

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for amendment  
of Certificate No. 427-W to add  
territory in Marion County by  
Windstream Utilities Company.

Docket No. 960867-WU

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PREFILED DIRECT TESTIMONY

OF

ANDREW T. WOODCOCK, P.E.

On Behalf of Marion County, Florida

and

Joe Lettelleir/Barrett Family Partnership IV, Ltd. (JB Ranch)

- ACK \_\_\_\_\_ 35
- AFA \_\_\_\_\_ 36
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- EAG \_\_\_\_\_ 41
- LEG 1 42
- LIN 3 to y 43
- OPC \_\_\_\_\_ 44
- RCH \_\_\_\_\_
- SEC 1
- WAS Kedermann
- OTH \_\_\_\_\_

Thomas A. Cloud, Esquire  
Fla. Bar No. 293326  
GRAY, HARRIS & ROBINSON, P.A.  
Post Office Box 3068  
Orlando, FL 32802-3068  
Telephone: 407/843-8880  
Facsimile: 407/244-5690

DOCUMENT NUMBER-DATE

1 00284 JAN-95

FPSC-RECORDS/REPORTING

1                   **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

2                                   **DOCKET NO. 96-0867-WU**

3                                   **MARION COUNTY, FLORIDA and**

4   **JB RANCH**

5                   **In Re: Application for amendment of Certificate No.**

6                   **427-W to add territory in Marion County by**

7                   **Windstream Utilities Company.**

8                   **PREFILED DIRECT TESTIMONY OF ANDREW T. WOODCOCK**

9                   **Q. PLEASE STATE YOUR NAME AND BUSINESS ADDRESS.**

10                  **A. My name is Andrew T. Woodcock. My business address**  
11                  **is Hartman & Associates, Inc., 201 East Pine Street, Suite**  
12                  **1000, Orlando, Florida 32801.**

13                  **Q. COULD YOU BRIEFLY DESCRIBE YOUR EDUCATIONAL**  
14                  **BACKGROUND AND YOUR PROFESSIONAL**  
15                  **QUALIFICATIONS RELATIVE TO THE WATER AND**  
16                  **WASTEWATER INDUSTRY?**

17                  **A. I received my Bachelors of Science degree in**  
18                  **Environmental Engineering from the University of Central**  
19                  **Florida in 1988. I also received a Masters of Science**  
20                  **degree in Environmental Engineering in 1989 from the**  
21                  **University of Central Florida. I have been a registered**  
22                  **professional engineer in the State of Florida for over three**  
23                  **years.**

24                  **Q. PLEASE DESCRIBE YOUR PROFESSIONAL ENGINEERING**  
25                  **EXPERIENCE AND PLANNING EXPERIENCE**

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**CONCERNING WATER AND WASTEWATER UTILITIES.**

**A. I have participated in the planning, design, permitting and construction management of several water and wastewater projects. I am the engineer of record for three water supply and treatment expansion projects and have certified to the FDEP permit renewal of two wastewater treatment facilities. I have conducted many engineering studies including treatability studies, lead and copper compliance evaluations, utility feasibility studies, and system evaluations. I have prepared and assisted in the preparation of six utility master plans and numerous capital improvement and implementation programs. In addition, I have assisted in over ten utility valuations for utilities throughout the country.**

**Q. HAVE YOU TESTIFIED PREVIOUSLY IN THE AREA OF WATER AND WASTEWATER?**

**A. No.**

**Q. WHAT IS THE PURPOSE OF YOUR TESTIMONY?**

**A. To describe and explain Marion County's recent engineering and planning efforts related to the extension of central water and wastewater facilities in Marion County generally, as well as specifically in the area proposed by Windstream Utilities as its future certificated service area and provide statements of fact regarding Windstream Utilities' representations during meetings to negotiate a**

1 "bulk" water supply agreement with Marion County for  
2 water service.

3 Q. WHAT PLANNING AND ENGINEERING EFFORTS  
4 REGARDING PROPOSED CERTIFICATED SERVICE AREA  
5 AND SURROUNDING LAND HAS HARTMAN &  
6 ASSOCIATES ("HAI") PERFORMED ON BEHALF OF  
7 MARION COUNTY?

8 A. HAI is in the process of completing two studies regarding  
9 utilities in the S.R. 200 Subregional Service Area. This  
10 Subregional Service Area is depicted on the map attached  
11 to and incorporated in this testimony as Exhibit ATW-1  
12 and Exhibit ATW-2. These detailed studies were  
13 authorized by the Marion County Board of County  
14 Commissioners ("BOCC") to fulfill its comprehensive  
15 plans for providing central water and wastewater service  
16 in the Subregional Service Area. The first study is the  
17 Marion County Water and Wastewater Utility Consolidation  
18 Plan which was initiated in July 1996, and will be  
19 completed in January 1997. This study investigates  
20 potential ways of interconnecting county water and  
21 wastewater facilities with other privately held and not-for-  
22 profit utilities in the central portion of the County to  
23 provide an integrated system for potable water service,  
24 fire protection and wastewater service. The second study  
25 is an update to the S.R. 200 Master Plan which was

1 initiated in July 1996 and will be complete in January 1997.  
2 This study develops projections for the S.R. 200  
3 Subregional Service Area for future population and water  
4 and wastewater demand. It also provides a plan of  
5 facilities to be constructed to meet the future demand in  
6 the Subregional Service Area and presents an  
7 implementation plan for phasing the facilities. Both of  
8 these studies constitute the fulfillment of Marion County's  
9 water and wastewater planning efforts begun in 1992 and  
10 specifically set forth in 1993 in the Water Supply and  
11 Wastewater Master Plan and in 1996 in the Marion County  
12 Comprehensive Plan, as amended. The 1993 Water Supply  
13 and Wastewater Master Plans are attached and  
14 incorporated as Exhibits ATW-3 and ATW-4, respectively.  
15 Both current studies call for a 12-inch water supply line  
16 along 60th Street and S.R. 200 to provide potable water  
17 and fire flow service to the areas in question. In addition,  
18 the plan has provisions for interconnects with Windstream  
19 Utilities to form an integrated water supply network in the  
20 area. The plan also provides for a 10-inch force main  
21 along 60th Street and S.R. 200 to provide central  
22 wastewater service.

23 Q. ARE THERE ANY OTHER ACTIVITIES PERFORMED BY HAI  
24 FOR MARION COUNTY THAT RELATE TO THE S.R. 200  
25 CORRIDOR?

1           A.    HAI has performed design and permitting activities relative  
2                   to the provision of potable water, fire protection,  
3                   wastewater and reclaimed water service to two future  
4                   developments in the area; Cherrywood and JB Ranch.  
5                   These facilities are initially sized to provide service to  
6                   these developments, however, provisions have been made  
7                   to easily expand the facilities to provide County service  
8                   throughout the area as called for in the Marion County  
9                   Comprehensive Plan, as amended.

10           Q.    WHAT IS THE CHRONOLOGY OF EVENTS REGARDING  
11                   THE COUNTY'S UTILITY CONSOLIDATION EFFORTS AND  
12                   THE FILING TO AMEND THE CERTIFICATED SERVICE  
13                   AREA BY WINDSTREAM UTILITIES?

14           A.    Following the adoption of the Marion County Water  
15                   Resource Protection and Utilities Plan (the "Game Plan")  
16                   on May 21, 1996, the County held meetings with the  
17                   investor owned utility owners in Marion County to discuss  
18                   the coordination of providing utility service throughout the  
19                   County.  Representatives from Windstream Utilities  
20                   (including Mr. Dlouhy) were present at all three of the  
21                   meetings.  The first meeting was held on June 25, 1996,  
22                   where four alternatives for service was explained: (1) bulk  
23                   service agreements between the County and the utilities;  
24                   (2) public/private partnership; (3) not-for-profit  
25                   corporations; and (4) direct sale of the utilities to the

1 County. After an explanation of the alternatives,  
2 Mr. Dlouhy indicated that the first alternative, bulk service,  
3 was preferable. On this same day, June 25, 1996,  
4 Windstream submitted the application for amendment of  
5 certificate 427-W for an expansion of service territory. The  
6 remaining meetings held with the private utilities were  
7 further discussion of the particulars of each of the four  
8 alternatives.

9 In early July, representatives of the JB Ranch and  
10 Cherrywood property approached the County with the  
11 possibility of providing water and wastewater service. On  
12 August 26th representatives of JB Ranch filed a petition  
13 with the FPSC opposing Windstream's application. During  
14 the development of the service agreement for these  
15 developers, Marion County approached Windstream  
16 Utilities with the possibility of providing bulk service to the  
17 County. An initial meeting was held on August 30 to  
18 discuss the basis of the deal. The deal as presented to  
19 Mr. Dlouhy was for 50 ERC's of bulk potable water service.  
20 Mr. Dlouhy expressed his willingness to expand the deal  
21 to include fire protection or to have the County acquire  
22 Windstream Utilities through purchase. It was stated that  
23 these options would require more time to execute and that  
24 a simple bulk service agreement would initially meet the  
25 County's goals. The structure of the agreement called for

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the County to pay the capital charge for 50 ERC's and purchase water at \$0.88/1000 gallons. Another meeting was scheduled for September 10, 1996.

On September 9, a letter was sent to HAI through Windstream's attorney which included items that were not agreed to or even discussed at the August 30 meeting. A few of these items included: (1) purchasing bulk water service at \$0.95 per 1000 gallons; (2) payment of capital charges for gallonage used over the 50 ERC volume; (3) County to construct an 8-inch meter to measure the flow; (4) the right of Windstream to use the County's water lines to pass through water to other developments; (5) Windstream would receive a base facility charge equal to 70% of its current tariff of a 5/8-inch X 3/4-inch meter for every meter that connects to the County's system. On September 10 these items were discussed and agreeable terms could not be reached. Correspondence proving the existence of these negotiations are attached to and incorporated in this testimony as Composite Exhibit ATW-5.

On November 5, 1996, an agreement was signed between Marion County and the JB Ranch and Cherrywood developers to provide water and wastewater service. At this meeting, Mr. Dlouhy renewed his request to negotiate a bulk agreement. On November 12, 1996, the Board of



1 County Commissioners directed the Marion County staff  
2 and consultants to again attempt to establish a bulk  
3 service agreement with Windstream. Draft agreements  
4 were sent to Windstream on November 15, and  
5 November 20. On November 27 a facsimile was received  
6 from Windstream itemizing their concerns with the latest  
7 draft of the agreement and a meeting was scheduled for  
8 December 4 to go over the concerns.

9 Q. WHAT ARE THE DETAILS OF THE DECEMBER 4TH  
10 MEETING BETWEEN THE COUNTY AND WINDSTREAM  
11 REGARDING THE BULK DEAL?

12 A. Mr. Diouhy requested Commissioner Randy Harris to  
13 attend the meeting, and the meeting was attended by  
14 Mr. Diouhy, Mr. Harris and numerous County Staff and  
15 consultants, including me. Initially, Mr. Diouhy objected  
16 to the consent of JB Ranch and Cherrywood to the  
17 agreement. The County's plan is to construct the  
18 interconnect with Windstream in lieu of the second well  
19 provided for by the JB Ranch/Cherrywood agreement. It  
20 was explained that since this agreement would affect the  
21 facilities, consent of the parties was necessary.  
22 Mr. Diouhy agreed to keep this language in the agreement.  
23 The next objection Mr. Diouhy raised was the first point in  
24 his facsimile regarding Windstream to purchase and  
25 install the meters to Majestic Oaks. It was presented to

1 Mr. Diouhy that all facilities to be required to be  
2 constructed by Windstream Utilities would remain in the  
3 ownership of Windstream. In addition, Windstream would  
4 be eligible to receive refundable advances. Next a  
5 discussion of the refundable advances occurred. It was  
6 agreed by everyone that the refundable advance term  
7 would match that of the JB Ranch/Cherrywood agreement  
8 and that Windstream would not be subject to receive  
9 refundable advances for the ERC's already allocated by  
10 the JB Ranch/Cherrywood agreement. The next point  
11 Mr. Diouhy raised involved the pressure sets. After a  
12 discussion of the service requirements; it was agreed that  
13 the pressure sets for Windstream would be a high  
14 pressure of 80 psi, and the County would have a high  
15 pressure of 65 psi, with the pressures to be measured at  
16 the WTP discharge. Mr. Diouhy also questioned the timing  
17 of the future meters but agreed to the timing after it was  
18 explained that the lines to serve the meters were not yet  
19 constructed and the timing was under the control of JB  
20 Ranch. The agreement was revised to include that the  
21 meter installation would occur when the lines were  
22 installed. Mr. Diouhy's next item concerned the agreement  
23 being contingent on the FPSC approving the bulk rate by  
24 January 31. He expressed concern that the timing of the  
25 FPSC Board meetings would make this difficult. It was

1 stated to Mr. Diouhy that this was the deadline by when  
2 the County needed to know in order to timely provide the  
3 facilities to provide service to JB Ranch and Cherrywood.  
4 Mr. Diouhy agreed to this point after it was represented  
5 that the County would support his efforts with the FPSC in  
6 order to secure the deal. A discussion of the timing  
7 required to meet these deadlines occurred next. It was  
8 agreed by Mr. Diouhy that the agreement with these  
9 revisions would be signed and returned to the County by  
10 December 11 to make it to the December 17 BOCC meeting  
11 for approval. After approval, the agreement was to be  
12 immediately presented to the FPSC for consideration of  
13 the bulk rate. Mr. Diouhy next raised a concern over the  
14 30-year time limit of the agreement. It was expressed to  
15 him that he was free to choose a time limit, however, a  
16 perpetual time limit was not acceptable. Mr. Diouhy  
17 agreed to the 30-year limit after which the agreement could  
18 be renegotiated. The next area of concern for Mr. Diouhy  
19 was his uncertainty and doubt that Windstream alone  
20 could obtain the necessary easements to construct the  
21 interconnections. The County representatives agreed to  
22 assist him in obtaining the easements. It was also agreed  
23 by the parties that matching the alignment shown in the  
24 exhibits to the agreement was critical because any other  
25 routing would make the interconnect cost ineffective and

1                   uneconomical. Mr. Diouhy next stated he wanted more  
2                   service area than what was shown in the agreement  
3                   exhibits. County representatives explained that the area  
4                   shown had been previously discussed and agreed to in  
5                   front of the BOCC and was necessary to obtain the cost  
6                   effectiveness of the interconnect. Any revisions would  
7                   require an adjustment to the agreed upon bulk rate.  
8                   Mr. Diouhy accepted the service area exhibits in the  
9                   agreement. It was also agreed that Windstream would  
10                  always have preferential pressure sets over any other  
11                  utility that interconnects with the County and these  
12                  systems would remain at the County's high pressure  
13                  previously agreed to. At the end of the meeting the  
14                  schedule was reiterated, and both parties agreed to  
15                  accomplish the necessary tasks to finalize the deal. On  
16                  December 6th, the agreement was sent to Windstream  
17                  Utilities, however no response whatsoever was received.

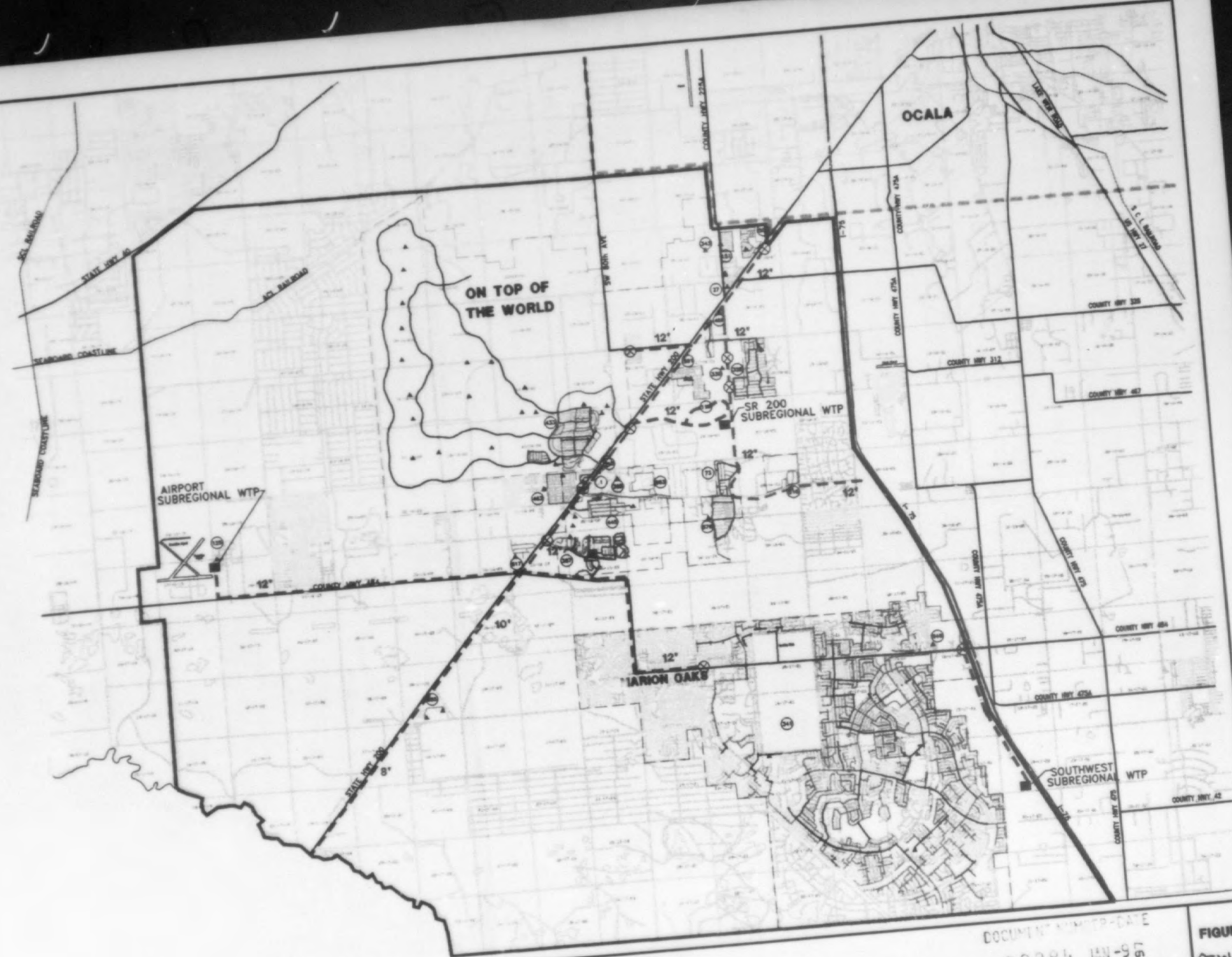
18                  Q.    DOES THIS CONCLUDE YOUR PREFILED TESTIMONY?

19                  A.    Yes, it does.



**LEGEND**

- CITY OF OCALA TERRITORIAL BOUNDARY
- STUDY AREA BOUNDARY
- SERVICE AREA BOUNDARY
- WATER MAIN - 4" AND SMALLER
- WATER MAIN - 6"
- WATER MAIN - 8"
- WATER MAIN - 10"
- WATER MAIN - 12"
- WATER MAIN - 14"
- WATER MAIN - 16" AND LARGER
- ▲ WELL AND WATER TREATMENT PLANT
- ELEVATED WATER STORAGE
- WATER SYSTEM ITEM NUMBER
- ⊗ METERED INTERCONNECT
- - - - PROPOSED WATER MAIN



**STATE ROAD 200  
MASTER PLAN  
PLANNED WATER SYSTEM**

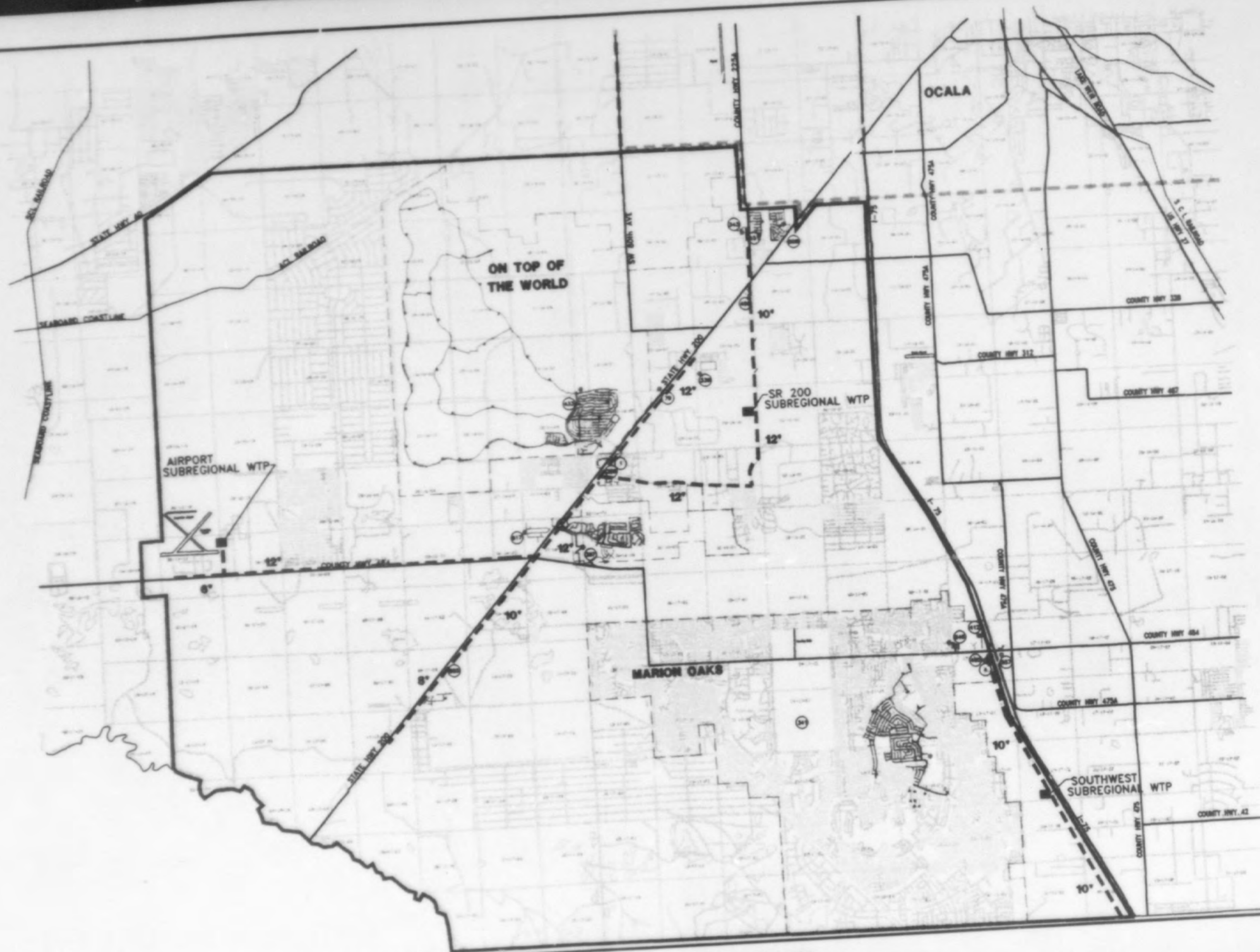
DOCUMENT NUMBER-DATE  
00284 JAN-95  
PSC-RECORDS/REPORTING

FIGURE  
ATW-1

**HARTMAN & ASSOCIATES, INC.**  
engineers, hydrogeologists, surveyors & management consultants  
201 EAST PINE STREET - SUITE 1000 - ORLANDO, FL 32801  
TELEPHONE (407) 539-3955 - FAX (407) 539-3790



- LEGEND:**
- CITY OF OCALA BOUNDARY
  - SERVICE AREA BOUNDARY
  - FORCE MAIN - 4" AND SMALLER
  - FORCE MAIN - 6"
  - FORCE MAIN - 8"
  - FORCE MAIN - 10"
  - FORCE MAIN - 12"
  - FORCE MAIN - 14"
  - FORCE MAIN - 16" AND LARGER
  - SANITARY SEWER
  - LIFT STATION
  - WASTEWATER TREATMENT PLANT
  - PROPOSED FORCE MAIN







**STATE ROAD 200  
UTILITY FEASIBILITY REPORT  
STUDY AREA WASTEWATER SYSTEMS**

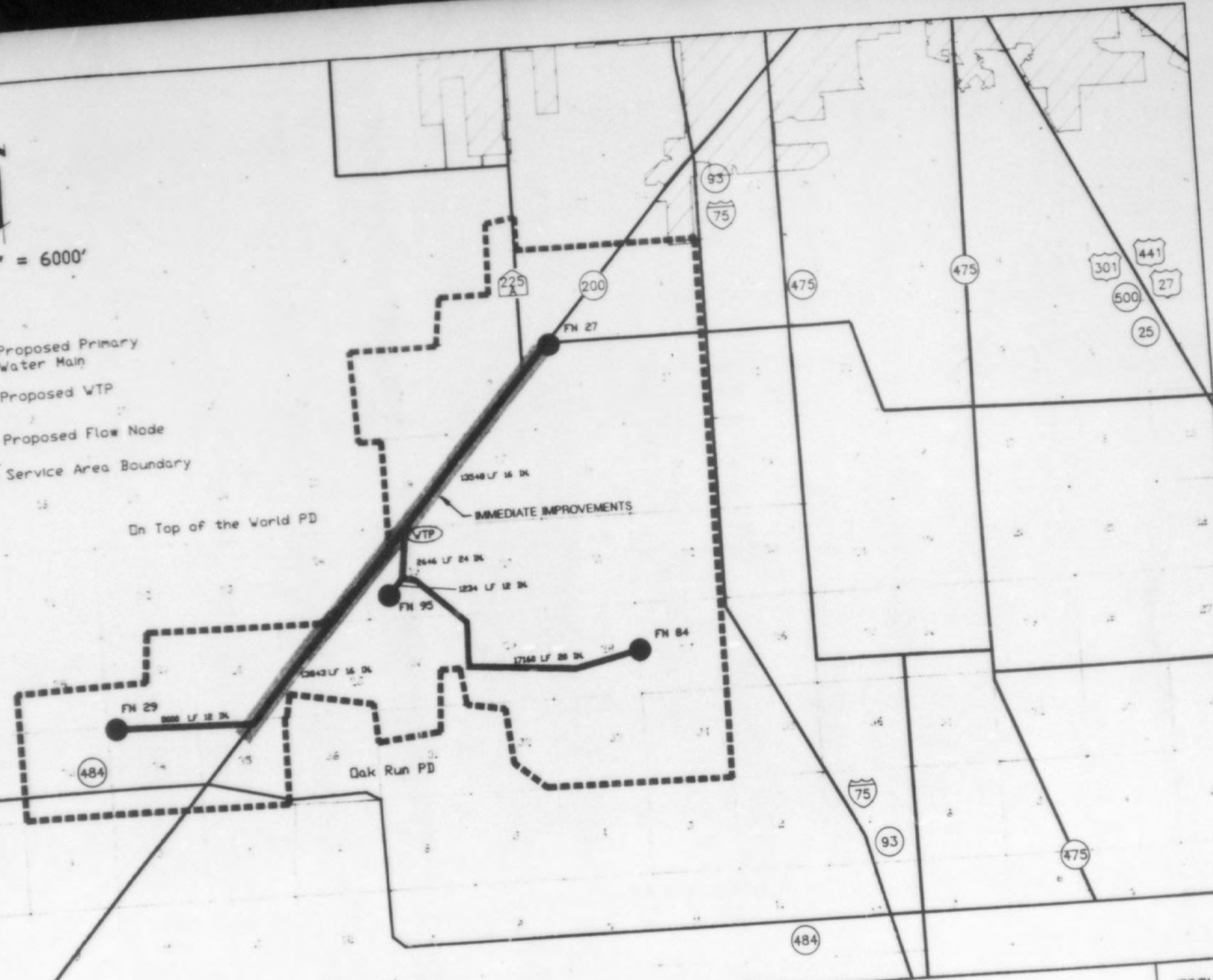
**FIGURE  
ATW-2**

**HARTMAN & ASSOCIATES, INC.**  
engineers, hydrogeologists, surveyors & management consultants  
301 EAST PINE STREET - SUITE 1000 - ORLANDO, FL 32801  
TELEPHONE (407) 639-3855 - FAX (407) 639-3790

SCALE: 1" = 6000'

LEGEND

-  Proposed Primary Water Main
-  Proposed WTP
-  Proposed Flow Node
-  Service Area Boundary



200 CORRIDOR SERVICE AREA (SERVED BY COUNTY WTP)

FIGURE 6-7

ATW-3



MARION COUNTY, FLORIDA  
 WASTEWATER MASTER PLAN

200 CORRIDOR, OAKRUN, & TOP OF THE WORLD COMBINED  
 SERVICE AREAS (SERVED BY COUNTY WVTP)

FIGURE  
 10-7

ATw-4



# GRAY, HARRIS & ROBINSON

PROFESSIONAL ASSOCIATION

ATTORNEYS AT LAW

SUITE 1200

201 EAST PINE STREET

POST OFFICE BOX 3088

ORLANDO, FL 32802-3088

TELEPHONE (407) 843-8880

FAX (407) 244-8890

WRITER'S DIRECT DIAL

TRACY A. BORGERT  
LILA INGATE MCHENRY  
KENT L. HIPP  
ROBERT L. SEALS  
DONALD H. GIBSON  
KIMBERLY NOWORYTA SUNNER  
N. SCOTT NOVELL  
CHRISTOPHER J. COLEMAN  
PEGGY R. HOYT  
JOHN A. KIRST, JR.  
BRUCE M. HARRIS  
R. DEAN CANNON, JR.  
FRANK A. HAMNER  
RICHARD A. RODGERS  
ALISON M. YURKO  
JAMES D. KISIO  
KELLY M. FITZGERALD

OF COUNSEL  
MALCOLM R. KIRSCHENBAUM  
SYDNEY L. JACKOWITZ  
THEODORE L. SHINKLE  
WILBUR E. BREWTON, P.A.  
KELLY BREWTON PLANTE  
LEE M. KILLINGER  
KENNETH J. PLANTE

J. CHARLES GRAY  
GORDON H. HARRIS  
RICHARD M. ROBINSON  
PHILLIP R. FINCH  
PAMELA O. PRICE  
JAMES F. PAGE, JR.  
WILLIAM A. BOYLES  
THOMAS A. CLOUD  
BYRD F. MARSHALL, JR.  
J. MASON WILLIAMS III  
LEO P. ROCK, JR.  
G. ROBERTSON DILG  
CHARLES W. SELL  
JACK A. KIRSCHENBAUM  
RICHARD E. BURKE  
GUY S. HAGGARD  
FREDERICK W. LEONHARDT  
BORRON J. OWEN, JR.  
MICHAEL K. WILSON  
JEFFREY D. KEINER  
PAUL S. QUINN, JR.  
DAVID L. SCHICK  
JACK K. McMULLEN  
SUSAN T. SPRADLEY  
MICHAEL E. NEUKAMM  
DONALD A. NOWRR  
PHILIP F. NOWRR  
WILLIAM G. BOLTIN, III  
R. LEE BENNETT

October 14, 1996

William H. Phelan, Jr., Esquire  
BOND, ARNETT & PHELAN, P.A.  
101 S.W. 3rd Street  
Post Office Box 2405  
Ocala, FL 34478-2405

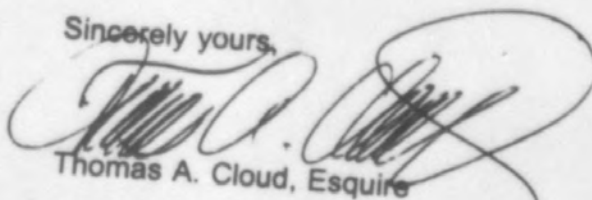
COMPOSITE  
EXHIBIT ATW-5  
Page 1 of 31

Dear Mr. Phelan:

Enclosed is a copy of our agreement with Marion County. Ms. Yurko has a different recollection of the meeting than you do. Furthermore, I have a recollection of talking with you personally at the end of our last meeting about the fact of our representation of Marion County. Butch certainly knows that we represent the County. Finally, your letter of September 13, 1996, referred to our "client's proposal."

I find it incredible (in every sense of the word) that you didn't know we were representing Marion County as their utility counsel. Nevertheless, if you have any doubts, don't hesitate to call Gordon Johnston.

Sincerely yours,



Thomas A. Cloud, Esquire

GRAY, HARRIS & ROBINSON, P.A.

Enclosure

COCOA BEACH  
(407) 783-2288

MELBOURNE  
(407) 727-8100

ORLANDO  
(407) 843-8880

TALLAHASSEE  
904-222-1111

# GRAY, HARRIS & ROBINSON

PROFESSIONAL ASSOCIATION  
ATTORNEYS AT LAW

J. CHARLES GRAY  
GORDON H. HARRIS  
RICHARD M. ROBINSON  
PHILLIP R. FINCH  
PAMELA D. PRICE  
JAMES F. PAGE, JR.  
WILLIAM A. BOYLES  
THOMAS A. CLOUD  
BYRD F. MARSHALL, JR.  
J. MASON WILLIAMS III  
LEO P. ROCK, JR.  
G. ROBERTSON DILD  
CHARLES W. SELL  
JACK A. KIRSCHENBAUM  
JAMES W. PEEPLES III  
RICHARD E. BURKE  
GUY S. HAGGARD  
FREDERICK W. LEONHARDT  
BORRON J. OWEN, JR.  
MICHAEL K. WILSON  
JEFFREY D. KEINER  
PAUL S. QUINN, JR.  
DAVID L. SCHICK  
JACK K. McMULLEN  
SUSAN T. SPRADLEY  
MICHAEL E. NEUKAMM

SUITE 1200  
201 EAST PINE STREET  
POST OFFICE BOX 3088  
ORLANDO, FL 32808-3088  
TELEPHONE (407) 843-8880  
FAX (407) 244-5690

GLASS BANK BUILDING  
805 NORTH ORLANDO AVENUE  
POST OFFICE BOX 320787  
COCOA BEACH, FL 32908-0787  
TELEPHONE (407) 783-2218  
FAX (407) 783-2227

TRACY A. BORGERT  
LILA INGYE MCHENRY  
KENT L. HIPP  
ROBERT L. BEALS  
DONALD H. GIBSON  
KIMBERLY NOWORYTA SUNNER  
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FRANK A. HAMNER  
RICHARD A. RODGERS  
ALISON M. YURKO

OF COUNSEL  
MALCOLM R. KIRSCHENBAUM  
STONEY L. JACKOWITZ  
WILLIAM G. BOLTIN, III P.A.  
DONALD A. NOHRN

WRITER'S DIRECT DIAL

PLEASE REPLY TO:

Orlando

January 22, 1996

COMPOSITE  
EXHIBIT ATW-5  
Page 2 of 31

Via FAX Transmission - 904/620-3790 and

Via UPS Overnight Delivery

Gordon S. Johnston, County Attorney  
MARION COUNTY  
601 S.E. 25th Avenue  
Ocala, FL 34471-2690

Re: Engagement Letter

Dear Mr. Johnston:

It is a privilege for our firm to work with you and to represent Marion County on a limited basis concerning Marion County's legal consultant and advisor to the Board in its capacity as the Marion County Utility Authority.

As stated in our response to the County's RFP, our fees and costs will be as follows:

(1) Our fees are based on hourly rates in effect at the time the work is done by the various lawyers and paralegals involved. At the present time, our rates vary from \$75.00 to \$300.00 per hour for this type of work. We have agreed to a blended hourly rate for all attorneys who work on this project to be \$150 per hour. This hourly rate is substantially less than our rate to non-governmental clients. We will charge \$75 per hour for paralegals. We anticipate that myself, Mr. Gray, Susan Spradley and Ms. Yurko would be the main lawyers working on this matter.



CELEBRATING 25 YEARS

Gordon S. Johnston, County Attorney  
Page 2  
January 22, 1996

COMPOSITE  
EXHIBIT ATW-5  
Page 3 of 31

(2) Our statement for fees and costs will be itemized and submitted to the County Attorney on a monthly basis, and are to be paid in accordance with Florida's Prompt Payment Act after receipt of the statement. You will be charged a reasonable rate for postage, reproduction, telecopies, couriers, express mail, long-distance telephone, travel costs and other costs. We may also use computerized research services to assist in handling your matters. This service will be used when we believe that it will save you money to do so. We agree (as we have with all of our other governmental clients) that all travel expenses will be charged at the rate specified in Section 112.061, Florida Statutes, and that attorneys' fees would not be charged for travel time, and xeroxing is at cost. Expenses incurred or advanced on your behalf will be itemized on the statement.

As we stated in our response to the County's RFP, our firm represents Southern States Utilities in all utility acquisition litigation state-wide. We have consulted Southern States Utilities, and they have indicated their consent to our representation of the Marion County Utility Authority in all matters other than that which involve the issue of valuation of Southern States Marion Oaks Water and Wastewater System located in Marion County, Florida. Southern States has previously retained us to represent them in issues of valuation of all of their utilities. Professional ethics requires that we disclose to you the appearance of any potential conflict. Our representation of the Marion County Utility Authority may create the appearance of a conflict of interest with our representation of Southern States Utilities in this single matter. Your consent to our continued representation of Southern States Utilities with regard to any matters involving the valuation of the utility is necessary in order for us to represent the Marion County Utility Authority in its matters.

If the foregoing meets with your approval, please so indicate by signing the copy of this letter in the space provided below.

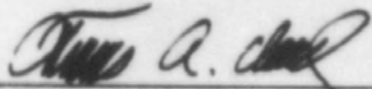
GRAY, HARRIS & ROBINSON  
Professional Association

Gordon B. Johnston, County Attorney  
Page 3  
January 22, 1996

We look forward to working with you and Marion County in the future in this and any other matters you deem appropriate. If there are any questions, please do not hesitate to call me or my partner Charlie Gray.

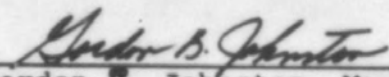
Sincerely,

GRAY, HARRIS & ROBINSON, P.A.

By:   
Thomas A. Cloud, Esquire

The terms of this representation are accepted this 22<sup>nd</sup> day of January, 1996.

MARION COUNTY

By:   
Gordon B. Johnston, Marion  
County Attorney

BOND, ARNETT & PHELAN, P. A.  
ATTORNEYS AT LAW  
101 SOUTHWEST THIRD STREET  
POST OFFICE BOX 8408  
OCALA, FLORIDA 34478

M. THOMAS BOND, JR.  
JOHN W. ARNETT  
WILLIAM H. PHELAN, JR.  
ANN MELINDA CRAIGS  
COLLEEN M. DURIS

\*BOARD CERTIFIED REAL ESTATE LAWYER

COMPOSITE  
EXHIBIT ATW-5  
Page 5 of 31

October 11, 1996

Thomas A. Cloud, Esquire  
GRAY, HARRIS & ROBINSON, P.A.  
201 East Pine Street, Suite 1200  
Orlando, FL 32801

RE: WINDSTREAM UTILITIES COMPANY

Dear Mr. Cloud:

Your letter of October 7, 1996 was quite a shock. My understanding from the meeting of August 30, 1996; which you did not attend, was that your firm represented Hartman and Associates, Inc. I did not know you represented the County. My further understanding from Ms. Yurko was that I should correspond directly with Hartman and Associates, Inc.; hence my previous letters.

So there can be no further misunderstanding concerning the scope of your firm's representation of Marion County, or its Board of County Commissioners, (hereinafter jointly or severally referred to as "the County"), please have the appropriate public official furnish me with copies of the following public records:

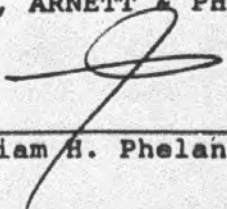
1. Your firm's contract or contracts for representation of the County.
2. All amendments or additions to any such contract or contracts.
3. All correspondence, memorandum or other documents confirming or regarding the scope of your firm's representation of the County.

I will be happy to pay to Marion County those fees for copying permitted by §119.07. Fla. Stat. (1995).

Sincerely,

BOND, ARNETT & PHELAN, P.A.

By:

  
\_\_\_\_\_  
William H. Phelan, Jr.

WHP\anc  
cc: Client

BOND, ARNETT & PHELAN, P. A.  
ATTORNEYS AT LAW  
101 SOUTHWEST THIRD STREET  
POST OFFICE BOX 2408  
OCALA, FLORIDA 34478

M. THOMAS BOND, JR.  
JOHN W. ARNETT\*  
WILLIAM H. PHELAN, JR.

ANN MELINDA CRAIGGS  
COLLEEN M. DURIS

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COMPOSITE  
EXHIBIT ATW-5  
Page 6 of 31

October 11, 1996

Thomas A. Cloud, Esquire  
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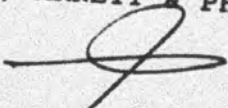
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Sincerely,

BOND, ARNETT & PHELAN, P.A.

By:

  
William H. Phelan, Jr.

WHP\anc  
cc: Client

MODE = MEMORY TRANSMISSION

START=OCT-07 14:37

END=OCT-07 14:39

FILE NO. = 178

NO.	COM	ABBR/NTWK	STATION NAME/ TELEPHONE NO.	PAGES	PRG. NO.	PROGRAM NAME
001	OK	*	913526221125	003/003		

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### GRAY, HARRIS & ROBINSON

PROFESSIONAL ASSOCIATION  
ATTORNEYS AT LAW

SUITE 1000  
20 EAST PINE STREET  
POST OFFICE BOX 2000  
ORLANDO, FL 32802-2000

TELEPHONE (407) 843-8880  
FAX (407) 844-8880

WRITER'S DIRECT DIAL

October 7, 1996

TRACY A. BOGERT  
LILA INGATE McHENRY  
BENT L. HIPP  
ROBERT L. BEALS  
DONALD R. GIBSON  
KIMBERLY HOWDYTTA BUNNEN  
N. SCOTT HOWELL  
CHRISTOPHER J. COLEMAN  
PEBBY R. HOYT  
JOHN A. HURST, JR.  
BRUCE M. HARRIS  
R. DEAN CANNON, JR.  
FRANK A. HANMER  
RICHARD A. RODGERS  
ALISON M. TURKO  
JAMES D. RISIO  
KELLY M. FITZGERALD

OF COUNSEL  
MALCOLM R. AIRSCHENBAUM  
STREY L. JACKOWITZ  
THEODORE L. SHINALE  
WILLIAM E. BREWSTER, P.A.  
KELLY BREWSTER PLANTE  
LEE M. BILLINGER  
KENNETH J. PLANTE

J. CHARLES GRAY  
GORDON N. HARRIS  
RICHARD M. ROBINSON  
PHILLIP S. FINCH  
JAMES P. PAGE, JR.  
WILLIAM A. BOYLES  
THOMAS A. CLOUD  
BYRON F. MARSHALL, JR.  
J. MASON WILLIAMS III  
LEO P. ROOR, JR.  
S. ROBERTSON BILG  
CHARLES W. SELL  
JACK A. AIRSCHENBAUM  
RICHARD E. BURKE  
GUY S. MAGGARD  
FREDERICK W. LEONHARDT  
BORROR J. OWEN, JR.  
MICHAEL S. WILSON  
JEFFREY D. KEINER  
PAUL S. QUINN, JR.  
DAVID L. SCHUCH  
JACK H. MCHULLEN  
SUSAN Y. BRADBURY  
MICHAEL S. NEUBAUM  
DONALD A. NOHR  
PHILIP F. NOHR  
WILLIAM G. BOLTIN, III  
R. LEE BENNETT

Via FAX Transmittal- 352/622-1125

William H. Phelan, Jr., Esquire  
BOND, ARNETT & PHELAN, P.A.  
101 S.W. 3rd Street  
Post Office Box 2405  
Ocala, FL 34478-2405

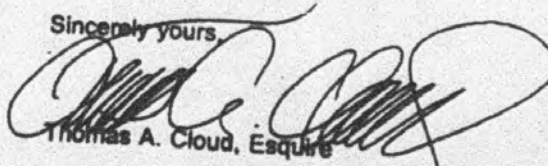
**COMPOSITE  
EXHIBIT ATW-5  
Page 7 of 31**

Dear Mr. Phelan:

I am in receipt of letters which you directed to my clients the Marion County Board of County Commissioners. I am enclosing for your information a copy of Rule 4-4.2 of the Florida Rules of Professional Conduct, as well as a Staff Opinion of the Florida Bar dated August 23, 1990. You have not and do not have my consent to communicate with my clients directly, particularly when it is to complain about the positions articulated in negotiations on a matter where you know I represent the Commissioners.

If Windstream has an item they wish to schedule before the County Commission, such an item can be scheduled in the normal course of events as an agendaed item through the County Administrator. Whining about County staff, consultant, and attorney positions in letters directed to the individual commissioners, however, is clearly inappropriate. Kindly cease and desist from any such further communications.

Sincerely yours,



Thomas A. Cloud, Esquire

GRAY, HARRIS & ROBINSON, P.A.

OCOLA BEACH  
(407) 782-2888

MELBOURNE  
(407) 797-8100

ORLANDO  
(407) 843-8880

FALLAHOUSE  
(304) 288-1111

# GRAY, HARRIS & ROBINSON

PROFESSIONAL ASSOCIATION

ATTORNEYS AT LAW

SUITE 1200

201 EAST PINE STREET

POST OFFICE BOX 3068

ORLANDO, FL 32802-3068

TELEPHONE (407) 843-8880

FAX (407) 244-8690

WRITER'S DIRECT DIAL

October 7, 1996

J. CHARLES GRAY  
GORDON H. HARRIS  
RICHARD M. ROBINSON  
PHILLIP R. FINCH  
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SUSAN T. BRADLEY  
MICHAEL E. NEUKAMM  
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PHILIP F. NOHRR  
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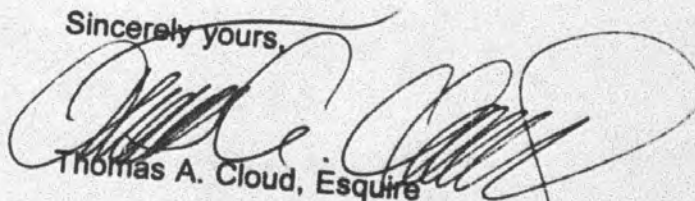
**COMPOSITE  
EXHIBIT ATW-5  
Page 8 of 31**

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Thomas A. Cloud, Esquire

GRAY, HARRIS & ROBINSON, P.A.

COCOA BEACH  
(407) 783-2216

MELBOURNE  
(407) 727-8100

ORLANDO  
(407) 843-8880

TALLAHASSEE  
(904) 222-7717



other measures by the prosecutor and knowing disregard of these obligations or systematic abuse of prosecutorial discretion could constitute a violation of rule 4-8.4.

Paragraph (b) does not apply to an accused appearing pro se with the approval of the tribunal, nor does it forbid the lawful questioning of a suspect who has knowingly waived the rights to counsel and silence.

The exception in paragraph (c) recognizes that a prosecutor may seek an appropriate protective order from the tribunal if disclosure of information to the defense could result in substantial harm to an individual or to the public interest.

**4-3.9 Advocate in nonadjudicative proceedings.** A lawyer representing a client before a legislative or administrative tribunal in a nonadjudicative proceeding shall disclose that the appearance is in a representative capacity and shall conform to the provisions of rules 4-3.3(a) through (c), 4-3.4(a) through (c), and 4-3.5(a), (c), and (d).

*Comment:*

In representation before bodies such as legislatures, municipal councils, and executive and administrative agencies acting in a rule-making or policy-making capacity, lawyers present facts, formulate issues, and advance argument in the matters under consideration. The decisionmaking body, like a court, should be able to rely on the integrity of the submissions made to it. A lawyer appearing before such a body should deal with the tribunal honestly and in conformity with applicable rules of procedure.

Lawyers have no exclusive right to appear before nonadjudicative bodies, as they do before a court. The requirements of this rule therefore may subject lawyers to regulations inapplicable to advocates who are not lawyers. However, legislatures and administrative agencies have a right to expect lawyers to deal with them as they deal with courts.

This rule does not apply to representation of a client in a negotiation or other bilateral transaction with a governmental agency; representation in such a transaction is governed by rules 4-4.1 through 4-4.4.

**4-4 Transactions with persons other than clients.**

**4-4.1 Truthfulness in statements to others.** In the course of representing a client a lawyer shall not knowingly:

(a) Make a false statement of material fact or law to a third person; or

(b) Fail to disclose a material fact to a third person when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by rule 4-1.6.

*Comment:*

*Misrepresentation*

A lawyer is required to be truthful when dealing with others on a client's behalf, but generally has no affirmative duty to inform an opposing party of relevant facts. A misrepresentation can occur if the lawyer incorporates or affirms a statement of another person that the lawyer knows is false. Misrepresentations can also occur by failure to act.

*Statements of fact*

This rule refers to statements of fact. Whether a particular statement should be regarded as one of fact can depend on the circumstances. Under generally accepted conventions in negotiation, certain types of statements ordinarily are not taken as statements of material fact. Estimates of price or value placed on the subject of a transaction and a party's intentions as to an acceptable settlement of a claim are in this category and so is the existence of an undisclosed principal except where nondisclosure of the principal would constitute fraud.

*Fraud by client*

Paragraph (b) recognizes that substantive law may require a lawyer to disclose certain information to avoid being deemed to have assisted the client's crime or fraud. The requirement of disclosure created by this paragraph is, however, subject to the obligations created by rule 4-1.6.

**4-4.2 Communication with person represented by counsel.** In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer.

*Comment:*

This rule does not prohibit communication with a party, or an employee or agent of a party, concerning matters outside the representation. For example, the existence of a controversy between

GH & R  
ST

THIS OPINION WAS APPROVED BY THE PROFESSIONAL ETHICS COMMITTEE  
OF THE FLORIDA BAR AT ITS JANUARY 1992 MEETING

126 '93

NOTE: This advisory ethics opinion was authored in response to a specific inquiry and, therefore, might not be applicable to a factual situation other than that presented by the inquiring attorney.

STAFF OPINION TEO91001  
August 23, 1990

**COMPOSITE  
EXHIBIT ATW-5  
Page 10 of 31**

The inquiring attorney has requested an opinion whether it would be permissible to direct a request for public records to the Records Custodian of a city that is represented by counsel in pending litigation with his client. Presumably the request is in connection with the matter in litigation.

Rule 4-4.2 of The Rules Regulating The Florida Bar states:

In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer.

The Florida rule is based on ABA Model Rule 4.2. The ABA rule, unlike the Florida rule, provides for an exception if the communication is authorized by law. The rule states:

In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized by law to do so. [Emphasis added.]

In June of 1989 the Professional Ethics Committee published a proposed ethics opinion incorporating the additional ABA language "or is authorized by law to do so" into our rule. In response to comments from Bar members the Committee narrowed the language of the opinion. The final opinion, Opinion 89-6, permits an attorney to strictly comply with a statute requiring notice or service of process directly on the adverse party. The opinion states that the attorney should provide opposing counsel with a copy of any document served upon the adverse party. The Committee intentionally omitted the exception for communications authorized by law. Furthermore, the Committee's most recent opinion regarding the communication rule, Opinion 90-4, relies upon Florida's omission of the "or is authorized by law" exception.

Therefore, under our rules and ethics opinions, any communication concerning the subject matter of representation to a represented person must go through that person's attorney unless (1) the attorney consents or, (2) a statute requires notice or service of process directly on the adverse party. Accordingly, the request for public records must be directed to the attorney for the city unless a statute requires notice or service of process directly on the city. (Whether Chapter 119, F.S. does require such direct contact is a question of law, beyond the scope of an ethics opinion.)

**BOND, ARNETT & PHELAN, P. A.**

ATTORNEYS AT LAW

101 SOUTHWEST THIRD STREET

POST OFFICE BOX 2405

OCALA, FLORIDA 34478

M. THOMAS BOND, JR.  
JOHN W. ARNETT\*  
WILLIAM H. PHELAN, JR.

ANN MELINDA CRAIGGS  
COLLEEN M. DUNIS

\*BOARD CERTIFIED REAL ESTATE LAWYER

October 4, 1996

Gerald C. Hartman, P.E.  
Hartman & Associates, Inc.  
Suite 1000, 201 E. Pine Street  
Orlando, FL 32801

Joseph T. Lettelleir  
J.B. Ranch  
300 S. Duncan Avenue, #296  
Clearwater, FL 34615

**COMPOSITE  
EXHIBIT ATW-5  
Page 11 of 31**

Re: Windstream Utilities Company

Dear Gentlemen:

Windstream Utilities Company (hereinafter "Windstream") has requested that I communicate to you its continued willingness to provide all water service required by the J.B. Ranch development. Windstream recognizes you are currently exploring options available for water service other than from Windstream. If you are successful in that endeavor, Windstream extends its congratulations. However, if, as Windstream expects, you ultimately realize Windstream represents the best and most cost efficient alternative, my client remains willing to provide the service you require.

During failed negotiations questions were raised concerning availability of sewer service. As you know, heretofore Windstream has not been in the sewer business. However, as a result of questions raised in this regard it has subsequently explored options available to it. At this time, Windstream does believe it will be possible to provide sewer service to J.B. Ranch in conjunction with full water service.

Mr. Hartman's letter of September 12, 1996 raises several questions concerning compliance of Windstream's previous proposals with its approved tariff rates. Obviously, the proposal previously offered by Windstream at Mr. Hartman's request is different than Windstream's current tariff system and would require approval by the PSC. This hybrid proposal was offered only as an accommodation to Mr. Hartman's request for a proposal representing something other than full water service. Windstream's preference always has been and remains that it provide full water service to J.B. Ranch.

Windstream Utilities Company  
October 4, 1996  
Page 2

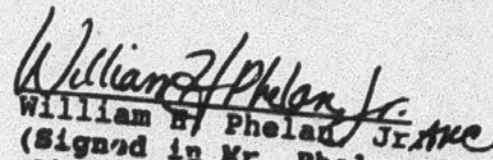
COMPOSITE  
EXHIBIT ATW-5  
Page 12 of 31

Windstream remains willing to provide full water service to J.B. Ranch in accordance with its currently approved schedule of tariffs.

Sincerely,

BOND, ARNETT & PHELAN, P.A.

By:

  
William H. Phelan Jr.  
(Signed in Mr. Phelan's  
Absence to Avoid Delay)

WHPjr/anc

cc: client

Thomas A. Cloud, Esq.  
Larry Cretul, County Commissioner  
Jeff Gann, County Commissioner  
Randy Harris, County Commissioner  
Steve Henning, County Commissioner  
Judy Johnson, County Commissioner  
Jim Lowry, Acting County Administrator

BOND, ARNETT & PHELAN, P. A.

ATTORNEYS AT LAW  
101 SOUTHWEST THIRD STREET  
POST OFFICE BOX 2408  
OCALA, FLORIDA 34478

M. THOMAS BOND, JR.  
JOHN W. ARNETT  
WILLIAM H. PHELAN, JR.

ANN MELINDA CRAIGS  
COLLEEN M. DUBIS

\*BOARD CERTIFIED REAL ESTATE LAWYER

TELEPHONE  
(352) 622-1100

FAX  
(352) 622-1100

October 4, 1996

The Marion County  
Board of Commissioners  
Attn: Larry Cretul  
601 SE 25th Avenue  
Ocala, FL 34470

COMPOSITE  
EXHIBIT ATW-5  
Page 13 of 31

Re: Windstream Utilities Company

Dear Mr. Cretul:

My client, Windstream Utilities Company (hereinafter "Windstream"), has requested that I furnish you with a copy of my letter of even date to Hartman and Associates, Inc. and J.B. Ranch. As you may know, Windstream is a water utility service located adjacent to J.B. Ranch.

Windstream has been negotiating with the County's utility consultant regarding provision of water service to J.B. Ranch. It is fair to say Windstream and the County's consultant have a dramatically different understanding of the commission's philosophy regarding arrangements with private utility companies. Windstream's purpose in furnishing the attached correspondence to you is to apprise you fully of its position regarding J.B. Ranch. Windstream is ready, willing and able to provide all of the water needs for this development. However, it can not accept the financially unreasonable offer of Hartman and Associates, Inc. for providing token service.

Windstream's hope is that you will review the position of your consultant regarding this matter to be sure the commission's articulated policy is being followed. Windstream requests an opportunity to participate in any meeting or workshop where this subject is discussed.

Sincerely,

BOND, ARNETT & PHELAN, P.A.

By:

*William H. Phelan, Jr.*  
William H. Phelan, Jr.  
(Signed in Mr. Phelan's  
Absence to Avoid Delay) *WHP*

WEP:jr/anc  
Enclosure

cc: client  
Gerald C. Hartman, P.E.  
Thomas A. Cloud, Esq.  
Jim Lowry, Acting County Administrator

BOND, ARNETT & PHELAN, P. A.

ATTORNEYS AT LAW  
101 SOUTHWEST THIRD STREET  
POST OFFICE BOX 2405  
OCALA, FLORIDA 34478

M. THOMAS BOND, JR.  
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WILLIAM H. PHELAN, JR.

ANN MELINDA CRAIGS  
COLLEEN M. DURIS

\*BOARD CERTIFIED REAL ESTATE LAWYER

TELEPHONE  
(352) 622-1186

FAX  
(352) 622-1125

October 4, 1996

The Marion County  
Board of Commissioners  
Attn: Judy Johnson  
601 SE 25th Avenue  
Ocala, FL 34470

COMPOSITE  
EXHIBIT ATW-5  
Page 14 of 31

Re: Windstream Utilities Company

Dear Ms. Johnson:

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Sincerely,

BOND, ARNETT & PHELAN, P.A.

By:

*William H. Phelan, Jr.*  
William H. Phelan, Jr.  
(Signed in Mr. Phelan's  
Absence to Avoid Delay) *WHP*

WHPjr/anc  
Enclosure

cc: client  
Gerald C. Hartman, P.E.  
Thomas A. Cloud, Esq.  
Jim Lowry, Acting County Administrator

BOND, ARNETT & PHELAN, P. A.

ATTORNEYS AT LAW  
101 SOUTHWEST THIRD STREET  
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COLLEEN M. DURIS

\*BOARD CERTIFIED REAL ESTATE LAWYER

TELEPHONE  
(352) 682-1186

FAX  
(352) 682-1186

October 4, 1996

The Marion County  
Board of Commissioners  
Attn: Randy Harris  
601 SE 25th Avenue  
Ocala, FL 34470

COMPOSITE  
EXHIBIT ATW-5  
Page 15 of 31

Re: Windstream Utilities Company

Dear Mr. Harris:

My client, Windstream Utilities Company (hereinafter "Windstream"), has requested that I furnish you with a copy of my letter of even date to Hartman and Associates, Inc. and J.B. Ranch. As you may know, Windstream is a water utility service located adjacent to J.B. Ranch.

Windstream has been negotiating with the County's utility consultant regarding provision of water service to J.B. Ranch. It is fair to say Windstream and the County's consultant have a dramatically different understanding of the commission's philosophy regarding arrangements with private utility companies. Windstream's purpose in furnishing the attached correspondence to you is to apprise you fully of its position regarding J.B. Ranch. Windstream is ready, willing and able to provide all of the water needs for this development. However, it can not accept the financially unreasonable offer of Hartman and Associates, Inc. for providing token service.

Windstream's hope is that you will review the position of your consultant regarding this matter to be sure the commission's articulated policy is being followed. Windstream requests an opportunity to participate in any meeting or workshop where this subject is discussed.

Sincerely,

BOND, ARNETT & PHELAN, P.A.

By:

*William H. Phelan, Jr.*  
William H. Phelan, Jr.  
(Signed in Mr. Phelan's  
Absence to Avoid Delay)

WEP:jr/enc  
Enclosure

cc: client  
Gerald C. Hartman, P.E.  
Thomas A. Cloud, Esq.  
Jim Lowry, Acting County Administrator

**BOND, ARNETT & PHELAN, P. A.**  
ATTORNEYS AT LAW

101 SOUTHWEST THIRD STREET  
POST OFFICE BOX 2408  
OCALA, FLORIDA 34478

M. THOMAS BOND, JR.  
JOHN W. ARNETT  
WILLIAM H. PHELAN, JR.

ANN MELINDA CRAIGOS  
COLLEEN M. DUBIS

\*BOARD CERTIFIED REAL ESTATE LAWYER

TELEPHONE  
(352) 622-1188

FAX  
(352) 622-1125

October 4, 1996

**COMPOSITE  
EXHIBIT ATW-5  
Page 16 of 31**

The Marion County  
Board of Commissioners  
Attn: Jeff Gann  
601 SE 25th Avenue  
Ocala, FL 34470

Re: Windstream Utilities Company

Dear Mr. Gann:

My client, Windstream Utilities Company (hereinafter "Windstream"), has requested that I furnish you with a copy of my letter of even date to Hartman and Associates, Inc. and J.B. Ranch. As you may know, Windstream is a water utility service located adjacent to J.B. Ranch.

Windstream has been negotiating with the County's utility consultant regarding provision of water service to J.B. Ranch. It is fair to say Windstream and the County's consultant have a dramatically different understanding of the commission's philosophy regarding arrangements with private utility companies. Windstream's purpose in furnishing the attached correspondence to you is to apprise you fully of its position regarding J.B. Ranch. Windstream is ready, willing and able to provide all of the water needs for this development. However, it can not accept the financially unreasonable offer of Hartman and Associates, Inc. for providing token service.

Windstream's hope is that you will review the position of your consultant regarding this matter to be sure the commission's articulated policy is being followed. Windstream requests an opportunity to participate in any meeting or workshop where this subject is discussed.

Sincerely,

BOND, ARNETT & PHELAN, P.A.

By:

*William H. Phelan, Jr.*  
William H. Phelan, Jr.  
(Signed in Mr. Phelan's  
Absence to Avoid Delay) *WHP*

WHPjr/anc  
Enclosure

cc: client  
Gerald C. Hartman, P.E.  
Thomas A. Cloud, Esq.  
Jim Lowry, Acting County Administrator



# GRAY, HARRIS & ROBINSON

PROFESSIONAL ASSOCIATION

ATTORNEYS AT LAW

SUITE 1200

201 EAST PINE STREET

POST OFFICE BOX 3068

ORLANDO, FL 32802-3068

TELEPHONE (407) 843-8880

FAX (407) 244-5690

WRITER'S DIRECT DIAL

September 17, 1996

J. CHARLES GRAY  
GORDON M. HARRIS  
RICHARD M. ROBINSON  
PHILLIP R. FINCH  
PAMELA O. PRICE  
JAMES F. PAGE, JR.  
WILLIAM A. BOYLES  
THOMAS A. CLOUD  
BYRD F. MARSHALL, JR.  
J. MASON WILLIAMS III  
LEO P. ROCK, JR.  
G. ROBERTSON DILG  
CHARLES W. BELL  
JACK A. KIRSCHENBAUM  
RICHARD E. BURKE  
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FREDERICK W. LEONHARDT  
BORRON J. OWEN, JR.  
MICHAEL K. WILSON  
JEFFREY D. HEINER  
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DAVID L. SCHICK  
JACK H. McMULLEN  
SUSAN T. SPRADLEY  
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PHILIP F. NOHRR  
WILLIAM G. BOLTIN, III  
R. LEE BENNETT

TRACY A. BORGERT  
LILA INGATE McHENRY  
KENT L. HIPP  
ROBERT L. BEALS  
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KIMBERLY NOWORYTA SUNNER  
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CHRISTOPHER J. COLEMAN  
PEGGY R. HOYT  
JOHN A. KIRST, JR.  
BRUCE M. HARRIS  
R. DEAN CANNON, JR.  
FRANK A. HAMNER  
RICHARD A. RODGERS  
ALISON M. TURRO  
JAMES D. HIBIO  
RELLY M. FITZGERALD

OF COUNSEL  
MALCOLM R. KIRSCHENBAUM  
SYDNEY L. JACKOWITZ  
THEODORE L. SHINLE  
WILBUR E. BREWTON, P.A.  
RELLY BREWTON PLANTE  
LEE M. KILLINGER  
KENNETH J. PLANTE

William H. Phelan, Jr., Esquire  
BOND, ARNETT & PHELAN, P.A.  
101 S.W. 3rd Street  
Ocala, FL 34478

COMPOSITE  
EXHIBIT ATW-5  
Page 17 of 31

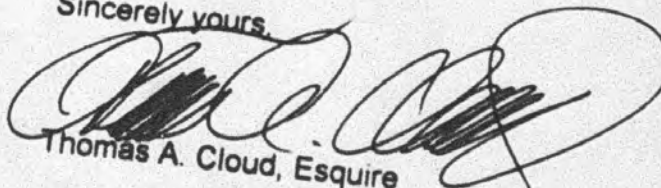
Re: Windstream Utilities Company

Dear Dude:

I am sure that I do not know what you mean by your statement "little mutual trust has been established between the County's utility consultants and the various private utility companies, including Windstream." Perhaps you are privy to discussions to which I am not. I was not aware that the topic of mutual trust between the County's utility consultants and the various private utility companies was relevant to our discussions, let alone discussed at our previous meeting. If it is "bickering" to correct misstatements of fact made by your client during the meeting, then so be it. If you didn't "admit" to a failure to incorporate our proposal in your September 9 letter, you certainly agreed that such a failure occurred.

For one who complains of "bickering," "adversarial tone," and "rhetoric," you seem to have accomplished all three in your September 13 letter. Perhaps you would do well to take your own advice.

Sincerely yours,



Thomas A. Cloud, Esquire

GRAY, HARRIS & ROBINSON, P.A.

COCOA BEACH  
(407) 783-2218

MELBOURNE  
(407) 787-8000

ORLANDO  
(407) 843-8880

TALLAHASSEE  
(904) 222-1117

BOND, ARNETT & PHELAN, P. A.

ATTORNEYS AT LAW  
101 SOUTHWEST THIRD STREET  
POST OFFICE BOX 2408  
OCALA, FLORIDA 34478

M. THOMAS BOND, JR.  
JOHN W. ARNETT\*  
WILLIAM H. PHELAN, JR.

ANN MELINDA CRAIGGS  
COLLEEN M. DUNIS

\*BOARD CERTIFIED REAL ESTATE LAWYER

TELEPHONE  
(352) 622-1188

FAX  
(352) 622-1125

September 13, 1996

Thomas A. Cloud, Esquire  
GRAY, HARRIS & ROBINSON, P.A.  
201 East Pine Street, Suite 1200  
Orlando, FL 32801

COMPOSITE  
EXHIBIT ATW-5  
Page 18 of 31

RE: WINDSTREAM UTILITIES

Dear Tom:

As I am sure you know, little mutual trust has been established between the County's utility consultants and the various private utility companies, including Windstream. In my opinion, bickering such as that which occurred during Tuesday's meeting only exacerbates that situation. Similarly, the adversarial tone of your September 11th letter is also counterproductive.

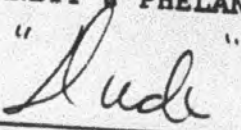
For example, no one "admitted" anything. Discussion of various alternatives is to be expected. Windstream certainly is not compelled to accept your client's proposal or incorporate same into its own counter-proposal. To characterize a failure to agree as an admission implies a moral imperative which does not exist.

My respectful suggestion is that all involved parties reduce the rhetoric and work toward some fair resolution on the merits.

Sincerely,

BOND, ARNETT & PHELAN, P.A.

By:

  
\_\_\_\_\_  
William H. Phelan, Jr.

WHP\jl  
cc: Client

# GRAY, HARRIS & ROBINSON

PROFESSIONAL ASSOCIATION  
ATTORNEYS AT LAW

SUITE 1200  
20 EAST PINE STREET  
POST OFFICE BOX 3068  
ORLANDO, FL 32802-3068

TELEPHONE (407) 843-8880  
FAX (407) 264-8890

WRITER'S DIRECT DIAL

J. CHARLES GRAY  
GORDON M. HARRIS  
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THEODORE L. SHINALE  
WILBUR E. BREWTON, P.A.  
KELLY BREWTON PLANTE  
LEE M. HILLINGER  
KENNETH J. PLANTE

September 11, 1996

Via FAX Transmittal - 352/622-1125

William H. Phelan, Jr., Esquire  
BOND, ARNETT & PHELAN, P.A.  
101 S.W. 3rd Street  
Ocala, FL 34478

COMPOSITE  
EXHIBIT ATW-5  
Page 19 of 31

Re: Windstream Utilities Company

Dear Mr. Phelan:

I am writing you this letter to confirm our meeting yesterday and to respond to Windstream Utilities Company's counter-offer received by after business hours on September 9, 1996. As you admitted in the meeting yesterday, your letter to us did not incorporate the proposal discussed during the meeting of August 30, 1996. We cannot recommend Windstream's counter-proposal.

I believe we all concurred at yesterday's meeting that the proposal which was delivered to us did constitute a basis for us to price what 50 ERC's of water capacity would cost were the County to buy it from Windstream Utilities Company. I note with interest that this proposal is inconsistent with Windstream's current tariff.

I also wanted to respond to Mr. Dlouhy's request that he be allowed to meet with the owners of JB Ranch, Cherry Developers and the County. As we promised, we

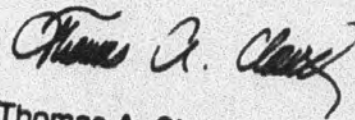
GRAY, HARRIS & ROBINSON  
PROFESSIONAL ASSOCIATION

William H. Phelan, Jr., Esquire  
Page 2  
September 11, 1996

COMPOSITE  
EXHIBIT ATW-5  
Page 20 of 31

passed along your request. Neither party was interested in meeting with Windstream Utilities Company, either with or without the County present.

Sincerely yours,



Thomas A. Cloud, Esquire

GRAY, HARRIS & ROBINSON, P.A.

cc: Bob Titterington, Acting Utility Director, Marion County  
Gerald C. Hartman, P.E.

# HARTMAN & ASSOCIATES, INC.

engineers, hydrogeologists, surveyors & management consultants

## PRINCIPALS

James E. Christopher, PE  
Charles W. Drake, PG  
Gerald C. Hartman, PE  
Mark I. Luke, PLS  
Mark A. Rynning, PE  
Harold E. Schmidt, Jr. PE

## ASSOCIATES

William D. Munser, PE  
Scott C. Quinnan, PE  
Timothy A. Hochuli, PE  
Marco H. Rocca, C.M.C.  
J. Richard Voorhees, PE  
Douglas P. Dufresne, PG  
Richard C. Copeland, M.B.A.

September 12, 1996

HAI #95-539.08

**COMPOSITE  
EXHIBIT ATW-5  
Page 21 of 31**

Mr. William H. "Dude" Phelan, Jr., Esquire  
Bond, Arnett & Phelan, P.A.  
P.O. Box 2405  
Ocala, Florida 34478

**Subject: Your Letter Dated September 9, 1996, Regarding Windstream Utilities  
Company**

Dear Mr. Phelan:

As we discussed in our September 10, 1996, your September 9th letter was much different than our discussions on August 30, 1996. The request for services from Windstream was for the County's use. The County may use, of course, the water in any fashion it deems appropriate. This request came following Butch Dlouhy's offer at the Board of County Commissioners meeting to provide bulk water service to the County. Now, Windstream continues to question the practicality of providing bulk potable water service to the County as stated in your letter. Of course both of these statements are contradictory. First, to our knowledge, we have not reviewed a plan with you. Therefore, the economical feasibility of such a plan would be difficult to comment on if you had not yet reviewed the plan.

We understand your position that Windstream wants to be the only provider of water. The County, though, must be non-discriminatory and look for the most cost-effective and best provider of water in whatever mix is appropriate. Competition in water and wastewater services from a bulk and interconnection standpoint should benefit all concerned.

At our September 10, 1996 meeting, we inquired if your September 9, 1996 letter reflected the terms and conditions, and the manner in which Windstream would be willing to provide 50 ERC's of service to the County. We understand the terms that you offer for "bulk" water service to the County are as follows:

1. Payment of 100% of the capital charges pursuant to the tariff, which equals \$515 per ERC, totaling \$25,750.
2. Requirement for the County to take-or-pay 532,292 gallons per month at the rate of 95¢ per 1,000 gallons. Of course the Windstream tariff does not have take-or-pay provisions

201 EAST PINE STREET • SUITE 1000 • ORLANDO, FL 32801  
TELEPHONE (407) 839-3955 • FAX (407) 839-3790

ORLANDO

FORT MYERS

FORT PIERCE

JACKSONVILLE

TALLAHASSEE

in it, and such a requirement is much more stringent than the present tariff of Windstream Utilities. Moreover, coupled with item 3, which requested that if we use anything over 532,292 gallons per month, there would be an excess charge unless it was due to excessive consumption. Such an excess charge, again, is not within the present tariff of Windstream Utilities. The fourth point involved the County building an 8-inch meter, and Windstream not charging for the meter on a monthly basis, while the County would pay for the meter. Of course, the tariff does have a charge for such a meter, and this, again, is not in accordance with your tariff. The request from the County was not for an 8-inch meter but was for a 2-inch meter or 3-inch meter in the previous meeting, and in the September 10th meeting, clarified to a 2-inch meter. We can understand that Windstream wants to modify their tariff in a fashion to gain additional revenues as shown in item 6, which would be the provision of 70% of the base facility charge for each individual meter behind the meter connecting to the system paid to Windstream versus payment based on the master meter. Of course this is not pursuant to Windstream's tariff, and it would be an additional burden to the County once the number of meters equaled or exceeded the base facility charge for the master meter.

3. Another term was that Windstream would basically have the unconstrained right to utilize the County's system for Windstream's service purposes and pass-through purposes. In other words, Windstream has the ability to utilize its customers facilities for future service with no compensation to the customer for whatever purposes Windstream wants to use the customers lines following the meter. Of course, that is not within the tariff and it is also not something that would be appropriate for the County to allow Windstream to do. The County's lines would be the County's lines, and the County would have the ability to serve from their lines.

All of the above terms and conditions commented upon are not in accordance with our previous meeting. We inquired of you during the meeting as to whether your proposal was anywhere close to what we had talked about in the previous meeting, which was simply a service connection, and you responded that of course it was not; it was totally different.

The only request and inquiry was for the potential of obtaining 50 ERC's of service and in contrast to that, we received your letter of September 9, 1996.

We understand that your client wishes to sell its utility to the County for the amount of \$2,000,000 as was stated in the August 30, 1996 meeting. The County has not pursued any type of negotiations with Windstream relative to acquisition, and the Board of County Commissioners has not authorized such discussions.

The only discussions we have at this juncture revolve around the potential inquiry relative to 50 ERC's on a 2-inch meter paying the base facility charge for the 2-inch meter, and paying the

Mr. William H. "Dude" Phelan, Jr., Esquire  
September 12, 1996  
Page 3

COMPOSITE  
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Page 23 of 31

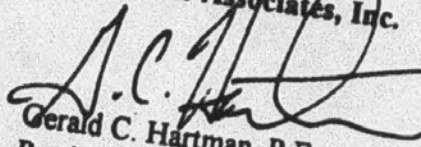
wholesale rate for the bulk service. The only modification to the present tariff in-place would be the provision of a bulk wholesale rate, and we are simply requesting whether Windstream would do so.

Obviously, based upon the letter provided for 50 ERC's, it is prohibitive to utilize Windstream service due to the cost requested, and the terms and conditions.

We thought that Windstream would offer service pursuant to its tariff, such that the County would be treated as any other customer, and there was a request for one concession associated with the reduction from a retail rate to a bulk rate since Mr. Droughy had offered the same at the Board of County Commissioners meeting.

Very truly yours,

Hartman & Associates, Inc.



Gerald C. Hartman, P.E.  
President

GCH/ch  
C55/Phelan.gch  
Attachment

cc: Tom Cloud, Esquire, GHR  
Gordon Johnston, Esquire, Marion County  
Bob Titterington, Marion County  
Alison Yurko, Esquire, GHR  
Andy Woodcock, HAI

**BOND, ARNETT & PHELAN, P.A.**  
101 S.W. 3rd Street  
P.O. Box 2405  
Ocala, FL 34478  
(352) 622-1188  
(352) 622-1125 [fax]

4:44 pm  
9/9/96

**FACSIMILE COVER SHEET**

**TO:** Alison Yurko

**FAX #:** (407) 244-5690

**FROM:** William H. Phelan, Jr.

**DATE:** 9-9-96 **TIME:** a.m./p.m.

**PAGES:** 3 (Including this cover)

**MESSAGE:**  
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**COMPOSITE  
EXHIBIT ATW-5  
Page 24 of 31**

**THE INFORMATION CONTAINED IN THIS FACSIMILE MESSAGE IS ATTORNEY PRIVILEGED AND CONFIDENTIAL INFORMATION INTENDED ONLY FOR THE USE OF THE INDIVIDUAL OR ENTITY NAMED ABOVE. IF THE READER OF THIS MESSAGE IS NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISSEMINATION, DISTRIBUTION OR COPYING OF THIS COMMUNICATION IS STRICTLY PROHIBITED. IF YOU HAVE RECEIVED THIS COMMUNICATION IN ERROR, PLEASE IMMEDIATELY NOTIFY US COLLECT BY TELEPHONE, AND RETURN THE ORIGINAL MESSAGE TO US AT THE ABOVE ADDRESS VIA THE U.S. POSTAL SERVICE. THANK YOU.**



M. THOMAS TOWN, JR.  
JOHN W. ARNETT  
WILLIAM H. PIERSON, JR.  
ANN MELINDA CRADOCK  
COURTNEY M. DURIE  
\*MARRIAGE CERTIFICATION SHALL BE MADE BY COURT\*

ATTORNEYS AT LAW  
101 SOUTHWAY THIRD STREET  
POST OFFICE BOX 4400  
OCALA, FLORIDA 34476

TELEPHONE  
(352) 600-1180  
FAX  
(352) 600-1180

September 9, 1996

VIA FACSIMILE TRANSMISSION (407) 839-3790

Gerald C. Hartman, P.E.  
Hartman & Associates, Inc.  
Suite 1000, 201 E. Pine Street  
Orlando, FL 32801

COMPOSITE  
EXHIBIT ATW-5  
Page 25 of 31

Re: Windstream Utilities Company  
Dear Mr. Hartman:

This correspondence will follow our meeting of August 30, 1996 and is in anticipation of our meeting scheduled for 8:30 a.m. tomorrow. As you will recall, the County and Windstream Utilities Company (hereinafter "Windstream") tentatively agreed upon a bulk water arrangement whereby Windstream would provide potable water for the County's use in servicing the J.B. Ranch development. Windstream remains willing to provide bulk water to the County; however, Windstream continues to question the practicality of that arrangement.

The County's plan to provide fire flow independent of potable water service does not appear to be economically reasonable. Likewise, substantial difficulties are presented by any system which incorporates multiple providers. Windstream is able and willing to provide all potable water and fire flow which is required for J.B. Ranch. For the benefit of all concerned parties, including the citizens of Marion County, Windstream would urge the County to consider a comprehensive arrangement for providing total water service to J.B. Ranch.

With that said, Windstream is willing to provide the 50 ERC's currently requested by the County. After consulting with its certified public accountant, Windstream proposes to provide the requested bulk water upon the following terms:

1. At the commencement of the bulk water contract Marion County will pay to Windstream the tariff charge for hook-ups which is 50 ERC's at \$515.00 each or a total of \$25,750.00.
2. The County will pay a gallonage rate of \$0.95 per 1,000 gallons on a "take or pay" basis for 532,292 gallons per month.

unit charges at the rate of 532,29¢ per month will presume in excess. The County will pay the tariff charge for hook-up unless it can demonstrate the overage is due to excessive consumption rather than additional hook-ups.

4. The County will supply at its own expense an 8" meter to measure gallonage flow. There will be no tariff charged for this meter.

5. Windstream will have the right to pass additional flow through the County's meter and lines so that Windstream can service other developments with fire flow or potable water. In the event Windstream uses the County's lines for this pass-through purpose, Windstream shall, at its own expense, meter the pass-through volume so no charge is made to the County for pass-through gallonage.

6. Windstream will charge the County a base facility charge equal to 70% of the base facility charge promulgated by Windstream for 5/8 x 3/4" meters. That is, Windstream will charge a monthly fee of \$6.29 (i.e.: \$8.99 x 70%) for each 5/8 x 3/4" meter connecting to the system.

7. All of the above-referenced rates will be subject to approved rate increases as same occur periodically.

8. The term of this contract is negotiable but must be a long-term undertaking.

9. Any contract is subject to PSC approval.

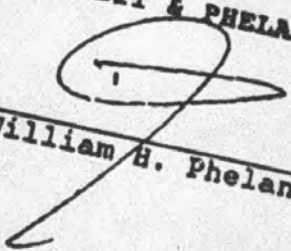
As mentioned above, Windstream remains convinced that a comprehensive provision of water service is the best idea. Toward that end, Windstream is willing to dedicate the base facility charges to upgrade of its plant so that fire flow can be provided. Obviously, the details of any such arrangement would be subject to specific negotiation. However, this suggestion is offered as evidence of Windstream's sincerity in working towards a system of unified water provision for J.B. Ranch.

We look forward to meeting with you in the morning at 8:30. I am hopeful that further discussion will yield an agreement satisfactory to all concerned.

Sincerely,

BOND, ARNETT & PHELAN, P.A.

By:

  
William H. Phelan, Jr.

WHPjr/anc  
cc: Butch Dlouhy (via fax)  
Bob Titterington (via fax)

MODE = MEMORY TRANSMISSION

START=SEP-11 15:33

END=SEP-11 15:35

FILE NO. = 123

NO.	COM	ABBR/NTWK	STATION NAME/ TELEPHONE NO.	PAGES	PRG. NO.	PROGRAM NAME
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-GRAY HARRIS ROBINSON PA -

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- \*\*\*\*\* - 407 244 5690- \*\*\*\*\*

### GRAY, HARRIS & ROBINSON

PROFESSIONAL ASSOCIATION

ATTORNEYS AT LAW

SUITE 1200

201 EAST PINE STREET

POST OFFICE BOX 3068

ORLANDO, FL 32802-3068

TELEPHONE (407) 843-8880

FAX (407) 844-8880

WRITER'S DIRECT DIAL

TRACY A. BERGETT  
LILA INGATE MCHENRY  
KENT L. MIDD  
ROBERT L. BEALS  
DONALD H. GIBSON  
RICHARD M. HENNINGTON  
M. SCOTT HOWELL  
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S. DEAN CANNON, JR.  
FRANK A. HANMER  
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ALISON M. YURKO  
JAMES D. KIBO  
KELLY M. FITZGERALD

OF COUNSEL  
ALDOUS S. RISS-ENGBAUM  
STEVE L. JACOBOWITZ  
THEODORE L. SHIPLE  
WILBUR E. BREWTON, P.A.  
BELL BREWTON PLANTE  
LEE M. HILLIARD  
HENRY J. PLANTE

J. CHARLES GRAY  
GORDON H. HARRIS  
RICHARD W. ROBINSON  
PHILIP R. FINCH  
PAMELA G. BRICE  
JAMES F. PAGE, JR.  
WILLIAM A. BOYLES  
THOMAS A. CLOUD  
BYRD F. MARSHALL, JR.  
J. MASON WILLIAMS III  
LEO P. ROCK, JR.  
G. ROBERTSON BILG  
CHARLES W. BELL  
JACK A. KIRSCHENBAUM  
RICHARD E. BURKE  
GUY S. MADGARD  
FREDERICK W. LEONHARDT  
BORRON J. OWEN, JR.  
MICHAEL R. WILSON  
JEFFREY D. KEINER  
PAUL S. QUINN, JR.  
DAVID L. SCHICK  
JACK R. MULLIN  
SUSAN T. SPRADLEY  
MICHAEL E. NEUHAHM  
DONALD A. MOHR  
PHILIP F. MOHR  
WILLIAM G. BOLTYN, III  
R. LEE BENNETT

September 11, 1996

Via FAX Transmittal - 352/622-1125

William H. Phelan, Jr., Esquire  
BOND, ARNETT & PHELAN, P.A.  
101 S.W. 3rd Street  
Ocala, FL 34478

**COMPOSITE  
EXHIBIT ATW-5  
Page 27 of 31**

Re: Windstream Utilities Company

Dear Mr. Phelan:

I am writing you this letter to confirm our meeting yesterday and to respond to Windstream Utilities Company's counter-offer received by after business hours on September 9, 1996. As you admitted in the meeting yesterday, your letter to us did not incorporate the proposal discussed during the meeting of August 30, 1996. We cannot recommend Windstream's counter-proposal.

I believe we all concurred at yesterday's meeting that the proposal which was delivered to us did constitute a basis for us to price what 50 ERC's of water capacity would cost were the County to buy it from Windstream Utilities Company. I note with interest that this proposal is inconsistent with Windstream's current tariff.

I also wanted to respond to Mr. Diouhy's request that he be allowed to meet with the owners of JB Ranch, Cherry Developers and the County. As we promised, we

# GRAY, HARRIS & ROBINSON

PROFESSIONAL ASSOCIATION

ATTORNEYS AT LAW

SUITE 1200

201 EAST PINE STREET

POST OFFICE BOX 3068

ORLANDO, FL 32802-3068

TELEPHONE (407) 843-8880

FAX (407) 244-8690

WRITER'S DIRECT DIAL

J. CHARLES GRAY  
GORDON H. HARRIS  
RICHARD M. ROBINSON  
PHILLIP R. FINCH  
PAMELA O. PRICE  
JAMES F. PAGE, JR.  
WILLIAM A. BOYLES  
THOMAS A. CLOUD  
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PHILIP F. NOHRR  
WILLIAM G. BOLTIN, III  
R. LEE BENNETT

TRACY A. BORGERT  
LILA INGATE MCHENRY  
KENT L. HIPP  
ROBERT L. BEALS  
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CHRISTOPHER J. COLEMAN  
PEGGY R. HOYT  
JOHN A. KIRST, JR.  
BRUCE M. HARRIS  
R. DEAN CANNON, JR.  
FRANK A. HAMNER  
RICHARD A. RODGERS  
ALISON M. YURKO  
JAMES D. KIBIO  
KELLY M. FITZGERALD

OF COUNSEL  
MALCOLM R. KIRSCHENBAUM  
SYDNEY L. JACKOWITZ  
THEODORE L. SHINKLE  
WILBUR E. BREWTON, P.A.  
KELLY BREWTON PLANTE  
LEE M. KILLINGER  
KENNETH J. PLANTE

September 11, 1996

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**COMPOSITE  
EXHIBIT ATW-5  
Page 28 of 31**

William H. Phelan, Jr., Esquire  
BOND, ARNETT & PHELAN, P.A.  
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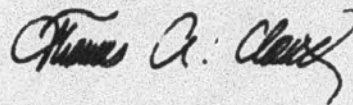
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William H. Phelan, Jr., Esquire  
Page 2  
September 11, 1996

passed along your request. Neither party was interested in meeting with Windstream Utilities Company, either with or without the County present.

Sincerely yours,



Thomas A. Cloud, Esquire

GRAY, HARRIS & ROBINSON, P.A.

cc: Bob Titterington, Acting Utility Director, Marion County  
Gerald C. Hartman, P.E.

**BOND, ARNETT & PHELAN, P.A.**

ATTORNEYS AT LAW

101 SOUTHWAY THIRD STREET

POST OFFICE BOX 2405

OCALA, FLORIDA 34478

M. THOMAS BOND, JR.  
JOHN W. ARNETT  
WILLIAM H. PHELAN, JR.

ANN KRISTINA CHAFFIN  
CURTIS M. DIERIA

\*MICHIGAN LICENSED REAL ESTATE LAWYER

TELEPHONE  
(888) 688-1188

FAX  
(888) 688-1188

September 9, 1996

**VIA FACSIMILE TRANSMISSION (407) 839-3790**

Gerald C. Hartman, P.E.  
Hartman & Associates, Inc.  
Suite 1000, 201 E. Pine Street  
Orlando, FL 32801

**COMPOSITE  
EXHIBIT ATW-5  
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Re: Windstream Utilities Company

Dear Mr. Hartman:

This correspondence will follow our meeting of August 30, 1996 and is in anticipation of our meeting scheduled for 8:30 a.m. tomorrow. As you will recall, the County and Windstream Utilities Company (hereinafter "Windstream") tentatively agreed upon a bulk water arrangement whereby Windstream would provide potable water for the County's use in servicing the J.B. Ranch development. Windstream remains willing to provide bulk water to the County; however, Windstream continues to question the practicality of that arrangement.

The County's plan to provide fire flow independent of potable water service does not appear to be economically reasonable. Likewise, substantial practical difficulties are presented by any system which incorporates multiple providers. Windstream is able and willing to provide all potable water and fire flow which is required for J.B. Ranch. For the benefit of all concerned parties, including the citizens of Marion County, Windstream would urge the County to consider a comprehensive arrangement for providing total water service to J.B. Ranch.

With that said, Windstream is willing to provide the 50 ERC's currently requested by the County. After consulting with its certified public accountant, Windstream proposes to provide the requested bulk water upon the following terms:

1. At the commencement of the bulk water contract Marion County will pay to Windstream the tariff charge for hook-ups which is 50 ERC's at \$515.00 each or a total of \$25,750.00.
2. The County will pay a gallonage rate of \$0.95 per 1,000 gallons on a "take or pay" basis for 532,292 gallons per month.

3. Any gallonage in excess of 532,292 per month will presume ERC unit charges at the rate of 1 ERC per 10,646 gallons per month in excess. The County will pay the tariff charge for hook-up unless it can demonstrate the overage is due to excessive consumption rather than additional hook-ups.

4. The County will supply at its own expense an 8" meter to measure gallonage flow. There will be no tariff charged for this meter.

5. Windstream will have the right to pass additional flow through the County's meter and lines so that Windstream can service other developments with fire flow or potable water. In the event Windstream uses the County's lines for this pass-through purpose, Windstream shall, at its own expense, meter the pass-through volume so no charge is made to the County for pass-through gallonage.

6. Windstream will charge the County a base facility charge equal to 70% of the base facility charge promulgated by Windstream for 5/8 x 3/4" meters. That is, Windstream will charge a monthly fee of \$6.29 (i.e., \$9.00 x 70%) for each 5/8 x 3/4" meter connecting to the system.

7. All of the above-referenced rates will be subject to approved rate increases as same occur periodically.

8. The term of this contract is negotiable but must be a long-term undertaking.

9. Any contract is subject to PSC approval.

As mentioned above, Windstream remains convinced that a comprehensive provision of water service is the best idea. Toward that end, Windstream is willing to dedicate the base facility charges to upgrade of its plant so that fire flow can be provided. Obviously, the details of any such arrangement would be subject to specific negotiation. However, this suggestion is offered as evidence of Windstream's sincerity in working towards a system of unified water provision for J.B. Ranch.

We look forward to meeting with you in the morning at 8:30. I am hopeful that further discussion will yield an agreement satisfactory to all concerned.

Sincerely,

BOND, ARNETT & PHELAN, P.A.

By:

  
William H. Phelan, Jr.

WHPjr/anc

cc: Butch Dlouhy (via fax)  
Bob Titterington (via fax)

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