

AGREEMENT OF THE DELIVERY AND USE
OF RECLAIMED IRRIGATION WATER

THIS AGREEMENT is made and entered into on _____ of June 2005, between the CITY OF NAPLES (CITY), a municipal corporation organized and existing under the laws of the State of Florida, and GREY OAKS COMMUNITY SERVICES, INC. (USER) whose address or principal place of business is 2600 Golden Gate Parkway, suite 105, Naples Florida 34105.

WITNESSETH

WHEREAS, the CITY owns, operates and maintains wastewater treatment facilities, distribution mains and intends to increase the capability of the facilities to produce reclaimed water of a quality suitable for the irrigation of grasses, woodlands and certain croplands; and

WHEREAS, the CITY desires to deliver this reclaimed water for irrigation use by others as the primary means of effluent disposal, and

WHEREAS, the CITY plans to construct or allow the use of present distribution systems to provide the user with reclaimed water under pressure directly to OWNER's site; and

WHEREAS, the USER OR OWNER is willing to make use of a portion of this reclaimed water for irrigation of lands owned or controlled by this user; and

WHEREAS, the USER now owns or otherwise has control of the land upon which reclaimed water will be used for irrigation purposes; and

WHEREAS, the CITY and USER will operate said systems under the rules adopted by City Code and the State of Florida for their mutual benefit, under policies "effluent disposal by spray irrigation methods; and

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

1. 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 circumstance beyond its control. The CITY will make every effort to supply the USER with

an annual allocation of 640,000 gallons per day and maximum daily pumping not to exceed 1,000,000 gallons per day of reclaimed water at a minimum pressure of 20 psi or a maximum pressure of 110 psi. The maximum daily pumping allocation of 1,000,000 gallons shall not exceed more than 30 calendar days per year. During periods of severe water shortages the CITY will, if necessary, place a cap on delivered quantities of reclaimed water based on a percentage of contracted amounts. If USER should require reclaimed water at different pressures, or different quality from that normally supplied by the CITY, he shall be responsible for the necessary devices.

2. The USER shall take all reasonable precautions, including signs, labeling and color code painting to prevent confusion between reclaimed water and other sources. The Florida Department of Environmental Protection Rule 62-610.468, Florida Administrative Code, requires signs to be posted on the property to notify the public that reclaimed water is used for irrigation. The CITY will provide the necessary language for the sign.
3. **QUALITY.** The effluent shall be a “polished” effluent from a tertiary treatment facility with effluent permitted for public contact as required by the Florida Department of Environmental Protection Rule 62-610, Florida Administrative Code, as amended from time to time, and shall meet the criteria for land application of domestic wastewater effluent. The effluent shall be in accord with all requirements of permits issued by local, state and federal regulatory agencies with jurisdiction over such activities.
4. **POINTS OF DELIVERY.** USER shall maintain all effluent distribution facilities downstream of the POINT OF DELIVERY, which begins at the effluent side of the CITY’S flow meter located adjacent to and west of Estuary Drive.
5. **CITY’S RESPONSIBILITY.** The CITY shall be responsible for the design, construction, permitting, financing of all costs and placing in operation the effluent delivery system up to the POINT OF DELIVERY. The CITY shall bear all cost of operation and maintenance of the effluent delivery system up to and including the POINT OF DELIVERY.
6. **EMERGENCY SITUATIONS.** In the event of an emergency, as defined below, the USER shall notify any of those CITY representatives set forth herein and request that the pumping of effluent

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 the parties that the CITY will, to the best of its ability, assist USER with the storage and non-delivery of treated effluent for a period not to exceed three (3) days in such an emergency situation. Such storage of effluent, however, shall be subject to the rules, regulations and directives of the Department of Environmental Protection.

Emergencies shall include but shall not be limited to:

- A. Climatic conditions such as hurricanes, floods or unseasonably excessive rainfall, which make it impossible for USER to accept treated effluent.
- B. Short term equipment or material failure making it impossible for USER to store or distribute the treated effluent.
- C. An Act of God which makes it impossible for USER to accept, store or distribute the treated effluent.

7. NOTIFICATION OF EMERGENCY. Those representatives of the CITY who shall be notified in the event of an emergency are:

- A. City of Naples Wastewater Treatment Plant 213-4753
- B. City of Naples Utilities Maintenance Division 213-4727
- C. City of Naples Utilities Director 213-4714

8. CITY LIABILITY. The CITY shall not be liable by USER for failure to deliver treated wastewater effluent if a reasonable situation preventing such delivery exists. Such situations shall include, but not be limited to:

- A. A lack of treated wastewater effluent due to loss or lack of flow to the treatment plant or due to process failure.
- B. Contamination in the treated wastewater effluent making it unusable for irrigation.
- C. Equipment or material failure in the treated wastewater effluent delivery system, including storage and pumping.
- D. An Act of God, which makes delivery by the district not reasonably feasible or impossible.

9. CONTACT INFORMATION. In the event of an emergency contact will be made to the following individuals:

USER: Tom Sansbury
 Grey Oaks Community Services, Inc.
 2600 Golden Gate Parkway

Naples, FL 34105
Wk: 239-403-6800

CITY: Robert Middleton, Utilities Director
City of Naples
380 Riverside Circle
Naples, FL 34102
239-213-4714

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

10. WRITTEN NOTICE OF ADDRESSES AND TELEPHONE CHANGES REQUIRED. The CITY and the USER may change the above mailing addresses and/or phone numbers at any time upon giving the other party written notification, return receipt requested, by U. S. mail.
11. USE OF EFFLUENT. Except as set forth above, USER shall accept the effluent delivered by the CITY and use it for spray irrigation on the property in any manner determined by USER, except that use of the effluent shall be consistent with local, state and federal regulations. Except as the normal use of the irrigation system may incidentally spray effluent into the lakes, ponds, ditches and sloughs on the Property, USER shall not discharge effluent directly into the surface waters of the State of Florida without written authorization from the Florida Department of Environment Protection. USER shall not be allowed to use effluent to raise or maintain surface water levels for aesthetic purposes. USER shall take all reasonable precautions, including signs and labeling, to prevent confusion between effluent sources and other water sources downstream of the POINT OF DELIVERY. The CITY shall be deemed to be in possession and control of the effluent until it shall have delivered to USER at the POINT OF DELIVERY, after which the USER shall be in possession and control of the effluent.
12. USER'S RIGHT TO TERMINATION; AGREEMENT RUNS WITH LAND. The USER shall have the right to terminate this Agreement if the CITY continually fails to deliver effluent, under the conditions described in Paragraph 1 herein. The USER shall have the right to sell, transfer or encumber the land areas irrigated with the effluent as described in Exhibit A, except that written notice of any proposed sale

or transfer must be given to the CITY, as provided for herein, at least thirty (30) days prior to the 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 receive and use the specified quantity of effluent under the same terms and conditions of this agreement unless modified by mutual consent of the CITY and the buyer, or transferee, or successor in interest to the USER.

13. CITY'S RIGHT TO TERMINATION. The CITY shall have the right to terminate this agreement if the USER fails to accept effluent under the conditions described herein, or if performance is prevented by third party litigation, or if the USER is or reasonably appears to be irresponsibly or illegally disposing of or using the effluent, or if any other event beyond the control of the CITY prevents performance, or if the USER fails to pay delinquent fees, rates, or charges for the services and facilities provided for under this Agreement.

14. TIME OF TERMINATION. This agreement shall be in effect from date of acceptance by both parties signed herewith and shall expire 5 years from the effective date unless renewed. It may be renewed for up to 2 successive 5-year periods. In order to renew, either party will notify of its intention to renew at least 180 days prior to the expiration date. Otherwise, termination on the part of either party shall not occur before one hundred and eighty (180) days after the terminating party has notified the other party in writing, except in an instance where USER is, or reasonably appears to be, irresponsibly or illegally disposing of or using the effluent.

15. CHARGES AND RELATED CONSIDERATIONS

- A. The CITY shall bear all costs of maintenance of operation and maintenance of the reclaimed water system up to the Point(s) of Delivery.
- B. For furnishing of the reclaimed water the City shall charge and the USER shall pay \$0.30 per one thousand (1,000) gallons of the USER's total consumption. This rate is established by City Code and is subject to change in accordance with the Code revisions.
- C. The CITY shall bill the USER bimonthly an amount equal to the effluent consumption established by the meter reading. The USER shall make payment to the CITY within 30 days following receipt of the bimonthly bill.

16. ACCESS. The CITY shall have the right, but not the duty, to enter upon the Property of USER to review and inspect at reasonable times the practices of USER with respect to conditions agreed to herein. Such entry shall normally be for the purpose of review of the operation of the effluent irrigation system, for inspection of distribution mains and appurtenances, and for sampling at any monitoring wells located on the property of USER. USER may have a representative accompany the CITY personnel.
17. INDEMNIFICATION. USER acknowledges that the effluent, due to its chemical composition, may not be compatible for irrigation of certain susceptible vegetation. USER agrees that the CITY shall not be held liable for damages that may occur to vegetation or for any other damages, which may occur due to the use or acceptance of effluent. The USER, in consideration of ten dollars, receipt and sufficiency of which is accepted through the signing of this Agreement, shall hold harmless and defend the CITY and its agents and employees from all suits and actions, including attorneys' fees and all costs of litigation and judgements of any name and description arising out of or incidental to this Agreement.
18. 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.
19. 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.
20. 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 or zoning approvals, permissions, variances, special exceptions, or any other rights with respect to the real property in the irrigated area.
21. APPLICABLE LAW. This Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the

laws of the State of Florida and the City of Naples codes of Ordinance or its successor in function.

22. RECORDATION. This Agreement shall be recorded in the public records of the City Clerk's Office, Naples, Florida.
23. ASSIGNMENT. Assignment or transfer of the USER'S rights or obligations under this agreement is prohibited without prior written consent of the CITY.
24. BINDING EFFECT. This Agreement shall be binding upon the parties, their successors and assigns.
25. ENTIRE AGREEMENT; AMENDMENT. 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 hereto, or their successors in interest to the Property.

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

ATTEST:

CITY OF
NAPLES, FLORIDA

Tara A. Norman, City Clerk

BY: _____
Dr. Robert E. Lee,
City Manager

Approved as to form and
Legality

Robert D. Pritt, City Attorney

USER: _____
THOMAS W. SANSBURY, PRESIDENT
GREY OAKS DEVELOPMENT CO.

DEVELOPER'S ACKNOWLEDGEMENT AND NOTARY BLOCK

I hereby certify THAT ON THIS DAY, BEFORE ME AN OFFICER DULY AUTHORIZED IN THE STATE AND County aforesaid to take acknowledgements, personally appeared _____, will be known to me to be the City Manager of the City of Naples, Florida, being authorized so to do, executed the foregoing Effluent Agreement for the purposes therein contained under authority duly invested by the council of the City of Naples, and that the seal affixed thereto is the true seal of said City.

WITNESS my hand and official seal in the county and State last aforesaid this _____ day of _____, 20_____.

(Notary Seal)

Notary Public
My Commission Expires:

ATTACHMENT "A"

REQUIREMENTS FOR RECLAIMED WATER SERVICE APPLICATIONS

1. Site/Construction plans, showing proposed service, main diameter, estimated daily usage, and location. The service location shall be a minimum of ten (10) feet from any potable water meter. Any modifications will require prior approval by the Utilities Engineer.
2. USER must submit plans detailing his/her irrigation system, including its proximity to potable water services. No system with a cross-connection or potential for cross-connection to a potable water source will be considered for reclaimed water service.
3. All reclaimed water users will be required to install a meter at their point of service. This meter and its location will be approved prior to application for service. All meters will be installed in an above ground arrangement unless prior approvals have been given in writing. In all cases, City Utilities forces will install or contract to have this service installed and itemized billing presented to applicant, at cost plus a small handling fee.
4. All reclaimed water applicants shall be responsible for installing approved backflow prevention device assemblies on all potable water service prior to receiving reclaimed water on site. Installation of a (PRV) Pressure Reducing Valve on the customer's side of the meter will be necessary to assure a maximum 80-psig pressure to USER'S system. This device and the approved backflow devices will require yearly testing by USER with results delivered to the Public Works Department. Call 213-4717 if you have questions. Inspection by City cross-connection representative and sign off will be a requirement.
5. Customer required to sign a Hold Harmless Agreement for any costs arising from claims, actions, suits, proceedings, costs, expenses, damages or liabilities from any injuries, illness or disease to persons or property alleged to have been caused by reclaimed water furnished by the CITY. The CITY agrees to furnish reclaimed water to the customer's meter which meets or exceeds the (AST) Advanced Secondary Treatment Standards of FAC 62-610.
6. Rates for reclaimed water are established by the City of Naples Code of Ordinances and subject to change.

7. During times of drought, it will not be acceptable for the USER to fill lakes for aesthetic purposes. The CITY will monitor USER flow rates and reuse water availability and close the lake dump. This should only happen during times of drought.