

ORIGINAL

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OF COUNSEL
THOMAS F. WOODS

July 28, 1998

RECEIVED-FPSC
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RECORDS AND REPORTING

HAND DELIVERY

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

RE: Docket No. 971663-WS
Petition of Florida Cities Water Company for limited
proceeding to recover environmental litigation costs for North
and South Ft. Myers Division in Lee County and Barefoot Bay
Divisions in Brevard County.

Dear Ms. Bayo:

Please find enclosed an original and fifteen (15) copies of
a report to the Commission related to the Barefoot Bay Golf Course.
The Commission asked for this report during the June 14, 1998
Hearing in this docket.

Also enclosed for filing is an original and fifteen (15)
copies of our Certificate of Service related to the above filing.

Please acknowledge receipt of the foregoing by stamping the
enclosed extra copy of this letter and returning same to my
attention.

ACK _____

AFA Vandura Thank you.

APP _____

CAF _____ RECEIVED & FILED

CMU _____

CTR _____ FPSC-BUREAU OF RECORDS

EAG _____ BKG/l dv

LEG 2 Enclosures

LIN 5 cc: Harold McLean, Esq.

OPC _____ Rosanne Gervasi, Esq.

RCH _____

SEC 1

WAS _____

OTH _____

Very truly yours,

B. Kenneth Gatlin
B. Kenneth Gatlin

DOCUMENT NUMBER-DATE

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FPSC-RECORDS/REPORTING

**FLORIDA CITIES
WATER COMPANY**

ORIGINAL

July 24, 1998

Julia Johnson , Chairman
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

Re: Docket No. 971663-WS
Barefoot Bay Reclaimed Water System

Dear Ms. Johnson:

This letter is in response to the Florida Public Service Commission's (FPSC) inquiry concerning the reclaimed water supplied to the Barefoot Bay Golf Course stemming from the June 14, 1998 customer hearing for Docket Number 971663-WS.

The Barefoot Bay Advanced Wastewater Treatment Facility (AWTF) presently provides reclaimed water to the Barefoot Bay Golf Course and to a sod farm. When supply exceeds demand, Florida Cities Water Company (FCWC) also applies reclaimed water to a 40-acre tract of land which is not in commercial use. Reclaimed water is supplied to the golf course from the AWTF's four million gallon reclaimed water holding pond via a gravity reclaimed water piping system that connects directly to the golf course's two irrigation pumps. The reclaimed water holding pond valve remains open at all times except during repairs or maintenance to the reclaimed water main. This system is designed and operated so that as long as reclaimed water is contained within the holding pond it is available to the golf course.

During the hearing, allegations were made that FCWC was not supplying the quantity of reclaimed water to the golf course specified in the contract between FCWC and the Barefoot Bay Recreation District. Moreover, it was alleged that the reason for not meeting the supply requirements was that FCWC was giving priority to supplying the sod farm because the rate for the sod farm was two cents per thousand gallons higher. Attachment 1 hereto, the tariff sheets for each reclaimed water customer, shows that not to be the case.

The golf course has been provided with reclaimed water in accordance with the terms of the contract, enclosed as Attachment 2 for your information. Indeed, during certain months, the golf course has consumed considerably more water than its contract allocation of approximately equal weekly quantities of 115,000 gpd or 807,000 gallons per week. Attachment 3, the consumption logs for the period April through June 1998, show

FLORIDA CITIES WATER COMPANY
4837 Swift Road, Suite 100
Sarasota, Florida 34231
Telephone 941-925-3088
FAX 941-924-7203

A Unit of Avatar Utilities Inc.

Julia Johnson, Chairman
July 24, 1998
Page Two

that FCWC has provided the golf course 14,179,700 gallons of reclaimed water, an average of 1,090,746 gallons per week as compared to the allocation of 807,692 gallons per week specified in the contract.

In late June, for a period of two days (June 21 and 22) and after informing golf course personnel, it became necessary to temporarily restrict the withdrawal of reclaimed water due to the depletion of reclaimed water in the holding pond. Reclaimed water was again being utilized on June 23, 1998.

Clearly, the allegations are without basis and are probably due to a misunderstanding between FCWC and the Recreation District. In an effort to clear the matter up and assist the District in meeting its reclaimed water needs, a meeting with the District has been scheduled for July 31, 1998.

Should you have any questions or need additional information, please contact me.

Sincerely,

FLORIDA CITIES WATER COMPANY



Michael Acosta, P.E.
Vice President,
Engineering & Operations

MA/ajc

Attachments

FLORIDA CITIES WATER COMPANY
Barefoot Bay - Wastewater

Fourth Revised Sheet No. 24.0
Canceling Third Revised Sheet No. 24.0

GENERAL SERVICE

RATE SCHEDULE - RECLAIMED WATER (WASTEWATER)

Availability - Reclaimed water service in accordance with this rate schedule is available for commercial units throughout the certified area in Brevard County, Florida.

Applicability - This rate is available only to large volume users, such as golf courses.

Rate (Monthly)
General Service

| | | |
|-----------------|--------|---|
| Gallonge Charge | \$0.13 | .per 1,000 gallons of effluent water |
|-----------------|--------|---|

Terms of Payment - Bills are due and payable when rendered and become delinquent if not paid within twenty (20) days. Service may be discontinued after five (5) working days' written notice is mailed to the Customer separate and apart from any other bill.

Additional Clauses - Water and sewer charges are billed concurrently and payment for sewer service only is not acceptable to the Company without concurrent or simultaneous payment of the water charge. Non-receipt of total charges may result in discontinuance of service.

Limitations - Subject to all of the Rules and Regulations of the Company.

Effective Date: For service rendered on or after 7/15/96.

Type of Filing: 1995 Rate Case (Final Rates).

Gerald S. Allen
President

WP 7/96

SPECIAL RECLAIMED WATER (WASTEWATER)

RATE SCHEDULE FOR H&S GROVES

Availability - Reclaimed water service in accordance with this rate schedule is specifically for the H&S Property for the certificated area in Brevard County, Florida.

Applicability - This rate is available only to the H&S Property per an Agreement between Florida Cities Water Company (FCWC) and South Florida Sod, INC., dated Jan. 25, 1997, for the use of reclaimed water from FCWC's Advanced Wastewater Treatment Plant.

Rate (Monthly)
General Service

| | | |
|-----------------|--------|--|
| Gallonge Charge | \$0.00 | per 1,000 gallons of effluent water |
|-----------------|--------|--|

Limitations - Subject to all of the Rules and Regulations of the Company and Agreement.

Effective Date: September 3, 1997.

Type of Filing: Agreement Rate

Gerald S. Allen
President

WP 4/97

**AGREEMENT FOR THE DELIVERY AND USE OF
RECLAIMED IRRIGATION WATER**

THIS AGREEMENT is made and entered into on May 25, 1994, between Florida Cities Water Company (FCWC), a Florida Corporation engaged in the operation of water and wastewater systems in the State of Florida, hereafter referred to as "Utility" and Barefoot Bay Development Corporation, a Florida Corporation, whose address or principal place of business is 255 Alhambra Circle, Coral Gables, Florida 33134, hereafter referred to as the "Owner."

BASIS FOR THE AGREEMENT

Utility owns and operates the Barefoot Bay Wastewater Treatment Plant which will be capable of producing reclaimed water meeting applicable "public access" water quality standards which may be used for productive and beneficial purposes to irrigate golf courses, urban and residential lawns.

Owner owns approximately 75 acres of land which is described in Exhibit "A", attached and made a part hereof by reference. Owner warrants that it owns title to this land in fee simple without liens or encumbrances, or if the land is encumbered that all holders of rights by lien or encumbrance have joined in this Agreement as evidenced by an attached consent form with the intent to be bound to the extent of their interest. It is further warranted, if Owner is a corporation, that appropriate resolutions have authorized the undersigned representative to execute it so as to bind Owner. Owner shall not request more reclaimed water than can be beneficially used for irrigation, and surface storage purposes.

Both parties understand that Utility will rely upon this Agreement in the design, construction and operation of the treatment, transmission and distribution systems for delivery of reclaimed water to Owner.

TERMS AND CONDITIONS

In consideration of the commitment of Utility to deliver reclaimed water to Owner and the commitment of Owner to receive and beneficially use this water for the purposes set forth in this Agreement, the parties agree to the following terms and conditions:

1. TERM OF AGREEMENT; RECORDING

- (a) Utility shall deliver and Owner shall accept and use reclaimed water produced by Utility at the Barefoot Bay Wastewater Treatment Plant, and this Agreement shall be effective on the date of execution and for a term of ten (10) years. It is anticipated, but not warranted, that delivery of water will commence on or before July 1, 1995. The term of this Agreement shall be renewed only by mutual written agreement of the parties for successive five (5) periods beyond the initial ten-year term unless terminated by either party by written notice. Such written notice must be given at least 24 months prior to the expiration date of the then current term.

- (b) Upon execution by both parties, this Agreement shall be binding as a covenant or condition, which shall run with the land described in Exhibit "A", upon any subsequent owner unless the commitments undertaken by Owner are modified as provided herein. This Agreement incorporating its terms and conditions by reference shall be recorded in the Official Records of each county in which the land is located.

2. RECLAIMED WATER - QUALITY AND USE

- (a) All reclaimed water delivered under this Agreement shall conform to the applicable water quality standards specified in Florida Administrative Code (FAC) Chapter 17-610, Part III: Reuse; Slow-Rate Land Application Systems, Public Access Areas, Residential Irrigation and Edible Crops and the permit issued by the Florida Department of Environmental Protection (FDEP) pursuant thereto to reuse reclaimed water under this Agreement. Utility shall monitor water quality in accordance with said regulations and permit.
- (b) Owner shall reuse reclaimed water delivered by Utility for golf course irrigation, and for other purposes as determined by Owner, provided all such uses shall conform strictly to the FDEP regulations, permits issued pursuant thereto and the laws and regulations of other governmental agencies having jurisdiction over reuse under this Agreement. All such reuse is limited to Owner's land described in Exhibit "A" unless otherwise approved in writing by Utility. In no event shall Owner discharge reclaimed water directly to ground waters or to surface waters of the State except to the extent allowed by all required permits. Owner will also take all reasonable precautions, including signs and labeling, to prevent confusion between reclaimed water sources and other water sources.

3. FACILITIES

- (a) Utility's Facilities. Utility now has, or agrees to construct, reclaimed water main(s) to a point(s) adjacent to Owner's property and will deliver reclaimed water at the point(s) of delivery as shown in Exhibit "B". Utility will install a meter at each point of delivery. Utility will be solely responsible for operating and maintaining its facilities.
- (b) Owner's Facilities. Owner agrees to construct or modify irrigation systems on its land, described at Exhibit "A", to the extent necessary, sufficiently in advance so that reclaimed water will be received and used within thirty (30) days of written notice from Utility that deliveries will commence. Existing irrigation wells or surface waters of the State connected to the irrigation system being converted to a reclaimed water irrigation system shall be either disconnected or protected with a reduced-pressure principle backflow-prevention assembly, a double check valve backflow-prevention assembly or an appropriate air-gap. Owner agrees to complete all engineering studies, testing, permitting, design and construction, at its expense for all such irrigation systems.

The construction standards and specifications shall specifically address the requirements of Rules 17-610.468(2), 17-610.469(2), 17-610.470(3), 17-610.470(4), 17-610.471(1), 17-610.471(3) and 17-610.471(6), F.A.C. The Utility reserves the right to review and approve all permit applications. The system(s) shall include: (1) backflow prevention devices to prohibit the backflow of water from other supply sources into Utility's system; (2) appropriate provisions regarding the discharge of reclaimed water directly into ground and surface waters of the State; (3) provisions for storage within Owner's existing ponds to the extent reasonably feasible for the temporary storage of reclaimed water; (4) any and all piping, pumping and other equipment necessary to transfer reclaimed water from point of delivery to Owner's irrigation system, temporary storage ponds, and from temporary storage ponds to Owner's irrigation system; and (5) all groundwater monitoring facilities, including monitoring wells, as required by applicable permits and regulations. All such facilities shall comply with applicable regulations and Owner shall be solely responsible for the operation and maintenance of same.

- (c) Utility and Owner shall each separately complete all engineering studies, testing, designs, submit applications and obtain permits from all governmental entities having jurisdiction over permitting their respective facilities. Owner and Utility shall fully cooperate in coordinating their respective reclaimed water distribution/transmissions system(s) designs to assure hydraulic compatibility. Utility shall furnish, in a timely manner, hydraulic gradeline data with supporting calculations to aid Owner in the design of its distribution system(s).

4. VOLUME OF WATER, DELIVERY SCHEDULE

- (a) Utility will deliver and Owner shall accept and use a volume of 42 million gallons of reclaimed water per year in approximately equal weekly quantities (hereinafter referred to as a "weekly allocation") in accordance with a delivery schedule established by the Utility as provided below. Unless supplying water under adverse conditions as provided in Section 5 herein Utility shall deliver reclaimed water under a minimum pressure of twenty (20) pounds per square inch at the points of delivery designated elsewhere herein.
- (b) Utility shall consult with all reclaimed water users entering into like Agreements in order to establish among them a mutually beneficial delivery schedule for the quantity of water to be delivered so that under normal conditions each reclaimed water user shall receive a weekly allocation which shall be applied. Reasonable efforts will be made by Utility to accommodate the irrigation systems and practices of all reclaimed water users.

5. DELIVERY OF RECLAIMED WATER UNDER ADVERSE CONDITIONS

- (a) Both parties recognize that adverse weather conditions or unforeseen circumstances may necessitate modification of the normal delivery schedule established by Utility. Owner shall

have the right to restrict or refuse the use of the reclaimed water to be delivered in the event of adverse weather conditions or unforeseen circumstances, for a period of up to sixty (60) days per calendar year, no more than fifteen (15) days of which may be consecutive. Notwithstanding the foregoing, Owner shall not restrict or refuse the use of reclaimed water until all on-site storage is full and all alternate application sites available to the Owner have been utilized to their capacity. Notice to Utility of the exercise of this right shall be provided in writing, in advance. If advance notice to Utility is not practical, then the Owner shall give notice of the restriction or refusal upon exercising this right.

- (b) Both parties hereto also recognize that other reclaimed water users entering into like agreements shall have the right to draw additional water, subject to availability of reclaimed water supplies and economic feasibility on the part of Utility. During any period in which another Owner exercises the right to draw additional reclaimed water, Utility will furnish water under such pressure as the transmission and delivery systems are capable of producing. During these events, Utility shall not be obligated to provide the minimum pressure described in Paragraph 4(a) above.

6. CHARGES

For furnishing of the reclaimed water, the Owner shall pay the Utility \$ 0.13 per 1000 gallons subject to the approval of the Florida Public Service Commission (FPSC). The rate may be changed from time to time as approved by the FPSC. The Utility shall bill the Owner monthly based upon the volume of reclaimed water delivered to the Owner as measured by the Utility's meter.

7. INDEMNIFICATION

- (a) Owner shall save and hold harmless, defend and indemnify Utility, its agents, representatives, servants and employees, insofar as it legally may, from all claims costs, penalties, damages and expenses (including attorney's fees) arising out of the following:
- (1) Claims related to Owner's construction, erection, location, operation, maintenance, repair, installation, replacement or removal of that part of the system controlled by Owner for effluent disposal and reuse;
 - (2) Claims arising out of Owner's negligence or omissions.
 - (3) Claims or fines for non-compliance with permit conditions solely controlled by Owner.
 - (4) Claims arising out of Owner's groundwater or use of reclaimed water, except where such claim is related solely to failure of the reclaimed water provided at the point of delivery to meet water quality standards as provided in Paragraph 2(a), herein.



- (5) Claims for injury or damage to Owner's employees or agents resulting from the access right provided in Paragraph 13(b) where Utility is not found to be responsible from a gross negligent standpoint.
- (b) Utility shall save and hold harmless, defend and indemnify Owner, its agents, representatives, servants and employees, from all claims, costs, penalties, damages and expenses (including attorney's fees) arising out of the following:
- (1) Claims related to the Utility's construction, erection, location, operation, maintenance, repair, installation, replacement or removal of that part of the system controlled by Utility for effluent disposal and reuse;
 - (2) Claims arising out of Utility's negligence or omissions.
 - (3) Claims arising out of Utility's providing reclaimed water to the point of delivery which does not meet applicable water quality standards as provided in Paragraph 2(a), herein.
 - (4) Notwithstanding the above indemnification provisions of this Agreement, so long as Owner shall use reclaimed water delivered by Utility for the purposes set forth in Paragraph 2(b) herein and under the terms and conditions of this Agreement, Utility shall indemnify Owner and hold Owner harmless from any and all claims, actions, suits, proceedings, costs, expenses, including, but not limited to attorney's fees, damages and liabilities arising out of the claims by third parties residing on or using the land described in said Exhibit "A" or land adjacent and in close proximity (not to exceed 200 feet) to the land described thereon that the use of said reclaimed water has resulted in adverse human health effects. Owner shall also be indemnified and held harmless in like manner against the claims by third parties who have consumed products produced on the land described at said Exhibit "A" that the constituents in said reclaimed water delivered have resulted in adverse human health effects from the consumption. Utility's obligation to indemnify Owner shall be conditioned upon the following:
 - a Owner's strict compliance with all operating practice restrictions pertaining to protecting human health and the environment as prescribed by law, statutes and regulations and with any additional reasonable operating practices which Utility may establish from time to time and provide to Owner;
 - b Notice of any claim or information suggesting that a claim may be made against Owner which could result in damages or liability for which Utility has agreed to indemnify Owner and which could result in damages or liability for which Utility has agreed to indemnify Owner and hold Owner harmless, must be provided to

Utility. Oral notice of the claim or of the information that a claim may be made must be provided as soon as practical and reasonable from the time information regarding same is obtained but not more than seventy-two (72) hours from the time the information regarding same is obtained. In addition, written notice confirming the oral notice shall be given by Owner to Utility within a reasonable time after Owner has provided oral notice, and in all events promptly after service of process on Owner for any litigation which may result in damage of liability, together with a copy of the complaint and summons; and

- c Utility shall have the option to defend all such claims against Owner upon which damages may be awarded for which Utility has agreed to indemnify Owner and hold Owner harmless.

Likewise, Utility shall be indemnified in the same manner described above for similar claims or demands from persons residing on or using land adjacent to or in close proximity to the land described at said Exhibit "A" in the event Owner fails to comply with this Agreement and any operating practice restrictions protecting human health and the environment as provided herein and the claim or demand arises out of Owner's failure to comply.

- (5) Claims for injury or damage to Utility's employees or agents resulting from the access right provided in Paragraph 13(a) where Owner is not found to be responsible from a gross negligent standpoint.

8. EMERGENCY SITUATIONS

- (a) Utility shall not be held liable by Owner for failure to deliver reclaimed water as specified herein if an emergency or other situation beyond the direct control of Utility occurs which prevents delivery of reclaimed water including but not limited to the following, provided however Utility takes reasonable actions to restore delivery:
- (1) A lack of reclaimed water due to loss of flow to the treatment plant or due to process failure.
 - (2) Production of reclaimed water not meeting applicable water quality standards.
 - (3) Equipment or material failure in Utility's reclaimed water distribution system, including storage and pumping.
 - (4) Acts of God.
 - (5) Third party litigation.



- (6) Regulatory action.
- (b) Owner shall not be held liable for failure to accept delivery of reclaimed water as specified herein if an emergency or other situations beyond the direct control of Owner occurs which prevents acceptance of delivery of reclaimed water including but not limited to the the following, provided however Owner takes reasonable actions to restore ability to accept delivery:
- (1) Equipment or material failure in Owner's facilities.
 - (2) Acts of God.
 - (3) Regulatory action.
 - (4) Injunctive action by a court.
- (c) If such a situation occurs, the party experiencing the emergency shall notify the other party by telephone and confirm with a letter describing the nature of the emergency and the anticipated duration.

9. EXCUSE FROM PERFORMANCE BY GOVERNMENTAL ACTS

- (a) If for any reason, beyond the direct control of the applicable party, during the term of this Agreement local, regional, state or federal governments or agencies shall fail to issue necessary permits, grant necessary approvals, or shall require any change in the operation of the treatment, transmission and distribution systems or the application and use of reclaimed water by Owner, then to the extent that such requirements shall affect the ability of any party to perform any of the terms of this Agreement, the affected party shall be excused from the performance thereof and a new Agreement shall be negotiated, if possible, by the parties herewith in conformity with such permits, approvals, or requirements. More specifically, without excluding other governmental actions which excuse performance by each party, if any regulatory agency fails to approve or revokes approval of alternate application sites identified by Owner as provided under Paragraph 10(d) or 10(e) herein and no other site is available to Owner which the regulatory agencies will approve, then Owner's performance shall be excused in the manner set forth above.

10. TERMINATION, ASSIGNMENT, SALE OF LAND, TRANSFER OF COMMITMENTS, OWNER'S BUY OUT

- (a) Utility shall have the right to terminate this Agreement at any time if Owner refuses to receive and use the weekly allocation of water or receives and uses substantially less than the weekly allocation established by the delivery schedule, except as provided in Paragraph 5(a) herein . If termination for non-performance on the part of Owner occurs, Utility shall have all legal rights available to it, including but not limited to, specific performance, injunction rights, etc., to either force

performance or collect liquidated damages. Failure to exercise this right shall not constitute a waiver by Utility to terminate this Agreement upon subsequent breaches.

- (b) Utility shall also have the right to transfer all or any part of the treatment, transmission or distribution facilities to another utility and to assign all or any part of their rights and obligations under this Agreement to an alternate utility who shall be bound by and accept, and be exclusively responsible for all applicable terms and conditions of this Agreement.
- (c) Owner shall have the right to terminate this Agreement if Utility fails to deliver reclaimed water for a period of up to sixty (60) days per calendar year, no more than fifteen (15) days of which may be consecutive, except as provided in Paragraph 9 herein or delivers reclaimed water which does not conform to the standards prescribed in Paragraph 2(a) herein to the extent that the reclaimed water may be detrimental to Owner's land. Utility shall notify Owner of any incidence of delivery of reclaimed water which does not conform to said standards by telephone and confirm with a letter describing the water quality parameter(s) not met, duration and implications.
- (d) Sale of Land. Owner's right to sell, transfer or encumber the land described in Exhibit "A" shall not be restricted by this Agreement, except that written notice of any proposed sale or transfer must be given to Utility at the address noted in Section 13 herein, at least thirty (30) days prior to the sale or transfer and any subsequent party in interest shall be obligated to receive and use the weekly allocation of reclaimed water as described in Paragraph 4(a) herein and the buyer or transferee must execute and deliver to Utility prior to the sale or transfer an acknowledgement and acceptance of the prior Owner's commitment under the same terms and conditions of this Agreement.
- (e) Transfer of Commitment to Other Land. Owner shall also have the right to transfer the commitment under this Agreement to other land, within the service area of Utility's transmission and distribution system (hereafter referred to as "substituted land"), so long as the weekly allocation of reclaimed water is to be utilized for the same purposes or other purpose approved by the FDEP and under the same terms and conditions of this Agreement. If transferred to another owner, the transferee shall also execute an acknowledgement and acceptance of the terms and conditions of this Agreement in the same manner described in Paragraph 4(a) herein. All capital improvements required for delivery of reclaimed water to substituted land must be designed, constructed, permitted, owned and maintained by Utility. In the event Owner transfers the commitment of this Agreement to substituted land, the cost of Utility's capital improvements, including rights-of-way and land, required by the transfer to the substituted land shall be borne by Owner or transferee. Owner or transferee shall provide Utility a letter of credit or surety bond prior to commencement of construction as guarantee that Owner or transferee will pay all costs

associated with the extension of reclaimed water services to substituted land.

- (f) Owner Buy Out. Owner shall have the right to terminate the commitment to accept reclaimed water under this Agreement by providing advance notice and payment of a termination fee to the Utility as set forth in this paragraph. If Owner exercises this right during the initial year of the initial ten (10) year term of this Agreement, the fee shall be \$ 1,333 per acre for all land described in Exhibit "A" or land to which this agreement has been transferred as described in Paragraph 10(d) and 10(e) herein. This fee constitutes an allocated share per acre of the estimated construction cost in the amount of \$ 100,000 for the distribution system built at Utility's expense and shall be adjusted by written addendum to this Agreement to reflect the actual construction cost to Utility upon completion of construction. Upon Owner's termination during subsequent years or Owner's declination of renewal for subsequent terms, the fee shall be reduced by 3.6 percent for each year that this Agreement has been in effect. This Agreement may be terminated twenty four (24) months after written notice to Utility of Owner's exercise of this right and payment of the termination fee, unless Utility is able, within a shorter time, to identify and connect substitute lands or accommodate the reclaimed water supplied under this Agreement with other land then utilized for this purpose and at no additional cost to Utility in a manner which does not reduce the available capacity of Utility's system.

11. DISCLAIMER OF REPRESENTATIONS AND WARRANTIES

Utility does not represent or warrant that the volume of reclaimed water delivered shall increase the productivity of the land described in Exhibit "A", nor result in changes to the land, or vegetation of any kind. Owner shall secure independent advice and shall make an independent judgement as to the use of the volume of water described in Section 4 herein and of the quality described in Section 2 herein.

12. NOTICES

All notices required or authorized under this Agreement shall be given in writing and shall be served by mail on the parties at the addresses listed below:

Owner: Barefoot Bay Development Corporation
P.O. Box 780097
Sebastian, FL 32978-0097



With copy to: Barefoot Bay Development Corporation
Attention: General Counsel
P.O. Box 523000
Miami, FL 33152-3000

Utility: Florida Cities Water Company
P.O. Box 21119
Sarasota, FL 34276-4119

With copy to: Florida Cities Water Company
Attention: General Counsel
P.O. Box 523000
Miami, FL 33152-3000

13. ACCESS TO PROPERTY FOR INSPECTION AND TESTING

- (a) Utility shall have the right to enter upon the Owner's property without notice for purposes of performing tasks required by permits and regulations applicable to supplying reclaimed water hereunder and reading, servicing, repairing or replacing water meters. Furthermore, Utility shall have the right to enter upon the Owner's property upon 48-hour advance written notice to Owner, except that notice requirement is waived in the event of an emergency, to review and inspect Owner's operating practices as they relate to this Agreement, and inspect any backflow prevention devices between Owner's irrigation system and any well which is maintained by Owner. Utility will be responsible for any damage caused by Utility in such entry and Utility warrants that it will not unreasonably interfere in such entry with the business of Owner. Owner shall not be responsible for injury or damages incurred by Utility, its employees, servants, representatives and agents while on Owner's property unless same arises from Owner's gross negligence.
- (b) Should Owner desire to monitor water quality and upon Owner's 48-hour advance written request, Utility shall grant Owner reasonable access to its wastewater treatment plant for the collection of reclaimed water samples. Utility shall not be responsible for injury or damages incurred by Owner, its employees, servants, representatives and agents while on Utility's property unless same arises from Utility's gross negligence. Owner warrants that it will not unreasonably interfere in such entry with the business of Utility.

14. DISCLAIMER OF THIRD PARTY BENEFICIARIES

This Agreement is solely for the benefit of the formal parties hereto and no right or cause of action shall accrue upon or by reason hereof, to or for the benefit of any third party not a formal party hereto.

15. SEVERABILITY

If any part of this Agreement is found invalid or unenforceable by any court, such invalidity or unenforceability shall not

affect the other parts of this Agreement if the rights and obligations of the parties contained therein are not materially prejudiced and if the intentions of the parties can continue to be effectuated. To that end, this Agreement is declared severable.

16. LAND USE APPROVALS

This Agreement shall not be construed as granting or assuring or indicating any future grant of any land use or zoning approvals, permissions, variances, special exceptions, or rights with respect to real property described in Exhibit "A" hereof.

17. TAXES/ASSESSMENTS

Owner shall remain liable for payment of all real estate taxes or assessments levied against the property described on Exhibit "A". At the sole option of Utility, Utility reserves the right to pay any taxes or assessments on the behalf of Owner. Notwithstanding, loss of property ownership for failure to pay such taxes or assessments does not excuse Owner from performance as outlined in this Agreement.

18. PREVAILING PARTY

If it should become necessary for either of the parties to resort to legal action the non-prevailing party shall pay all reasonable legal fees and other expenses incurred by the prevailing party, including, but not limited to, attorneys fees at all judicial levels.

19. ENTIRE UNDERSTANDING

This Agreement contains the entire understanding between the parties and no modification or alteration of this Agreement shall be binding unless endorsed in writing by the parties hereto.

20. WAIVER

- (a) The waiver by either party of any term, covenant, agreement or condition herein shall not be deemed a waiver of any preceding or subsequent breach of the same or any other term, covenant, agreement or condition herein. No covenant, term, agreement, or condition of this Agreement shall be deemed to have been waived by either party, unless such waiver be in writing.
- (b) No waiver of any covenant, term, agreement, or condition of this Agreement or legal right or remedy shall be implied by the failure of Utility or Owner to declare a default, or for any other reason. Utility's or Owner's consent to or approval of any subsequent similar act.
- (c) The rights of Utility and Owner are cumulative and failure of either party to exercise any right hereunder shall not operate as waiver or forfeiture of said rights.

21. APPLICABLE LAW

This Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida.

22. EXHIBITS AND ADDENDA

This Agreement incorporates the following exhibits and addenda which are specifically made a part hereof:

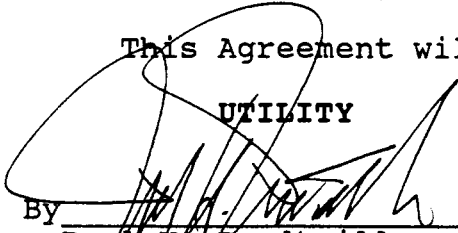
- Exhibit A - Property Description
- Exhibit B - Sketch Identifying Point(s) of Delivery

THIS WRITTEN AGREEMENT constitutes the entire Agreement between the parties and has been entered into voluntarily and with independent advice and legal counsel and has been executed by the authorized representatives of each party on the date written above. Modifications to and waivers of the provisions herein shall be made in writing by the parties hereto.

This Agreement will be effective on May 25, 1994.

UTILITY


OWNER

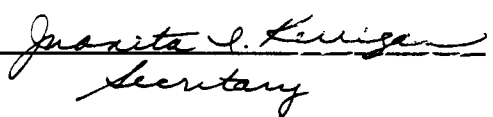
By 
 Paul H. Bradtmiller
 Executive Vice President &
 Chief Operating Officer

By 
 Dennis J. Getman
 Exec. Vice President & Asst. Sec.

(CORPORATE SEAL)

(CORPORATE SEAL)

ATTEST 

ATTEST 
 Secretary

FOR OWNER

STATE OF FLORIDA)
COUNTY OF DADE)

I HEREBY CERTIFY that on this day before me, an officer duly authorized in the State and County named above to take acknowledgements, personally appeared Dennis J. Getman, well known to me to be the Executive Vice President and Assistant Secretary of BAREFOOT BAY DEVELOPMENT CORPORATION, and acknowledges executing this Agreement freely and voluntarily under authority duly vested in him by said corporation and that the seal affixed hereto is the true corporate seal of said corporation.

WITNESS my hand and official seal in the County and State named above this 26th day of MAY, 1994.



OFFICIAL SEAL
PATRICIA SNOW
My Commission Expires
Nov. 19, 1995

Patricia Snow
NOTARY PUBLIC CC161896
My Commission Expires: 11-19-95

FOR UTILITY

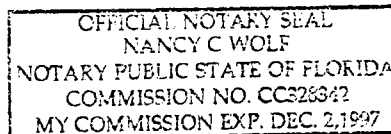
STATE OF FLORIDA)
COUNTY OF SARASOTA)

I HEREBY CERTIFY that on this day before me, an officer duly authorized in the State and County named above to take acknowledgements, personally appeared Paul H. Bradtmiller, well known to me to be the Executive Vice President and Chief Operating Officer of FLORIDA CITIES WATER COMPANY, and acknowledges executing this Agreement freely and voluntarily under authority duly vested in him by said corporation and that the seal affixed hereto is the true corporate seal of said corporation.

WITNESS my hand and official seal in the County and State named above this 31st day of May, 1994.

(SEAL)

Nancy C. Wolf
NOTARY PUBLIC
My Commission Expires: _____



Golf Course Irrigation

| Month | North Mtr 930780 | Total Reuse | Groundwater | Groundwater Total | South Mtr 930781 | Total Reuse | Groundwater | Groundwater Total | Combined Total Resue | Weekly Total |
|------------------|---------------------|----------------|-------------|----------------------|---------------------|----------------|-------------|----------------------|----------------------------|-----------------|
| April 1998 31 | 66,773,500 | | | | 52,501,400 | | | | | |
| 1 | 66,878,200 | 104,700 | | | 52,575,100 | 73,700 | | | 178,400 | |
| 2 | 66,991,700 | 113,500 | | | 52,691,200 | 116,100 | | | 229,600 | |
| 3 | 67,098,400 | 106,700 | | | 52,799,200 | 108,000 | | | 214,700 | |
| 4 | 67,098,400 | | | | 52,799,200 | | | | | |
| 5 | 67,098,400 | | | | 52,799,200 | | | | | 957,800 |
| 6 | 67,211,700 | 113,300 | | | 52,911,900 | 112,700 | | | 226,000 | |
| 7 | 67,294,000 | 82,300 | | | 52,983,800 | 71,900 | | | 154,200 | |
| 8 | 67,375,600 | 81,600 | | | 53,082,000 | 98,200 | | | 179,800 | |
| 9 | 67,494,800 | 119,200 | | | 53,082,000 | | | | 119,200 | |
| 10 | 67,585,800 | 91,000 | | | 53,266,000 | 184,000 | | | 275,000 | |
| 11 | 67,680,000 | 94,200 | | | 53,328,300 | 62,300 | | | 156,500 | |
| 12 | 67,772,200 | 92,200 | | | 53,410,700 | 82,400 | | | 174,600 | 1,285,300 |
| 13 | 67,772,200 | | | | 53,520,200 | 109,500 | | | 109,500 | |
| 14 | 67,904,900 | 132,700 | | | 53,520,200 | | | | 132,700 | |
| 15 | 68,011,800 | 106,900 | | | 53,522,700 | 2,500 | | | 109,400 | |
| 16 | 68,108,400 | 96,600 | | | 53,606,300 | 83,600 | | | 180,200 | |
| 17 | 68,230,600 | 122,200 | | | 53,713,400 | 107,100 | | | 229,300 | |
| 18 | 68,361,200 | 130,600 | | | 53,827,300 | 113,900 | | | 244,500 | |
| 19 | 68,458,200 | 97,000 | | | 53,939,200 | 111,900 | | | 208,900 | 1,214,500 |
| 20 | 68,458,200 | | | | 53,939,200 | | | | | |
| 21 | 68,575,800 | 117,600 | | | 54,009,100 | 69,900 | | | 187,500 | |
| 22 | 68,671,700 | 95,900 | | | 54,097,800 | 88,700 | | | 184,600 | |
| 23 | 68,761,000 | 89,300 | | | 54,210,100 | 112,300 | | | 201,600 | |
| 24 | 68,837,700 | 76,700 | | | 54,296,000 | 85,900 | | | 162,600 | |
| 25 | 68,837,700 | | | | 54,296,000 | | | | | |
| 26 | 68,939,000 | 101,300 | | | 54,380,400 | 84,400 | | | 185,700 | 922,000 |
| 27 | 68,947,800 | 8,800 | | | 54,470,300 | 89,900 | | | 98,700 | |
| 28 | 69,029,800 | 82,000 | | | 54,580,100 | 109,800 | | | 191,800 | |
| 29 | 69,048,000 | 18,200 | | | 54,642,400 | 62,300 | | | 80,500 | |
| 30 | 69,048,000 | | | | 54,642,400 | | | | | |
| 31 | | | | | | | | | | |
| Mo. Total | | 2,274,500 | | | | 2,141,000 | | | 4,415,500 | |

Weekly total
includes previous
month

Golf Course Irrigation

| Month | North Mtr 930780 | Total Reuse | Groundwater | Groundwater Total | South Mtr 930781 | Total Reuse | Groundwater | Groundwater Total | Combined Total Reuse | Weekly Total |
|-----------|---------------------|----------------|-------------|----------------------|---------------------|----------------|-------------|----------------------|----------------------------|-----------------|
| May 1998 | | | | | | | | | | |
| 30 | 69,048,000 | | | | 54,642,400 | | | | | |
| 1 | 69,048,000 | | | | 54,642,400 | | | | | |
| 2 | 69,092,400 | 44,400 | | | 54,712,600 | 70,200 | | | 114,600 | |
| 3 | 69,136,200 | 43,800 | | | 54,792,700 | 80,100 | | | 123,900 | 809,500 |
| 4 | 69,136,200 | | | | 54,792,700 | | | | | |
| 5 | 69,163,200 | 27,000 | | | 54,829,200 | 36,500 | | | 63,500 | |
| 6 | 69,163,200 | | | | 54,829,200 | | | | | |
| 7 | 69,200,400 | 37,200 | | | 54,829,200 | | | | 37,200 | |
| 8 | 69,232,300 | 31,900 | | | 54,899,200 | 70,000 | | | 101,900 | |
| 9 | 69,317,300 | 85,000 | | | 55,004,500 | 105,300 | | | 190,300 | |
| 10 | 69,403,600 | 86,300 | | | 55,073,400 | 68,900 | | | 155,200 | 548,100 |
| 11 | 69,490,500 | 86,900 | | | 55,151,000 | 77,600 | | | 164,500 | |
| 12 | 69,609,400 | 118,900 | | | 55,314,800 | 163,800 | | | 282,700 | |
| 13 | 69,700,500 | 91,100 | | | 55,431,600 | 116,800 | | | 207,900 | |
| 14 | 69,812,900 | 112,400 | | | 55,582,900 | 151,300 | | | 263,700 | |
| 15 | 69,927,300 | 114,400 | | | 55,727,000 | 144,100 | | | 258,500 | |
| 16 | 70,072,700 | 145,400 | | | 55,856,000 | 129,000 | | | 274,400 | |
| 17 | 70,189,500 | 116,800 | | | 55,994,300 | 138,300 | | | 255,100 | 1,706,600 |
| 18 | 70,314,600 | 125,100 | | | 56,134,500 | 140,200 | | | 265,300 | |
| 19 | 70,452,200 | 137,600 | | | 56,254,500 | 120,000 | | | 257,600 | |
| 20 | 70,566,500 | 114,300 | | | 56,373,000 | 118,500 | | | 232,800 | |
| 21 | 70,676,800 | 110,300 | | | 56,540,900 | 167,900 | | | 278,200 | |
| 22 | 70,793,900 | 117,100 | | | 56,689,500 | 148,600 | | | 265,700 | |
| 23 | 70,793,900 | | | | 56,689,500 | | | | | |
| 24 | 70,793,900 | | | | 56,689,500 | | | | | 1,299,600 |
| 25 | 70,793,900 | | | | 56,689,500 | | | | | |
| 26 | 70,973,300 | 179,400 | | | 56,880,200 | 190,700 | | | 370,100 | |
| 27 | 71,121,000 | 147,700 | | | 57,024,000 | 143,800 | | | 291,500 | |
| 28 | 71,296,600 | 175,600 | | | 57,317,600 | 293,600 | | | 469,200 | |
| 29 | 71,384,700 | 88,100 | | | 57,491,500 | 173,900 | | | 262,000 | |
| 30 | 71,478,700 | 94,000 | | | 57,645,400 | 153,900 | | | 247,900 | |
| 31 | 71,567,500 | 88,800 | | | 57,766,500 | 121,100 | | | | 1,640,700 |
| Mo. Total | | 2,519,500 | | | | 3,124,100 | | | 5,643,600 | |

Weekly total
includes previous
month

367

Golf Course Irrigation

| Month | North Mtr 930780 | Total Reuse | Groundwater | Groundwater Total | South Mtr 930781 | Total Reuse | Groundwater | Groundwater Total | Combined Total Reuse | Weekly Total |
|-----------------|---------------------|----------------|-------------|----------------------|---------------------|----------------|-------------|----------------------|----------------------------|-----------------|
| June 1998 31 | 71,567,500 | | | | 57,766,500 | | | | | |
| 1 | 71,643,100 | 75,600 | | | 57,884,900 | 118,400 | | | 194,000 | |
| 2 | 71,677,600 | 34,500 | | | 57,976,500 | 91,600 | | | 126,100 | |
| 3 | 71,744,300 | 66,700 | | | 58,050,200 | 73,700 | | | 140,400 | |
| 4 | 71,812,600 | 68,300 | | | 58,132,400 | 82,200 | | | 150,500 | |
| 5 | 71,926,900 | 114,300 | | | 58,218,200 | 85,800 | | | 200,100 | |
| 6 | 72,034,400 | 107,500 | | | 58,293,600 | 75,400 | | | 182,900 | |
| 7 | 72,034,400 | | | | 58,293,600 | | | | | 994,000 |
| 8 | 72,155,500 | 121,100 | | | 58,392,400 | 98,800 | | | 219,900 | |
| 9 | 72,249,000 | 93,500 | | | 58,467,100 | 74,700 | | | 168,200 | |
| 10 | 72,341,300 | 92,300 | | | 58,546,300 | 79,200 | | | 171,500 | |
| 11 | 72,446,500 | 105,200 | | | 58,631,900 | 85,600 | | | 190,800 | |
| 12 | 72,466,000 | 19,500 | | | 58,739,800 | 107,900 | | | 127,400 | |
| 13 | 72,646,900 | 180,900 | | | 58,802,900 | 63,100 | | | 244,000 | |
| 14 | 72,738,000 | 91,100 | | | 58,876,600 | 73,700 | | | 164,800 | 1,286,000 |
| 15 | 72,860,300 | 122,300 | | | 59,032,500 | 155,900 | | | 278,200 | |
| 16 | 72,956,800 | 96,500 | | | 59,137,800 | 105,300 | | | 201,800 | |
| 17 | 73,058,800 | 102,000 | | | 59,246,800 | 109,000 | | | 211,000 | |
| 18 | 73,175,600 | 116,800 | | | 59,378,400 | 131,600 | | | 248,400 | |
| 19 | 73,279,100 | 103,500 | | | 59,460,500 | 82,100 | | | 185,600 | |
| 20 | 73,283,800 | 4,700 | | | 59,460,500 | | | | 4,700 | |
| 21 | 73,283,800 | | | | 59,460,500 | | | | | 1,129,700 |
| 22 | 73,283,800 | | | | 59,460,500 | | | | | |
| 23 | 73,333,900 | 50,100 | | | 59,496,700 | 36,200 | | | 86,300 | |
| 24 | 73,367,500 | 33,600 | | | 59,523,100 | 26,400 | | | 60,000 | |
| 25 | 73,435,400 | 67,900 | | | 59,557,000 | 33,900 | | | 101,800 | |
| 26 | 73,461,700 | 26,300 | | | 59,626,000 | 69,000 | | | 95,300 | |
| 27 | 73,543,400 | 81,700 | | | 59,671,200 | 45,200 | | | 126,900 | |
| 28 | 73,578,000 | 34,600 | | | 59,716,600 | 45,400 | | | 80,000 | 550,300 |
| 29 | 73,613,000 | 35,000 | | | 59,761,500 | 44,900 | | | 79,900 | |
| 30 | 73,667,500 | 54,500 | | | 59,787,100 | 25,600 | | | 80,100 | |
| Mo. Total | | 2,100,000 | | | | 2,020,600 | | | 4,120,600 | |

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Petition of FLORIDA)
CITIES WATER COMPANY, seeking)
recovery of environmental)
litigation costs in a Limited)
Proceeding for its NORTH and)
SOUTH FT. MYERS DIVISION in)
Lee County and BAREFOOT BAY)
DIVISION in Brevard County,)
Florida)

Docket No. 971663-WS

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of a report to the Commission related to the Barefoot Bay Golf Course has been furnished by hand delivery to Rosanne Gervasi, Esq., Division of Legal Services, Florida Public Service Commission, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850 and to Harold McLean, Esq., Office of Public Counsel, c/o The Florida Legislature, 111 W. Madison Street, Room 812, Tallahassee, FL 32399-1400, on this 28th day of July, 1998.



B. KENNETH GATLIN
Fla. Bar #0027966
Gatlin, Schiefelbein & Cowdery
3301 Thomasville Road, Suite 300
Tallahassee, Florida 32312
(850) 385-9996

Attorneys for
FLORIDA CITIES WATER COMPANY