

SIRE BS No.
20071041

Lee County Board Of County Commissioners
Agenda Item Summary

Blue Sheet No. 20070677-UTL

1. ACTION REQUESTED/PURPOSE:

Authorize Chair, on behalf of the BOCC, to execute and approve recording of the "Agreement for the Delivery and Use of Reclaimed Effluent Water" (which does not includes a utility easement) between Lee County and Mr. Edward Lawler. The property is located on Iona Road in South Fort Myers.

2. FUNDING SOURCE:

No funds required.

3. WHAT ACTION ACCOMPLISHES:

Provides for disposal of treated effluent from the Fort Myers Beach Wastewater Treatment Plant.

4. MANAGEMENT RECOMMENDATION: Approval.

5. Departmental Category: 10 - Utilities **CIOJ**

6. Meeting Date: MAY 15 2007

7. Agenda:

- Consent
- Administrative
- Appeals
- Public
- Walk-On

8. Requirement/Purpose: (specify)

- Statute
- Ordinance
- Admin. Code
- Other Approval

9. Request Initiated:

Commissioner _____
 Department Pub. Works
 Division Utilities
 By: Douglas L. Meurer 4-30-2007
 Douglas L. Meurer, P.E., Director

10. Background:

Mr. Edward Lawler desires reclaimed water (treated effluent) from Lee County's Fort Myers Beach Wastewater Treatment Plant and has agreed to receive reclaimed water, which will provide for additional "disposal capacity" at this Wastewater Treatment Plant.

No Easement is included in this Agreement as the meter location is in the county right-of-way.

Funds are available for document recording fees in:

Account No. OD5360748700.504930
 (Util-Util Eng-Dep Clerk Fees for Recording & Filing)

Attachments: Project Location Map
 Recorder's Office Sheet
 Effluent Agreement only (w/o attached Easement) – 1 Original



11. Review for Scheduling:

Department Director	Purchasing or Contracts	Human Res.	Other	County Attorney	Budget Services				County Manager/P.W. Director
					Analyst	Risk	Grants	Mgr.	
<u>J. Lavender</u> Date: <u>4.30.07</u>	N/A Date:	N/A Date:		<u>S. Coovert</u> Date: <u>5/1/07</u>	<u>RK</u> 5/3/07	<u>MZ</u> 5/3/07	<u>AK</u> 5/3/07	<u>J. Lavender</u> Date: <u>4.30.07</u>	

12. Commission Action:

- Approved
- Deferred
- Denied
- Other

RECEIVED BY
 COUNTY ADMIN:
5/2/07 @ 2pm
 COUNTY ADMIN
 FORWARDED TO: PPC
5/3 @ 1:30pm

Rec. by CoAtty
 Date: 5/1/07
 Time: 4:15pm
 Forwarded To:
ALM
5/2/07 10:00 am

TO: RECORDERS OFFICE

PLEASE PUT MY NAME ON THE ATTENTION LINE:

Sue Gulledge

**CHARGE TO: LEE COUNTY UTILITIES -
LCU 500283**

ACCOUNT NO. OD5360748700.504930

THANK YOU.

FOR UTILITIES USE ONLY:

**BLUE SHEET NO. 20070677-UTL
(SIRE BS 20071041)**

PROJECT NAME: LAWLER RESIDENCE REUSE

AGREEMENT NAME: EDWARD LAWLER

TYPING BY: Sue Gulledge

This Instrument Prepared By:
Lee County Utilities
1500 Monroe Street - 3rd Floor
Fort Myers, Florida 33901

Strap Number(s):

36-45-23-11-00000.0150

LCU 500283
(THIS SPACE RESERVED FOR RECORDING)

**AGREEMENT FOR THE DELIVERY
AND USE OF RECLAIMED EFFLUENT WATER**

THIS AGREEMENT is made and entered into on this _____ day of _____ 2007, between **EDWARD LAWLER** and his assigns and successors in interest, hereinafter referred to as the "USER," and **LEE COUNTY**, a political subdivision of the State of Florida, hereinafter referred to as "COUNTY."

WITNESSETH:

WHEREAS, the COUNTY owns, maintains, and operates wastewater treatment facilities in Lee County and intends to produce treated effluent of a quality for the irrigation of grasses, woodlands, and certain crops; and

WHEREAS, the COUNTY desires to deliver this treated effluent for irrigation use by others as a means of effluent disposal; and

WHEREAS, the COUNTY intends to utilize a reclaimed effluent distribution system in order that delivery can be made under pressure directly to USER in a closed system; and

WHEREAS, USER now owns or otherwise controls the land upon which the reclaimed effluent water is to be used for irrigation purposes; and

WHEREAS, the County believes that it is in the best public interest to enter into this Agreement in order to further dispose of effluent water from its wastewater treatment facilities.

NOW, THEREFORE, in consideration of the foregoing and the mutual covenants contained herein, the USER and COUNTY do hereby agree as follows:

1. **EASEMENTS (NO EASEMENT REQUIRED) - N/A**

(a) If the Point of Delivery is within the USER'S property, the USER will grant to the COUNTY, an easement for operation and maintenance of the delivery system for the reclaimed effluent water on the USER'S property. The easement agreement itself, and the legal description of the property subject to the easement are incorporated by reference, attached hereto as Exhibit A, and made a part of this Agreement.

(b) Upon execution by both parties of Exhibit A, it shall be recorded in the appropriate record book in the official records of Lee County, Florida.

2. **TERM OF THE AGREEMENT**

(a) The COUNTY shall deliver and the USER shall accept and use reclaimed effluent water produced by the COUNTY from one of its wastewater treatment facilities, and this Agreement shall be effective on the date of the execution and for a term of twenty (20) years from date of Board approval. The term of this Agreement shall be renewed automatically from year to year beyond the initial twenty-year term, unless terminated by the USER by written notice not less than one (1) year (365 days) in advance or by the COUNTY by written notice not less than one (1) year (365 days) in advance of the anniversary of the commencement of each renewal.

3. **USE OF RECLAIMED WATER: USER'S IRRIGATION SYSTEM**

(a) The USER shall use reclaimed water delivered by the COUNTY for agricultural or urban irrigation; to include, but not be limited to, golf courses, lawns, and roadway right-of-way, or other purposes in any manner determined by the USER, except that use of the reclaimed water shall be consistent with all local, state, and federal regulations, and in such a manner as not to require a federal wastewater discharge permit.

(b) The USER agrees to receive reclaimed water within thirty (30) days of receipt of written notice from the COUNTY that deliveries will commence. The USER shall be solely responsible for the operation and maintenance of all portions of the USER'S irrigation system located within the boundaries of USER'S property and in accordance with the conditions established in Exhibit B of this Agreement.

4. **WATER QUALITY**

Reclaimed water delivered under this Agreement shall be treated to levels acceptable to meet the requirements of Chapter 62-6 Florida Administrative Code and F.D.E.P. requirements for irrigation on lands for public access.

5. **VOLUME OF WATER: DELIVERY SCHEDULE**

The COUNTY will deliver reclaimed water and the USER shall accept and use a volume of gallons of reclaimed water per day in accordance with the conditions established in Exhibit B. The COUNTY will require the USER to install appropriate meters at the Point of Delivery so that the volume of reclaimed water delivered will be monitored.

6. **POINT(S) OF DELIVERY**

The Point(s) of Delivery of reclaimed water from the COUNTY to the USER is immediately downstream of the meter. The COUNTY shall own, operate, and maintain the reclaimed water distribution system upstream of the Point(s) of Delivery. The USER shall own, operate, and maintain all works downstream of the Point(s) of Delivery.

The USER shall provide, in a manner approved by the appropriate regulatory agencies, a positive check-valve between the reclaimed water irrigation system and any other irrigation water source(s). The cost of such check-valve and its installation shall be borne by the USER, and the complete operation of the check-valve shall be the responsibility of the USER. The USER agrees to identify to the COUNTY all well(s) connected to the irrigation system. The USER may continue to use its existing well(s) and/or lake or pond water source(s) for its irrigation system, provided that the two are not operated simultaneously.

It shall be the USER'S responsibility to construct all lines, meters, etc., necessary to extend reclaimed water lines from existing COUNTY facilities. Construction shall be in accordance with COUNTY Standards. Record drawings shall be submitted to the COUNTY, as well as a Certificate of Contributory Assets, covering all facilities on the upstream side of, and including, the meter. A Release of Lien and a One-Year Warranty shall be furnished prior to the Utilities Department forwarding the project to the Board of County Commissioners for final acceptance of the portion of the line upstream of the meter.

7. DELIVERY OF RECLAIMED WATER UNDER ADVERSE CONDITIONS

(a) Adverse weather conditions or unforeseen circumstances may necessitate modification of the normal delivery schedule. Their USER may have the right to restrict the use of the reclaimed water to be delivered in the event of adverse weather conditions or unforeseen circumstances. The USER shall not restrict the use of reclaimed water until all alternate application sites available to the USER have been utilized to their capacity. Notice to the COUNTY of the USER'S intent to restrict the use of the reclaimed water shall be in writing and accepted by the COUNTY in advance. If advance notice to the COUNTY is not practical, then the USER shall give oral notice of the restriction to the COUNTY immediately, to be followed by a written document as soon as it is practical, fully describing the circumstances for the restriction.

(b) Both parties also recognize that adverse weather conditions or unforeseen circumstances may result in a need for reclaimed water greater than the volume set forth in Paragraph 5. Each USER shall have the right to draw additional water, subject to availability of reclaimed water supplies. During any period in which more than one USER exercises the right to draw additional reclaimed water, the COUNTY will furnish water, if available, as the transmission and delivery systems are capable of handling.

(c) If the COUNTY'S transmission or distribution system fails for reasons or events beyond the COUNTY'S control, then delivery of reclaimed water under the requirements of this Agreement may be interrupted or limited in quantity.

8. EMERGENCY SITUATIONS

The COUNTY shall not be held liable by the USER for failure to deliver reclaimed water if an emergency situation preventing such delivery exists.

If and when emergency situations occur, the COUNTY will notify the USER by telephone and follow up with a letter stating the nature of the emergency and the anticipated duration.

9. TERMINATION OR ASSIGNMENT

(a) The USER may have the right to terminate its obligations under this Agreement only upon two (2) years advance written notice to the COUNTY. The USER shall be liable for all costs and expenses that the COUNTY may incur for developing any alternate method of disposal of the effluent not taken as the result of the USER'S termination, unless such termination is mandated by a State or Federal regulatory agency.

(b) The COUNTY shall have the express right to collect from USER, all costs expended by the COUNTY that are associated with any alternate method of disposal of the effluent not taken as the result of the USER'S termination, subject to the condition in Part 9(a) above.

(c) The COUNTY shall have the right to terminate this Agreement if performance is prevented by third-party litigation or any other event beyond the control of the COUNTY.

(d) The COUNTY shall have the right to transfer all or any part of the treatment or distribution facilities to others and to assign all or any part of its rights and obligations under this Agreement to others who shall be bound by and accept, and be exclusively responsible for all applicable terms and conditions of this Agreement.

10. EXCUSE FROM 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, grant necessary approvals, or shall require any change in the operation of the treatment, transmission and distribution systems or the application and use of reclaimed water, then 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 a new Agreement shall be negotiated by the parties hereto in conformity with such permits, approvals, or requirements.

11. TRANSFER OR MODIFICATION OF USER'S COMMITMENT

Sale of Land: The USER'S right to sell, transfer or encumber the land described in Exhibit A shall not be restricted by this Agreement, except that immediate written notice of any proposed sale or transfer must be given to the COUNTY at the address noted in Section 20 herein, and the buyer or transferee must execute and deliver to the COUNTY prior to the sale or transfer, an acknowledgement and acceptance of the prior USER'S commitment under the same terms and conditions of this Agreement. In effect, this Agreement shall run with the land, and as such, shall be properly filed with the Property Records of Lee County, Florida.

12. INDEMNIFICATION

(a) The COUNTY will be liable for money damages in tort for any injuries to or losses of property, personal injury, or death caused by the negligent or wrongful act(s) or omission(s) of any official or employee of the County while acting within the scope of the official's or employee's office or employment under circumstances in which a private person would be held to be liable in accordance with the general laws of the State of Florida, subject to the limitations as set out in Section 768.28, Florida Statutes, as it may be revised or amended from time to time.

(b) The obligation of the COUNTY to indemnify the USER to the extent provided by Section 768.28, Florida Statutes, shall be conditioned upon the compliance of the USER with all regulatory agency requirements and regulations for the use of the reclaimed water from the point of the USER'S control, provided that the noncompliance with the said regulations by the USER is the primary or proximate cause of the alleged injury, illness or disease to persons or to property.

(c) The USER shall save and hold harmless and indemnify COUNTY, its agents, representatives, servants and employees, insofar as it legally may from all claims costs, penalties, damages and expenses (including attorney's fees) arising out of the following:

1. Claims related to the USER'S construction, erection, location, operation, maintenance, repair, installation, replacement or removal of that part of the system controlled by the USER for efficient disposal and reuse;
2. Claims arising out of USER'S negligence or omissions upon any areas controlled by COUNTY that are contained within, adjoining or abutting USER'S property, or claims arising out of USER'S negligence or omissions within an area controlled, operated, or maintained by USER;
3. Claims or demands that the use of the reclaimed irrigation water by the USER in the manner set forth in this Agreement constitutes a nuisance, or is in violation of Statutes or regulations, within or upon any areas controlled, operated, or maintained by USER.

USER'S indemnification of the COUNTY in the above listed claims are subject to the terms and conditions contained in Paragraphs 7 and 8 of this Agreement.

13. RIGHT TO SET RATES, FEES AND CHARGES

Nothing in this Agreement shall be construed as affecting in any way COUNTY'S right and obligation to set fees, rates and charges, and its authority to regulate the delivery, storage, use, or spraying of effluent. COUNTY specifically, and without limitation, reserves the right to set rates, fees and charges for the provision of treated effluent in accordance with the authority vested in COUNTY and in accordance with the rules, regulations, and procedures prescribed for COUNTY under the Laws of Florida.

14. CHARGES AND RELATED CONSIDERATIONS

The COUNTY will charge the USER monthly for the number of gallons used at the current rate per 1,000 gallons. Payment shall be made to the COUNTY within 30 days following receipt of the bill.

15. ACCESS

The COUNTY shall have the right, at any reasonable time and upon written notice to the USER in advance, to enter upon the property of the USER to review and inspect the practices of the USER with respect to conditions agreed to herein, to include compliance with any and all Local, State and Federal regulatory agencies.

Such entry shall normally be for the purpose of review of the operation of reclaimed water irrigation system, for inspection of COUNTY-owned mains and appurtenances, and for sampling at any monitoring wells located on the property of the USER. The USER has the option of having a representative accompany the COUNTY personnel. All such on-site monitoring will be at COUNTY'S expense.

16. DISCLAIMER OF THIRD PARTY BENEFICIARIES

This Agreement is solely for the benefit of the formal 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.

17. **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 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 to be severable.

18. **LAND USE APPROVALS**

This Agreement shall not be construed as a basis for (1) granting or assuring or indicating or (2) denying, refusing to grant or preventing any future grant of land use or zoning approvals, permissions, variances, special exceptions, or rights with respect to the real property in the irrigated area.

19. **APPLICABLE LAW**

This Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida.

20. **NOTICES**

All notices required or authorized under this Agreement shall be given in writing and shall be served by mail on the parties at the addresses below:

COUNTY: LEE COUNTY UTILITIES
Post Office Box 398
Fort Myers, FL 33902-0398

USER: EDWARD LAWLER
12983 Iona Road
Ft. Myers FL 33908

21. **WAIVER OF RIGHTS AFFORDED BY THE UNIFORM RELOCATION ASSISTANCE AND REAL PROPERTY ACQUISITION POLICIES ACT OF 1970**

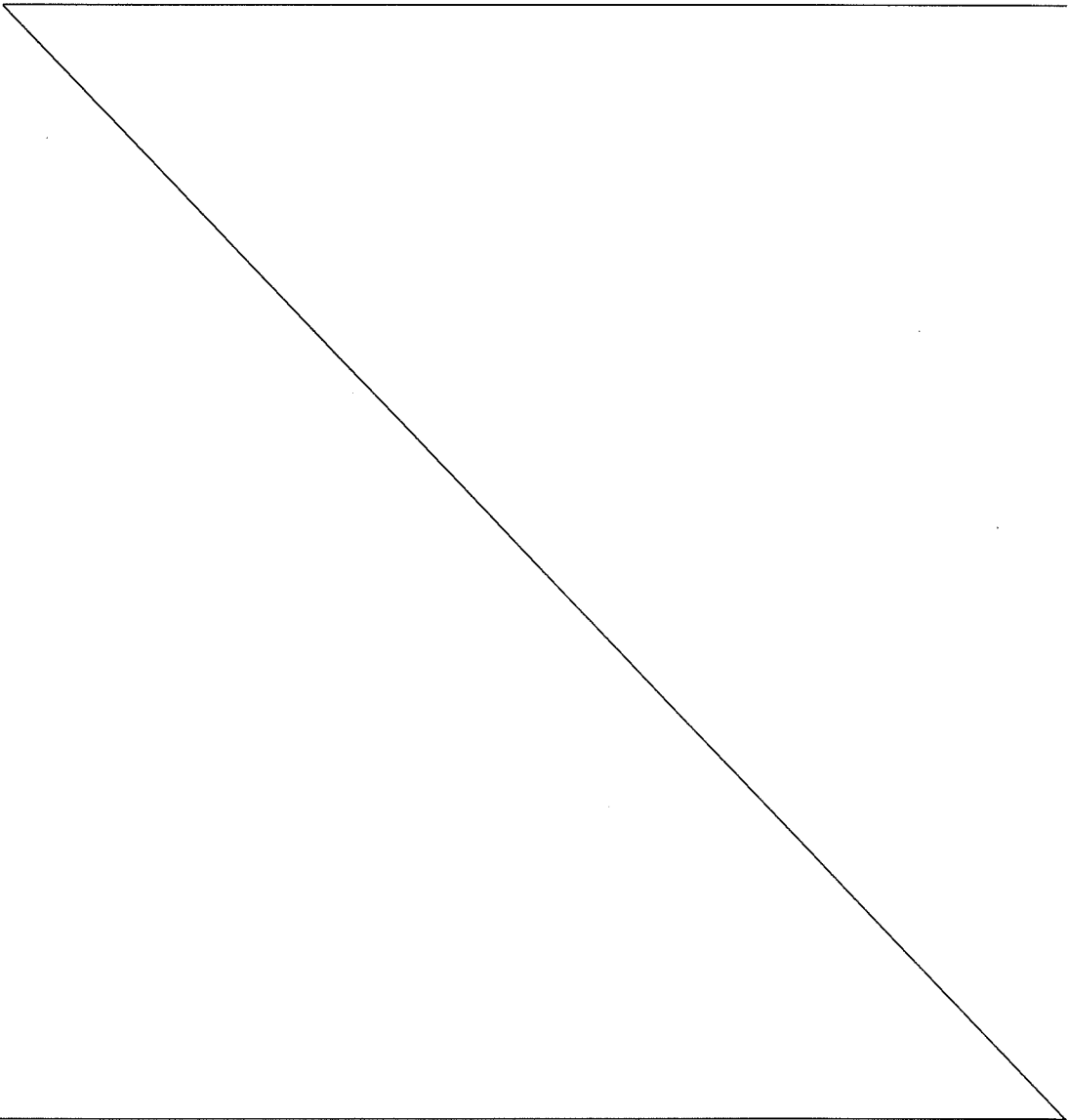
The USER acknowledges having been informed of his rights under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. The USER also acknowledges receipt of a copy of EPA Regulations and Implementation of the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 and hereby voluntarily waives these rights.

22. **EXHIBITS AND ADDENDUMS**

This Agreement incorporates the following exhibits and addendums which are specifically made a part of this Agreement:

- Exhibit A: Delivery and Use of Reclaimed Water Easement: **Not Required-Meter in Right-of-Way**
 - Exhibit B: Contract Conditions between LEE COUNTY and Edward Lawler
-

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IN WITNESS WHEREOF, this AGREEMENT, with its attached Exhibits and/or Addendums, constitutes the entire Agreement between the parties and has been entered into voluntarily and with independent advice and legal counsel, and has been executed by the authorized representative of each party on the date written herein. Modifications to and waivers of the provisions herein shall be made in writing by the parties hereto.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:

WITNESS:

Joe McBride
[1st Witness' Signature]

Joe McBride
[Type or Print Name]

Theresa Lawler
[2nd Witness' Signature]

Theresa Lawler
[Type or Print Name]

Edward Lawler
[“User’s” Signature]

Edward Lawler
[Type or Print Name]

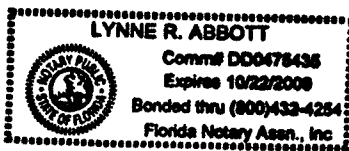
Owner
[Title]

STATE OF FLORIDA

COUNTY OF Lee

The foregoing instrument was signed and acknowledged before me this 23 day of April, 2007 by Edward Lawler who produced the following as identification personally known or is personally known to me, and who did/did not take an oath.

[Notary Seal]



Lynne R. Abbott
[Signature of Notary]

Lynne R. Abbott
[Typed or Printed Name]

The foregoing **AGREEMENT** was approved and accepted for and on behalf of Lee County, Florida, this _____ day of _____, 2007.

ATTEST:
CHARLIE GREEN, CLERK

BOARD OF COUNTY COMMISSIONERS OF
LEE COUNTY, FLORIDA

BY: _____
Deputy Clerk

BY: _____
Chair

APPROVED AS TO FORM

BY: _____
Office of the County Attorney
Scott S. Covert, Esquire

EXHIBIT A
DELIVERY AND USE OF RECLAIMED WATER
EASEMENT - (N/A)

_____, whose mailing address is _____, hereinafter referred to as "GRANTOR," in consideration of the mutual benefits to be derived, hereby grant and set over to the COUNTY OF LEE, a political subdivision of the State of Florida, with its mailing address being Post Office Box 398, Fort Myers, Florida 33902-0398, hereinafter referred to as "GRANTEE," an easement for the use and benefit of the Lee County Public Utilities Department for the delivery of reclaimed effluent water, and the use of public utility facilities and equipment in connection with the delivery of said reclaimed effluent water, through and across real property located in Lee County, Florida, being more particularly described in Figure A-1 attached hereto and made a part hereof.

This is a non-exclusive easement with the GRANTOR reserving reserves unto itself, its heirs, successors or assigns, the right to the continued free use and enjoyment of the property herein described, for any purposes which are not inconsistent or restrictive of the rights and uses granted herein unto the GRANTEE.

At such time as the facilities of GRANTEE are removed or abandoned, this EASEMENT shall terminate and all rights shall revert to the GRANTOR, its heirs, successors, or assigns.

IN WITNESS WHEREOF, the GRANTOR, and GRANTEE have caused these presents to be duly executed this _____ day of _____, 20 ____.

SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:

WITNESS:

[1st Witness' Signature]

["User's" Signature]

[Type or Print Name]

[Type or Print Name]

[2nd Witness' Signature]

[Title]

[Type or Print Name]

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was signed and acknowledged before me this _____ day of _____, 20____ by _____ who produced the following as identification _____ or is personally known to me, and who did/did not take an oath.

[Notary Seal]

[Signature of Notary]

[Typed or Printed Name]

**EXHIBIT A
(FIGURE A-1)**

N/A

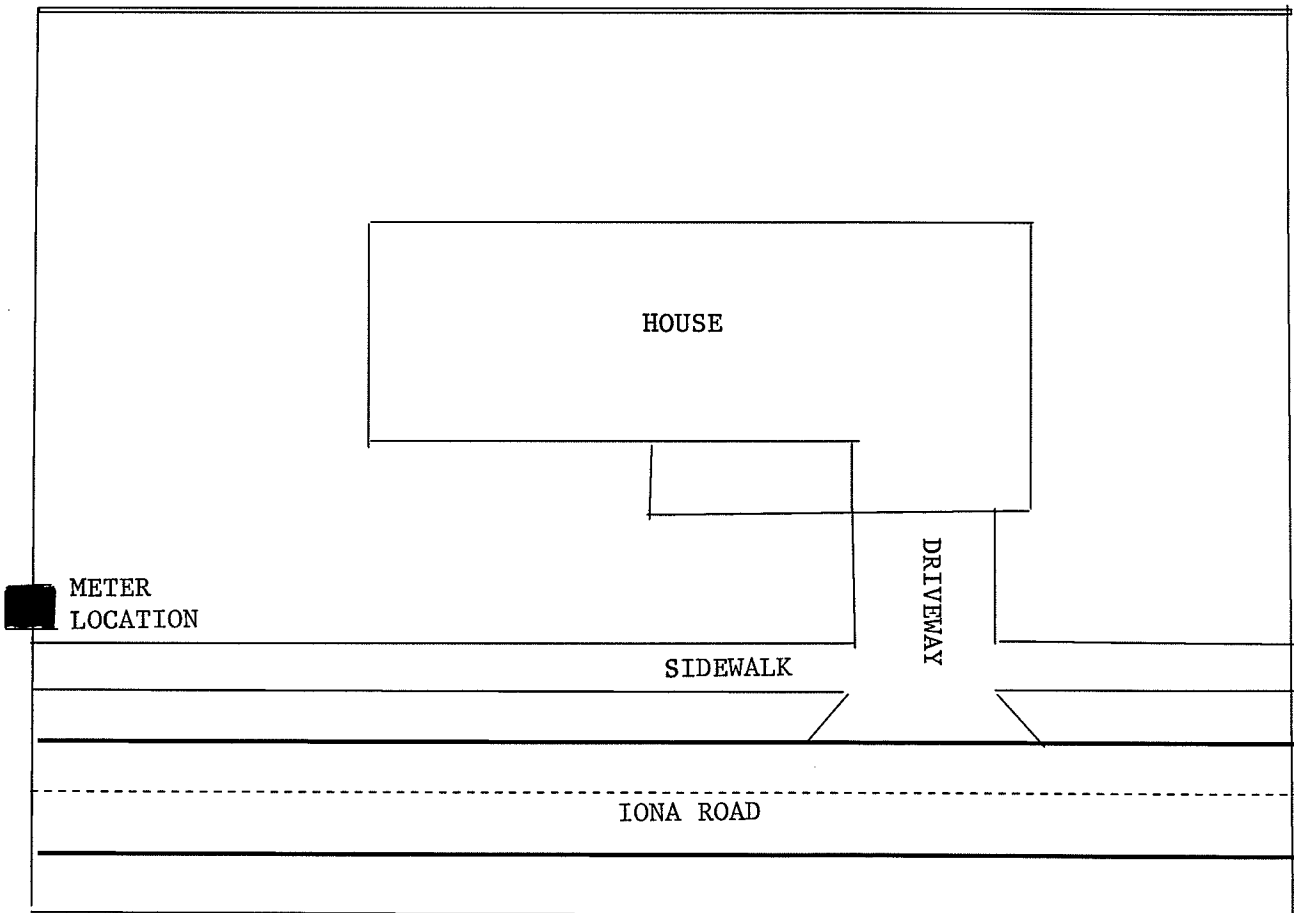
(NAME OF ASSOCIATION)

PUBLIC UTILITY EASEMENT - N/A

(INSERT/ATTACH HERE, EASEMENT DESCRIPTION, AND **SITE SKETCH** WITH “POINT OF DELIVERY” AT METER STATION INDICATED WITHIN THE EASEMENT)

(NOTE: NO EASEMENT REQUIRED AS METER IS IN COUNTY RIGHT-OF-WAY)

SITE SKETCH:



**EXHIBIT A
(FIGURE A-2)**

EDWARD LAWLER
(NAME OF ASSOCIATION OR OWNER)

LEGAL DESCRIPTION OF PROPERTY TO BE SERVED:

(INSERT/ATTACH LEGAL DESCRIPTION HERE OF PROPERTY WHICH IS
SUBJECT TO IRRIGATION WITH RECLAIMED WATER)

**12983 IONA ROAD, FORT MYERS, FL
LEGAL DESCRIPTION
LOT 15, CANDLEWOOD LAKE ESTATES, PB 29 PG 125
STRAP # 36-45-23-11-00000.0150**

EXHIBIT B
CONTRACT CONDITIONS BETWEEN
USER AND LEE COUNTY

THE FOLLOWING conditions are agreed to by **EDWARD LAWLER**, (hereinafter referred to as "USER"), and **LEE COUNTY** (hereinafter referred to as "COUNTY"), for the use of reclaimed effluent water. Conditions set forth in this Exhibit B are in accordance with the Agreement and are meant to meet the specific needs of the individual USER and the COUNTY.

All conditions of this Exhibit B are specifically added to and made part of this Agreement.

Location of Distribution Point and Property:

The distribution point (or Point of Delivery) to the meter station/location where the County is to deliver the reclaimed water shall be considered a point inside the easement (or county right-of-way) shown in Figure A-1, of Exhibit A of the Agreement.

The property identified by the USER to receive reclaimed water is described in Exhibit A of the Agreement, and shown in Figure A-2 of Exhibit A of the Agreement.

Quantity of Reclaimed Water:

The COUNTY will deliver and the USER shall accept a monthly average flow of .0008 million gallons per day (MGD) reclaimed water. Availability of the reclaimed water shall be determined by the COUNTY based upon: flow into the treatment facility, quality of the reclaimed water, and/or priority level as established in the Agreement. The maximum rate available to the USER, pursuant to adverse conditions under Section 7 (b) will be twice the average daily flow rate of .0008 MGD, or .0016 MGD.

Operation and Maintenance Practices:

The USER will apply reclaimed water in accordance with all appropriate Local, State, and Federal rules and regulations.

Reclaimed water irrigation systems shall protect human health and the environment, which includes, but is not limited to, the following:

1. Appropriate warning signs shall be posted around the sites utilizing reclaimed water by the USER to designate the nature of the water and its non-potability.
2. The USER will also take all reasonable precautions, including signs and labeling, to clearly identify reclaimed water systems to prevent inadvertent human consumption.
3. The USER shall ensure that no inter-connections are made between the reclaimed water system and other water systems, which includes the installation of irrigation check valves on existing wells that are to remain connected to the irrigation system for reclaimed water.
4. A distance of 500 feet should be maintained between the periphery of the reclaimed water irrigation system application site and any existing or approved (but not yet constructed) shallow drinking water wells.
5. A distance of 1,000 feet shall be maintained between potable water wells and holding ponds which are incorporated into the irrigation system.

6. The USER shall give approval to the COUNTY to conduct soil borings and locate monitoring wells at the perimeter of the property in areas agreeable to the USER so as not to interfere with USER'S operations. These monitoring wells shall be installed and sampled at periodic intervals by the COUNTY at the COUNTY'S expense.

COST ALLOCATION

All costs for operating and maintaining the USER'S irrigation distribution system shall be exclusively paid by the USER.

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