

LEE COUNTY BOARD OF COUNTY COMMISSIONERS
AGENDA ITEM SUMMARY **BLUE SHEET NO: 20021475-UTL**

1. REQUESTED MOTION:

ACTION REQUESTED:

Authorize the Chairman, on behalf of the BOCC, to execute "Agreements for Wholesale Sale and Purchase of Treated Potable Water" by and between Lee County and each wholesale water customer.

WHY ACTION IS NECESSARY:

The Lee County Board of County Commissioners (BOCC) must approve an agreement between each Wholesale Customer and the County.

WHAT ACTION ACCOMPLISHES:

Defines the terms by which the County will provide wholesale water and sewer service to the Wholesale Customer.

2. DEPARTMENTAL CATEGORY: 10 -
COMMISSION DISTRICT #: CW

CIDA

3. MEETING DATE:

01-21-2003

4. AGENDA:

- CONSENT
- ADMINISTRATIVE
- APPEALS
- PUBLIC
- WALK ON
- TIME REQUIRED: _____

5. REQUIREMENT/PURPOSE:

- (Specify)*
- STATUTE _____
 - ORDINANCE _____
 - ADMIN. CODE _____
 - OTHER Agmt _____

6. REQUESTOR OF INFORMATION:

- A. COMMISSIONER: _____
- B. DEPARTMENT: Lee County Public Works
- C. DIVISION/SECTION: Utilities Division
- BY: Rick Diaz, Utilities Director

DATE: 12/29/02

7. BACKGROUND:

On July 9, 2002, the BOCC approved new utility rates and charges for Lee County Utilities in Lee County Resolution No. 02-07-44. These new utility rates were effective October 1, 2002. The new rates provided wholesale water and sewer rates to each County wholesale customer that: i) resells such services to its customers in accordance with Florida law and County ordinances; and ii) maintains all distribution/collection systems, valves, hydrants, service connections, manholes and meters in the public rights-of-way or valid easements within its recognized service area. The terms for providing either wholesale water or wholesale sewer service, or both, to a qualifying applicant will be established by an agreement between the applicant and the County.

Attachments: Originals (2) – Need 1 **Certified Copy** of Each Agreement

- Buccaneer
- Gulf Environmental Services
- Mobile Manor
- North Fort Myers Utility
- Tamiami Village

MANAGEMENT RECOMMENDATIONS:

9. RECOMMENDED APPROVAL

(A) DEPARTMENT DIRECTOR	(B) PURCH. OR CONTRACTS	(C) HUMAN RESOURCES	(D) OTHER	(E) COUNTY ATTORNEY	(F) BUDGET SERVICES				(G) COUNTY MANAGER
					OA	OM	Risk	GC	
<i>Lavender</i> Date: <u>12/30/02</u>	<i>[Signature]</i> Date: <u>1/6/03</u>	N/A Date: _____	N/A Date: _____	<i>Andrea</i> <i>[Signature]</i> Date: <u>1/8/03</u> <i>only</i>	<i>[Signature]</i> Date: <u>1/9/03</u>	<i>[Signature]</i> Date: <u>1/9/03</u>	<i>[Signature]</i> Date: <u>1/9/03</u>	<i>[Signature]</i> Date: <u>1/9/03</u>	<i>Lavender</i> Date: <u>1/30/02</u>

10. COMMISSION ACTION:

- APPROVED
- DENIED
- DEFERRED
- OTHER

Rec. by CoAtty

Date: 1/6/03

Time: 4:15 PM

Forwarded To:
Budget
1/7/03 8:30 AM

RECEIVED BY
COUNTY ADMIN. *PM*

1-7-03

9:30

COUNTY ADMIN.
FORWARDED TO:
1/9/03

**AGREEMENT FOR WHOLESALE SALE AND PURCHASE OF
TREATED POTABLE WATER BY AND BETWEEN
LEE COUNTY, FLORIDA AND
BUCCANEER WATER SERVICE**

THIS AGREEMENT is made and entered into as of this 1st day of October, 2002, by and between **LEE COUNTY**, Florida, a Charter County and a political subdivision of the State of Florida (“County”) and BE Utility Systems, L.L.C., a Delaware limited liability company d/b/a Buccaneer Water Service, (“**Buccaneer Water Service**”), collectively the “Parties”, for the wholesale sale and purchase of treated potable water.

WHEREAS, the County owns, operates and maintains a Public Potable Water Supply System in Lee County (“System”) which is available for providing service to Buccaneer Water Service; and,

WHEREAS, the County’s potable water production and treatment facilities have sufficient capacity, and will continue to do so for the term of this Agreement, to provide treated potable water to Buccaneer Water Service and,

WHEREAS, Buccaneer Water Service now desires to purchase, and the County desires to sell, wholesale treated potable water to Buccaneer Water Service for the term of this agreement; and,

WHEREAS, both the County and Buccaneer Water Service have the legal ability and authority to enter into an Agreement for the wholesale sale and purchase of treated potable water; and,

WHEREAS, this is solely a contract for the wholesale sale of treated potable water to Buccaneer Water Service and is not to be construed in any manner as a change to any of the billing policies for either the County or Buccaneer Water Service with

respect to its' retail sale of potable water to Buccaneer Water Service customers on a non-emergency basis; and,

WHEREAS, the Parties find that this Agreement serves a public purpose and is to the public's benefit.

NOW THEREFORE, in consideration of the above, and the conditions, covenants and obligations between the Parties as outlined further herein, the sufficiency of which is accepted by the Parties hereto, the Parties agree as follows:

ARTICLE I. GENERAL CONDITIONS

1.1 The preamble statements above are accepted and approved by the Parties, and are incorporated herein as if set out at length in this Section.

1.2 The County agrees to provide to Buccaneer Water Service and Buccaneer Water Service agrees to accept, pursuant to the terms and conditions set forth herein, a quantity of treated potable water, treated in accordance with and conforming to the existing standards of the Department of Environmental Protection, the Division of Health, and/or County Health Department and all other governmental bodies having regulatory jurisdiction over such matters, as may be modified by those agencies from time to time. The County represents to Buccaneer Water Service that its water treatment facilities are presently operating and producing treated potable water in accordance with existing regulations and standards. The County further agrees that during the life of this Agreement, the water quality shall be maintained at a level to conform with present and future requirements of all regulatory agencies having jurisdiction thereof, or in the event there are any changes in the regulations of the relevant regulatory agencies, the County

shall have use of all necessary time that is allotted by the affected regulatory agency to bring the water quality to the new regulated standards.

The County shall not, at any time, assume or be obligated to assume any financial responsibility for the operation and maintenance of Buccaneer Water Service's *potable water distribution lines lying within the service territory of Buccaneer Water Service.*

ARTICLE II. REPRESENTATIONS

2.1 The County hereby represents to Buccaneer Water Service that it has and will continue to have the ability to provide Buccaneer Water Service with sufficient treated potable water, of the quality required by this Agreement, to the existing service territory, for the term of this Agreement.

2.2 The County represents to Buccaneer Water Service that it will, during the term of this Agreement, have sufficient raw water supply capacity, and water treatment capacity, to furnish the treated potable water in sufficient quantity referred to above, except for those events beyond the County's reasonable control, to include, but not be limited to: mechanical failures, repairs, routine maintenance, Acts of God, rationing, or additional regulation by any State or Federal agencies which would potentially alter the quantity and/or the quality of the delivered water, or any other matters beyond the reasonable lawful control of the County.

ARTICLE III. CHARGES AND MAINTENANCE

3.1 *Buccaneer Water Service shall pay the “County-Wide Bulk Potable Water Rate” of \$2.46 per thousand gallons delivered pursuant to Lee County Resolution No. 02-07-44, as it may be amended from time to time by the County’s Board of County Commissioners, pursuant to law, and which rate may be modified by the County from time to time, system-wide, during the term of this Agreement.*

3.2 *Buccaneer Water Service shall be responsible for payment for water delivered by the County to Buccaneer Water Service. Buccaneer Water Service shall make all reasonable efforts to minimize leakage within its water distribution system, and will comply with the Florida Department of Environmental Protection, Consumer Confidence Reports rules and regulations, and other regulations as they apply.*

3.3 *The County shall remain and be responsible for all maintenance, repairs and calibrations of the meters for wholesale potable water services to Buccaneer Water Service.*

3.4 *All meters required hereunder shall be readily accessible for reading, testing and maintenance. The County shall be responsible for maintaining the meters in good working condition at all times, and for the testing and calibration of the meters. The meters shall be tested at least annually in accordance with the American Water Works Association Standards for Meter Testing or other mutually agreeable standards.*

3.5 *The County shall have the right upon reasonable notice to Buccaneer Water Service, and when reasonably necessary, to enter upon Buccaneer Water Service’s lands and improvements thereon to review and inspect Buccaneer Water Service’s operating practices for the distribution of potable water, as they may relate to this Agreement.*

3.6 Payment for all charges for the sale of the wholesale potable water from the County by Buccaneer Water Service, shall be made to the County on a monthly basis during the term of this Agreement within thirty (30) days, gross, or as otherwise mutually established by the Parties.

3.7 Buccaneer Water Service shall be responsible for all charges associated with new connections to the County's potable water system by Buccaneer Water Service when such new connections constitute an increase in the flow from the previous customer.

ARTICLE IV. TERM OF AGREEMENT

4.1 This Agreement for Buccaneer Water Service's purchase of bulk potable water from the County shall remain in full force and effect on a continuously exclusive basis.

ARTICLE V. ADDITIONAL PROVISIONS

5.1 This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the County and Buccaneer Water Service. This Agreement may only be amended by a mutual agreement of the Parties hereto, which amendment shall be reduced to writing and executed with the same formalities as the execution of this Agreement.

5.2 This Agreement shall be construed and enforced in accordance with the laws of the State of Florida.

5.3 Notices provided by this Agreement to be served in writing upon either of the Parties shall be deemed sufficient if delivered to an authorized representative of either of the Parties, or if mailed by registered or certified mail, return receipt requested, to the address of the Party below written or such other addresses as the Parties may designate in writing. Such notices shall be effective from the date the same is deposited in the mails, registered, first class postage prepaid and addressed, whether or not received.

Buccaneer Water Service: Mr. Don Barton
Manager
BE Utility Systems, L.L.C. d/b/a Bucaneer
Water Service
2210 N. Tamiami Trail
North Fort Myers, FL 33903-2874

Copy to:

Marguerite Nader, V.P. Business Development
MHC, Inc.
2 North Riverside Plaza, Suite 800
Chicago, IL 60606

County: Director of Utilities
Department of Lee County Utilities
Post Office Box 398
Fort Myers, FL 33902-0398

Copy To:
Office of Lee County Attorney
Post Office Box 398
Fort Myers, FL 33902-0398

5.4 If for any reason during the term of this Agreement, any local, state or federal governments or agency shall fail or refuse to issue the necessary permits, grant necessary approvals, or require any change in the operation of the treatment, transmission and distribution systems by the Parties hereto, then, to the extent that such requirements shall affect the ability of either Party to perform any of the terms and conditions of this Agreement, the affected Party shall be excused from the performance thereof.

5.5 Each Party shall remain liable for its own negligence or omissions, and by entering into this Agreement, the County has not waived its right of sovereign immunity beyond the statutory limits as set out at Section 768.28, Florida Statutes.

5.6 This Agreement is solely for the benefit of the Parties signing hereto, their successors and assigns, and no right nor cause of action shall accrue upon or by reason hereto to or for the benefit of any third party not a signatory hereof.

5.7 This Agreement shall be binding upon the heirs, executors, administrators, successors, and assigns of the Parties hereto, except as may be expressly limited herein.

5.8 All rights, remedies and powers granted to Buccaneer Water Service or the County herein shall be cumulative and may be exercised singly or concurrently. In the event a dispute arises between Buccaneer Water Service and the County relating to the performance of the respective obligations under this Agreement, both Parties may utilize all remedies authorized by law.

5.9 Each party hereto shall keep, observe and perform all requirements of local, state and federal laws, rules, regulations, or ordinances applicable to this Agreement while it is in force and effect.

5.10 The failure of either party hereto to enforce any of the provisions of this Agreement or the waiver thereof, in any instance, shall not be construed as a general waiver or relinquishment on its part of any such provision but the same shall, nevertheless, be and remain in full force and effect.

5.11 Where any consent, approval or standard is required by the Parties hereto pursuant to the terms of this Agreement, then the applicable standard for determination shall be on a reasonable basis.

5.12 The headings used in this Agreement are for reference only, and will not be relied upon nor used in the interpretation of same.

5.13 This Agreement and any addendum pertaining hereto, as may be executed by the Parties, represents the entire understanding between the Parties with respect to the undertakings covered hereunder and there are no oral or collateral agreements with respect thereto between the Parties. Any prior agreements or understanding dealing basically with the same subject matter of this Agreement shall be superseded by this Agreement and no longer of force and effect. Neither Party hereto shall be bound by any supplement hereto unless it is signed by an authorized representative of each of the Parties.

5.14 No assignment, delegation, transfer or novation of this Agreement or part hereof, shall be made by Buccaneer Water Service, unless approved by the County. Transfers to affiliates or successor owners with written notice to County from both and transferee, or successor in interest.

5.15 It is understood and agreed to by the Parties, that either Party shall have reasonable access to the books, records and accounts of the agents, designees or vendors duly contracting with either Party for the purpose of fulfilling any of their obligations under this Agreement.

5.16 This Agreement and any subsequent amendments hereto shall be filed with the Lee County Clerk of the Circuit Court, Minutes Department.

IN WITNESS WHEREOF, the parties have executed this Agreement by their
duly authorized officials, on the date above first written.

BE Utility Systems, L.L.C.
A Delaware limited liability company
By: Liquid Assets, L.L.C.
A Delaware limited liability company

Its: Sole Member
By: MHC Operating Limited Partnership,
An Illinois limited partnership

Its: Sole Member
By: MANUFACTURED HOME COMMUNITIES, INC.
A Maryland corporation
Its: General Partner

ATTEST:

By: [Signature]
12/19/07

By: [Signature]
Marguerite Nader
Vice President-Business Development

APPROVED AS TO FORM:

By: _____

ATTEST: CHARLIE GREEN
CLERK OF COURTS

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

By: _____
Deputy Clerk

By: _____
Chairman

APPROVED AS TO FORM:

By: _____
Office of County Attorney

**AGREEMENT FOR WHOLESALE SALE AND PURCHASE OF
TREATED POTABLE WATER BY AND BETWEEN
LEE COUNTY, FLORIDA AND
GULF ENVIRONMENTAL SERVICES**

THIS AGREEMENT is made and entered into on this 1st day of October, 2002, by and between **LEE COUNTY**, Florida, a Charter County and a political subdivision of the State of Florida (“County”) and **Gulf Environmental Services**, collectively the “Parties”, for the wholesale sale and purchase of treated potable water.

WHEREAS, the County owns, operates and maintains a Public Potable Water Supply System in Lee County (“System”) which is available for providing service to Gulf Environmental Services and,

WHEREAS, the County’s potable water production and treatment facilities have sufficient capacity, and will continue to do so for the term of this Agreement, to provide treated potable water to Gulf Environmental Services and,

WHEREAS, Gulf Environmental Services now desires to purchase, and the County desires to sell, wholesale treated potable water to Gulf Environmental Services for so long as Gulf Environmental Services provides retail potable water service to its water customers; and,

WHEREAS, both the County and Gulf Environmental Services have the legal ability and authority to enter into an Agreement for the wholesale sale and purchase of treated potable water; and,

WHEREAS, this is solely a contract for the wholesale sale of treated potable water to Gulf Environmental Services and is not to be construed in any manner as a change to any of the billing policies for either the County or Gulf Environmental Services

with respect to its' retail sale of potable water to Gulf Environmental Services customers on a non-emergency basis; and,

WHEREAS, the Parties find that this Agreement serves a public purpose and is to the public's benefit.

NOW THEREFORE, in consideration of the above, and the conditions, covenants and obligations between the Parties as outlined further herein, the sufficiency of which is accepted by the Parties hereto, the Parties agree as follows:

ARTICLE I. GENERAL CONDITIONS

1.1 The preamble statements above are accepted and approved by the Parties, and are incorporated herein as if set out at length in this Section.

1.2 The County agrees to provide to Gulf Environmental Services and Gulf Environmental Services agrees to accept, pursuant to the terms and conditions set forth herein, a quantity of treated potable water at 300,000 GPD, commencing with the effective date of this agreement, treated in accordance with and conforming to the existing standards of the Department of Environmental Protection, the Division of Health, and/or County Health Department and all other governmental bodies having regulatory jurisdiction over such matters, as may be modified by those agencies from time to time. The County represents to Gulf Environmental Services that its water treatment facilities are presently operating and producing treated potable water in accordance with existing regulations and standards. The County further agrees that during the life of this Agreement, the water quality shall be maintained at a level to conform with present and future requirements of all regulatory agencies having

jurisdiction thereof, or in the event there are any changes in the regulations of the relevant regulatory agencies, the County shall have use of all necessary time that is allotted by the affected regulatory agency to bring the water quality to the new regulated standards.

The County shall not, at any time, assume or be obligated to assume any financial responsibility for the operation and maintenance of Gulf Environmental Services's potable water distribution lines lying within the corporate limits of the Gulf Environmental Services.

ARTICLE II. REPRESENTATIONS

2.1 The County hereby represents to Gulf Environmental Services that it has and will continue to have the ability to provide Gulf Environmental Services with sufficient treated potable water, of at least 300,000 GPD, commencing with the effective date of this agreement, of the quality required by this Agreement, to the existing service territory, for the term of this Agreement.

2.2 The County represents to Gulf Environmental Services that it will, during the term of this Agreement, have sufficient raw water supply capacity, and water treatment capacity, to furnish the treated potable water in sufficient quantity of at least 300,000 GPD, referred to above, except for those events beyond the County's reasonable control, to include, but not be limited to: mechanical failures, repairs, routine maintenance, Acts of God, rationing, or additional regulation by any State or Federal agencies which would potentially alter the quantity and/or the quality of the delivered water, or any other matters beyond the reasonable lawful control of the County.

ARTICLE III. CHARGES AND MAINTENANCE

3.1 Gulf Environmental Services shall pay the “County-Wide Bulk Potable Water Rate” of \$2.46 per thousand gallons delivered pursuant to Lee County Resolution No. 02-07-44. As it may be amended from time to time by the BOCC, pursuant to law, and which rate may be modified by the County from time to time, system-wide, during the term of this Agreement.

3.2 Gulf Environmental Services shall be responsible for payment for water delivered by the County to Gulf Environmental Services. Gulf Environmental Services shall make all reasonable efforts to minimize leakage within its water distribution system, and will comply with the Florida Department of Environmental Protection, CCR rules and regulations, and other regulations as they apply.

3.3 The County shall remain and be responsible for all maintenance, repairs and calibrations of the Meters for wholesale potable water services to Gulf Environmental Services.

3.4 All Meters required hereunder shall be readily accessible for reading, testing and maintenance. The County shall be responsible for maintaining the Meters in good working condition at all times, and for the testing and calibration of the Meters. The Meters shall be tested at least annually in accordance with the American Water Works Association Standards for Meter Testing or other mutually agreeable standards.

3.5 The County shall have the right upon reasonable notice to Gulf Environmental Services, and when reasonably necessary, to enter upon Gulf Environmental Services’s lands and improvements thereon to review and inspect Gulf

Environmental Services's operating practices for the distribution of potable water, as they may relate to this Agreement.

3.6 Payment for all charges for the sale of the wholesale potable water from the County by Gulf Environmental Services, shall be made to the County on a monthly basis during the term of this Agreement within thirty (30) days, gross, or as otherwise mutually established by the Parties.

ARTICLE IV. TERM OF AGREEMENT

4.1 This Agreement for Gulf Environmental Services's purchase 300,000 GPD of potable water from the County shall remain in full force and effect on a continuously exclusive basis.

ARTICLE V. ADDITIONAL PROVISIONS

5.1 This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the County and Gulf Environmental Services. This Agreement may only be amended by a mutual agreement of the Parties hereto, which amendment shall be reduced to writing and executed with the same formalities as the execution of this Agreement.

5.2 This Agreement shall be construed and enforced in accordance with the laws of the State of Florida.

5.3 Notices provided by this Agreement to be served in writing upon either of the Parties shall be deemed sufficient if delivered to an authorized representative of either of the Parties, or if mailed by registered or certified mail, return receipt requested, to the address of the Party below written or such other addresses as the Parties may designate in

writing. Such notices shall be effective from the date the same is deposited in the mails, registered, first class postage prepaid and addressed, whether or not received.

Gulf Environmental Services: A.A. Reeves, III
General Manager
19910-A South Tamiami Trail
Estero, FL 33928

Copy to: Rose, Sundstrom & Bentley, LLP
2548 Blairstone Pines Drive
Tallahassee, FL 32301
ATTN : William E. Sundstrom, P.A.

County: Director of Utilities
Department of Lee County Utilities
Post Office Box 398
Fort Myers, FL 33902-0398

Copy To:
Office of Lee County Attorney
Post Office Box 398
Fort Myers, FL 33902-0398

5.4 If for any reason during the term of this Agreement, any local, state or federal governments or agency shall fail or refuse to issue the necessary permits, grant necessary approvals, or require any change in the operation of the treatment, transmission and distribution systems by the Parties hereto, then, to the extent that such requirements shall affect the ability of either Party to perform any of the terms and conditions of this Agreement, the affected Party shall be excused from the performance thereof.

5.5 Each Party shall remain liable for its own negligence or omissions, and by entering into this Agreement, the County has not waived its right of sovereign immunity beyond the statutory limits as set out at Section 768.28, Florida Statutes.

5.6 This Agreement is solely for the benefit of the Parties signing hereto, their successors and assigns, and no right nor cause of action shall accrue upon or by reason hereto to or for the benefit of any third party not a signatory hereof.

5.7 This Agreement shall be binding upon the heirs, executors, administrators, successors, and assigns of the Parties hereto, except as may be expressly limited herein.

5.8 All rights, remedies and powers granted to Gulf Environmental Services or the County herein shall be cumulative and may be exercised singly or concurrently. In the event a dispute arises between Gulf Environmental Services and the County relating to the performance of the respective obligations under this Agreement, both Parties may utilize all remedies authorized by law.

5.9 Each party hereto shall keep, observe and perform all requirements of local, state and federal laws, rules, regulations, or ordinances applicable to this Agreement while it is in force and effect.

5.10 The failure of either party hereto to enforce any of the provisions of this Agreement or the waiver thereof, in any instance, shall not be construed as a general waiver or relinquishment on its part of any such provision but the same shall, nevertheless, be and remain in full force and effect.

5.11 Where any consent, approval or standard is required by the Parties hereto pursuant to the terms of this Agreement, then the applicable standard for determination shall be on a reasonable basis.

5.12 The headings used in this Agreement are for reference only, and will not be relied upon nor used in the interpretation of same.

5.13 This Agreement and any addendum pertaining hereto, as may be executed by the Parties, represents the entire understanding between the Parties with respect to the undertakings covered hereunder and there are no oral or collateral agreements with respect thereto between the Parties. Any prior agreements or understanding dealing basically with the same subject matter of this Agreement shall be superseded by this Agreement and no longer of force and effect. Neither Party hereto shall be bound by any supplement hereto unless it is signed by an authorized representative of each of the Parties.

5.14 No assignment, delegation, transfer or novation of this Agreement or part hereof, shall be made by Gulf Environmental Services, unless approved by the County, such approval not to be unreasonably withheld.

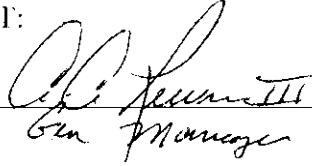
5.15 It is understood and agreed to by the Parties, that either Party shall have reasonable access to the books, records and accounts of the agents, designees or vendors duly contracting with either Party for the purpose of fulfilling any of their obligations under this Agreement.

5.16 This Agreement and any subsequent amendments hereto shall be filed with the Lee County Clerk of the Circuit Court, Minutes Department.

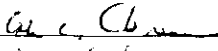
5.17 A backflow preventor shall be installed to the 24-inch interconnect, which shall be cleared for Lee County Utilities by Department of Health. This shall be accomplished prior to any use of the subject 24-inch water line.

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized officials, on the date above first written.

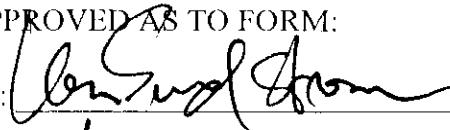
ATTEST:

By: 
Gen Manager

Gulf Environmental Services, Inc.

By: 
Gen Manager
Treasurer

APPROVED AS TO FORM:

By: 
Counsel

ATTEST: CHARLIE GREEN
CLERK OF COURTS

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

By: _____
Deputy Clerk

By: _____
Chairman

APPROVED AS TO FORM:

By: _____
Office of County Attorney

**AGREEMENT FOR WHOLESALE SALE AND PURCHASE OF
TREATED POTABLE WATER BY AND BETWEEN
LEE COUNTY, FLORIDA AND
MOBILE MANOR, INC.**

THIS AGREEMENT is made and entered into on this 1st day of October, 2002, by and between **LEE COUNTY**, Florida, a Charter County and a political subdivision of the State of Florida (“County”) and **Mobile Manor, Inc.**, collectively the “Parties”, for the wholesale sale and purchase of treated potable water.

WHEREAS, the County owns, operates and maintains a Public Potable Water Supply System in Lee County (“System”) which is available for providing service to Mobile Manor, Inc. and,

WHEREAS, the County’s potable water production and treatment facilities have sufficient capacity, and will continue to do so for the term of this Agreement, to provide treated potable water to Mobile Manor, Inc. and,

WHEREAS, Mobile Manor, Inc. now desires to purchase, and the County desires to sell, wholesale treated potable water to Mobile Manor, Inc. for so long as Mobile Manor, Inc. provides retail potable water service to its water customers; and,

WHEREAS, both the County and Mobile Manor, Inc. have the legal ability and authority to enter into an Agreement for the wholesale sale and purchase of treated potable water; and,

WHEREAS, this is solely a contract for the wholesale sale of treated potable water to Mobile Manor, Inc. and is not to be construed in any manner as a change to any of the billing policies for either the County or Mobile Manor, Inc. with respect to its’

retail sale of potable water to Mobile Manor, Inc. customers on a non-emergency basis; and,

WHEREAS, the Parties find that this Agreement serves a public purpose and is to the public's benefit.

NOW THEREFORE, in consideration of the above, and the conditions, covenants and obligations between the Parties as outlined further herein, the sufficiency of which is accepted by the Parties hereto, the Parties agree as follows:

ARTICLE I. GENERAL CONDITIONS

1.1 The preamble statements above are accepted and approved by the Parties, and are incorporated herein as if set out at length in this Section.

1.2 The County agrees to provide to Mobile Manor, Inc. and Mobile Manor, Inc. agrees to accept, pursuant to the terms and conditions set forth herein, a quantity of treated potable water, treated in accordance with and conforming to the existing standards of the Department of Environmental Protection, the Division of Health, and/or County Health Department and all other governmental bodies having regulatory jurisdiction over such matters, as may be modified by those agencies from time to time. The County represents to Mobile Manor, Inc. that its water treatment facilities are presently operating and producing treated potable water in accordance with existing regulations and standards. The County further agrees that during the life of this Agreement, the water quality shall be maintained at a level to conform with present and future requirements of all regulatory agencies having jurisdiction thereof, or in the event there are any changes in the regulations of the relevant regulatory agencies, the County shall have use of all

necessary time that is allotted by the affected regulatory agency to bring the water quality to the new regulated standards.

The County shall not, at any time, assume or be obligated to assume any financial responsibility for the operation and maintenance of Mobile Manor, Inc.'s potable water distribution lines lying within the corporate limits of the Mobile Manor, Inc..

ARTICLE II. REPRESENTATIONS

2.1 The County hereby represents to Mobile Manor, Inc. that it has and will continue to have the ability to provide Mobile Manor, Inc. with sufficient treated potable water, of the quality required by this Agreement, to the existing service territory, for the term of this Agreement.

2.2 The County represents to Mobile Manor, Inc. that it will, during the term of this Agreement, have sufficient raw water supply capacity, and water treatment capacity, to furnish the treated potable water in sufficient quantity referred to above, except for those events beyond the County's reasonable control, to include, but not be limited to: mechanical failures, repairs, routine maintenance, Acts of God, rationing, or additional regulation by any State or Federal agencies which would potentially alter the quantity and/or the quality of the delivered water, or any other matters beyond the reasonable lawful control of the County.

ARTICLE III. CHARGES AND MAINTENANCE

3.1 Mobile Manor, Inc. shall pay the “County-Wide Bulk Potable Water Rate” of \$2.46 per thousand gallons delivered pursuant to Lee County Resolution No. 02-07-44. As it may be amended from time to time by the BOCC, pursuant to law, and which rate may be modified by the County from time to time, system-wide, during the term of this Agreement.

3.2 Mobile Manor, Inc. shall be responsible for payment for water delivered by the County to Mobile Manor, Inc.. Mobile Manor, Inc. shall make all reasonable efforts to minimize leakage within its water distribution system, and will comply with the Florida Department of Environmental Protection, CCR rules and regulations, and other regulations as they apply.

3.3 The County shall remain and be responsible for all maintenance, repairs and calibrations of the Meters for wholesale potable water services to Mobile Manor, Inc..

3.4 All Meters required hereunder shall be readily accessible for reading, testing and maintenance. The County shall be responsible for maintaining the Meters in good working condition at all times, and for the testing and calibration of the Meters. The Meters shall be tested at least annually in accordance with the American Water Works Association Standards for Meter Testing or other mutually agreeable standards.

3.5 The County shall have the right upon reasonable notice to Mobile Manor, Inc., and when reasonably necessary, to enter upon Mobile Manor, Inc.’s lands and improvements thereon to review and inspect Mobile Manor, Inc.’s operating practices for the distribution of potable water, as they may relate to this Agreement.

3.6 Payment for all charges for the sale of the wholesale potable water from the County by Mobile Manor, Inc., shall be made to the County on a monthly basis during the term of this Agreement within thirty (30) days, gross, or as otherwise mutually established by the Parties.

3.7 Mobile Manor, Inc. shall be responsible for all charges associated with new connections to the County's potable water system when such new connections constitute an increase in the flow from the previous customer.

ARTICLE IV. TERM OF AGREEMENT

4.1 This Agreement for Mobile Manor, Inc.'s purchase of bulk potable water from the County shall remain in full force and effect on a continuously exclusive basis.

ARTICLE V. ADDITIONAL PROVISIONS

5.1 This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the County and Mobile Manor, Inc.. This Agreement may only be amended by a mutual agreement of the Parties hereto, which amendment shall be reduced to writing and executed with the same formalities as the execution of this Agreement.

5.2 This Agreement shall be construed and enforced in accordance with the laws of the State of Florida.

5.3 Notices provided by this Agreement to be served in writing upon either of the Parties shall be deemed sufficient if delivered to an authorized representative of either of the Parties, or if mailed by registered or certified mail, return receipt requested, to the

address of the Party below written or such other addresses as the Parties may designate in writing. Such notices shall be effective from the date the same is deposited in the mails, registered, first class postage prepaid and addressed, whether or not received.

Mobile Manor, Inc.:	Ms. Carol Julius Manager 150 Lantern Lane North Fort Myers, FL 33917-6515
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County: Director of Utilities Department of Lee County Utilities Post Office Box 398 Fort Myers, FL 33902-0398	Copy To: Office of Lee County Attorney Post Office Box 398 Fort Myers, FL 33902-0398
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5.4 If for any reason during the term of this Agreement, any local, state or federal governments or agency shall fail or refuse to issue the necessary permits, grant necessary approvals, or require any change in the operation of the treatment, transmission and distribution systems by the Parties hereto, then, to the extent that such requirements shall affect the ability of either Party to perform any of the terms and conditions of this Agreement, the affected Party shall be excused from the performance thereof.

5.5 Each Party shall remain liable for its own negligence or omissions, and by entering into this Agreement, the County has not waived its right of sovereign immunity beyond the statutory limits as set out at Section 768.28, Florida Statutes.

5.6 This Agreement is solely for the benefit of the Parties signing hereto, their successors and assigns, and no right nor cause of action shall accrue upon or by reason hereto to or for the benefit of any third party not a signatory hereof.

5.7 This Agreement shall be binding upon the heirs, executors, administrators, successors, and assigns of the Parties hereto, except as may be expressly limited herein.

5.8 All rights, remedies and powers granted to Mobile Manor, Inc. or the County herein shall be cumulative and may be exercised singly or concurrently. In the event a dispute arises between Mobile Manor, Inc. and the County relating to the performance of the respective obligations under this Agreement, both Parties may utilize all remedies authorized by law.

5.9 Each party hereto shall keep, observe and perform all requirements of local, state and federal laws, rules, regulations, or ordinances applicable to this Agreement while it is in force and effect.

5.10 The failure of either party hereto to enforce any of the provisions of this Agreement or the waiver thereof, in any instance, shall not be construed as a general waiver or relinquishment on its part of any such provision but the same shall, nevertheless, be and remain in full force and effect.

5.11 Where any consent, approval or standard is required by the Parties hereto pursuant to the terms of this Agreement, then the applicable standard for determination shall be on a reasonable basis.

5.12 The headings used in this Agreement are for reference only, and will not be relied upon nor used in the interpretation of same.

5.13 This Agreement and any addendum pertaining hereto, as may be executed by the Parties, represents the entire understanding between the Parties with respect to the undertakings covered hereunder and there are no oral or collateral agreements with respect thereto between the Parties. Any prior agreements or understanding dealing

basically with the same subject matter of this Agreement shall be superseded by this Agreement and no longer of force and effect. Neither Party hereto shall be bound by any supplement hereto unless it is signed by an authorized representative of each of the Parties.

5.14 No assignment, delegation, transfer or novation of this Agreement or part hereof, shall be made by Mobile Manor, Inc., unless approved by the County.

5.15 It is understood and agreed to by the Parties, that either Party shall have reasonable access to the books, records and accounts of the agents, designees or vendors duly contracting with either Party for the purpose of fulfilling any of their obligations under this Agreement.

5.16 This Agreement and any subsequent amendments hereto shall be filed with the Lee County Clerk of the Circuit Court, Minutes Department.

IN WITNESS WHEREOF, the parties have executed this Agreement by their
duly authorized officials, on the date above first written.

ATTEST:

By: Berbara Ramsey
CSR

Mobile Manor, Inc.
By: Carol L. Julius
Manager

APPROVED AS TO FORM:

By: _____

ATTEST: CHARLIE GREEN
CLERK OF COURTS

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

By: _____
Deputy Clerk

By: _____
Chairman

APPROVED AS TO FORM:

By: _____
Office of County Attorney

**AGREEMENT FOR WHOLESALE SALE AND PURCHASE OF
TREATED POTABLE WATER BY AND BETWEEN
LEE COUNTY, FLORIDA AND
NORTH FORT MYERS UTILITY**

THIS AGREEMENT is made and entered into on this 1st day of October, 2002, by and between **LEE COUNTY**, Florida, a Charter County and a political subdivision of the State of Florida (“County”) and **North Fort Myers Utility**, collectively the “Parties”, for the wholesale sale and purchase of treated potable water.

WHEREAS, the County owns, operates and maintains a Public Potable Water Supply System in Lee County (“System”) which is available for providing service to North Fort Myers Utility and,

WHEREAS, the County’s potable water production and treatment facilities have sufficient capacity, and will continue to do so for the term of this Agreement, to provide treated potable water to North Fort Myers Utility and,

WHEREAS, North Fort Myers Utility now desires to purchase, and the County desires to sell, wholesale treated potable water to North Fort Myers Utility for so long as North Fort Myers Utility provides retail potable water service to its water customers; and,

WHEREAS, both the County and North Fort Myers Utility have the legal ability and authority to enter into an Agreement for the wholesale sale and purchase of treated potable water; and,

WHEREAS, this is solely a contract for the wholesale sale of treated potable water to North Fort Myers Utility and is not to be construed in any manner as a change to any of the billing policies for either the County or North Fort Myers Utility with respect

to its' retail sale of potable water to North Fort Myers Utility customers on a non-emergency basis; and,

WHEREAS, the Parties find that this Agreement serves a public purpose and is to the public's benefit.

NOW THEREFORE, in consideration of the above, and the conditions, covenants and obligations between the Parties as outlined further herein, the sufficiency of which is accepted by the Parties hereto, the Parties agree as follows:

ARTICLE I. GENERAL CONDITIONS

1.1 The preamble statements above are accepted and approved by the Parties, and are incorporated herein as if set out at length in this Section.

1.2 The County agrees to provide to North Fort Myers Utility and North Fort Myers Utility agrees to accept, pursuant to the terms and conditions set forth herein, a quantity of treated potable water, treated in accordance with and conforming to the existing standards of the Department of Environmental Protection, the Division of Health, and/or County Health Department and all other governmental bodies having regulatory jurisdiction over such matters, as may be modified by those agencies from time to time. The County represents to North Fort Myers Utility that its water treatment facilities are presently operating and producing treated potable water in accordance with existing regulations and standards. The County further agrees that during the life of this Agreement, the water quality shall be maintained at a level to conform with present and future requirements of all regulatory agencies having jurisdiction thereof, or in the event there are any changes in the regulations of the relevant regulatory agencies, the County

shall have use of all necessary time that is allotted by the affected regulatory agency to bring the water quality to the new regulated standards.

The County shall not, at any time, assume or be obligated to assume any financial responsibility for the operation and maintenance of North Fort Myers Utility's potable water distribution lines lying within the corporate limits of the North Fort Myers Utility.

ARTICLE II. REPRESENTATIONS

2.1 The County hereby represents to North Fort Myers Utility that it has and will continue to have the ability to provide North Fort Myers Utility with sufficient treated potable water, of the quality required by this Agreement, to the existing service territory, for the term of this Agreement.

2.2 The County represents to North Fort Myers Utility that it will, during the term of this Agreement, have sufficient raw water supply capacity, and water treatment capacity, to furnish the treated potable water in sufficient quantity referred to above, except for those events beyond the County's reasonable control, to include, but not be limited to: mechanical failures, repairs, routine maintenance, Acts of God, rationing, or additional regulation by any State or Federal agencies which would potentially alter the quantity and/or the quality of the delivered water, or any other matters beyond the reasonable lawful control of the County.

ARTICLE III. CHARGES AND MAINTENANCE

3.1 North Fort Myers Utility shall pay the "County-Wide Bulk Potable Water Rate" of \$2.46 per thousand gallons delivered pursuant to Lee County Resolution No. 02-07-44. As it may be amended from time to time by the BOCC, pursuant to law, and which rate may be modified by the County from time to time, system-wide, during the term of this Agreement.

3.2 North Fort Myers Utility shall be responsible for payment for water delivered by the County to North Fort Myers Utility. North Fort Myers Utility shall make all reasonable efforts to minimize leakage within its water distribution system, and will comply with the Florida Department of Environmental Protection, CCR rules and regulations, and other regulations as they apply.

3.3 The County shall remain and be responsible for all maintenance, repairs and calibrations of the Meters for wholesale potable water services to North Fort Myers Utility.

3.4 All Meters required hereunder shall be readily accessible for reading, testing and maintenance. The County shall be responsible for maintaining the Meters in good working condition at all times, and for the testing and calibration of the Meters. The Meters shall be tested at least annually in accordance with the American Water Works Association Standards for Meter Testing or other mutually agreeable standards.

3.5 The County shall have the right upon reasonable notice to North Fort Myers Utility, and when reasonably necessary, to enter upon North Fort Myers Utility's lands and improvements thereon to review and inspect North Fort Myers Utility's operating practices for the distribution of potable water, as they may relate to this Agreement.

3.6 Payment for all charges for the sale of the wholesale potable water from the County by North Fort Myers Utility, shall be made to the County on a monthly basis during the term of this Agreement within thirty (30) days, gross, or as otherwise mutually established by the Parties.

3.7 North Fort Myers Utility shall be responsible for all charges associated with new connections to the County's potable water system when such new connections constitute an increase in the flow from the previous customer.

ARTICLE IV. TERM OF AGREEMENT

4.1 This Agreement for North Fort Myers Utility's purchase of bulk potable water from the County shall remain in full force and effect on a continuously exclusive basis.

ARTICLE V. ADDITIONAL PROVISIONS

5.1 This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the County and North Fort Myers Utility. This Agreement may only be amended by a mutual agreement of the Parties hereto, which amendment shall be reduced to writing and executed with the same formalities as the execution of this Agreement.

5.2 This Agreement shall be construed and enforced in accordance with the laws of the State of Florida.

5.3 Notices provided by this Agreement to be served in writing upon either of the Parties shall be deemed sufficient if delivered to an authorized representative of either

of the Parties, or if mailed by registered or certified mail, return receipt requested, to the address of the Party below written or such other addresses as the Parties may designate in writing. Such notices shall be effective from the date the same is deposited in the mails, registered, first class postage prepaid and addressed, whether or not received.

North Fort Myers Utility: Mr. Tony Reeves
 Utilities Director
 P.O.Box 2547
 Fort Myers, FL 33902-2547

Copy to: Rose, Sundstrom & Bentley, LLP
 2548 Blairstone Pines Drive
 Tallahassee, FL 32301
 ATTN : William E. Sundstrom, P.A.

County: Director of Utilities	Copy To:
Department of Lee County Utilities	Office of Lee County Attorney
Post Office Box 398	Post Office Box 398
Fort Myers, FL 33902-0398	Fort Myers, FL 33902-0398

5.4 If for any reason during the term of this Agreement, any local, state or federal governments or agency shall fail or refuse to issue the necessary permits, grant necessary approvals, or require any change in the operation of the treatment, transmission and distribution systems by the Parties hereto, then, to the extent that such requirements shall affect the ability of either Party to perform any of the terms and conditions of this Agreement, the affected Party shall be excused from the performance thereof.

5.5 Each Party shall remain liable for its own negligence or omissions, and by entering into this Agreement, the County has not waived its right of sovereign immunity beyond the statutory limits as set out at Section 768.28, Florida Statutes.

5.6 This Agreement is solely for the benefit of the Parties signing hereto, their successors and assigns, and no right nor cause of action shall accrue upon or by reason hereto to or for the benefit of any third party not a signatory hereof.

5.7 This Agreement shall be binding upon the heirs, executors, administrators, successors, and assigns of the Parties hereto, except as may be expressly limited herein.

5.8 All rights, remedies and powers granted to North Fort Myers Utility or the County herein shall be cumulative and may be exercised singly or concurrently. In the event a dispute arises between North Fort Myers Utility and the County relating to the performance of the respective obligations under this Agreement, both Parties may utilize all remedies authorized by law.

5.9 Each party hereto shall keep, observe and perform all requirements of local, state and federal laws, rules, regulations, or ordinances applicable to this Agreement while it is in force and effect.

5.10 The failure of either party hereto to enforce any of the provisions of this Agreement or the waiver thereof, in any instance, shall not be construed as a general waiver or relinquishment on its part of any such provision but the same shall, nevertheless, be and remain in full force and effect.

5.11 Where any consent, approval or standard is required by the Parties hereto pursuant to the terms of this Agreement, then the applicable standard for determination shall be on a reasonable basis.

5.12 The headings used in this Agreement are for reference only, and will not be relied upon nor used in the interpretation of same.

5.13 This Agreement and any addendum pertaining hereto, as may be executed by the Parties, represents the entire understanding between the Parties with respect to the undertakings covered hereunder and there are no oral or collateral agreements with respect thereto between the Parties. Any prior agreements or understanding dealing basically with the same subject matter of this Agreement shall be superseded by this Agreement and no longer of force and effect. Neither Party hereto shall be bound by any supplement hereto unless it is signed by an authorized representative of each of the Parties.

5.14 No assignment, delegation, transfer or novation of this Agreement or part hereof, shall be made by North Fort Myers Utility, unless approved by the County, such approval shall not be unreasonably denied.

5.15 It is understood and agreed to by the Parties, that either Party shall have reasonable access to the books, records and accounts of the agents, designees or vendors duly contracting with either Party for the purpose of fulfilling any of their obligations under this Agreement.

5.16 This Agreement and any subsequent amendments hereto shall be filed with the Lee County Clerk of the Circuit Court, Minutes Department.

IN WITNESS WHEREOF, the parties have executed this Agreement by their duly authorized officials, on the date above first written.

ATTEST:

By: Jo Ann Bailey

Jo Ann Bailey

A.A. Reeves III

By: A.A. REEVES III V.P.

APPROVED AS TO FORM:

By: [Signature]

Counsel

ATTEST: CHARLIE GREEN
CLERK OF COURTS

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

By: _____
Deputy Clerk

By: _____
Chairman

APPROVED AS TO FORM:

By: _____
Office of County Attorney

**AGREEMENT FOR WHOLESALE SALE AND PURCHASE OF
TREATED POTABLE WATER BY AND BETWEEN
LEE COUNTY, FLORIDA AND
TAMIAMI VILLAGE WATER COMPANY**

THIS AGREEMENT is made and entered into on this 1st day of October, 2002, by and between **LEE COUNTY**, Florida, a Charter County and a political subdivision of the State of Florida (“County”) and **Tamiami Village Water Company**, collectively the “Parties”, for the wholesale sale and purchase of treated potable water.

WHEREAS, the County owns, operates and maintains a Public Potable Water Supply System in Lee County (“System”) which is available for providing service to Tamiami Village Water Company and,

WHEREAS, the County’s potable water production and treatment facilities have sufficient capacity, and will continue to do so for the term of this Agreement, to provide treated potable water to Tamiami Village Water Company and,

WHEREAS, Tamiami Village Water Company now desires to purchase, and the County desires to sell, wholesale treated potable water to Tamiami Village Water Company for so long as Tamiami Village Water Company provides retail potable water service to its water customers; and,

WHEREAS, both the County and Tamiami Village Water Company have the legal ability and authority to enter into an Agreement for the wholesale sale and purchase of treated potable water; and,

WHEREAS, this is solely a contract for the wholesale sale of treated potable water to Tamiami Village Water Company and is not to be construed in any manner as a change to any of the billing policies for either the County or Tamiami Village Water

Company with respect to its' retail sale of potable water to Tamiami Village Water Company customers on a non-emergency basis; and,

WHEREAS, the Parties find that this Agreement serves a public purpose and is to the public's benefit.

NOW THEREFORE, in consideration of the above, and the conditions, covenants and obligations between the Parties as outlined further herein, the sufficiency of which is accepted by the Parties hereto, the Parties agree as follows:

ARTICLE I. GENERAL CONDITIONS

1.1 The preamble statements above are accepted and approved by the Parties, and are incorporated herein as if set out at length in this Section.

1.2 The County agrees to provide to Tamiami Village Water Company and Tamiami Village Water Company agrees to accept, pursuant to the terms and conditions set forth herein, a quantity of treated potable water, treated in accordance with and conforming to the existing standards of the Department of Environmental Protection, the Division of Health, and/or County Health Department and all other governmental bodies having regulatory jurisdiction over such matters, as may be modified by those agencies from time to time. The County represents to Tamiami Village Water Company that its water treatment facilities are presently operating and producing treated potable water in accordance with existing regulations and standards. The County further agrees that during the life of this Agreement, the water quality shall be maintained at a level to conform with present and future requirements of all regulatory agencies having jurisdiction thereof, or in the event there are any changes in the regulations of the relevant

regulatory agencies, the County shall have use of all necessary time that is allotted by the affected regulatory agency to bring the water quality to the new regulated standards.

The County shall not, at any time, assume or be obligated to assume any financial responsibility for the operation and maintenance of Tamiami Village Water Company's potable water distribution lines lying within the corporate limits of the Tamiami Village Water Company.

ARTICLE II. REPRESENTATIONS

2.1 The County hereby represents to Tamiami Village Water Company that it has and will continue to have the ability to provide Tamiami Village Water Company with sufficient treated potable water, of the quality required by this Agreement, to the existing service territory, for the term of this Agreement.

2.2 The County represents to Tamiami Village Water Company that it will, during the term of this Agreement, have sufficient raw water supply capacity, and water treatment capacity, to furnish the treated potable water in sufficient quantity referred to above, except for those events beyond the County's reasonable control, to include, but not be limited to: mechanical failures, repairs, routine maintenance, Acts of God, rationing, or additional regulation by any State or Federal agencies which would potentially alter the quantity and/or the quality of the delivered water, or any other matters beyond the reasonable lawful control of the County.

ARTICLE III. CHARGES AND MAINTENANCE

3.1 Tamiami Village Water Company shall pay the “County-Wide Bulk Potable Water Rate” of \$2.46 per thousand gallons delivered pursuant to Lee County Resolution No. 02-07-44. As it may be amended from time to time by the BOCC, pursuant to law, and which rate may be modified by the County from time to time, system-wide, during the term of this Agreement.

3.2 Tamiami Village Water Company shall be responsible for payment for water delivered by the County to Tamiami Village Water Company. Tamiami Village Water Company shall make all reasonable efforts to minimize leakage within its water distribution system, and will comply with the Florida Department of Environmental Protection, CCR rules and regulations, and other regulations as they apply.

3.3 The County shall remain and be responsible for all maintenance, repairs and calibrations of the Meters for wholesale potable water services to Tamiami Village Water Company.

3.4 All Meters required hereunder shall be readily accessible for reading, testing and maintenance. The County shall be responsible for maintaining the Meters in good working condition at all times, and for the testing and calibration of the Meters. The Meters shall be tested at least annually in accordance with the American Water Works Association Standards for Meter Testing or other mutually agreeable standards.

3.5 The County shall have the right upon reasonable notice to Tamiami Village Water Company, and when reasonably necessary, to enter upon Tamiami Village Water Company’s lands and improvements thereon to review and inspect Tamiami Village

Water Company's operating practices for the distribution of potable water, as they may relate to this Agreement.

3.6 Payment for all charges for the sale of the wholesale potable water from the County by Tamiami Village Water Company, shall be made to the County on a monthly basis during the term of this Agreement within thirty (30) days, gross, or as otherwise mutually established by the Parties.

3.7 Tamiami Village Water Company shall be responsible for all charges associated with new connections to the County's potable water system when such new connections constitute an increase in the flow from the previous customer.

ARTICLE IV. TERM OF AGREEMENT

4.1 This Agreement for Tamiami Village Water Company's purchase of bulk potable water from the County shall remain in full force and effect on a continuously exclusive basis.

ARTICLE V. ADDITIONAL PROVISIONS

5.1 This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the County and Tamiami Village Water Company. This Agreement may only be amended by a mutual agreement of the Parties hereto, which amendment shall be reduced to writing and executed with the same formalities as the execution of this Agreement.

5.2 This Agreement shall be construed and enforced in accordance with the laws of the State of Florida.

5.3 Notices provided by this Agreement to be served in writing upon either of the Parties shall be deemed sufficient if delivered to an authorized representative of either of the Parties, or if mailed by registered or certified mail, return receipt requested, to the address of the Party below written or such other addresses as the Parties may designate in writing. Such notices shall be effective from the date the same is deposited in the mails, registered, first class postage prepaid and addressed, whether or not received.

Tamiami Village Water Company: Mr. John Ustica
Utility Director
9280-5 College Parkway
Fort Myers, FL 33917-6515

County: Director of Utilities
Department of Lee County Utilities
Post Office Box 398
Fort Myers, FL 33902-0398

Copy To:
Office of Lee County Attorney
Post Office Box 398
Fort Myers, FL 33902-0398

5.4 If for any reason during the term of this Agreement, any local, state or federal governments or agency shall fail or refuse to issue the necessary permits, grant necessary approvals, or require any change in the operation of the treatment, transmission and distribution systems by the Parties hereto, then, to the extent that such requirements shall affect the ability of either Party to perform any of the terms and conditions of this Agreement, the affected Party shall be excused from the performance thereof.

5.5 Each Party shall remain liable for its own negligence or omissions, and by entering into this Agreement, the County has not waived its right of sovereign immunity beyond the statutory limits as set out at Section 768.28, Florida Statutes.

5.6 This Agreement is solely for the benefit of the Parties signing hereto, their successors and assigns, and no right nor cause of action shall accrue upon or by reason hereto to or for the benefit of any third party not a signatory hereof.

5.7 This Agreement shall be binding upon the heirs, executors, administrators, successors, and assigns of the Parties hereto, except as may be expressly limited herein.

5.8 All rights, remedies and powers granted to Tamiami Village Water Company or the County herein shall be cumulative and may be exercised singly or concurrently. In the event a dispute arises between Tamiami Village Water Company and the County relating to the performance of the respective obligations under this Agreement, both Parties may utilize all remedies authorized by law.

5.9 Each party hereto shall keep, observe and perform all requirements of local, state and federal laws, rules, regulations, or ordinances applicable to this Agreement while it is in force and effect.

5.10 The failure of either party hereto to enforce any of the provisions of this Agreement or the waiver thereof, in any instance, shall not be construed as a general waiver or relinquishment on its part of any such provision but the same shall, nevertheless, be and remain in full force and effect.

5.11 Where any consent, approval or standard is required by the Parties hereto pursuant to the terms of this Agreement, then the applicable standard for determination shall be on a reasonable basis.

5.12 The headings used in this Agreement are for reference only, and will not be relied upon nor used in the interpretation of same.

5.13 This Agreement and any addendum pertaining hereto, as may be executed by the Parties, represents the entire understanding between the Parties with respect to the undertakings covered hereunder and there are no oral or collateral agreements with respect thereto between the Parties. Any prior agreements or understanding dealing basically with the same subject matter of this Agreement shall be superseded by this Agreement and no longer of force and effect. Neither Party hereto shall be bound by any supplement hereto unless it is signed by an authorized representative of each of the Parties.

5.14 No assignment, delegation, transfer or novation of this Agreement or part hereof, shall be made by Tamiami Village Water Company, unless approved by the County.

5.15 It is understood and agreed to by the Parties, that either Party shall have reasonable access to the books, records and accounts of the agents, designees or vendors duly contracting with either Party for the purpose of fulfilling any of their obligations under this Agreement.

5.16 This Agreement and any subsequent amendments hereto shall be filed with the Lee County Clerk of the Circuit Court, Minutes Department.

IN WITNESS WHEREOF, the parties have executed this Agreement by their
duly authorized officials, on the date above first written.

ATTEST:

By: Carolyn B. Andrews
Barbara K. [unclear]

^{TWC}
TAMIAMI VILLAGE WATER COMPANY,
By: John J. Ustia
President

APPROVED AS TO FORM:

By: _____

ATTEST: CHARLIE GREEN
CLERK OF COURTS

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

By: _____
Deputy Clerk

By: _____
Chairman

APPROVED AS TO FORM:

By: _____
Office of County Attorney