

LEE COUNTY BOARD OF COUNTY COMMISSIONERS  
AGENDA ITEM SUMMARY

BLUE SHEET NO: 20040031-UTL

1. REQUESTED MOTION:

**ACTION REQUESTED:**

Authorize the Chairman on behalf of the BOCC to approve an Agreement for the Wholesale Sale of Potable Water by Lee County to the City of Cape Coral.

**WHY ACTION IS NECESSARY:**

An interlocal agreement is required so that Lee County Utilities may sell potable water on a wholesale basis to, and as requested by, the City of Cape Coral over an initial period of 20 years so that it may provide water service to the developing northeastern (Section 86) portion of the City.

**WHAT ACTION ACCOMPLISHES:**

The interlocal agreement will establish rates, metering, impact fee recovery, inspection procedures, and responsibilities of each party.

2. DEPARTMENTAL CATEGORY: 10 - UTILITIES  
COMMISSION DISTRICT #: 1

CIOB

3. MEETING DATE:

01-27-2004

4. AGENDA:

- CONSENT
- ADMINISTRATIVE
- APPEALS
- PUBLIC
- WALK ON
- TIME REQUIRED: \_\_\_\_\_

5. REQUIREMENT/PURPOSE:

- (Specify)
- STATUTE
  - ORDINANCE
  - ADMIN. CODE
  - OTHER Interlocal Agreement

6. REQUESTOR OF INFORMATION:

- A. COMMISSIONER: \_\_\_\_\_
- B. DEPARTMENT: Lee County-Public Works
- C. DIVISION/SECTION: Utilities Division
- BY: Rick Diaz, P.E. Utilities Director
- DATE: 1/12/04

7. BACKGROUND

The City of Cape Coral is experiencing development growth in Section 86, which is generally located in the northeastern portion of the City. The City does not presently have, or anticipates having in the near future, potable water facilities to serve this area. The City has requested that LCU provide potable water to the City on a wholesale basis. LCU has the treatment capacity available to provide up to 0.5 million gallons per day of potable water to the City for the term of the Agreement. LCU will charge the potable water bulk rate as established by Resolution 03-10-18.

Funding Source: Not Applicable

Attachments: Originals (3)

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	
J. Lavender Date: 1/13/04	N/A Date:	N/A Date:	M. Crumpton Date: 1/13/04	[Signature] Date: 1/13/04	[Signature] 1/13/04	[Signature] 1/14/04	[Signature] 1/14/04	[Signature] 1/14/04	[Signature] J. Lavender Date: 1-13-04

10. COMMISSION ACTION:

- \_\_\_\_\_ APPROVED
- \_\_\_\_\_ DENIED
- \_\_\_\_\_ DEFERRED
- \_\_\_\_\_ OTHER

Rec. by CoAtty  
Date: 1/13/04  
Time: 1:58 PM

Forwarded To:  
City Admin  
1-13-04 2:05

RECEIVED BY  
COUNTY ADMIN: [Signature]  
1/13/04  
3:20 PM  
COUNTY ADMIN  
FORWARDED TO: [Signature]  
1-14-04  
MOON

**AGREEMENT FOR THE  
WHOLESALE SALE OF  
POTABLE WATER  
BY LEE COUNTY, FLORIDA  
TO THE CITY OF CAPE CORAL, FLORIDA**

THIS AGREEMENT is made and entered into on this \_\_\_ day of \_\_\_\_\_, by and between **LEE COUNTY**, Florida, a Charter County and a political subdivision of the State of Florida (“County”) and the **CITY OF CAPE CORAL**, a Florida municipal corporation (“City”), collectively the “Parties”, for the wholesale sale of treated potable water.

WHEREAS, both Parties own, operate, and maintain public potable water supply systems in Lee County; and,

WHEREAS, the City does not currently have a potable water distribution system to service Northeast Cape Coral; and,

WHEREAS, the City desires to purchase, as needed, up to plus or minus 0.5 million gallons per day (mgd) of finished potable water from the County; and,

WHEREAS, the County desires to sell the above stated quantity of wholesale treated potable water to the City; and,

WHEREAS, the County 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 the City; and,

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

WHEREAS, both 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 and the City agrees to accept, pursuant to the terms and conditions set forth herein, the above stated quantity of treated potable water, treated in accordance with and conforming to the existing standards of the Florida Department of Environmental Protection, the Florida Department of Health, and/or Lee 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 the City that its water treatment facilities are presently operating and producing treated potable water in accordance with existing regulations and standards and will deliver a minimum chlorine residual of 1.5 mg/L at the point of connection. Both Parties further agree 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, both Parties shall have use of all necessary time that is allotted by the specific regulatory agency to bring the water quality to the new regulated standards. The City shall maintain an active Cross Connection Control Program that shall protect the County's potable water supply system from all potential contamination sources originating within the area being served by this Agreement.

1.3 Both Parties shall not, at any time, assume or be obligated to assume any financial responsibility for the operation and maintenance of the other Party's potable water distribution lines lying within the corporate limits or service areas of either Party.

## **ARTICLE II. REPRESENTATIONS**

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

2.2 The County represents to the City that it will, during the term of this Agreement, have sufficient raw water supply capacity, water treatment capacity, and transmission capacity to furnish the treated potable water in the quantity stated above, except for those events beyond the County's reasonable control, to include, but not be limited to, mechanical failures beyond the control of the County, emergency repairs, and Acts of God. The County agrees to provide a one (1) hour oral notice in advance of any action to discontinue service under emergency conditions, and to return service as soon as possible following such emergency. The County agrees to use

all reasonable efforts to avoid emergency conditions. County will follow-up discontinuance of service with a written report explaining the conditions under which emergency conditions were declared and the actions taken, or to be taken, to avoid recurrence.

2.2 The County represents that in the event additional regulation by State or Federal agencies which would potentially alter the provision of potable water service is imposed upon the County, the County shall provide the City with immediate notification of the regulation and its effect upon the potable water service to be provided in this agreement.

### **ARTICLE III. CHARGES AND MAINTENANCE**

3.1 The City shall pay the County's "Bulk Potable Water Rate" of \$2.46 per thousand gallons delivered pursuant to County Ordinance 02-07-44, as it may be amended from time to time by the County, 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 The City shall be responsible for payment for all water delivered by the County to it. The City shall make all reasonable efforts to minimize leakage within its water distribution system, and will comply with the Florida Department of Environmental Protection, Customer Confidence Report rules and regulations, and other regulations as they apply.

3.3 The County shall remain and be responsible for all maintenance, repairs, testing, and calibrations of its Meter for the wholesale potable water services to the City. The sixteen (16) inch Meter shall be located in the vicinity of the intersection of State Road 41 and Del Prado Boulevard in a location mutually agreed upon by both Parties, which shall be known as the "Point of Connection". The Meter shall be readily accessible for reading, testing, maintenance, and be installed above ground with gate valves on either side in accordance with the current edition of the County's Utilities Operations Manual.

3.4 The Meter shall be provided by the City to the County. The County shall specify the manufacturer and model number of the Meter. The Meter shall be tested by the County and recalibrated, if necessary, at least annually in accordance with the American Water Works Association Standards for Meter Testing or other mutually agreeable standards. County agrees to provide City one copy of the annual test report. The City reserves the right to test the Meter at its expense. In the event the meter registers an accuracy error that is greater than the Standards described above, then the Parties agree that the County shall refund to City the amount billed in

error for one-half the period since the last test, said one-half period not to exceed six months, provided, however, that if it can be shown that the error was due to some cause, the date of which can be fixed, the overcharge shall be computed back to but not beyond such date. Whenever the meter is found to register less than the Standard described above, the County may bill the City any additional amount due for one-half the period since the last test, said one-half period not to exceed six months, provided, however, that if it can be shown that the error was due to some cause, the date of which can be fixed, the undercharge shall be computed back to but not beyond such date.

3.5 Both Parties agree that this Agreement may be amended at any time upon mutual consent of both Parties to increase or decrease the gallons of capacity to be reserved by County.

3.6 Both Parties agree that water impact fees will be paid to the County in accordance with the County's impact fee schedule. The City shall forward to the County on a monthly basis the water impact fees due to the County for new customers connected during the previous month. As the capacity of the County's potable water treatment facilities will be subject to replacement during the term of this Agreement, an amount equal to five (5) percent during the first year, ten (10) percent during the second year, and so on up to one hundred (100) percent during the twentieth year of the principal amount of the collected impact fees shall be permanently surrendered to the County with each monthly payment made by the City during the term of this Agreement to offset the replacement of capacity at the County's potable water treatment facilities. When this Agreement is terminated, the County will return the principal amount of all impact fees paid to the County by the City, less the above surrendered funds. The County will retain any interest earned on said funds.

3.7 Either Party shall have the right upon reasonable notice to the other Party and, when reasonably necessary, to enter upon the other Party's lands and improvements thereon to review and inspect the other Party's operating practices for the distribution of potable water, as they may relate to this Agreement.

3.8 Payment for all charges for the sale of the wholesale potable water from the County, as metered at the interconnect, shall be made to the County on a monthly invoice basis from the City, to be paid within thirty (30) calendar days from receipt of an invoice from the County, net, or as otherwise mutually established by the Parties.

3.9 After the termination of this Agreement or whenever the City connects the area being served by this Agreement to its own water supply system, the interconnect may be utilized by either Party in the future for receiving purposes in cases of declared emergencies as may occur in the future. The County shall be responsible for installing at its expense a Meter on the City side of the interconnect at a future date for measuring said emergency potable water provided to the County. Charges for the use of either Parties potable water shall be in accordance with the Agreement between the Parties in force at the time for the emergency sale and purchase of potable water.

#### **ARTICLE IV. TERM OF AGREEMENT**

4.1 This Agreement for the City's wholesale purchase of potable water from the County shall remain in full force and effect through an initial period of twenty (20) calendar years with automatic successive renewal periods of five (5) calendar years. Either Party shall give notice to the other Party of its intent not to renew at least twenty four (24) calendar months prior to the expiration of any term. When the City determines that it is able to provide its own potable water service to the area served by this Agreement, the City may terminate this Agreement at any time with twenty four (24) calendar months prior notice to the County of the City's intent to terminate this Agreement. The County reserves the right to terminate this Agreement at any time with twenty four (24) calendar months prior notice to the City of the County's intent to terminate this Agreement.

#### **ARTICLE V. ADDITIONAL PROVISIONS**

5.1 This Agreement shall be binding upon and inure to the benefit of the successors and assigns of both Parties. 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.

County:        Utilities Director  
                 Lee County Utilities Division  
                 P. O. Box 398  
                 Fort Myers, FL 33902-0398

City:	Public Works Director	Utilities Manager
	City of Cape Coral	City of Cape Coral
	Post Office Box 150027	Post Office Box 150027
	Cape Coral, FL 33915	Cape Coral, FL 33915

City Attorney  
City of Cape Coral  
Post Office Box 150027  
Cape Coral, FL 33915

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    Both Parties shall hold the other harmless from and against any actions, claims, and damages arising after the commencement of this Agreement which may be imposed upon or incurred by or asserted against either Party by reason of any claim of any person for any damage to persons or property occurring as the direct result of the City's purchase of finished potable water from the County. Both Parties shall have the right to contest the validity of any and all such claims and to defend, settle, and compromise any and all such claims of any kind or character and by whomsoever claimed, in the name of the County, as the City may deem necessary, provided that the expense thereof shall be paid by the City. Notwithstanding the above, either Party shall not be liable to, in any manner, nor be required to hold the other Party harmless, for any of the other Party's own negligent acts. Each Party shall remain liable for its own negligence or omissions, and by entering into this Agreement, neither Party shall be deemed

to have 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 either Party herein shall be cumulative and may be exercised singly or concurrently. In the event a dispute arises between the Parties 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 either Party, unless approved by the other Party.

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 constitutes the entire Agreement between the Parties with respect to the subject matter contained herein and may not be amended, modified, or rescinded unless otherwise provided in this Agreement, except in writing and signed by all the Parties hereto. Should any provision of this Agreement be declared illegal, invalid, unenforceable, unconstitutional, or in violation of any bond covenants of the City of Cape Coral or the County by any Court of competent jurisdiction, the remaining provisions of this Agreement shall remain in full force and effect, unless such provision is found illegal, invalid, unenforceable, or unconstitutional, altering substantially the benefits of the Agreement for either of the parties or rendering the statutory and regulatory obligations not performable. The Parties agree to negotiate in good faith to replace any illegal, invalid, unenforceable, or unconstitutional provision(s) of this Agreement with a provision(s) that is legal, valid, enforceable, and constitutional and that expresses the intention of the original provision.

5.17 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: Bonnie J. Vent  
Bonnie J. Vent, City Clerk

CITY OF CAPE CORAL, FL

By: Arnold E. Kempe  
Arnold E. Kempe, Mayor

Date: 12-16-03

APPROVED AS TO FORM:

By: Marilyn W. Miller  
Marilyn W. Miller,  
Assistant City Attorney

ATTEST: CHARLIE GREEN  
CLERK OF THE COURTS

BOARD OF COUNTY COMMISSIONERS  
OF LEE COUNTY, FLORIDA

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Chairman

Date: \_\_\_\_\_

APPROVED AS TO FORM:

By: \_\_\_\_\_  
Office of County Attorney