

RECLAIMED WATER SERVICE AGREEMENT

THIS AGREEMENT is made and entered into as of this 29 day of March, 2007, by and between **HERONS GLEN RECREATION DISTRICT**, an independent special recreation district of Lee County, Florida, as established by Lee County Ordinance No. 98-08 (hereinafter "District"), and **NORTH FORT MYERS UTILITY, INC.**, a Florida corporation, (hereinafter "Utility").

RECITALS

A. Herons Glen is a residential country club community being developed in Lee County, Florida ("Herons Glen") and is subject to the Declaration of Covenants, Conditions, and Restrictions for Del Vera Country Club (n/k/a Heron's Glen Country Club), recorded at ORB 2197, Page 3502, et seq., of the Public Records of Lee County, Florida, as amended. Defined terms used herein but not defined shall have the meanings ascribed to such terms in the Declaration.

B. Pursuant to Lee County Resolution No. Z88-069, the developer is required to use the treated reclaimed effluent from the wastewater treatment facility for spray irrigation of golf courses and open space areas within Herons Glen ("Property"), and has constructed a storage, pumping, transmission and distribution system for that purpose ("Golf Course Irrigation System"). The District now has responsibility for the developer's obligations with regard to spray irrigation of golf courses located within the District's boundaries, as the same may be amended by the Board of County Commissioners from time to time and which property is currently described on Exhibit "A" hereto ("Property").

C. Utility generates highly treated wastewater ("Reclaimed Water") which it wishes to dispose of through a permitted land application process; and,

D. District desires to obtain treated Reclaimed Water from Utility for purposes of supplying water to its Golf Course Irrigation System; and,

E. Utility and District desire to set forth their respective duties and obligations with regard to the provision and disposal of Reclaimed Water to the Golf Course Irrigation System.

NOW, THEREFORE, in consideration of the payment of ten and no/100 dollars (\$10.00) and other valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1.0 RECITATIONS. The foregoing Recitations are true and correct and incorporated herein as though fully set forth.

2.0 UTILITY'S COVENANTS. Utility agrees to provide Reclaimed Water from its Wastewater Treatment Facility ("Plant") to the Point of Delivery, as hereinafter defined, at such times and in the manner set forth herein.

2.1 The Point of Delivery for the Reclaimed Water shall be at the discharge point of the Reclaimed Water transfer pipe as is more specifically set forth on the map

attached as Exhibit "B" and incorporated herein by reference ("Point of Delivery"). Utility agrees to construct, at its sole cost and expense, a reclaimed water transmission line to the Point of Delivery on or before September 30, 2007. Utility will, at its expense, maintain, repair and replace the reclaimed water transmission line to the Point of Delivery, as needed, at Utility's sole cost and expense. Each party shall be deemed to be in possession and control of Reclaimed Water on its side of the Point of Delivery. Utility may, at District's expense, purchase and install a single bulk service water meter at the Point of Delivery ("Meter"). Such Meter shall meet all applicable regulatory requirements. The Meter shall be used to monitor the amount of Reclaimed Water delivered by Utility. Utility agrees to own, operate, and maintain the Meter within prescribed accuracy limits set forth by the manufacturer. If a meter is installed, then the Point of Delivery shall be the outflow pipe from the meter.

3.0 ACCEPTANCE OF IRRIGATION WATER. District shall accept Reclaimed Water produced by the Plant in such quantities as Utility, in its sole discretion, may determine; however such quantity shall be at least equal to the quantity of wastewater produced from the Herons Glen development or 210 thousand gallons per day ("MGPD"), whichever is greater and District agrees to accept and assume all obligations for the disposal of the Reclaimed Water by means of land application, and will be responsible for any and all construction, maintenance, operation, expansion and all associated costs of its Golf Course Irrigation System utilized now or in the future to dispose of the Reclaimed Water. Notwithstanding the above, in the event that District's storage facilities are full and Utility continues to send Reclaimed Water in excess of 210 MGPD, the District shall not be obligated to accept such additional quantities and the parties will reconsider and revise the terms of this section as appropriate. District warrants and represents that it will at all times maintain the Golf Course Irrigation System in good and serviceable condition, use Reclaimed Water as its primary source of irrigation for the golf course within the Property, and dispose of all Reclaimed Water in a manner consistent with the terms and conditions of this Agreement, and all applicable federal, state and local environmental laws and requirements. Notwithstanding the limitations contained in this Agreement to the contrary, District covenants that it shall never use potable or non-potable water for irrigation of the golf course within the Property if Utility has and provides sufficient Reclaimed Water available for District's utilization. District may, at its option, use Reclaimed Water for irrigation of common areas within the Property, such as, by way of example, landscaped medians and entry features. District acknowledges that Utility operates its wastewater system pursuant to a Department of Environmental Protection operating permit which may be affected by a change in Reclaimed Water disposal circumstances.

3.1 District shall not sell, distribute, or in any way allow the Reclaimed Water to be utilized on any land other than the Property without the Utility's prior written approval.

3.2 District shall be responsible for the maintenance, operation and compliance with all regulatory requirements for the acceptance, storage and disposal of Reclaimed Water on its side of the Point of Delivery, including but not limited to providing all required notices. Upon request, District shall provide to Utility copies of the results of any Reclaimed Water sampling completed by District, including, but not limited to groundwater monitoring samples, and related reports to the Florida Department of Environmental Protection ("DEP") or other such agencies. All costs associated with District's obligations hereunder shall be borne by District.

4.0 CHARGE FOR RECLAIMED WATER. Utility needs to dispose of the Reclaimed Water and District needs irrigation water for its Golf Course Irrigation System; therefore, in exchange for District's obligation to use Reclaimed Water as provided in this Agreement and District's right to receive Reclaimed Water for its Golf Course Irrigation System, there shall be no charge to District for the Reclaimed Water unless a charge is approved by the Florida Public Service Commission or other agency having jurisdiction over such matters.

5.0 LEVEL OF TREATMENT. Utility agrees to deliver only properly treated Reclaimed Water to the Point of Delivery. For purposes of this Agreement, properly treated Reclaimed Water shall be defined as wastewater discharged from Utility's Plant which meets or exceeds the minimum quality standards established for reclaimed water reused in public access areas as set forth in Florida Administrative Code Rule 62-610 or its successor rule as amended from time to time. If, in the future, District, in its sole discretion, no longer irrigates public access areas, or otherwise restricts its method of disposal, though not quantity, of Utility's Reclaimed Water in a manner that calls for a lower level of treatment than that provided by Utility at the time of this Agreement, then, in such event, the standard for properly treated Reclaimed Water required of Utility hereunder shall be reduced appropriately.

5.1 District shall have no obligation to accept Reclaimed Water which is not properly treated as defined herein. Utility further agrees to promptly divert the flow of inadequately treated Reclaimed Water to an alternative disposal site, or take such other action as may be reasonably required to avoid the delivery of improperly treated Reclaimed Water. District shall maintain the quality of Reclaimed Water in its Golf Course Irrigation System consistent with all regulatory requirements.

5.2 District agrees to take necessary precautions to insure that Reclaimed Water lines are properly identified and that cross-connection with potable water lines or service does not occur.

6.0 CONTINUING RIGHTS OF DISTRICT. District retains the right, following notice to Utility, to move, relocate and install new and/or additional irrigation systems at its expense, provided, however, that such action shall not restrict Utility's rights as created hereby.

7.0 INDEMNIFICATION. The Utility shall indemnify and hold harmless District, its officers, directors, members, agents, representatives, servants and employees from all claims, costs, penalties, damages and expenses, (including attorney's fees) arising out of the following:

7.1.1 Claims related to the Utility's construction, erection, location, operation, maintenance, repair, installation, replacement or removal of any part of the system controlled by the Utility for Reclaimed Water disposal; and

7.1.2 Claims arising out of Utility's negligence or omissions upon any areas controlled by Utility that are contained within, adjoining or abutting District's Property, or claims arising out of the Utility's negligence or omissions within an area controlled, operated or maintained by the Utility.

7.1.3 Claims arising out of delivery of Reclaimed Water which does not meet standards set forth in this Agreement.

7.2 The obligation of the Utility to indemnify the District shall be conditioned upon the compliance by the District with all regulatory requirements and regulations for the use of the reclaimed water from the Point of Delivery.

7.3 The District shall hold harmless and indemnify Utility, its agents, representatives, servants, and employees from all claims, costs, penalties, damages, and expenses (including attorneys' fees) arising out of the following:

7.3.1 Claims related to the District's construction, erection, location, operation, maintenance, repair, installation, replacement or removal of any part of the Golf Course Irrigation System controlled by the District for Reclaimed Water disposal;

7.3.2 Claims arising out of District's negligence or omissions upon any areas controlled by District that are contained within, adjoining or abutting the Property, or claims arising out of District's negligence or omissions within an area controlled, operated or maintained by District;

7.3.3 Claims or demands that the use of properly treated Reclaimed Water by the District in the manner set forth in this Agreement within or upon any areas controlled, operated or maintained by District is in violation of any applicable Statutes or regulations.

7.4 The obligation of the District to indemnify Utility shall be conditioned upon the compliance by Utility with all regulatory requirements and regulations for the Reclaimed Water.

8.0 TERM. This Agreement shall be in effect for an initial term of thirty (30) years from the Date of this Agreement. Thereafter, the term of this Agreement shall be renewed automatically for ten (10) year periods unless terminated by either party in writing not less than twelve (12) months in advance of the next renewal date.

9.0 DEFAULT. In the event of material breach by either party of its duties and obligations hereunder, the non-defaulting party shall be entitled to exercise all remedies at law or in equity, including, but not limited to, specific performance, in order to enforce the terms and provisions of this Agreement and recover any damages resulting from the breach thereof.

9.1 In the event it is necessary for either party to litigate in order to enforce its rights under the terms of this Agreement, then the prevailing party shall be entitled to reimbursement of its litigation costs, including but not limited to, reasonable attorney's fees, including those caused by appellate proceedings.

10.0 FURTHER ASSURANCES. The parties agree that at any time after the execution hereof, they will, upon the request of the other party, execute and deliver such other documents and further assurances as may be reasonably required by such other party in order to carry out the terms of the Agreement.

11.0 REGULATORY AUTHORITY. The provisions of this Agreement shall at all times be subject to the exercise of lawful regulatory authority.

12.0 NOTICES. Until further written notice by either party, all notices provided for herein shall be in writing and transmitted by messenger, by certified mail or by telegram, and shall be addressed as follows:

To District:

Hérons Glen Recreation District
2250 Avenida Del Vera
North Fort Myers, FL 33917
ATTN: Chairman

with a copy to:

Knott, Consoer, Ebelini, Hart & Swett, P.A.
1625 Hendry Street, Third Floor
Fort Myers, FL 33901
ATTN: Thomas B. Hart

To Service Company:

North Fort Myers Utility, Inc.
Post Office Box 2547
Ft. Myers, Florida 33902
ATTN: Mr. A. A. Reeves, III

with a copy to:

Rose, Sundstrom & Bentley, LLP
Sanlando Center
2180 W. State Road 434, Suite 2118
Longwood, FL 32779
ATTN: Martin S. Friedman, Esquire

12.1 All notices provided for herein shall be deemed to have been duly given upon the delivery thereof by hand to the appropriate address as evidenced by a signed receipt for same, or by the receipt of certified, return receipt, mail, or by courier service receipt therefor, evidencing delivery of such notice. Either Party may change the address for notices by sending a written notice to the other party in accordance with this section.

13.0 FORCE MAJEURE. Acts of God such as storms, earthquakes, land subsidence, strikes, lockouts or other industrial disturbances, acts of public enemy, wars, blockades, riots, acts of armed forces, delays by carriers, inability to obtain materials or rights-of-way, acts of public authority, regulatory agencies, or courts, or any other cause, whether the same kind is enumerated herein, not within the control of District or Utility, and which by the exercise of due diligence, District or Utility is unable to overcome, which prevents the performance of all or any specific part of this Agreement, shall excuse performance of said part of this Agreement until such force majeure is abated or overcome.

14.0 BINDING EFFECT. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns. Without limiting the foregoing, District may and shall assign this Agreement to any subsequent Owners of the golf

course land, who shall, as a condition to assignment, be required to assume this Agreement and performance of the obligations of District hereunder.

15.0 COUNTERPARTS. This Agreement may be executed in any number of counterparts, each of which shall be an original, but such counterparts shall together constitute but one and the same instrument.

16.0 LICENSE TO INSPECT. District hereby grants Utility a non-exclusive license, during the term of this Agreement, to enter upon the Property, upon advance notice and at any reasonable time, and to review and inspect the practices of District with respect to conditions agreed to herein, including, but not limited to, compliance with all federal, State and local regulatory requirements. Such entry shall be allowed for the purpose of inspection of the operation and facilities constituting the Golf Course Irrigation System, for inspection of any Utility owned facilities, and for sampling of the Reclaimed Water utilized in the Golf Course Irrigation System, and any monitoring wells located on the Property. District has the option of having a representative accompany the Utility personnel on all such inspections. All such on-site monitoring shall be at Utility's expense.

17.0 SEVERABILITY. If any part of this Agreement is found invalid or unenforceable by any court, such invalidity or unenforceability shall not affect the other parts of this Agreement, absent material prejudice to one or the other party.

18.0 IN PARI MATERIA. It is agreed by and between the parties hereto that all words, terms, and conditions herein contained 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 heading in the interpretation of this Agreement.

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

20.0 MUTUAL REPRESENTATIONS AND WARRANTIES. Each party represents and warrants to the other party that (a) such party has full power and authority to execute and deliver this Agreement and to perform its obligations hereunder, (b) the execution, delivery, and performance of this Agreement has been duly and validly authorized, and no additional authorization or consent is required in connection with the execution, delivery, and performance by such Party of this Agreement, (c) this Agreement is a legal and valid obligation binding upon such party and enforceable in accordance with its terms, and (d) the execution, delivery and performance of this Agreement by such party does not conflict with any agreement, instrument or understanding, oral or written, to which it is a party or by which it may be bound.

IN WITNESS WHEREOF, District and Utility have executed or have caused this Agreement, with the named Exhibits attached, to be duly executed in duplicate originals.

WITNESSES:

Jenny M. Castellitto

Print Name: Jenny M. CASTELLITTO

Patricia L. Honse

Print Name: Patricia E. Honse

David L. Klackie

Print Name: DAVID L. KLACKIE

Mary Ellen Marbin

Print Name: Mary Ellen Marbin

NORTH FORT MYERS UTILITY, INC.

A. A. Reeves, III

BY: A. A. Reeves, III, Vice President

HERONS GLEN RECREATION DISTRICT

Dorothy M. Klewicki

BY: Dorothy M. Klewicki
Its: Chairman