrases of similar meaning means a notice delivered to SWWF of which any of the above-mentioned officers have actual knowledge.

(g) "Utilities Stock" means the common stock, \$0.01 par value per share, of Utilities.

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## ARTICLE X MISCELLANEOUS

**10.1 Notices.** All notices, demands, and other communications to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and shall be deemed to have been given (a) when personally delivered, (b) when transmitted via facsimile (or other facsimile device) to the number set out below if the sender on the same day sends a confirming copy of such notice by a recognized overnight delivery service (charges prepaid), (c) the day following the day (except if not a business day then the next business day) on which the same has been delivered prepaid to a reputable national overnight air courier service, or (d) the third business day following the day on which the same is sent by certified or registered mail, postage prepaid. Notices, demands, and communications, in each case to the respective parties, shall be sent to the applicable address set forth below, unless another address has been previously specified in writing:

### Notices to Utilities

SWWC Utilities, Inc.  
c/o Southwest Water Company  
624 South Grand Avenue, 29<sup>th</sup> Floor  
Los Angeles, California 90017  
Attention: William K. Dix, Vice President, General Counsel  
Facsimile: 213.929.1880

### Notices to SWWF

Southwest Water Florida, Inc.  
c/o Southwest Water Company  
624 South Grand Avenue, 29<sup>th</sup> Floor  
Los Angeles, California 90017  
Attention: William K. Dix, Vice President, General Counsel  
Facsimile: 213.929.1880

**10.2 Severability.** Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

**10.3 Complete Agreement.** This Agreement and the documents referred to herein contain the complete agreement between the parties hereto and supersede any prior understandings, agreements, or representations by or between the parties, written or oral, which may have related to the subject matter hereof in any way.

**10.4 Third-Party Beneficiaries.** Certain provisions of this Agreement are intended for the benefit of, and shall be enforceable by, Southwest. Except as otherwise expressly provided herein, nothing expressed or referred to in this Agreement will be construed to give any

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Person other than the parties to this Agreement and Southwest any legal or equitable right, remedy, or claim under or with respect to this Agreement or any provision of this Agreement.

**10.5 Counterparts.** This Agreement may be executed in multiple counterparts, any one of which need not contain the signature of more than one party, but all such counterparts taken together shall constitute one and the same instrument.

**10.6 Governing Law.** All issues and questions concerning the construction, validity, interpretation, and enforceability of this Agreement and the exhibits and schedules hereto shall be governed by, and construed in accordance with, the laws of the State of Delaware, without giving effect to any choice of law or conflict of law rules or provisions (whether of the State of Delaware or any other jurisdiction) that would cause the application of the laws of any jurisdiction other than the State of Delaware.

**IN WITNESS WHEREOF,** the parties hereto have executed this Agreement and Plan of Merger on the day and year first above written.

**SWWC UTILITIES, INC.**

By: Michael O. Quinn  
Michael O. Quinn, President

By: William K. Dix  
William K. Dix, Secretary

**SOUTHWEST WATER FLORIDA, INC.**

By: Michael O. Quinn  
Michael O. Quinn, President

By: William K. Dix  
William K. Dix, Secretary

• Apr. 10. 2008 , 9:22AM

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**Schedule 3.1**

**Contracts and Agreements Requiring Consent to Assignment**