

AGREEMENT

THIS AGREEMENT is made and entered into this 6th day of February, 2007, by and between MANATEE COUNTY, FLORIDA, a political subdivision of the State of Florida, hereinafter referred to as the "COUNTY," and the TOWN OF LONGBOAT KEY, FLORIDA, a municipal corporation of the State of Florida, hereinafter referred to as the "TOWN."

WITNESSETH:

WHEREAS, the COUNTY owns and operates a countywide potable water treatment and distribution system under the authority of Section 125.01, Florida Statutes, and Chapter 63-1598, Laws of Florida, as amended; and

WHEREAS, the TOWN owns and operates a potable water distribution system which distributes potable water to real property located within the municipal boundaries of the TOWN as depicted on Exhibit A, attached hereto and incorporated herein; and

WHEREAS, the TOWN intends to continue said potable water distribution system within its municipal boundaries; and

WHEREAS, the COUNTY provides potable water to the TOWN under an Agreement dated March 17, 1970, as amended by Amendment to Agreement dated August 7, 1973, Second Amendment to Agreement dated January 19, 1978, and Third Amendment to Agreement dated June 4, 1996, which expires on or about September 30, 2011; and

WHEREAS, the COUNTY and the TOWN desire to enter into a new written agreement for the provision of potable water by the COUNTY to the TOWN.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the parties agree as follows:

1. The COUNTY agrees to sell potable water to the TOWN as a wholesale customer and the TOWN agrees to purchase potable water from the COUNTY which the TOWN shall deliver through the TOWN's potable water distribution system and sell to the TOWN's potable water

customers within the areas depicted on Exhibit A.

2. Effective upon execution of this Agreement by both parties, the COUNTY agrees to allocate for the TOWN two and five-tenths (2.5) million gallons per day (MGD) reserve capacity in the COUNTY's potable water system. Effective October 1, 2007, the TOWN may increase the reserve capacity in the COUNTY's potable water system by increments of one thousand (1,000) gallons per day no more than one (1) time each fiscal year, subject to payment of Facility Investment Fees established by the COUNTY ordinance relating to Facility Investment Fees in effect at the time and in accordance with the following procedures:

- A. For each year ending June 30 effective in 2007, the TOWN shall submit an annual report to the COUNTY no later than August 1 of each year for the period of time from July 1 through June 30 of the previous year. The annual report shall itemize all new or increased connections to the TOWN's potable water distribution system, the meter size of each connection, and the reserve capacity equivalent of each connection. The TOWN shall maintain records relating to each connection itemized on the annual report. Such records shall be open for audit, inspection, examination and copying in compliance with Chapter 119, Florida Statutes.
- B. Subject to the COUNTY's receipt of water use permits from the Southwest Florida Water Management District (SWFWMD), the TOWN may purchase additional reserve capacity in the COUNTY's potable water system by paying to the COUNTY the appropriate amount of all Facility Investment Fees for wholesale customers established by the COUNTY ordinance relating to Facility Investment Fees in effect for the period of time covered by the annual report described in paragraph 2.A above for all new and increased connections to the TOWN's potable water distribution system for potable water use only, not for irrigation. The Facility Investment Fees shall be paid to the COUNTY at the same time the TOWN submits

the annual report to the COUNTY described in paragraph 2.A above and no later than August 1 of each year.

- C. Effective October 1 of each year following receipt of the annual report and the appropriate amount of Facility Investment Fees from the TOWN, the COUNTY shall adjust the reserve capacity in its potable water system to accommodate the additional reserve capacity for the TOWN. The increased reserve capacity shall also result in a corresponding increase in the monthly customer charge paid by the TOWN effective October 1 of each year.

3. The TOWN agrees to pay to the COUNTY on a monthly basis customer charges based on two and five-tenths (2.5) MGD reserve capacity, or such higher reserve capacity increased in accordance with section 2 of this Agreement, at the rates established by the COUNTY utility rate resolution in effect at the time.

4. The TOWN agrees to pay to the COUNTY on a monthly basis quantity rates and excess demand charges based on two and five-tenths (2.5) MGD reserve capacity, or such higher reserve capacity increased in accordance with section 2 of this Agreement, at the rates established by the COUNTY utility rate resolution in effect at the time, provided such rates are equivalent to the rates charged to other wholesale customers of the COUNTY.

5. Unless otherwise specifically provided in this Agreement, the TOWN agrees to render full payment to the COUNTY in United States funds within thirty (30) calendar days of receipt of any bills, statements, costs, expenses, rates and charges from the COUNTY.

6. The COUNTY shall submit to the TOWN the COUNTY's estimated utility rates for wholesale customers no later than July 1 of each year. The COUNTY shall provide notice of any proposed resolutions establishing or revising the COUNTY's utility rates in accordance with Chapter 63-1598, Laws of Florida, as amended.

7. The COUNTY and the TOWN agree that the areas located within the municipal

boundaries of the TOWN depicted on Exhibit A constitute the only areas of Manatee County and Sarasota County, Florida, served by the TOWN's potable water distribution system. The TOWN shall not distribute or sell potable water to any other areas of Manatee County or Sarasota County, Florida, located outside the municipal boundaries of the TOWN without the prior written consent of the COUNTY, except as otherwise provided for emergency potable water service or emergency potable water supply in compliance with section 11 or section 12 of this Agreement, respectively. The TOWN shall not purchase, provide, furnish, or sell potable water reserve capacity in the COUNTY's potable water system for or to any other jurisdiction, including Sarasota County, Florida, or the City of Sarasota, Florida.

8. It is understood and agreed that the supply of potable water as set forth in this Agreement is subject to the rules, regulations, orders and permits of SWFWMD and that the COUNTY's ability to supply potable water under this Agreement is so governed. The COUNTY shall work with SWFWMD to assure its ability to supply potable water and shall comply with all applicable SWFWMD rules, regulations, orders and permits.

9. The COUNTY agrees that potable water service to be furnished under this Agreement shall be continuous at all times; provided, however, that disruption or interruption of service at any time caused by an act of God (including drought conditions or any other natural condition resulting in insufficient ground or surface water to meet the needs of the users of the COUNTY's potable water system), fire, strike, casualty, war, terrorism, natural disaster, accident, federal, state, regional or local governmental action or order, necessary maintenance work, breakdown of or damage to machinery, pumps or pipelines, act or omission of any federal, state, regional or local governmental authority, civil or military authority, insurrection, riot, or any cause beyond the reasonable control of the COUNTY shall not constitute a breach of this Agreement by the COUNTY, and the COUNTY shall not be liable to the TOWN or any of its customers for any claims, damages, injuries, liabilities, losses, costs or expenses resulting from such unavoidable

disruption or interruption of service. The COUNTY agrees to correct any and all disruptions or interruptions that may occur and restore service as soon as practicable.

10. The Director of the Utility Operations Department of the COUNTY shall attempt to give a written or verbal communication to the Public Works Director of the TOWN at least seventy-two (72) hours in advance of any scheduled maintenance work which will affect the quality, volume or pressure of the potable water service furnished by the COUNTY to the TOWN under this Agreement; provided, however, that any failure to give a written or verbal communication or any scheduled maintenance, unscheduled maintenance or emergency work shall not constitute a breach of this Agreement by the COUNTY, and the COUNTY shall not be liable to the TOWN or any of its customers for any claims, damages, injuries, liabilities, losses, costs or expenses resulting from such failure to give communication or such scheduled maintenance, unscheduled maintenance or emergency work.

11. In the case of an emergency, a written or verbal communication from the Director of the Utility Operations Department of the COUNTY or the Public Works Director of the TOWN shall be made to the other party specifying the following information:

- A. The emergency need for potable water service;
- B. The anticipated daily amount of potable water required; and
- C. The estimated time period for the purchase of emergency potable water service.

Upon approval by the respective director of the other party, emergency potable water service shall be furnished to the requesting party for a period not to exceed seventy-two (72) hours or for a period of time agreed upon by the County Administrator of the COUNTY and the Town Manager of the TOWN; provided, however, that any emergency potable water service shall not exceed thirty (30) consecutive days unless approved by the governing body of the party furnishing such emergency potable water service.

12. It is understood that short term potable water supply emergencies may exist during

a state of emergency declared by the governing body of the COUNTY or the TOWN. Under such conditions wherein the TOWN shall need a higher short term potable water supply than the reserve capacity may allow during a state of emergency, the Board of County Commissioners of the COUNTY shall take appropriate action to waive any excess demand charges and charge all excess consumption at the wholesale rate established by the COUNTY rate resolution in effect at the time. The obligation to deliver such higher potable water supply shall be conditioned on the COUNTY having adequate supply to provide the increased delivery and/or on the ability of the COUNTY to receive emergency water use permits to allow for increased withdrawals that may be necessary. If the COUNTY has a short term potable water supply emergency and is unable to deliver the full reserve capacity to the TOWN, the associated monthly customer charges shall be based on the average daily delivery for the month(s) of reduced supply used as the reserve capacity for that period. If the COUNTY needs and can receive emergency potable water supply from the TOWN during a state of emergency, such potable water that is delivered shall be metered and billed to the COUNTY at the TOWN's bulk rate plus any base charge in effect at that time, based on the average daily delivery rate as a reserve capacity. Any short term potable water supply emergency declaration shall not exceed ninety (90) consecutive days or a total of ninety (90) days in any fiscal year.

13. Either party may refuse to provide or may cancel the provision of emergency potable water service or short term emergency potable water supply as set forth in section 11 or section 12 of this Agreement, respectively, if the party determines that the provision of such service or supply would constitute a danger to the health, safety, and welfare of its customers, which may include the ability to provide potable water service to its customers. In the event of such refusal, the other party agrees to waive any claim of loss or damage against the refusing party. The purchase of potable water pursuant to section 11 or section 12 of this Agreement shall not represent a long term entitlement of potable water reserve capacity from the other party.

14. Effective upon execution of this Agreement by both parties, the TOWN is connected to the COUNTY's potable water system by one (1) meter at the following location: ten-inch (10") meter located at 1901 Gulf Drive South. All potable water lines extending from the COUNTY's potable water treatment plant to and including the meter shall be the property and responsibility of the COUNTY, and all potable water lines extending beyond the meter shall be the property and responsibility of the TOWN.

15. The quality of potable water furnished by the COUNTY to the TOWN under this Agreement shall meet all applicable standards for drinking water established by the United States Environmental Protection Agency and the Florida Department of Environmental Protection, or succeeding regulatory agencies. The TOWN shall comply with all such regulations and standards beyond the meter within the municipal boundaries of the TOWN served by the TOWN's potable water distribution system. The COUNTY agrees to provide to the TOWN written potable water quality information necessary for the TOWN to satisfy reporting requirements to the TOWN's customers.

16. The quantity of potable water delivered to the TOWN shall be determined based on readings of the meter by calculating the difference in quantity registered from the previous reading of the meter, said meter readings to be made by the COUNTY. In the event of a meter malfunction, the quantity of potable water consumption shall be based on all available information agreed to by the utility staffs of both parties. The COUNTY agrees to render monthly bills to the TOWN for amounts then due and payable. Said monthly bills shall consist of two (2) components computed in accordance with the COUNTY utility rate resolution in effect at the time: (1) a monthly customer charge; and (2) a quantity rate.

17. All potable water furnished to the TOWN under this Agreement shall be measured by meter equipment of standard manufacture located at the point of connection, said meter to be maintained, calibrated and read by the COUNTY at its expense. No meter shall be allowed to

remain in service which has an error in excess of the normal test flow rates (less than 96% or greater than 102%) for accuracy limits established by the American Water Works Association (A.W.W.A.) guidelines, or succeeding guidelines, as of the time of testing. The COUNTY shall inspect and test the meter at intervals recommended by the A.W.W.A., with the meter tested at least twice per year. The COUNTY shall forward copies of the results of such tests to the TOWN within seven (7) calendar days of the COUNTY's receipt of the written test results. The COUNTY shall pay all inspection and testing costs, except as provided below. Upon written request by the TOWN, the COUNTY shall inspect and test the meter in the presence of a representative or representatives of the TOWN. If the meter conforms to the A.W.W.A. guidelines upon testing, the TOWN shall pay all inspection and testing costs. In the event a faulty meter is discovered, the COUNTY shall immediately take steps to restore the meter to an accurate condition or to install a new meter at the COUNTY's cost.

18. The COUNTY agrees to deliver potable water to the TOWN at a minimum static pressure of sixty (60) pounds per square inch. If the TOWN requires increased or reduced pressure at any point of connection, the TOWN shall pay for the necessary pressure regulation equipment together with all costs and expenses for installation, operation, maintenance and repair of such equipment.

19. It is understood that this is not an Agreement between the COUNTY and the potable water customers of the TOWN. Nothing in this Agreement shall be construed to convey to the TOWN any ownership interest in any portion of the assets of the COUNTY's potable water system, including treatment and distribution facilities.

20. This Agreement shall commence upon execution by both parties and shall expire on September 30, 2031. Subject to mutual written agreement by both parties, this Agreement may be renewed for one (1) additional period of ten (10) years, commencing on October 1, 2031, and expiring on September 30, 2041. The Town Commission shall provide written notice of the

TOWN's intent to renew this Agreement to the COUNTY at least eighteen (18) months prior to the expiration date of this Agreement. Upon approval of the TOWN's written renewal notice by the Board of County Commissioners, this Agreement shall be renewed for the additional ten (10) year period. If the Board of County Commissioners determines not to approve the TOWN's renewal notice, this Agreement shall terminate ten (10) years from such determination. In the event the COUNTY does not intend to renew this Agreement, the COUNTY shall provide written notice of such intent to the TOWN no later than ten (10) years prior to the expiration date of this Agreement.

21. This Agreement or any renewal of this Agreement may be canceled or terminated by mutual written consent of the parties or as described below:

- A. If canceled or terminated by the COUNTY, at least ten (10) years advance written notice to the TOWN is required; or
- B. If canceled or terminated by the TOWN, at least eighteen (18) months advance written notice to the COUNTY is required.

22. All requests and notices required to be given by either party under this Agreement shall be in writing, addressed to the other party as follows, and delivered by certified mail, return receipt requested, or by hand delivery:

A. COUNTY: Director
Utility Operations Department
Manatee County
4410 66th Street West
Bradenton, Florida 34210

WITH COPY TO: County Administrator
Manatee County
1112 Manatee Avenue West
Bradenton, Florida 34205

B. TOWN: Town Manager
Town of Longboat Key
Longboat Key Town Hall
501 Bay Isles Road
Longboat Key, Florida 34228

WITH COPY TO: Public Works Director
 Town of Longboat Key
 Longboat Key Town Hall
 501 Bay Isles Road
 Longboat Key, Florida 34228

Either party may, by written notice to the other party as provided above, change the address for subsequent notice.

23. Neither party shall assign this Agreement or any rights or duties under this Agreement to any other person.

24. The failure of either party to insist at any time upon the strict performance of any covenant or agreement or to exercise any option, right, power or remedy contained in this Agreement shall not be construed as a waiver or relinquishment of such covenant, agreement, option, right, power or remedy for the future. No payment by either party or receipt of payment by the other party of a lesser amount than the amount that party claims to be due shall be deemed to be other than on account of the earliest payment due, nor shall any endorsement or statement on any check or any letter accompanying any check for any payment due either party be deemed an accord and satisfaction, and either party may accept such check or payment without prejudice to that party's right to recover the balance of any payment then due or to pursue any other remedy provided by law.

25. The parties agree that they have each participated in the drafting of this Agreement, and that the rules with respect to construing ambiguities against the drafter of a contract shall not apply in any action or litigation regarding this Agreement.

26. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

27. Should any term, provision, covenant, condition, section, paragraph, sentence or portion of this Agreement be held invalid or unenforceable by any court of competent jurisdiction, the remaining terms, provisions, covenants, conditions, sections, paragraphs, sentences and

portions shall, nevertheless, remain in full force and effect.

28. This Agreement sets forth all covenants, promises, agreements and understandings between the parties concerning the subject matter of this Agreement, and there are no covenants, promises, agreements or understandings, either oral or written, between the parties except as herein set forth. No subsequent alterations, amendments, changes or additions to this Agreement shall be binding upon the parties unless reduced to writing and approved and executed by the TOWN and the COUNTY with the same formality as this Agreement.

29. This Agreement shall supersede and replace the Agreement between the parties dated March 17, 1970, as amended by Amendment to Agreement dated August 7, 1973, Second Amendment to Agreement dated January 19, 1978, and Third Amendment to Agreement dated June 4, 1996, which expires on or about September 30, 2011. Upon the commencement date as provided in section 20 of this Agreement, the Agreement between the parties dated March 17, 1970, Amendment to Agreement dated August 7, 1973, Second Amendment to Agreement dated January 19, 1978, and Third Amendment to Agreement dated June 4, 1996, shall be rescinded in their entirety and shall have no further force or effect.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement, by and through their duly authorized representatives, on the respective dates below.

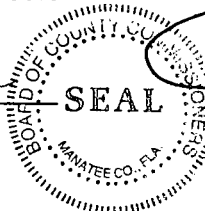
COUNTY

Manatee County, Florida, a political subdivision of the State of Florida, acting by and through the Board of County Commissioners, with a quorum present and voting, hereby approves this Agreement on the 6th day of February, 2007.

ATTEST: R. B. Shore
Clerk of the Circuit Court

MANATEE COUNTY, FLORIDA, a political
subdivision of the State of Florida

By: *Susan A. Lomnie*
Deputy Clerk



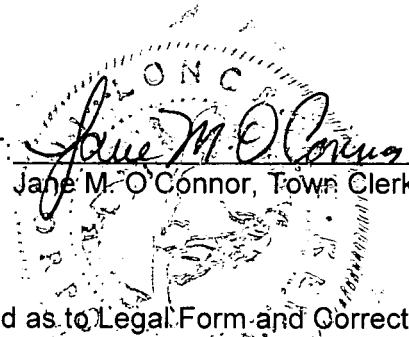
By: *Jane von Hahmann*
Vice Chairman, Jane von Hahmann
Board of County Commissioners

Date: 2/6/07

TOWN

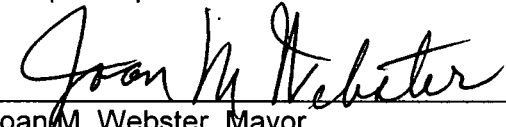
The Town of Longboat Key, Florida, a municipal corporation of the State of Florida, acting by and through the Town Commission, with a quorum present and voting, hereby approves this Agreement on the 18th day of JANUARY, 2007.

ATTEST:


Jane M. O'Connor, Town Clerk

TOWN OF LONGBOAT KEY, FLORIDA,
a municipal corporation of the State of Florida

By:


Joan M. Webster, Mayor

Date: 1-18-2007

Approved as to Legal Form and Correctness:

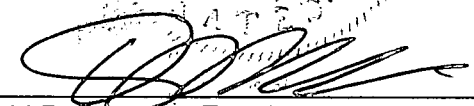
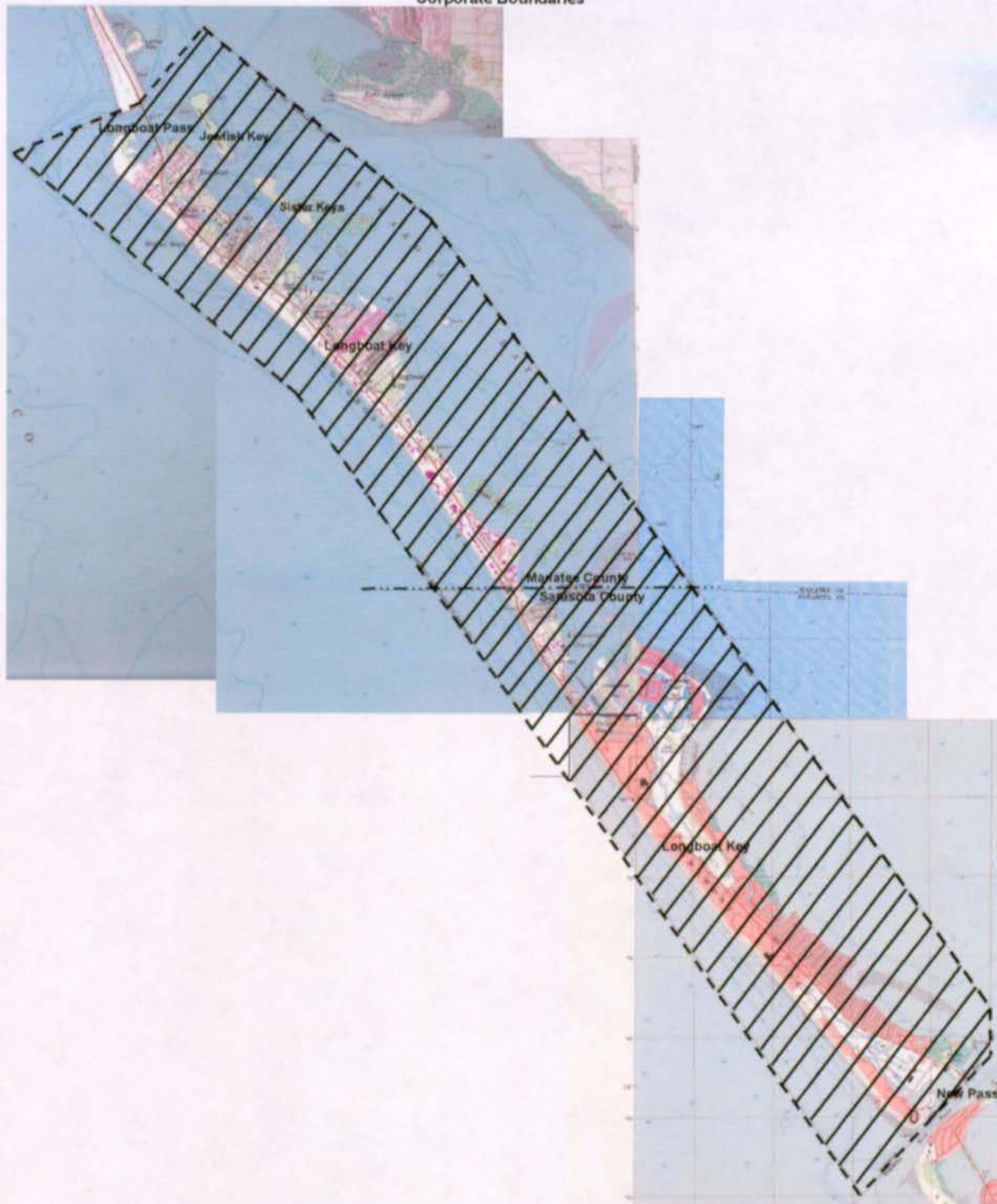

David P. Persson, Esquire, Town Attorney

Exhibit A
Town of Longboat Key
Corporate Boundaries



Legend and Notes

Longboat Key Corporate Limits 

Not to Scale

Source: USGS Bradenton, Sarasota, and Bradenton Beach (FL) Quadrangle Maps

MANATEE COUNTY GOVERNMENT

AGENDA MEMORANDUM

49

SUBJECT	Potable Water Agreement with the Town of Longboat Key	TYPE AGENDA ITEM	Consent
DATE REQUESTED	February 6, 2007	DATE SUBMITTED/REVISED	01/26/07
BRIEFINGS? Who?	No	CONSEQUENCES IF DEFERRED	Delay in implementing the agreement.
DEPARTMENT/DIVISION	Utility Operations Fiscal Services	AUTHORIZED BY TITLE	Daniel T. Gray, Director Utility Operations <i>Dan T. Gray</i>
CONTACT PERSON TELEPHONE/EXTENSION	Bev Chiotti/ Ext. 5429	PRESENTER/TITLE TELEPHONE/EXTENSION	Bev Chiotti / Fiscal Service Manager, Utility Operations/ Ext. 5429 <i>Bev Chiotti</i>
ADMINISTRATIVE APPROVAL		<i>[Signature]</i>	

ACTION DESIRED

INDICATE WHETHER 1) REPORT; 2) DISCUSSION; 3) FORM OF MOTION; OR 4) OTHER ACTION REQUIRED

Motion for approval and execution of Agreement to provide potable water to the Town of Longboat Key Florida.

ENABLING/REGULATING AUTHORITY

Federal/State law(s), administrative ruling(s), Manatee County Comp Plan/Land Development Code, ordinances, resolutions, policy

Chapter 63-1598, Laws of Florida, and section 125.01, Florida Statute

BACKGROUND/DISCUSSION

Please see Page 2 for additional information.

COUNTY ATTORNEY REVIEW

APPROVED IN OPEN SESSION
FEB 06 2007

BOARD OF COUNTY COMMISSIONERS
MANATEE COUNTY, FLORIDA

Check appropriate box	
☐	REVIEWED Written Comments: ☐ Attached ☐ Available from Attorney
☐	NOT REVIEWED (No apparent legal issues.)
☐	NOT REVIEWED (Utilizes exact form or procedure previously approved by CAO.)
☒	OTHER – Agreement Drafted by MSS.

ATTACHMENTS: (List in order as attached)

Potable Water Agreement between Manatee County and the Town of Longboat Key.

INSTRUCTIONS TO BOARD RECORDS:

Please forward one original, signed agreement to the Town of Longboat Key, and one copy to Utility Operations.

1 orig B. Chiotti 2 orig B. Chiotti ms 2/7/07

COST: N/A

SOURCE (ACCT # & NAME):

COMMENTS:

AMT./FREQ. OF RECURRING COSTS:
(ATTACH FISCAL IMPACT STATEMENT)

BACKGROUND/DISCUSSION (Continued)**Background**

Manatee County currently provides potable water to the Town of Longboat Key, under a forty year agreement, executed on March 17, 1970 which expires in 2010. In anticipation of that expiration, the proposed Agreement has been developed incorporating negotiated language that Staff of both the County and the Town contributed.

The main points of the Agreement are outlined below and the paragraph where each can be found within the contract is referenced.

1. Paragraph 2 – The reserve capacity for the Town is 2.5 million gallons per day. (This is the current level.)
2. Paragraph 2 – The Agreement establishes a mechanism for increasing the Town's reserve capacity in the County's potable water system. The Town will collect the appropriate Facility Investment Fees (as listed in the County Utility Rate Resolution) from its customers for new connections to the potable water service. By paying these Fees to the County, Longboat Key can purchase additional reserve capacity in small increments as needed. The impact of new customers on the water system is financially offset at the time they are connected. (Note: This language is also included in the potable water agreement with the City of Palmetto.)
3. Paragraphs 2, 3 & 4 – Rates and Facility Investment Fees are not specified in the Agreement, but reference the Manatee County Utility Rate Resolution.
4. Paragraph 6 – The County agrees to submit to the Town, estimated utility rates in July of each year. This is an estimate, but will assist the Town in planning for the upcoming year. The County Staff develops rates during the spring and summer and can supply this information each July as an estimate.
5. Paragraph 7 – The Agreement prohibits the sale of potable water to any areas outside the municipal boundaries of the Town without written consent of the County except during an emergency situation.
6. Paragraph 11 – The Agreement establishes emergency potable water supply procedures to allow **either party** to request emergency potable water. (Note: The Town of Longboat Key is constructing a connection to the City of Sarasota potable water supply which may be used during an emergency to provide water to Manatee County, or from the County, thru Longboat Key, to the City of Sarasota.) This is an important component of the Agreement and provides for critical emergency responsiveness, should it be required.
7. Paragraph 20 – The Agreement expires on 9/30/2031 with one renewable ten year option that would extend the term to 9/30/2041.

Language changes made after the January 8, 2007 LBK Commission meeting

This agreement was originally scheduled for presentation on January 9, 2007. It was delayed in order for the County Attorney's Office and Staff to review and insert modifications requested by LBK. The agreement now reflects these modifications as follows:

1. Paragraph 1 – Clarify that the Town is treated as a wholesale customer. Language inserted as highlighted, "The COUNTY agrees to sell potable water to the TOWN **as a wholesale customer** and the TOWN agrees to..."
2. Paragraph 2A – The County requires knowledge of new or increased connections to the Town's system that will increase their total reserve capacity. The Town was concerned about language in this section related to the fees associated with those connections. The intent of this paragraph is simply the reporting of the new connections, therefore language was deleted as follows, "The annual report shall itemize all new or increased connections to the TOWN's potable water distribution system, the meter size of each connection, **and** the reserve capacity equivalent of each connection, ~~and the Facility Investment Fee for each connection established by the COUNTY ordinance relating to Facility Investment Fees in effect at the time.~~"
3. Paragraph 2B – Clarify that the facility investment fees paid by the Town to the County in order to increase their reserve capacity, will be based on wholesale FIFs. Language inserted as highlighted, "Subject to the COUNTY's receipt of water use permits from SWFWMD, the TOWN may purchase additional reserve capacity in the COUNTY's potable water system by paying to the COUNTY the appropriate amount of all Facility Investment Fees **for wholesale customers** established by the COUNTY ordinance..."

Please note that wholesale customers are charged the same facility investment fee per gallon as retail customers in the current FIF ordinance.