

PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM SUMMARY

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Meeting Date: April 15, 2008 Consent Regular
Public Hearing

Submitted By: Water Utilities Department
Submitted For: Water Utilities Department
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I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to receive and file: Unilateral Termination and Partial Release of Standard Potable Water and Wastewater Development Agreement Due to Non-Renewal for the following property owners:

Termination of Standard Development Agreements

A) Ronald Mastroianni and David Moscarelli

02-01066-000

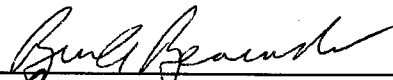
Summary: The terms and conditions for Standard and Non-Standard Development Agreements are outlined in the Water Utilities Department's Uniform Policies and Procedures Manual (UPAP). Development Agreements are valid for a period of five years and may be renewed for an additional five years by paying an additional Mandatory Agreement Payment (MAP). If the additional MAP is not paid or the Agreement has reached its ten-year expiration date, the Agreement is terminated. This agenda item recommends the Board receive and file the attached terminations. **Original documents can be viewed in Minutes.**

(District 6) (SF)

Background and Justification: The Water Utilities Department's UPAP provides for the execution of Development Agreements to obtain concurrency for water, wastewater, and/or reclaimed water service. The terms and conditions for such agreements, including provisions for termination are contained in the UPAP. The attached terminations have been executed by the Department Director and the County Attorney's Office and have been recorded in the official records of Palm Beach County. They are being provided to the Board to receive and file.

Attachments:

Original documents:
Ronald Mastroianni and David Moscarelli (02-01066-000)

Recommended By: 
Department Director
3/25/08
Date

Approved By: 
Assistant County Administrator
3/26/08
Date

RECLAIMED WATER SERVICE AGREEMENT – LAKE DISCHARGE IRRIGATION SYSTEM

THIS AGREEMENT ("Agreement") made and entered into this 8th day of FEBRUARY, 2008, by and between **PALM BEACH COUNTY**, a subdivision of the State of Florida (hereinafter referred to as "Utility"), and **CYPRESS LAKES MASTER HOMEOWNERS ASSOCIATION, INC.**, a Florida Corporation (hereinafter referred to as "Manager").

WHEREAS, Manager either owns the property set forth in **Exhibit "A"** which is attached hereto and incorporated herein (hereinafter referred to as "Property"), or has been granted the authority to own, control, and maintain an Irrigation System on the Property; and

WHEREAS, Manager desires to cause the existing Irrigation System to utilize Reclaimed Water supplied by Utility to irrigate the Property; and

WHEREAS, upon the conditions set forth herein, Utility will own and maintain the Reclaimed Water facilities up to the Point of Service and Manager will own and/or maintain the Irrigation System on the Property from the Point of Service; and

WHEREAS, Manager shall use Reclaimed Water for landscape irrigation purposes only; and

WHEREAS, to encourage and facilitate conservation of water resources, the parties desire to enter into this Agreement.

NOW, THEREFORE, for and in consideration of these premises, the mutual undertakings and agreements herein contained and assumed, Manager and Utility hereby covenant and agree as follows:

1. The foregoing statements are true and correct.
2. The following definitions and references are given for the purpose of interpreting the terms as used in this Agreement and apply unless the context indicates a different meaning:
 - (a) "UPAP" – the Uniform Policies and Procedures Manual of the Palm Beach County Water Utilities Department as adopted and amended from time to time by the Palm Beach County Board of County Commissioners. Except to the extent inconsistent herewith, said document controls the terms of this Agreement.
 - (b) "Service" – the readiness and ability on the part of Utility to furnish Reclaimed Water to the Property.
 - (c) "Point(s) of Service" – the point where the Reclaimed Water exits the Utility System and is discharged into the lake(s).
 - (d) "Lake Discharge Irrigation System" – an Irrigation System in which the Reclaimed Water supplied by Utility is discharged under controlled conditions into a lake or other body of water for withdrawal by Manager.
 - (e) "On-Property Utility Facilities" – Reclaimed Water facilities located on the Property which are required to be constructed to connect the Utility System with the Irrigation System.

- (f) "Utility System" – The Reclaimed Water facilities owned and operated by Utility. The Utility System shall include the On-Property Utility Facilities following conveyance of same by Manager to Utility.
- (g) "Service Initiation" – the date Reclaimed Water is supplied by Utility for its intended use by Manager.
- (h) "Reclaimed Water" – water that: (i) has received at least secondary treatment and high level disinfection; (ii) complies with all regulatory standards, including, without limitation, those set forth in F.A.C. Section 62-610, and (iii) is reused after flowing out of a wastewater treatment facility.
- (i) "Irrigation System" - a network of pipes, pumping facilities, storage facilities, sprinkler heads, lakes, and other bodies of water, and appurtenances on Manager's side of the Point of Service designed to convey and apply Reclaimed Water for landscape irrigation purposes. While certain components of the Irrigation System may not be owned by Manager (i.e., lakes and other bodies of water), said components are still considered part of the Irrigation System for purposes of this Agreement.

3. Manager shall cause to be prepared engineering plans and specifications prepared by and sealed by a professional engineer registered in the State of Florida showing the On-Property Utility Facilities. Utility will advise Manager's engineer of any sizing requirements as mandated by the UPAP. All such plans and specifications, including hard copy and electronic media, submitted to Utility's engineer shall be subject to the approval of Utility and shall conform to Utility's standards as set forth in the UPAP, and no construction shall commence until Utility has approved such plans and specifications in writing. After approval, Manager shall cause to be constructed, at Manager's expense, the On-Property Utility Facilities, as shown on the plans and specifications. Fees, as set forth in the UPAP, shall be levied to cover the cost of the plan review and inspection.

During the installation of the On-Property Utility Facilities, Utility may from time to time inspect such installation to determine compliance with the plans and specifications, adequacy of the quality of the installation, and further, shall be entitled to perform standard tests for pressure, infiltration, line and grade, and all other normal engineering tests to determine that the On-Property Utility Facilities have been installed in accordance with the approved plans and specifications and the UPAP. Inspection by Utility shall in no way relieve Manager of its responsibility to install the facilities in accordance with the approved plans and specifications and the UPAP. Complete as-built plans, including hard copy and electronic media when utilized, shall be submitted to Utility upon completion of construction of the On-Property Utility Facilities.

Utility hereby agrees to accept ownership of the On-Property Utility Facilities upon completion of installation of same. Manager hereby agrees to transfer to Utility title to all On-Property Utility Facilities installed by Manager's contractor up to the Point of Service, pursuant to the provisions of this Agreement. Such conveyance is to take effect without further action upon the acceptance by Utility of said installation. As further evidence of said transfer of title, upon the completion of the installation and prior to the rendering of Service by Utility, Manager shall convey to Utility in a form supplied by Utility the On-Property Utility Facilities as constructed by Manager and approved by Utility, along with the required Cost Documentation and Owner's No Lien Affidavit.

Subsequent to construction of the On-Property Utility Facilities and prior to Service Initiation, Manager shall convey to Utility an easement for the purpose of constructing, maintaining, repairing, replacing, and operating, as necessary and appropriate, the On-Property Utility Facilities up to the Point of Service and for ingress and egress for the foregoing purposes. If all or a portion of the easement area is not owned by Manager, then Manager shall be responsible for acquiring an easement(s) from the property owner(s) to Utility for the purpose of constructing, maintaining, repairing, replacing, and operating, as necessary and appropriate, the On-Property Utility Facilities up to the Point of Service and for ingress and egress for the foregoing purposes. All conveyance of easements or rights-of-way shall be accompanied by a paid title policy for the benefit of

Utility in a minimum amount of \$50.00 per linear foot of any granted utility easement (based on the centerline of the easement). Said title policy shall confirm the grantor's right to convey such easements or rights-of-way, and further, evidencing Utility's right to the continuous enjoyment of such easements or rights-of-way for those purposes set forth in this Agreement. Utility's acceptance of the On-Property Utility Facilities installed by Manager shall be in accordance with the provisions as set forth in the UPAP. All installations by Manager or its contractor and conveyed to Utility shall be warranted by Manager or its contractor for one year from the date of Final DEP Certification or Service Initiation, whichever occurs later. Mortgagees holding liens on such properties shall be required to release such liens, subordinate their position, or join in the granting of the easement or rights-of-way. All On-Property Utility Facilities shall be located within an easement if not located within platted or dedicated rights-of-way. The utility easements referenced above shall be recorded in the Palm Beach County Public Records for the purpose of perfecting the grant of the easement set forth therein.

4. Upon the continued accomplishment of all the prerequisites contained in this Agreement to be performed by Manager, Utility covenants and agrees that it will allow the connection of the Irrigation System to the Utility System (which will include any On-Property Utility Facilities) in accordance with the terms and intent of this Agreement. Manager shall be responsible for the design, construction, modification and operation of the Irrigation System, and shall be responsible for ensuring that the Irrigation System is designed, constructed, modified and operated in accordance with rules and regulations of the Health Department, the Department of Environmental Protection, the UPAP, the Palm Beach County Reclaimed Water Ordinance, and any other body with jurisdiction over usage of Reclaimed Water. Prior to Service Initiation, Manager shall be required to notify, in writing, all property owners which may utilize the Reclaimed Water delivered through the Irrigation System, that Reclaimed Water will be delivered through the Irrigation System. Manager shall hold harmless, indemnify, and release Utility from and against all liabilities, damages, penalties, claims, costs and expenses, including attorney's fees at all levels, which may be imposed upon or asserted against Utility as a result of or in any way connected to the operation of the Irrigation System, except where said liabilities, damages, penalties, claims, costs and expenses are the result of the negligent or intentional acts or omissions of Utility.

5. Manager hereby requests and Utility agrees to provide to Manager via a Lake Discharge System an annual maximum flow rate of 155,000,000 gallons of Reclaimed Water subject to a maximum monthly rate of 730,000 gallons. Utility does not guarantee a continuous availability of Reclaimed Water at the Point of Service. The flow rate has been determined by mutual agreement of Manager and Utility, and is subject to any usage/withdrawal restrictions imposed by the South Florida Water Management District or any other authority with jurisdiction over water use on the Property. Utility may modify and vary the flow rate of Reclaimed Water discharged into the lake, while maintaining the maximum monthly flow rate during those months in which such flow rate is needed. Manager shall be required to install a remote telemetry unit as specified by Utility at the Point of Service to regulate peak flow conditions and to permit Utility to shut off the flow of Reclaimed Water when necessary. In addition, the Point of Service shall include an automatic float-controlled shut-off valve. The float elevation shall be set in accordance with the rules and regulations for lake height set by the applicable water control authority, and shall automatically shut off the flow of Reclaimed Water in order to avoid violations of applicable lake level rules and regulations. Utility shall provide Reclaimed Water which meets all applicable water quality rules and regulations to the Point of Service, and shall be responsible for monitoring and maintaining the automatic float-controlled shut-off valve, so that applicable lake level rules are complied with. Manager shall be solely responsible for complying with all applicable rules and regulations relating to lake withdrawal, including but not limited to withdrawal amounts.

6. Manager shall be responsible for payment of any and all applicable fees and charges required under UPAP for Reclaimed Water Service. The timely payment by Manager of all fees and charges in accordance with the terms set forth herein shall be considered essential to the continued performance by Utility of all terms and conditions of this Agreement.

7. Upon submission of this Agreement, Manager, at its expense, agrees to furnish Utility with a copy of the recorded Warranty Deed for the purpose of establishing

ownership of the Property. Any mortgage or lien holder (if any) having an interest in the Property shall be required to execute a Consent and Joinder of Mortgagee/Lienholder as supplied by Utility. If no liens or mortgages exist, Manager shall submit a letter from an attorney licensed in Florida or other evidence satisfactory to Utility confirming that there are no mortgages or liens on the Property.

8. If Manager does not own all or a portion of the Property, or does not own a portion of the Irrigation System, Manager shall provide Utility with evidence satisfactory to Utility that Manager has been granted the authority to utilize that portion of the Property/Irrigation System that Manager does not own and that the Owner of said portion of the Property/Irrigation System consents to this Agreement.

9. Notwithstanding any provision in this Agreement, Utility may establish, revise, modify, and enforce rules, regulations, and fees covering the provision of Reclaimed Water Service to the Property. Such rules, regulations, and fees are subject to the approval of the Palm Beach County Board of County Commissioners. Such rules, regulations, and fees shall be reasonable and subject to regulation as may be provided by law or contract. Fees charged to Manager or customers located upon the Property shall be identical to fees charged for the same classification or service in the particular service area. All rules, regulations and fees as set forth in the UPAP, shall be binding upon Manager, upon any other entity holding by, through or under Manager, and upon any customer of the Reclaimed Water Service provided to the Property by Utility. Any fee or rate delinquent more than 120 days will automatically void this Agreement.

10. Manager or its assignee shall not have the right to and shall not connect to the Utility System until approval for such connection has been granted by Utility. The parties hereto further agree that the expense of construction, operation, and maintenance of all improvements beyond the Point of Service shall be the sole cost and expense of Manager or other than Utility. In addition, Manager or its Assignee agrees to comply with all rules and regulations of the UPAP, Department of Health, and DEP pertaining to the Irrigation System. The Reclaimed Water provided under this Agreement shall be used for landscape irrigation purposes only and solely on the Property shown in **Exhibit "A"**. Manager shall not permit the flow of Reclaimed Water into any adjoining property whatsoever.

11. The sale, conveyance, transfer of assignment of this Agreement by Manager shall only be performed in accordance with the provisions of UPAP.

12. All notices provided for herein shall be in writing and transmitted by mail or by courier, and, if to Manager, shall be mailed or delivered to Manager at:

**3445 Cypress Trail
West Palm Beach, FL 33417-1033**

And if to Utility, shall be mailed or delivered at:

**Palm Beach County Water Utilities Department
Contract Management Section
P. O. Box 16097
West Palm Beach, FL 33416-6097**

13. Unless Manager is requesting additional capacity for the Property described in **Exhibit "A"**, this Agreement shall supersede, null and void all previous agreements or representations, either verbal or written, heretofore in effect between Manager and Utility, made with respect to the matter contained herein, and when duly executed, constitutes the entire agreement between Manager and Utility.

14. No additions, alterations, or variations of terms of this Agreement shall be valid, nor can provisions of this Agreement be waived by either party, unless such additions, alternations, variations or waiver are expressed in writing and duly signed by the parties hereto.

15. This Agreement shall be governed by the laws of the State of Florida and shall become effective upon execution by the parties hereto. The venue for actions arising out of this Agreement is in Palm Beach County, Florida.

IN WITNESS WHEREOF, Manager and Utility have executed or have caused this Agreement, with the named Exhibit attached, to be duly executed in several counterparts, each of which counterpart shall be considered an original executed copy of this Agreement.

WITNESSES:

PALM BEACH COUNTY

Nancy M. May
Signature
NANCY M. MAY
Typed or Printed Name

By: [Signature]
County Administrator or Designee

Judy Provence
Signature
Judy Provence
Typed or Printed Name

WITNESSES:

PROPERTY OWNER:

Stephane G. Artigiani
Signature
Stephane G. ARTIGIANI
Typed or Printed Name
Edwin Rubin
Signature
EDWIN RUBIN
Typed or Printed Name

By: [Signature]
Signature
DAVID BRENENSON
Typed or Printed Name
Vice President
Title

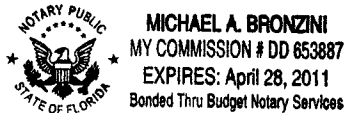
{Corporate Seal}

STATE OF FLORIDA NOTARY CERTIFICATE
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this 10 day of JANUARY, 20 08 by DAVE BRENENSON. He/she is personally known to me or has produced _____ as identification.

My Commission Expires: 4/28/2011

[Signature]
Signature of Notary
MICHAEL A. BRONZINI
Typed, Printed, or Stamped Name of Notary



Notary Public
Serial Number DD653887

WATER UTILITIES DEPARTMENT APPROVAL

By: [Signature]
Director of Finance and Administration
PBC Water Utilities Department (N)

APPROVED AS TO FORM AND LEGAL SUFFICIENCY

By: [Signature]
County Attorney

Exhibit A

Legal Description

CYPRESS LAKES PLAT 2, AS RECORDED IN PLAT BOOK 37, PAGES 148 THROUGH 151, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

CYPRESS LAKES PLAT 3-A, AS RECORDED IN PLAT BOOK 38, PAGES 155 THROUGH 158, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

CYPRESS LAKES PLAT 4, AS RECORDED IN PLAT BOOK 40, PAGE 200, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

CYPRESS LAKES PLAT 5, AS RECORDED IN PLAT BOOK 43, PAGE 131, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

CYPRESS LAKES PLAT 6-A, AS RECORDED IN PLAT BOOK 44, PAGES 102 THROUGH 103, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

CYPRESS LAKES PLAT 7-A, AS RECORDED IN PLAT BOOK 46, PAGES 31 THROUGH 33, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

CYPRESS LAKES PLAT 8, AS RECORDED IN PLAT BOOK 49, PAGES 58 THROUGH 59, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

CYPRESS LAKES PLAT 9, AS RECORDED IN PLAT BOOK 59, PAGES 172 THROUGH 173, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

CYPRESS LAKES PLAT 10, AS RECORDED IN PLAT BOOK 64, PAGES 7 THROUGH 9, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

CYPRESS LAKES PLAT 11, AS RECORDED IN PLAT BOOK 68, PAGES 108 THROUGH 110, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

CYPRESS LAKES PLAT 12, AS RECORDED IN PLAT BOOK 71, PAGES 86 THROUGH 87, PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA.

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01/23/08