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JOHN R. JENKINS, P.A.  
STEVEN T. MINDLIN, P.A.  
DAREN L. SHIPPY  
WILLIAM E. SUNDBSTROM, P.A.  
DIANE D. TREMOR, P.A.  
JOHN L. WHARTON

July 31, 2000

VIA HAND DELIVERY

ROBERT M. C. ROSE  
OF COUNSEL

Ms. Blanca S. Bayo, Director  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850

Re: North Fort Myers Utilities, Inc.;  
Wastewater Agreement with Bayshore Elementary School  
Our File No. 16319.29

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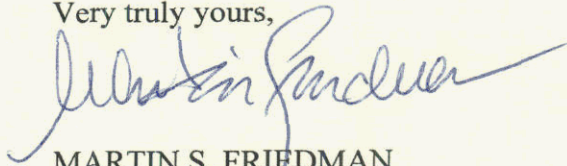
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00 JUL 31 PM 1:35  
RECORDS AND REPORTING

Dear Ms. Bayo:

Pursuant to Commission Rule 25-30.550, Florida Administrative Code, enclosed is a copy of a Wastewater Agreement entered into between North Fort Myers Utilities, Inc. and the School District of Lee County for wastewater service to Bayshore Elementary School. North Fort Myers Utility Inc.'s wastewater treatment plant has a permitted capacity of 2.0 mgd. The current treatment plant connected load is approximately 1.1 million gallons a day and this Wastewater Agreement is for 3,000 gallons a day. There is sufficient capacity in NFMU's existing plant to provide wastewater service pursuant to this Wastewater Agreement. This Wastewater Agreement will have no noticeable impact on the Utility's rates due to the amount of demand being placed on the NFMU wastewater system, and resultant revenues.

In accordance with the aforementioned Rule, we will deem this Agreement approved if we do not receive notice from the Commission of its intent to disapprove within thirty days. Should you have any questions regarding this Agreement, please do not hesitate to contact me.

Very truly yours,



MARTIN S. FRIEDMAN  
For the Firm

APP  
CAF  
CMP  
COM  
CTR  
ECR  
LEG MSF/brm  
OPC Enclosure  
PAI  
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FPSC-BUREAU OF RECORDS

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APPROVED

JUL 18 2000

SCHOOL BOARD OF  
LEE COUNTY

Bayshore Elementary School  
NAME OF PROJECT

WASTEWATER AGREEMENT

THIS AGREEMENT made and entered into this 18 day of July, 2000, by and between THE SCHOOL BOARD OF LEE COUNTY, hereinafter referred to as "Owner," and NORTH FORT MYERS UTILITY, INC., a Florida corporation, hereinafter referred to as "Service Company,"

WHEREAS, Owner owns or controls a wastewater system serving lands located in Lee County, Florida, and described in Exhibit "A," attached hereto and made a part hereof as if fully set out in this paragraph and hereinafter referred to as the "Property," and Owner has developed the Property by constructing thereon a public school; and

WHEREAS, Owner desires to cease providing wastewater service to the Property and has requested Service Company provide such service for the Property; and

WHEREAS, the Service Company is willing to provide, in accordance with the provisions of this Agreement and Service Company's Service Availability Policy, central wastewater services to the Property and thereafter operate applicable facilities so that the occupants of the improvements on the Property will receive an adequate wastewater collection and disposal service from Service Company;

NOW, THEREFORE, for and in consideration of the premises, the mutual undertakings and agreements herein contained and assumed, Owner and Service Company hereby covenant and agree as follows:

1.0 The foregoing recitations are true and correct.

2.0 The following definitions and references are given for the purpose of interpreting the terms as used in this Agreement and apply unless the context indicates a different meaning:

- (a) "Contribution-in-aid-of-Construction (CIAC)"  
- The sum of money and/or the value of prop-

erty represented by the cost of the wastewater collection systems including lift stations and treatment plants constructed or to be constructed by an Owner, which Owner transfers, or agrees to transfer, to Service Company at no cost to Service Company to provide utility service to specified property.

- (b) "Equivalent Residential Connection (ERC)" - A factor used to convert a given average daily flow (ADF) to the equivalent number of residential connections. For this purpose the average daily flow of one equivalent residential connection (ERC) is 275 gallons per day (gpd). The number of ERC's contained in a given ADF is determined by dividing that ADF by 275 gpd. The determination of the number of ERC's for the Property shall be subject to factoring as outlined in Service Company's Service Availability Policy.
- (c) "Point of Delivery" - The point where the pipes of Owner are connected with the master lift station being constructed by Service Company to serve the Property.
- (d) "Property" - The area or parcel of land described in Exhibit "A."
- (e) "Service" - The readiness and ability on the part of Service Company to furnish and maintain wastewater service to the Point of Delivery (pursuant to applicable rules and regulations of applicable regulatory agencies).

3.0 Connection Charges. Owner hereby agrees to pay to Service Company the following connection charges:

Contributions In Aid Of Construction:  
System Capacity Charges - The contribution of a portion of the cost of construction of

treatment plants, and collection and disposal systems, described in Exhibit "B."

3.1 Payment of the connection charges does not and will not result in Service Company waiving any of its rates or rules and regulations, and their enforcement shall not be affected in any manner whatsoever by Owner making payment of same. Service Company shall not be obligated to refund to Owner any portion of the value of the connection charges for any reason whatsoever, nor shall Service Company pay any interest or rate of interest upon the connection charges paid.

3.2 Neither Owner nor any person or other entity holding any of the Property by, through or under Owner, or otherwise, shall have any present or future right, title, claim or interest in and to the connection charges paid or to any of the wastewater facilities and properties of Service Company, and all prohibitions applicable to Owner with respect to no refund of connection charges, no interest payment on said connection charges and otherwise, are applicable to all persons or entities.

3.3 Any user or consumer of wastewater service shall not be entitled to offset any bill or bills rendered by Service Company for such service or services against the connection charges paid. Owner shall not be entitled to offset the connection charges against any claim or claims of Service Company.

4.0 On-Site Installations. On-site installations shall include all wastewater collection lines, facilities and equipment, including the lift stations located within the boundaries of the Property, and constructed for the purpose of providing service to the Property. Owner shall retain ownership and the responsibility of maintaining the on-site installations. Owner shall maintain the on-site installations so that infiltration is within the range of tolerance acceptable within the wastewater industry. Owner, at its expense, shall construct a master lift station on the Property at the location to be agreed upon by Owner and Service Company. If the master lift station is constructed to Service Company's specification, then Service Company, at its option, may obtain ownership of such master list station without compensation to Owner. In such case, Owner shall grant Service Company an exclusive easement for that location, which easement shall be in a form as approved by Service Company.

Service Company shall thereafter be responsible for the operation and maintenance of the master lift station.

5.0 Off-Site Systems. Owner hereby covenants and agrees to construct the off-site wastewater collection systems. The term "off-site wastewater collection systems" means and includes all wastewater collection lines, facilities and equipment, including lift stations, located outside the boundaries of Owner's Property and constructed for the purpose of connecting on-site installations to Service Company's lift station at the southeast corner of the intersection of Coon Road and Butler Road.

5.1 Owner shall provide Service Company with one (1) copy of the application for permits and one (1) set of finalized engineering plans prepared and sealed by a professional engineer registered in the State of Florida. Plans shall show the off-site wastewater collection systems proposed to be installed to provide service to the Property. Owner shall cause its engineer to submit specifications governing the material to be used and the method and manner of installation. All such plans and specifications submitted to Service Company's engineer shall meet the minimum specifications of Service Company and shall be subject to the approval of Service Company, which approval shall not be unreasonably withheld. No construction shall commence until Service Company and appropriate regulatory agencies have approved such plans and specifications in writing. When permits and approved plans are returned by appropriate regulatory agencies to Owner, Owner shall submit to Service Company one copy of the wastewater permit and approved plans.

5.2 After the approval of plans and specifications by Service Company and appropriate regulatory agencies, Owner, or the engineer of record, shall set up a preconstruction conference with engineer of record, utility contractor, appropriate building official(s), all other utility companies involved in the development of the Property, and Service Company.

5.3 Owner shall provide to Service Company's inspector, forty-eight (48) hours notice prior to commencement of construction. Owner shall cause to be constructed, at Owner's own cost and expense, the off-site wastewater collection systems as shown on the approved plans and specifications.

5.4 During the construction of the off-site wastewater collection systems by Owner, Service Company shall have the right to inspect such installations to determine compliance with the approved plans and specifications. The engineer of record shall also inspect construction to assure compliance with the approved plans and specifications. Service Company, engineer of record and utility contractor shall be present for all standard tests for pressure, exfiltration, line and grade, and all other normal engineering tests to determine that the systems have been installed in accordance with the approved plans and specifications, and good engineering practices. Owner agrees to pay to Service Company, or Service Company's authorized agent, a reasonable sum to cover the cost of inspection of installations made by Owner or Owner's contractor.

5.5 Upon completion of construction, Owner's engineer of record shall submit to Service Company a copy of the signed certification of completion submitted to the appropriate regulatory agencies. The engineer of record shall also submit to Service Company ammonia mylars of the as-built plans prepared and certified by the engineer of record.

5.6 Owner shall convey to Service Company by bill of sale without compensation, the off-site wastewater collection systems along with easements for all wastewater collection systems, including the pump station, that are not located in dedicated utility easements or public rights-of-way. Such bill of sale and easement shall be in a form satisfactory to Service Company.

6.0 Agreement to Serve. Upon the completion of construction of the off-site wastewater collection system and the master lift station and in accordance with the other terms of this Agreement and Service Company's Service Availability Policy, Service Company covenants and agrees that it will connect or oversee the connection of the on-site wastewater collection system to the central facilities of Service Company in accordance with the terms and intent of this Agreement. Such connection shall at all times be in accordance with rules, regulations and orders of the applicable governmental authorities. Service Company agrees that once it provides wastewater service to the Property and Owner or others have connected to its system, that thereafter Service Company will continuously provide, at its cost and expense, but in accordance with the other provisions of this



Agreement, including rules and regulations and rate schedules, wastewater service to the Property in a manner to conform with all requirements of the applicable governmental authority having jurisdiction over the operations of Service Company.

7.0 Application for Service: Owner shall not have the right to and shall not connect to the facilities of Service Company until formal written application has been made to Service Company in accordance with the then effective rules and regulations of Service Company and approval for such connection has been granted.

7.1 If a commercial kitchen, cafeteria, restaurant or other commercial food preparation or dining facility is constructed within the Property, the Service Company shall have the right to require that a grease trap be constructed, installed and connected so that all waste-waters from any grease producing equipment within such facility, including floor drains in food preparation areas, shall first enter the grease trap for pretreatment before the wastewater is delivered to the lines of the Service Company. Size, materials and construction of such grease trap to be approved by Service Company.

7.2 No substance other than domestic wastewater will be placed into the wastewater system and delivered to the lines of the Service Company. Should any non-domestic wastes, grease or oils, including, but not limited to, floor wax or paint, be delivered to the lines, the Owner will be responsible for payment of the cost and expense required in correcting or repairing any resulting damage.

8.0 Exclusive Right to Provide Service. Owner, as a further and essential consideration of this Agreement, agrees that Owner, or the successors and assigns of Owner, shall not (the words "shall not" being used in a mandatory definition) engage in the business of providing wastewater services to the Property during the period of time Service Company, its successors and assigns, provide wastewater services to the Property, it being the intention of the parties hereto that under the foregoing provision and also other provisions of this Agreement, Service Company shall have the sole and exclusive right and privilege to provide wastewater services to the Property and to the occupants of such residence, building or unit constructed thereon. Service

Company represents and warrants that it is duly licensed to provide wastewater service to Owner and that it will take all necessary steps in order to keep in good standing all permits necessary to carry out this Agreement.

9.0 Rates. Service Company agrees that the rates to be charged to Owner shall be those set forth in the tariff of Service Company approved by the applicable governmental agency. However, notwithstanding any provision in this Agreement, Service Company, its successors and assigns, may establish, amend or revise, from time to time in the future, and enforce rates or rate schedules so established and enforced and shall at all times be reasonable and subject to regulations by the applicable governmental agency, or as may be provided by law. Rates charged to Owner or consumers located upon the Property shall at all times be identical to rates charged for the same classification of service, as are or may be in effect throughout the service area of Service Company.

9.1 Notwithstanding any provision in this Agreement to the contrary, Service Company may establish, amend or revise, from time to time, in the future, and enforce rules and regulations covering wastewater services to the Property. However, all such rules and regulations so established by Service Company shall at all times be reasonable and subject to such regulations as may be provided by law or contract.

9.2 Any such initial or future lower or increased rates, rate schedules, and rules and regulations established, amended or revised and enforced by Service Company from time to time in the future, as provided by law, shall be binding upon Owner; upon any person or other entity holding by, through or under Owner; and upon any user or consumer of the wastewater service provided to the Property by Service Company.

10.0 Binding Effect of Agreement. This Agreement shall be binding upon and shall inure to the benefit of Owner, Service Company and their respective assigns and successors by merger, consolidation, conveyance or otherwise. Any assignment or transfer by Owner shall be approved in writing by Service Company, which approval shall not be unreasonably withheld.



11.0 Notice. Until further written notice by either party to the other, all notices provided for herein shall be in writing and transmitted by messenger, by mail or by telegram, and if to Owner, shall be mailed or delivered to Owner at:

Frederick R. Gutknecht  
Facilities Director  
The School District of Lee County  
3308 Canal Street  
Fort Myers, Florida 33916

With a copy to:

Board Attorney  
The School Board of Lee County  
2055 Central Avenue  
Fort Myers, Florida 33901

and if to the Service Company, at:

North Fort Myers Utility, Inc.  
Post Office Box 2547  
Ft. Myers, Florida 33902

with a copy to:

Martin S. Friedman, Esquire  
Rose, Sundstrom & Bentley  
2548 Blairstone Pines Drive  
Tallahassee, Florida 32301

12.0 Laws of Florida. This Agreement shall be governed by the laws of the State of Florida and it shall be and become effective immediately upon execution by both parties hereto, subject to any approvals which must be obtained from governmental authority.

13.0 Costs and Attorney's Fees. In the event the Service Company or Owner is required to enforce this Agreement by Court proceedings or otherwise, by instituting suit or otherwise, then the prevailing party shall be entitled to recover from the other

party all costs incurred, including reasonable attorney's fees for administrative proceedings, trials and appeals.

14.0 Force Majeure. In the event that the performance of this Agreement by either party to this Agreement is prevented or interrupted in consequence of any cause beyond the control of such party, including but not limited to Act of God or of the public enemy, war, national emergency, allocation or of other governmental restrictions upon the use or availability of labor or materials, rationing, civil insurrection, riot, racial or civil rights disorder or demonstration, strike, embargo, flood, tidal wave, fire, explosion, bomb detonation, nuclear fallout, windstorm, hurricane, earthquake, sinkhole or other casualty or disaster or catastrophe, unforeseeable failure or breakdown of pumping transmission or other facilities, governmental rules or acts or orders or restrictions or regulations or requirements, acts or action of any government or public or governmental authority or commission or board or agency or agent or official or officer, the enactment of any statute or ordinance or resolution or regulation or rule or ruling or order, order or decree or judgment or restraining order or injunction of any court, said party shall not be liable for such non-performance, so long as said Party uses its best efforts to perform in the event of said disaster.

15.0 Indemnification. Each party agrees to indemnify and hold the other harmless from and against any and all liabilities, claims, damages, costs and expenses (including reasonable attorney's fees for administrative proceedings, trials and appeals) to which the party may become subject by reason of or arising out of the other party's performance of this Agreement. This indemnification provision shall survive the actual connection to Service Company's wastewater system. Owner agrees to provide such indemnification to the extent allowed by 768.28, Florida Statute. Service Company specifically agrees to indemnify owner from any civil penalties imposed due to violations of state or federal laws resulting from operation of the wastewater collection system.

#### MISCELLANEOUS PROVISIONS

16.0 This Agreement supersedes all previous agreements or representations, either verbal or written, heretofore in effect

between Owner and Service Company, made with respect to the matters herein contained, and when duly executed, constitutes the entire agreement between Owner and Service Company. No additions, alterations or variations of the terms of this Agreement shall be valid, nor can provisions of this Agreement be waived by either party, unless such additions, alterations, variations or waivers are expressed in writing and duly signed.

17.0 Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural, and the masculine, feminine and neuter genders shall each include the others.

18.0 Whenever approvals of any nature are required by either party to this Agreement, it is agreed that same shall not be unreasonably withheld or delayed.

19.0 The submission of this Wastewater Agreement by Service Company for examination by Owner does not constitute an offer but becomes effective only upon execution thereof by both parties.

20.0 Failure to insist upon strict compliance of any of the terms, covenants, or conditions herein shall not be deemed a waiver of such terms, covenants, or conditions, nor shall any waiver or relinquishment of any right or power hereunder at any one time or times be deemed a waiver or relinquishment of such right or power at any other time or times.

21.0 Because of inducements offered by Owner to Service Company, Service Company has agreed to provide wastewater services to Owner's Property. Owner understands and agrees that capacity reserved hereunder cannot and shall not be assigned by Owner to Third Parties without the written consent of Service Company, except in the case of a bona-fide sale of Owner's property, in which case, such approval shall not be unreasonably withheld. Moreover, Owner agrees that this contract is a superior instrument to any other documents, representations, and promises made by and between Owner and Third Parties, both public and private, as regards the provisions of utility service to Owner's property.

22.0 It is agreed by and between the parties hereto that all words, terms and conditions contained herein are to be read in concert, each with the other, and that a provision contained

under one heading may be considered to be equally applicable under another in the interpretation of this Agreement.


23.0 Service Company shall at all reasonable times and hours, and upon providing reasonable notice to Owner, have the right of inspection of Owner's internal lines and facilities. Such inspection shall not be destructive without the express written consent of Owner. This provision shall be binding on the successors and assigns of the Owner.


IN WITNESS WHEREOF, Owner and Service Company have executed or have caused this Agreement, with the named Exhibits attached, to be duly executed in several counterparts, each of which counterpart shall be considered an original executed copy of this Agreement.

WITNESSES:

NORTH FORT MYERS UTILITY, INC.

  
Print Name Teen E. Clowers

By   
A.A. Reeves, III  
Vice President

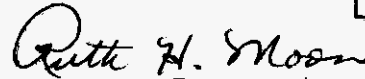
  
Print Name NANCY ZIEMINSKI HART

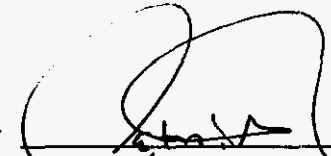
**APPROVED**

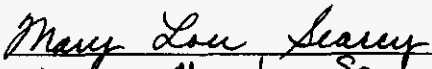
**JUL 18 2000**

THE SCHOOL BOARD OF LEE COUNTY, FL

SCHOOL BOARD OF  
LEE COUNTY

  
Print Name Ruth H. Moon

By   
Patricia Ann Riley, Chairman  
The School Board of Lee County,  
Florida

  
Print Name Mary Lou Searcy

APPROVED AS TO FORM:  
By:   
School Board Attorney

STATE OF FLORIDA )  
COUNTY OF LEE )

The foregoing instrument was acknowledged before me this 27<sup>th</sup> day of July, 2000, by A.A Reeves, III, as Vice President of North Fort Myers Utility, Inc., a Florida corporation, on behalf of the corporation. He is personally known to me.

*Personally known*

*Kathleen R. Shields*

Notary Public  
State of Florida at Large  
My Commission Expires:

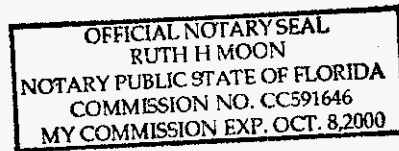


STATE OF FLORIDA )  
COUNTY OF LEE )

The foregoing instrument was acknowledged before me this 18<sup>th</sup> day of July, 2000, by Patricia Ann Riley, Chairman on behalf of The School Board of Lee County, Florida. She is personally known to me or has produced \_\_\_\_\_ as identification.

*Ruth H. Moon*

Notary Public  
State of Florida at Large  
My Commission Expires:



This Instrument Prepared By: Martin S. Friedman, Esquire, 2548 Blairstone Pines Drive, Tallahassee, Florida 32301.

agrmt\debug\bayshore.agr

SYSTEM CAPACITY CHARGES

Owner, upon execution of this Agreement, agrees to pay Service Company as set forth hereinbelow the following System Capacity Charges to induce Service Company to reserve the following system capacities for Owner's connections. System capacity charges to be paid by Owner are those which are set forth in Service Company's Service Availability Policy approved by the Florida Public Service Commission and, accordingly, these charges may be changed from time to time with the approval of the Commission.

Wastewater:

<u>Customer Category</u>	<u>Number of Gallons</u>	<u>Charge Per Gallon</u>	<u>Total Charge</u>
General Service	3,000 gallons/day	\$2.31	\$6,930



3.25  
S-66-90  
7 24/75

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OFF. REC. 337 PAGE 547

Attachment "A"

WARRANTY DEED

THIS INDENTURE, Made this 11<sup>th</sup> day of January, 1966, between ELLEN M. MOLTRUP, a widow; KATHRYN M. ZUBERBUHLER, joined by her husband HARRY O. ZUBERBUHLER; HELEN M. TOWNSEND, joined by her husband, EARL TOWNSEND; and JEAN MOLTRUP, a single woman; heirs of STEPHEN MOLTRUP, Deceased, of the County of BEAVER, State of Pennsylvania, grantor, and 'THE BOARD OF PUBLIC INSTRUCTION OF LEE COUNTY, FLORIDA, A Quasi Public Corporation under the laws of the State of Florida, whose post office address is Post Office Box 2238, Fort Myers, of the County of Lee, State of Florida, grantee.

WITNESSETH, That said grantor, for and in consideration of the sum of TEN and 00/100 DOLLARS, (\$10.00), and other good and valuable considerations to said grantor in hand paid by said grantee, the receipt whereof is hereby acknowledged, has granted, bargained and sold to the said grantee, and grantee's successors and assigns forever, the following described land, situate, lying and being in Lee County, Florida, to-wit:

The West Half of the Southwest Quarter of the Southwest Quarter, Less road right-of-way, Section 20, Township 43 South, Range 25 East.

and said grantor does hereby fully warrant the title to said land, and will defend the same against the lawful claims of all persons whomsoever. "Grantor" and "grantee" are used for singular or plural, as context requires.



SHEPPARD & ANDERSON  
Attorneys at Law  
2132 McGregor Blvd.  
FORT MYERS, FLORIDA

LEE COUNTY  
STATE OF FLORIDA  
DOCUMENTARY STAMP TAX  
JAN 18 1965  
COMPTROLLER  
PB. 190141  
6690