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August 25, 1998

Ms. Blanca S. Bayo, Director
Division of Records and Reporting
Florida Public Service Commission
2540 Shumard Oak Boulevard
Betty Easley Conference Center, Room 110
Tallahassee, Florida 32399-0850

HAND DELIVERY

RECEIVED-FPSC
98 AUG 25 PM 4:51
RECORDS AND REPORTING

Re: Docket Nos. 970657-WS and 980261-WS

Dear Ms. Bayo:

Enclosed herewith for filing in the above-referenced docket on behalf of Florida Water Services Corporation ("Florida Water") are the original and fifteen copies of Florida Water's Response in Opposition to Lake Suzy Utilities, Inc.'s Motion for Partial Summary Disposition.

Please acknowledge receipt of these documents by stamping the extra copy of this letter "filed" and returning the same to me.

Thank you for your assistance with this filing.

RECEIVED & FILED
[Signature]
FPSC-BUREAU OF RECORDS

Sincerely,

[Signature]
Kenneth A. Hoffman

KAH/rl
Enclosures
cc: Parties of Record
Trib.3

WAS
Legal - 1
Mat - 5
Sec - 1
1 to each docket

DOCUMENT NUMBER-DATE
09231 AUG 25 98
FPSC-RECORDS/REPORTING

BEFORE THE PUBLIC SERVICE COMMISSION

ORIGINAL

In Re: Application for)
certificate to operate a water)
and wastewater utility in)
Charlotte and DeSoto Counties)
by Lake Suzy Utilities, Inc.)
)
)
_____)

DOCKET NO. 970657-WS

and

In Re: Application for)
Amendment of Certificate Nos.)
570-W and 496-S in Charlotte)
County by Florida Water Services)
Corporation.)
)
)
_____)

DOCKET NO. 980261-WS

**FLORIDA WATER SERVICES CORPORATION'S
RESPONSE IN OPPOSITION TO LAKE SUZY
UTILITIES, INC.'S MOTION FOR PARTIAL SUMMARY DISPOSITION**

Florida Water Services Corporation ("Florida Water"), by and through its undersigned attorneys and pursuant to Rule 28-106.204, Florida Administrative Code, files this Response in opposition to the Motion For Partial Summary Disposition ("Motion") filed by Lake Suzy Utilities, Inc. ("Lake Suzy"). In support hereof, Florida Water states as follows:

1. Lake Suzy's Motion should be denied as it is based on several flawed premises and fails to meet the applicable legal standards to warrant the relief requested.

2. The Commission precedent cited by Lake Suzy¹ recognizes that a motion for summary judgement cannot be granted where disputed issues of material fact exist. As explained

¹ 97 F.P.S.C. 5:320, In Re: Dade County Circuit Court Referral of Certain Issues in Case No. 94-14234-CA-22 (S.H. Dohan & Company, P.A. v. Transcall America, Inc. d/b/a ATC Long Distance) that are within the Commission's Jurisdiction; Order No. PSC-97-0554-FOF-TI, issued May 15, 1997, in Docket No. 951270-TI.

DOCUMENT NUMBER-DATE
09231 AUG 25 88
PSC-RECORDS/REPORTING

below, such issues are clearly present here. That being the case, not only should the request for summary disposition be denied but any suggestion for the awarding of costs is inappropriate. Moreover, as to costs, Lake Suzy fails miserably to assert facts and circumstances which would justify an award of costs even if its Motion were granted.

3. It should first be noted that Lake Suzy's Motion is directed only to Florida Water's providing water service to the Links Subdivision. The fallacious premise for Lake Suzy's assertion is that Florida Water may not provide service outside the property described in the Agreement attached to the Motion (the "Agreement").

a. Contrary to Lake Suzy's assertion, it is not clear from the Agreement that Florida Water may only serve the property therein identified. The Agreement contains no such express restriction. The focus of the Agreement is a reservation of capacity for a minimum number of connections. Florida Water has not utilized all of the connections reserved under the Agreement, and, therefore, maintains it can provide the Links Subdivision and other properties water service pursuant thereto. Up until recently, Charlotte County's Utilities Director indicated he would not object to Florida Water's providing water and wastewater service to the Links Subdivision.

b. Florida Water is engaged in efforts to obtain water supply from sources other than Charlotte County pursuant to the Agreement, such as from DeSoto County. Such other supply source may be used to provide water service to the Links Subdivision.

4. The foregoing paragraph establishes that there are indeed disputed issues of material fact as to Florida Water's ability to provide water service to the Links Subdivision.

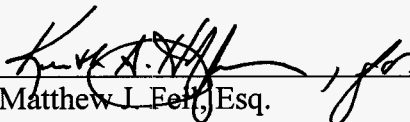
5. Lake Suzy's request to provide water service to the Links Subdivision is suspect under a theory similar to what Lake Suzy now asserts against Florida Water. Attached hereto is Lake Suzy's water supply agreement with DeSoto County ("Lake Suzy - DeSoto Agreement").

Paragraph 6.6 of the Lake Suzy – DeSoto Agreement provides that Lake Suzy assigns its revenues to DeSoto County in the event of Lake Suzy's default in payment. DeSoto County has reported that Lake Suzy has not paid DeSoto County in full for bulk water service. That being the case, Lake Suzy is contractually unable to provide service to the Links Subdivision.

6. Denying Lake Suzy's Motion is required as discussed above; therefore, there is no basis for an award of costs. Even if Lake Suzy's Motion is granted, Lake Suzy utterly fails to establish that Florida Water's application was made for an "improper purpose" as defined by Section 120.595 (1) (e) 1., Florida Statutes (1997). Florida Water had "a reasonably clear legal justification" for its filing, as established by the facts set forth hereinabove. See In Re: Application of East Central Florida Service, Inc. for an Original Certificate in Brevard, Orange, and Osceola Counties, Order No. PSC-92-0104-FOF-WU, issued March 27, 1992, in Docket No. 910114-WW; 92 F.P.S.C. 3:374, 377 (1992).

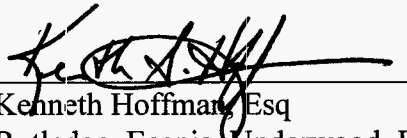
Wherefore, Florida Water Services Corporation requests that Lake Suzy's Motion for Partial Summary Disposition be denied.

Respectfully submitted this 25 day of August, 1998.


Matthew J. Feit, Esq.
Florida Water Services
1000 Color Place
Apopka, Florida 32860-9520
(407) 880-0058
(407) 880-1395 (Fax)

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing has been furnished by U.S. Mail to the following; Martha Young Burton, Esquire, Assistant County Attorney, 18500 Murdock Circle, Port Charlotte, Florida 33948-1094; John R. Marks, III, Knowles, Marks & Randolph, P.A.; Charlotte L. Sopka, Haus Development, Inc., Post Office Box 3024, Port Charlotte, Florida 33949; Frederick Bechtold, Esquire, Vorbeck & Vorbeck, 207 Magnolia Street, Arcadia, Florida 34266; Martin S. Friedman, Esquire, Rose, Sundstrom & Bently, 2548 Blairstone Pines Drive, Tallahassee, Florida 32301 and by hand delivery to Bobbie Reyes, Esquire, Florida Public Service Commission, Legal Division, 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0580, this 25 day of August, 1998.



Kenneth Hoffman, Esq
Rutledge, Ecenia, Underwood, Purnell & Hoffman
215 South Monroe Street, Suite 420
Tallahassee, Florida 32301-1841
(850) 681-6788
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**EXHIBIT 1
LAKE SUZY WATER ALLOCATION**

The maximum quantity of water committed by the County to be delivered to Lake Suzy at its Delivery Point(s) shall be as follows

- A. an amount not to exceed 18.25 mgy pursuant to the Peace River Water Supply Contract, dated May 21, 1991;
- B. an amount not exceed 29.2 mgy during the interim period of the effective date of this Contract and the completion of the expansion of the Peace River Regional Water Treatment Facility pursuant to the Interlocal Agreement for Water Supply Between Charlotte County and DeSoto County;
- C. amounts pursuant to the Peace River Option Water Supply Contract as follows:
 - 1. an amount not to exceed 29.2 mgy (annual quantity) and 0.096 mgd (peak month quantity) during the initial delivery year (the period between the final completion of the facilities construction and ending on the immediately following September 30);
 - 2. an amount not to exceed 29.2 mgy (annual quantity) and 0.096 mgd (peak month quantity) during the second delivery year (beginning October 1 and ending on the immediately succeeding September 30);
 - 3. an amount not to exceed 32.85 mgy (annual quantity) and 0.108 mgd (peak month quantity) during the third delivery year (beginning October 1 and ending on the immediately succeeding September 30);
 - 4. an amount not to exceed 40.15 mgy (annual quantity) and 0.133 mgd (peak month quantity) during the fourth delivery year (beginning October 1 and ending on the immediately succeeding September 30);
 - 5. an amount not to exceed 45.625 mgy (annual quantity) and 0.150 mgd (peak month quantity) during the fifth delivery year and thereafter (beginning October 1 and ending on the immediately succeeding September 30).

EXHIBIT 2

Existing Service Connection Points Locations Off 12" Water Pipeline

1. Within DeSoto County: Southwest corner of Section 30, Township 39 South, Range 23 East, along DeSoto/Sarasota County Line
2. Approximately 2300 feet north of the DeSoto/Charlotte County line along King's Highway

LAKE SUZY AMENDED WATER SUPPLY CONTRACT

THIS AMENDED CONTRACT is entered into this 1st day of April, 1995, by and between DeSoto County, a political subdivision of the State of Florida, acting by and through its Board of County Commissioners, the governing board thereof, hereinafter referred to as ("County") and Lake Suzy Utilities, Inc., a Florida corporation, hereinafter referred to as ("Lake Suzy").

WITNESSETH

WHEREAS, County and Lake Suzy are desirous of entering into an agreement to provide for the sale of water by County to Lake Suzy for distribution to the developments which Lake Suzy serves; and

WHEREAS, County is willing to provide potable water to Lake Suzy at specified delivery point(s); and

WHEREAS, prior to entering into this contract, Lake Suzy was previously supplied potable water by General Development Utilities, Inc., ("GDU") under that certain Utility Agreement dated March 19, 1987, and amended on April 13, 1990 ("Utility Agreement"); and

WHEREAS, as a result of the condemnation by Charlotte County of the facilities owned by GDU, which were used to supply potable water to Lake Suzy, and the subsequent conveyances of those facilities to the Peace River/Manasota Regional Water Supply Authority ("Authority"), Lake Suzy is no longer able to secure water from GDU; and

WHEREAS, the County has been supplying water to Lake Suzy since June

1991; and

WHEREAS, on February 24, 1992, County and Lake Suzy entered into an agreement whereby County would commit its allocation of water pursuant to the Peace River Water Supply Contract, dated May 21, 1991, for sale to Lake Suzy for a maximum quantity of water not to exceed 18.25 million gallons per year (mgpy); and

WHEREAS, Lake Suzy has notified County that it will require additional amounts of water and County has agreed to make all reasonable efforts to secure additional quantities of water; and

WHEREAS, County in order to acquire additional amounts of water proposes to enter a contract with the Peace River/Manasota Regional Water Supply Authority, Sarasota County, and Charlotte County, to cause the Authority to expand the Peace River Regional Water Supply Facility (the "Peace River Option Water Supply Contract"); and

WHEREAS, Lake Suzy will also require additional water during the interim period of the effective date of this Contract and completion of the expansion of the Peace River Regional Water Treatment Facility; and

WHEREAS, the County of Charlotte has expressed interest in supplying DeSoto County with 29.2 million gallons of water during this interim period; and

WHEREAS, the County therefore proposes to supply Lake Suzy with water as provided in Exhibit 1 attached hereto; and

WHEREAS, County and Lake Suzy recognize that it will be necessary to make certain amendments to the Lake Suzy Water Supply Contract in order to facilitate

County's efforts to secure additional water for Lake Suzy; and

WHEREAS, Lake Suzy is regulated by the Public Service Commission; and

WHEREAS, it is necessary and in the public interest that the County provide potable water to Lake Suzy under this Amended Water Supply Contract, hereinafter referred to as "Contract".

NOW, THEREFORE, in consideration of the foregoing premises, which shall be deemed an integral part of this Contract, and of the mutual covenants and agreements hereinafter set forth, the County and Lake Suzy, intending to be legally bound hereby agree that this Contract shall supersede the February 24, 1992, Lake Suzy Water Supply Contract, as follows:

1. DEFINITIONS: In the absence of a clear implication otherwise, capitalized terms under this Contract and in the attached exhibits shall have the following meanings:

1.1 Interlocal Agreement for Water Supply Between Charlotte County and DeSoto County. That certain proposed contract, by and between Charlotte County and DeSoto County providing for the sale of 29.2 mgd of water for ten years or until completion of the expansion of the Peace River Regional Water Treatment Facility.

1.2 Contract Year. The fiscal year of the County (beginning on each October 1, and ending on the immediately following September 30) and thereafter during the term of this Contract.

1.3 Delivery Point(s). The point(s) of delivery of water by County under this Contract, as more specifically described in Exhibit 2, attached hereto.

1.4 Peace River Water Supply Contract. That certain contract entered into

on May 21, 1991, by and between the Peace River/Manasota Regional Water Supply Authority, Charlotte County, DeSoto County, Manatee County, and Sarasota County.

1.5 Peace River Option Water Supply Contract. That certain proposed contract, by and between the Peace River/Manasota Regional Water Supply Authority, Charlotte County, DeSoto County, and Sarasota County, which shall provide for the first expansion by the Authority of the Peace River Regional Water Treatment Facility and increase the System Capacity of the Facility from 4,380 mgd to 6,570 mgd.

1.6 Water Allocation. For any Contract Year, the maximum quantity of water committed by the County to be delivered to Lake Suzy at the Delivery Point(s) which amounts are shown in the attached Exhibit 1. Lake Suzy's water allocation shall be comprised of those amounts of water committed by the Peace River/Manasota Regional Water Supply Authority for delivery to DeSoto County pursuant to the Peace River Water Supply Contract and the Peace River Option Water Supply Contract, and those quantities of water committed by Charlotte County for delivery to DeSoto County pursuant to the Interlocal Agreement for Water Supply Between Charlotte County and DeSoto County.

1.7 Water Charge. For any Contract Year, the rate established by the Board of County Commissioners of DeSoto County. Pursuant to paragraph 6.1 of this Contract, the rate shall be set in a per 1,000 gallon rate, however, in no event shall a monthly payment be less than one twelfth of the total water charges paid by the County to the Water Authority and Charlotte County pursuant to the Peace River Water Supply Contract, Peace River Option Water Supply Contract, and the Interlocal

Agreement for Water Supply Between Charlotte and DeSoto County, plus additional costs of DeSoto County, unless, the average monthly billing to date, during the billing period beginning on December 1, is in excess of one twelfth the total water charges paid by the County to the Water Authority and Charlotte County pursuant to the Peace River Water Supply Contract, Peace River Option Water Supply Contract, and the Interlocal Agreement for Water Supply Between Charlotte and DeSoto County, plus additional costs of DeSoto County, in which case, Lake Suzy may submit a payment in an amount which results in Lake Suzy's average monthly billing being lowered to a level which is equal to one twelfth the total water charges paid by the County to the Water Authority and Charlotte County pursuant to the Peace River Water Supply Contract, Peace River Option Water Supply Contract, and the Interlocal Agreement for Water Supply Between Charlotte and DeSoto County, plus additional costs of DeSoto County.

1.8 Water Use and Needs Report. The report prepared by Lake Suzy which shall indicate the number of water connections served by Lake Suzy, the number of lots and/or projects for which service is available but not connected, and a total of existing connections plus non-connected lots and/or projects.

2. **TERM.** The term of this Contract shall extend for whatever period of time the County may be obligated to purchase water from the Peace River/Manasota Regional Water Supply Authority, under the Peace River Water Supply Contract or the Peace River Option Water Supply Contract, or from Charlotte County under the Interlocal Agreement for Water Supply Between Charlotte and DeSoto County.

Specifically, the term of this contract with regard to water to be obtained pursuant to the above-mentioned contracts, respectively, shall be as follows:

2.1 Peace River Water Supply Contract, dated May 21, 1991. The term of this Contract with respect to the County's obligation to provide Lake Suzy with its water allocation to be obtained from the Peace River/Manasota Regional Water Supply Authority pursuant to the Peace River Water Supply Contract shall begin upon the date of the complete execution of this Contract and shall extend for an initial term expiring on September 30, 2026. Thereafter, the County may at its option extend the term of this Contract with respect to the County's obligation to provide Lake Suzy with its water allocation to be obtained from the Peace River/Manasota Regional Water Supply Authority pursuant to the Peace River Water Supply Contract for up to an additional thirty-five (35) years. Such extensions may, at the County's option, be done in five (5) year increments for a total of seven such five (5) year extensions. Such extension may be done at any time prior to expiration. Any such extension shall expire on the last day of the final Contract Year established by such extension, unless extended as permitted by this Section.

2.2 Peace River Option Water Supply Contract. The term of this Contract with respect to the County's obligation to provide Lake Suzy with its water allocation to be obtained from the Peace River/Manasota Regional Water Supply Authority pursuant to the Peace River Option Water Supply Contract shall begin upon the date of the complete execution of the Peace River Option Water Supply Contract and shall extend for an initial term of thirty-five (35) years. Thereafter, the County may at its

option extend the term of this Contract with respect to the County's obligation to provide Lake Suzy with its water allocation to be obtained from the Peace River/Manasota Regional Water Supply Authority pursuant to the Peace River Option Water Supply Contract for an additional thirty-five (35) years. Any such extension shall expire on the last day of the final Contract Year established by such extension, unless extended as permitted by this Section.

2.3 Interlocal Agreement for Water Supply Between Charlotte and DeSoto County. The term of this Contract with regard to the County's obligation to provide 29.2 mgd of water pursuant to the Interlocal Agreement for Water Supply Between Charlotte and DeSoto County shall begin upon the date the County and Charlotte County fully execute an agreement for the supply of the 29.2 mgd of water, and shall extend until completion of the expansion of Peace River Regional Water Treatment Facility or ten (10) years whichever occurs first.

3. CONDITIONS PRECEDENT. All rights, obligations, and liabilities of the County and Lake Suzy shall be subject to the satisfaction of the following conditions precedent identified in Section 3.1.

3.1 Conditions Precedent. The following are conditions precedent to the parties' rights, obligations and liabilities under this Contract:

3.1.1 The complete execution of this Contract by the County and Lake Suzy.

3.1.2 The representations set forth in Section 4 are true and correct as of the date this Contract was fully executed by the parties.

3.1.3 The rights, obligations, and liabilities of Lake Suzy and GDU under the

Utility Agreement are released and waived by all parties to the agreement.

3.2 The County's obligation to provide 29.2 mgd in addition to the water to be obtained from the Peace River/Manasota Regional Water Supply Authority is conditioned upon the County being able to enter into a water supply contract with Charlotte County. If the County should fail to enter into an agreement with Charlotte County for the purchase of 29.2 mgd of water, or if said agreement with Charlotte County should terminate prior to the expiration of this Contract, the County's obligation to provide 29.2 mgd shall lapse and all other provisions of this Contract shall remain in full force and effect.

3.3 The County's obligation to provide Lake Suzy with its water allocation to be obtained from the Peace River/Manasota Regional Water Supply Authority pursuant to the Peace River Option Water Supply Contract is conditioned upon the County being able to enter into a water supply contract with the Authority. If the County should fail to enter into such an agreement with the Authority, or if said agreement with Authority should terminate prior to the expiration of this Contract, the County's obligation to provide Lake Suzy with its water allocation to be obtained from the Peace River/Manasota Regional Water Supply Authority pursuant to the Peace River Option Water Supply Contract shall lapse and all other provision of this Contract shall remain in full force and effect.

3.4 Satisfaction of the Conditions Precedent. The parties shall exercise good faith and due diligence in satisfying the conditions precedent set forth in Section 3.1.

4. REPRESENTATION OF THE PARTIES. The County and Lake Suzy make the following representations:

4.1 Both parties are organized and existing in good standing under the laws of the State of Florida.

4.2 Both parties have the power, authority, and legal right to enter into and perform the obligations set forth in this Contract, and the execution, delivery and performance hereof by it (a) has been duly authorized; (b) does not require any other approvals by any other governmental officer or body; (c) will not violate any judgment, order, law, or regulation applicable to the party; and (d) does not constitute a default under, nor result in the creation of, any lien, charge, encumbrance, or security interest upon the assets of the party under any agreement or instrument to which it is a party or by which the party and its assets may be bound or affected.

4.3 This Contract has been duly entered into and delivered and as of the date of its full execution by all parties and constitutes a legal, valid, and binding obligation of the party, fully enforceable in accordance with its terms.

4.4 There is no action, suit, or proceeding, at law or in equity, before or by any court or governmental authority pending, or, to the best of the party's knowledge, threatened against the party, wherein any unfavorable decision, ruling, or finding would materially or adversely affect the performance by the party of its obligations hereunder or the other transactions contemplated hereby, or which, in any way, would adversely affect the validity or enforceability of this Contract, or any other agreement or instrument entered into by the party in connection with the transaction

contemplated hereby.

5. DELIVERY OF WATER ALLOCATION. During each Contract Year, the County shall use its best efforts to deliver water to Lake Suzy in an amount not to exceed Lake Suzy's Water Allocation.

5.1 Delivery. The County shall not be required to deliver water to Lake Suzy in excess of the Water Allocation nor shall the County be required to provide water to Lake Suzy, if prohibited by any applicable federal, state, regional, or local statute, rule, ordinance, law, administrative order, or judicial decree or in violation of applicable environmental permits. Further, in the event that at any time there is insufficient potable water available from the Peace River/Manasota Regional Water Supply Authority or Charlotte County to fully meet the Water Allocation, then the Water Allocation shall be reduced in accordance with Section 1.11.1 of the Peace River Water Supply Contract and the applicable provisions of the Peace River Option Water Supply Contract and Interlocal Agreement for Water Supply Between Charlotte and DeSoto County.

5.2 Source of Water. The County's obligation to supply Lake Suzy with its Water Allocation is limited to the water to be delivered to the County under the Peace River Water Supply Contract and to the water to be delivered to the County under the Peace River Option Water Supply Contract and the Interlocal Agreement for Water Supply Between Charlotte and DeSoto County if such agreements are reached between DeSoto County, the Peace River/Manasota Regional Water Supply Authority, and Charlotte County. The County is not required to provide water to satisfy Lake

Suzy's Water Allocation from any source other than those set out herein.

5.3 Future Water Allocation. Future water allocations will be requested by Lake Suzy from time to time. When Lake Suzy's yearly usage reaches eighty percent (80%) of the total water allocation or when Lake Suzy deems necessary, Lake Suzy shall request and the County shall make its best efforts to enter into agreements with the Peace River/Manasota Regional Water Supply Authority or its member counties for Lake Suzy's requested increase in water. Lake Suzy shall submit to the County on a yearly basis no later than July 15 of each year a Water Use and Needs Report.

5.4 Delivery Point. The County shall only deliver water to Lake Suzy at its Delivery Point specified in Exhibit 2, attached hereto and made a part of this Contract.

6. WATER CHARGE. For each Contract Year, Lake Suzy shall pay the County the applicable water charge as follows:

6.1 Rate Setting. On or before September 30 of each calendar year, the Board of County Commissioners of DeSoto County shall fix the Water Charge for the subsequent contract year to be paid by Lake Suzy, taking into account:

1. the water charge paid by the County to the Peace River/Manasota Regional Water Supply Authority pursuant to the Peace River Water Supply Contract; and
2. any water charge paid by the County to Charlotte County pursuant to the Interlocal Agreement for Water Supply Between Charlotte and DeSoto County; and
3. any water charge paid by the County to the Peace River/Manasota

Water Supply Contract, which includes charges for any exceedance of the County's Delivery Schedule and any charges for the repayment of funds recieved from SWFWMD; and

4. any additional costs, which are not arbitrary and capricious, associated with the delivery of water by DeSoto County to Lake Suzy.

The Board of County Commissioners shall fix the water charge after an internal audit of the costs associated with delivery of water to Lake Suzy in the previous calendar year and projected costs for the delivery of water in the subsequent calendar year. The County shall add together the cost as described in Section 6.1 (1 through 4) and divide this total amount by the previous twelve month total gallon water usage as metered by the Peace River/Manasota Regional Water Supply Authority. Lake Suzy's rate shall be set in a per 1,000 gallon rate, however, in no event shall a monthly payment be less than one twelfth of the total water charges paid by the County to the Water Authority and Charlotte County pursuant to the Peace River Water Supply Contract, Peace River Option Water Supply Contract, and the Interlocal Agreement for Water Supply Between Charlotte and DeSoto County, and additional cost of DeSoto County, unless, the average monthly billing to date, during the billing period beginning on December 1, is in excess of one twelfth the total water charges paid by the County to the Water Authority and Charlotte County pursuant to the Peace River Water

costs of DeSoto County, in which case, Lake Suzy may submit a payment in an amount which results in Lake Suzy's average monthly billing being lowered to a level which is equal to one twelfth the total water charges paid by the County to the Water Authority and Charlotte County pursuant to the Peace River Water Supply Contract, Peace River Option Water Supply Contract, and the Interlocal Agreement for Water Supply Between Charlotte and DeSoto County, plus additional costs of DeSoto County.

6.2 Effective Date of Water Charge. The water charge set pursuant to Section 6.1 of this Contract shall be effective beginning on the immediately following December 1 and shall remain in effect until the immediately following November 30, unless adjusted pursuant to Section 6.4 of this Contract. During the interim period between, (a) the date the Board of County Commissioners of DeSoto County fixes the water charge to be paid by Lake Suzy, and (b) the effective date of the revised water charge, any deficiency between monthly water charge currently being paid by Lake Suzy to the County and the monthly water charges owed by the County to the Peace River/Manasota Regional Water Supply Authority and Charlotte County shall be paid by withdrawing a sum which is equivalent to the deficiency from the Reserve Utility Account. Lake Suzy shall repay the sum withdrawn from the Reserve Utility Account by making ten equal monthly payments beginning December 1 and continuing through to September 30. Such repayments into the Reserve Utility Account shall be made in accordance with provisions of Section 6.5 of this Contract.

6.3 Irrevocable Commitment to Pay. It is the intent of the parties that Lake

Suzy shall bear all the costs incurred by DeSoto County in providing Lake Suzy with water pursuant to this contract. In no event shall Lake Suzy pay a water charge which is less than the County's costs for obtaining water from Charlotte County and the Peace River/Manasota Regional Water Supply Authority, including any administrative or incidental costs incurred by the County. Lake Suzy shall be obligated to pay its water charge regardless of whether or not it utilizes the whole of its water allocation. Moreover, Lake Suzy recognizes that circumstances such as equipment failure, construction delays, failure to obtain Permits, limitations on Permits, transmission line ruptures or defects, acts of God, etc. may prevent the performance by the County of its obligations pursuant to this Contract. Nevertheless, Lake Suzy shall pay its water charges throughout the term of this Contract. Said payments by Lake Suzy shall be made without notice or demand and without set-off, counterclaim, abatement, suspension or deduction.

6.4 Rate Adjustments. If Charlotte County or the Peace River/Manasota Regional Water Supply Authority should raise their rates subsequent to the County's fixing Lake Suzy's water charge, the County shall adjust, and Lake Suzy shall pay, an adjustment in Lake Suzy's water charge in an amount equal to the County's costs incurred by reason of such rate increase, including any administrative or incidental costs. The revised water charge set pursuant to this Section shall be effective sixty (60) days after the date the County adjusts Lake Suzy's water charge and shall remain in effect until the immediately following November 30. During the interim period between, (a) the date the Board of County Commissioners of DeSoto County revises

the water charge to be paid by Lake Suzy, and (b) the effective date of the revised water charge, any deficiency between monthly water charge currently being paid by Lake Suzy to the County and the monthly water charges owed by the County to the Peace River/Manasota Regional Water Supply Authority and Charlotte County shall be paid by withdrawing a sum which is equivalent to the deficiency from the Reserve Utility Account. Lake Suzy shall repay the sum withdrawn from the Reserve Utility Account by making equal monthly payments during the period from the effective date of the revised water charge to September 30. Such repayments into the Reserve Utility Account shall be made in accordance with provision of Section 6.5 of this Contract.

6.5 Payment. On or before the twentieth day of each month, the County shall bill Lake Suzy one twelfth of the Water Charge and payment shall be made by Lake Suzy to the County within thirty (30) days following receipt of said bill by Lake Suzy. The County, in addition to all other legal remedies, shall have the right to discontinue the delivery of water under this Contract for non-payment by Lake Suzy.

6.6 Assignment of Fees, Water Charges, and Receivables. Lake Suzy hereby assigns to the County any fees, water charges, or other receivables due to Lake Suzy by Lake Suzy's customers for the provision of water. Such assignment shall be absolute in the event of any default in payment by Lake Suzy to the County, upon written demand made by the County. Upon application by the County, a court of competent jurisdiction may appoint a receiver to collect such fees, water charges, or other receivables and pay the County the water charge owed by Lake Suzy to the

County in the manner provided in Section 6.4 of this Contract. In the event Lake Suzy should file a petition for bankruptcy Lake Suzy hereby agrees and consents to the entry of an order providing the County with relief from the automatic stay or adequate protection.

6.7 Reserve Utility Account. The County shall maintain a separate Reserve Utility Account into which any surplus funds paid by Lake Suzy shall be deposited. Said funds may be used for paying engineering, design, legal, professional and technical consulting services costs incurred by the County in meeting Lake Suzy's current and future water allocation; for the acquisition of the Lake Suzy utility by the County, or any special district created by the County; and for the payment of any deficiencies in Lake Suzy's payment as provided in Sections 6.2 and 6.4 of this Contract.

7. **WATER QUALITY.** The County shall use its best efforts to deliver water of the same quality and same terms as set forth in the Peace River Water Supply Contract to the Delivery Point.

8. **WATER MEASUREMENT.** The County shall measure all water delivered at the Delivery Point and shall maintain complete and accurate records of its water measurements.

9. **PLEDGE OF REVENUES.** The County reserves the right to pledge or assign all or any part of the revenues derived from the rates and fees charged under this Contract to the repayment of any loan, bond, or other indebtedness of the County utility system.

10. **ASSIGNMENT.** No assignment, delegation, transfer, or novation of this Contract or any part hereof shall be made, unless approved by both the County and Lake Suzy, which approval shall not be unreasonably withheld.

11. **SUCCESSORS BOUND.** Lake Suzy hereby binds itself, its partners, successors, assigns and legal representatives to the County with respect to all covenants of this Contract.

12. **FORCE MAJEURE.** The County's non-performance of its obligations under this Contract may be excused by the occurrence of strikes, or other labor disputes, damage to or destruction of the facilities delivering water to Lake Suzy, or prevention of performance by governmental authority or by act of God.

13. **NOTICES.** All notices, or other writings permitted or required to be delivered to the County at its County Administrator's office:

DeSoto County Courthouse, 115 E. Oak Street, Arcadia, Florida 33821

and to Lake Suzy at:

12408 SW Sheri Street, Lake Suzy, FL 33821

14. **DISCLAIMER OF THIRD PARTY BENEFICIARIES.** This Contract is solely for the benefit of the County and Lake Suzy and no right or cause of action shall accrue upon or by reason hereof, or for the benefit of any other person.

15. **AMENDMENT.** This Contract may only be amended by a writing duly executed by the County and Lake Suzy.

16. **CONSTRUCTION.** This Contract shall be governed by and constructed in accordance with the laws of the State of Florida, and shall be subject to the terms,

conditions and provisions of the Peace River Water Supply Contract, the Peace River Option Water Supply Contract and the Interlocal Agreement for Water Supply Between Charlotte and DeSoto County.

17. **SEVERABILITY.** If any part, section, subsection, or other portion of this Contract or any application thereof to any person or circumstance is declared void, unconstitutional, or invalid for any reason, such part, section, subsection, or other portion, or the prescribed application thereof shall be severable, and the remaining provisions of the Contract, and all applications thereof not having been declared void, unconstitutional, or invalid, shall remain in full force and effect.

18. **ENTIRE AGREEMENT.** This Contract constitutes the entire agreement between the County and Lake Suzy and has been entered into voluntarily and with independent advice and legal counsel and has been executed by authorized representatives of each party on the date written above. Furthermore, it is the intent of the parties for this agreement to operate as a novation and to supersede and replace the February 24, 1992, Lake Suzy Water Supply Contract which is hereby null and void.

19. **WAIVER.** Unless otherwise specifically provided by the terms of this Contract, no delay or failure to exercise a right resulting from any breach of this Contract shall impair such right or shall be construed to be a waiver thereof, but such right may be exercised from time to time and as often as may be deemed expedient. Any waiver shall be in writing and signed by the party granting such waiver. If any representation, warranty or covenant contained in this Contract is breached by any

party and thereafter waived by another party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive, either expressly or impliedly, any other breach under this Contract.

20. FURTHER ASSURANCES. County and Lake Suzy each shall use all reasonable efforts to provide such information, execute such further instruments and documents and take actions as may be reasonably requested by the other party and not inconsistent with the provisions of this Contract and not involving the assumption of obligations or liabilities different from, in excess of or in addition to those expressly provided for in this Contract to carry out the intent of this Contract.

21. FIRE PROTECTION. In the event the County utilizes water from Lake Suzy's distribution system for fire protection and said fire protection is not for the protection of Lake Suzy's customers, the County shall give Lake Suzy a credit against its water charge for the quantities of water so utilized by the County.

22. EXHIBITS AND ADDENDA. This Contract incorporates the following exhibits and addenda which are attached hereto and made a part hereof:

- a. Exhibit 1, Water Allocation
- b. Exhibit 2, Delivery Point(s)
- c. Exhibit 3, Peace River Water Supply Contract
- d. Exhibit 4, Interlocal Agreement for Water Supply Between Charlotte and DeSoto County (to be attached when executed)
- e. Exhibit 5, Peace River Option Water Supply Contract (to be attached when executed)

IN WITNESS WHEREFORE, the County and Lake Suzy have executed this Contract on the day, month, and year first above written.

(SEAL)

BOARD OF COUNTY COMMISSIONERS OF DESOTO COUNTY, FLORIDA

ATTEST:

By: Frederick C. Nutt
Frederick C. Nutt
County Administrator

By: William R. Avant
William R. Avant
Chairman

STATE OF FLORIDA
COUNTY OF DESOTO

BEFORE ME, the undersigned authority, personally appeared William R. Avant, Chairman of the Board of County Commissioners of DeSoto County, Florida, who is personally known to me and who being by me first duly sworn, states that he executed the above as the act and deed of DeSoto County, Florida.

My Commission Expires:

Carol Heitman

PRINT NAME
NOTARY PUBLIC
COMMISSION NO.:

CAROL HEITMAN
Notary Public, State of Florida
My comm. expires Nov. 1, 1997
Comm. No. CC322818

(SEAL)

LAKE SUZY UTILITIES, INC,

ATTEST:

By: Ann Marie East

By: Dallas A. Shepard
DALLAS A. SHEPARD
President

STATE OF FLORIDA
COUNTY OF DESOTO

BEFORE ME, the undersigned authority, personally appeared Dallas Shepard of the Lake Suzy Utilities, Inc., who is personally known to me and who being by me first duly sworn, states that he executed the above as the act and deed of Lake Suzy Utilities, Inc.

My Commission Expires:

Carol Heitman

PRINT NAME
NOTARY PUBLIC
COMMISSION NO.:

CAROL HEITMAN
Notary Public, State of Florida
My comm. expires Nov. 1, 1997
Comm. No. CC322818

APPROVED AS TO FORM

By: [Signature]
GARY A. VORBECK
County Attorney