

IRRIGATION WATER AGREEMENT

THIS AGREEMENT is made and entered into this ___ day of _____ 200_, by and between the CITY OF NAPLES (the "CITY") and _____ (the "CUSTOMER").

WHEREAS, policies of the federal, state, water management district, governments and of the CITY are in support of providing adequate and reliable disposal facilities for treated wastewater effluent and supplemental water resources (referred to in this Agreement as "irrigation" water, but also generally referred to as "reclaimed", or "reuse" water) provided to the CUSTOMER by the CITY for use of the CUSTOMER in lieu of use of potable water; and

WHEREAS, CUSTOMER is desirous of obtaining from the CITY irrigation water as a resource for approved uses located only upon the real property described in Exhibit A, which is attached to and incorporated into this Agreement (the "Property");

NOW, THEREFORE, the parties agree as follows:

1. **CUSTOMER REPRESENTS AND WARRANTS RECORD OWNERSHIP.** CUSTOMER has requested that the CITY provide available irrigation water to CUSTOMER. CUSTOMER hereby represents and warrants to CITY that CUSTOMER constitutes all individuals and entities that are record owners of the Property and that the person executing this Agreement has the authority to bind CUSTOMER.
2. **TERM.** This Agreement shall be for an initial period of 5 years, and the CITY will, in good faith, make available to the best of its ability an adequate supply and quality of reclaimed water at all times. However, no guarantees can be provided due to circumstances beyond its control. This Agreement may be extended for up to 3 successive 5 year periods. The maximum number of years, including the initial period and the successive periods is 20 years. The methodology for obtaining an extension of either the initial period or any successive period is that either party may request the extension by notifying the other party of such request at least 180 days prior to the termination date of the initial or successive period. The other party shall notify the requesting party of its acceptance or rejection of the request within approximately 90 days before the end of the applicable period. Otherwise this Agreement shall be terminated, unless the parties agree in writing to waive the time period.
3. For the duration of this Agreement, the CITY (subject to having such extra irrigation water available for delivery to the Property as such month-to-month availability is determined by the CITY), will attempt to supply additional irrigation water to the Property at the rates referred to in Paragraph 9 below.
4. **QUALITY AND USE OF IRRIGATION WATER.** The irrigation water shall be supplemental water resources and/or wastewater effluent that has been treated for

irrigation use to the standards now and hereafter required by the Florida Department of Environmental Protection. CUSTOMER shall accept the irrigation water delivered by the CITY and use it only on the Property always in full compliance with then applicable local, state and federal rules and regulations. Except for normal and customary irrigation use this water may incidentally be sprayed into the lakes, ponds, ditches and sloughs on the Property. No such water shall be discharged into the surface waters of the State of Florida without written authorization from the South Florida Water Management District and the Department of Environmental Protection, or the CITY, as applicable. CUSTOMER shall take reasonable precautions, including signs, labeling and color-coding to prevent confusion between irrigation water and other water sources downstream of the point of delivery. The CITY will evaluate the potential of blending other sources of water with the treated effluent.

5. **POINT OF DELIVERY DEFINED.** The point of delivery of irrigation water shall be where the irrigation water passes to CUSTOMER's property or other location as may be agreed to by the parties. CITY shall own, operate and maintain the irrigation water distribution system and shall be deemed to be in possession and control of the irrigation water only upstream of the point of delivery. The CUSTOMER shall own, operate and maintain the irrigation water distribution system and related lake storage or other facility, and shall be deemed to be in possession and control of the irrigation water downstream of the point of delivery.
6. **CITY RESPONSIBILITIES UPSTREAM OF THE POINT OF DELIVERY.** The CITY shall be responsible for the design, construction, permitting, financing of all costs and placing in operation the irrigation water delivery system up to the point of delivery, and the CITY shall bear all costs of operation and maintenance of the irrigation water delivery system only up to the point of delivery.
7. **CUSTOMER RESPONSIBILITIES DOWNSTREAM OF THE POINT OF DELIVERY.** Except to the extent, if any, clearly and expressly specified in the Special Provisions Paragraph in this Agreement to the contrary, CUSTOMER shall take full responsibility for the design, construction, permitting, financing of all costs and placing in operation the irrigation water delivery system downstream of the point of delivery. The CUSTOMER shall bear all costs of operation and maintenance of the irrigation water delivery system downstream of the point of delivery.
8. **STANDARD OF MAINTENANCE.** CUSTOMER shall maintain all irrigation water distribution facilities downstream of the point of delivery at current and then existing standards equal to the maintenance standards for comparable utility facilities maintained by the CITY.
9. **RATE TO BE CHARGED FOR IRRIGATION WATER.** For having available and/or furnishing the irrigation water, the CITY shall charge and CUSTOMER shall pay the rate provided in the City's Appendix A-Fees and Charges Schedule rate schedule for irrigation (reclaimed or reuse) water Bulk Customers. The

CITY reserves the right to adjust the rate from time to time as needed, including without limitation annual automatic rate increases.

10. **BILLING.** Subject to the terms and conditions of this Agreement, the CITY shall invoice CUSTOMER for services on a periodic (normally bi-monthly or monthly) basis in accordance with billing cycle meter readings, calculated charges and other applicable service fees. The invoice shall include the billing period of service, the amount of irrigation quality service flows as metered and billed, the applicable rate(s) for that service, the total dollar and cents amount of the invoice, contact telephone number for questions regarding the invoice. CUSTOMER shall deliver payment to the CITY in full based upon the invoice amount by the due date of the invoice from the CITY. If payment is not received by the CITY by the due date on the invoice after CUSTOMER's receipt of the invoice, CUSTOMER may be liable for the payment of any penalties on the outstanding balance as established from time to time by the CITY, which penalty charges being the same as those applied to all other customers of the CITY as established by City Ordinance or Resolution. The charging of penalties shall not extend the due date for any payment and any failure to pay may be considered a default under the terms of this Agreement. If there is no applicable provision in City regulations, the account shall become delinquent if unpaid in full within 30 days after the end of the prior monthly billing period, whether or not an invoice has been received. The irrigation water service from the CITY to CUSTOMER can also be disconnected when any payment is delinquent. The CITY agrees to provide written notice by certified mail with a cure period of at least 30 days before disconnecting.
11. **UNPAID FEES ARE A STATUTORY LIEN.** The CUSTOMER acknowledges that if the fees, rates or charges of the facilities provided for under this Agreement become delinquent, any unpaid balance and all interest accruing thereon shall be a lien on the affected property pursuant to law.
12. **IRRIGATION WATER AVAILABILITY.** The CITY will make a diligent effort to make available to CUSTOMER the agreed upon minimum quantity of irrigation water. The CITY will provide courtesy notifications to CUSTOMER concerning known serious problems that render irrigation water unusable.
13. **CUSTOMER EMERGENCY SITUATIONS.** In the event of an emergency, as defined below, CUSTOMER shall notify the City Manager or designee and request that pumping of irrigation water temporarily cease. Such notice shall be in writing where circumstances permit and, in the event of an immediate emergency, such notice may be by telephone with subsequent written confirmation. It is understood by both parties that CITY anticipates that it can assist CUSTOMER with the storage and non-delivery of irrigation water for a period not to exceed 3 days in such an emergency situation. Such storage of irrigation water, however, shall be subject to the rules, regulations and directives of the Department of Environmental Protection. Emergencies shall include but are not limited to:

- (a) Weather conditions such as hurricanes, floods or unseasonably excessive rainfall that make it impossible for CUSTOMER to accept irrigation water.
- (b) Short term equipment or material failure, making it impossible for CUSTOMER to store or distribute the irrigation water.
- (c) An act of God that makes it impossible for CUSTOMER to accept, store or distribute the irrigation water.

14. NOTIFICATIONS . Those representatives who shall be notified in the event of an emergency and of any other matters pertaining to this Agreement are as follows:

(a) FOR THE CITY:

- 1. City Manager
735 Eighth Street South
Naples, Florida 34102
(239) 213-1030.
- 2. City Utilities Director
380 Riverside Circle.
Naples, Florida 34102
(239) 213-4745

(b) FOR THE CUSTOMER

 (239) _____ - _____

The CITY and the CUSTOMER may change the above mailing address and/or phone numbers at any time upon giving the other party written notification, return receipt requested, by U.S. Mail.

If and when emergency situations occur, the CITY shall try to notify CUSTOMER by telephone and try to promptly follow up with a letter stating the nature of the emergency and the anticipated duration.

15. CITY NOT LIABLE. CUSTOMER shall not hold the CITY liable for failure to deliver irrigation water if a reasonable situation preventing such delivery exists or for delivery of water that is not of sufficient quality. Such situations shall include, but not be limited to:

- (a) A lack of irrigation water due to a loss or lack of flow to the treatment plant or due to process failure.

- (b) Contamination in the irrigation water making it unusable for approved uses, including without limitation, excessive chloride levels.
 - (c) Equipment or material failure in the irrigation water delivery system, including storage and pumping.
 - (d) An act of God that makes delivery of irrigation water by the CITY not reasonably feasible or impossible.
 - (e) Other plant upsets caused by mechanical or a biological process that would prevent delivery of irrigation water to the system.
16. **EXCUSE FOR PERFORMANCE BY GOVERNMENTAL ACTS.** If for any reason during the term of this agreement, local, state or federal governments or agencies shall fail to issue necessary permits, grants necessary approvals, or shall require any change in the operation of the treatment, transmission and distribution systems or the application and use of irrigation water, to the extent that such requirements shall affect the ability of any party to perform any of the terms of this Agreement, the affected party shall be excused from the performance thereof and the parties hereto in conformity with such permits, approvals, or requirements shall negotiate a new agreement, if possible. However, nothing shall require CUSTOMER or CITY to accept any new agreement if it substantially adds to its burdens and obligations hereunder.
17. **CUSTOMER'S RIGHT TO TERMINATION; AGREEMENT RUNS WITH LAND.** The CUSTOMER shall have the right to terminate this agreement if the CITY continually fails to deliver irrigation water (subject to the exemptions specified in paragraph 15). The CUSTOMER shall have the right to sell, transfer or encumber the PROPERTY, except that written notice of any proposed sale or transfer must be given to the CITY at least 30 days prior to sale or transfer. So long as use of the PROPERTY shall substantially continue to be for the purposes intended by this Agreement, any subsequent party in interest shall be obligated to pay in accordance with the take or pay provision, as well as receive and use the specified minimum quantity under the same terms and conditions of this Agreement unless modified by mutual consent of the CITY and the buyer, of transferee, or successor in interest to the CUSTOMER.
18. **CITY'S RIGHT TO TERMINATION.** The CITY shall have the right to terminate this Agreement if the CUSTOMER fails to accept irrigation water under the conditions described herein, or if performance is prevented by third party litigation, or if the CUSTOMER is or reasonably appears to be irresponsibly or illegally disposing of or using the irrigation water, or if any other event beyond the control of the CITY prevents performance, or if the CUSTOMER fails to pay delinquent fees, rates or charges for the services and facilities provided for under this Agreement. This Agreement shall not be subject to termination by CITY for CUSTOMER'S failure to accept irrigation water if the City Manager or his designee confirm that a reasonable situation exists making acceptance of the

water impracticable, such as but not limited to planned system maintenance or when weather or operating conditions make it impossible or impractical for CUSTOMER to accept water.

19. **ACCESS.** The CITY shall have the right, but not the duty, to enter upon the Property of the CUSTOMER to review and inspect at reasonable times the practices of CUSTOMER with respect to conditions agreed herein and/or to maintain, repair, replace, relocate or otherwise deal with the system. Such entry shall also be for the purpose of review of the operation of the irrigation water system, for inspection of distribution mains and appurtenances, and for sampling at any monitoring well located on the property of the CUSTOMER. CUSTOMER may have a representative accompany the CITY's personnel. After reasonable notice to CUSTOMER, the CITY shall have the right, but not the duty, to enter upon the Property to correct any maintenance deficiencies and charge the CUSTOMER all of the expenses of correction.
20. **DISCLAIMER OF THIRD PARTY BENEFICIARIES.** This agreement is solely for the benefit of the formal parties hereto, and their successors in interest, 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 party hereto.
21. **SEVERABILITY.** If any court finds any part of this Agreement invalid or unenforceable, such invalidity or unenforceability shall not affect the other parts of this Agreement if the rights and obligations of the parties contained therein are not materially prejudiced and if the intentions of the parties can continue to be effected. To that end, this Agreement is declared severable.
22. **LAND USE APPROVALS.** This Agreement shall not be construed as a basis for either granting or assuring or indicating, or denying, refusing to grant or preventing any future grant of land use zoning approvals, permissions, variances, special exceptions or any other rights with respect to the real property in the approved uses area.
23. **APPLICABLE LAW.** This agreement and the provisions contained herein shall be construed, controlled and interpreted according to the laws of the State of Florida, all then applicable provisions of the Florida Administrative Code, and the then current City Reclaimed/Irrigation Water Ordinance or its successors in function.
24. **RECORDATION.** This Agreement may be recorded in the Public Records of Collier County, Florida.
25. **ASSIGNMENT.** Assignment or transfer of the CUSTOMER's rights or obligations under this Agreement is prohibited without prior written consent of the CITY. Any attempt by CUSTOMER to assign or otherwise transfer this Agreement shall be null and void.

- 26. BINDING EFFECT. This Agreement shall be binding upon the parties, their successors and assigns.
- 27. ENTIRE AGREEMENT. This Agreement constitutes the entire agreement between the parties with respect to the subject matter referenced herein. Any amendment hereto shall be in writing duly executed by the parties, or their successors in interest to the Property. Each amending Agreement shall clearly and specifically refer to this Agreement by title and date. E.g., "First Amendment to that Agreement for Delivery and Reuse of Irrigation Water, which commenced on the _____ day of _____ between the CITY and CUSTOMER.
- 28. DISPUTE RESOLUTION. Any disputes of a material nature under this Agreement shall be resolved in the following order: 1. Formal meeting between the parties within 15 days after notification of dispute. 2. Mediation before a qualified mediator appointed by the Chief Judge of the 20th Judicial Circuit, to be held within 60 days after notification of dispute. 3. Arbitration, under the Florida Arbitration Code, before qualified arbitrator appointed by the said Chief Judge, to be held within 60 days after impasse at mediation. The mediator and arbitrator may be the same person if so appointed. The dispute resolution process shall not take more than 90 days after the notification of dispute unless waived by both parties. Each party will bear 1/2 the cost of a mediator or arbitrator. Each party shall bear the expense of its own attorneys, experts and representatives.

SPECIAL PROVISIONS: _____(If any)_____

IN WITNESS WHEREOF, the parties have subscribed their hands and seals for the day and year first above mentioned.

WITNESSES:

CUSTOMER:

(Print Name: _____)

CUSTOMER
a Florida _____

By: _____

(Print Name: _____)

Print Name: _____

Title: _____

STATE OF FLORIDA)
) Ss
COUNTY OF COLLIER)

I HEREBY CERTIFY that on this day, before me, an office duly authorized in the state and county aforesaid, take acknowledgments, personally appeared _____. He () is personally known to me, or () produced _____ as identification.

WITNESS my hand and official seal I the County and State last aforesaid this ____ day of _____, 2008.

(SEAL)

Notary Public
Print Name: _____
My Commission Expires: _____

ATTEST:

Tara A. Norman, City Clerk

CITY OF NAPLES

Approved as to form and
Legal sufficiency:

By: _____
A. William Moss,
City Manager

City Attorney
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EXHIBIT "A"

PROPERTY NAME AND ADDRESS:

PROPERTY DESCRIPTION

(TYPE HERE OR ATTACH AS EXHIBIT A-1) _____

ACREAGE
