

ORIGINAL
FILE COPY

1 **BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION**

2 **DUNES COMMUNITY DEVELOPMENT DISTRICT**

3 **DOCKET NO. 951056-WS**

4 **PREFILED DIRECT TESTIMONY OF GARY L. MOYER**

5

6 **Q. Please state your name and business address.**

7 A. My name is Gary L. Moyer. My business address is 10300 N.W. 11th Manor,
8 Coral Springs, Florida 33071.

9

10 **Q. In what capacity are you appearing in this proceeding?**

11 A. I am appearing as Manager of the Dunes Community Development District
12 ("District"). The District is a bulk water customer of Palm Coast Utility
13 Corporation ("PCUC"). The District also obtains unfiltered effluent from
14 PCUC for ultimate reuse by the District's irrigation customers.

15

16 **Q. Please describe your education.**

17 A. I have a Bachelor of Science Degree from Penn State University and a Master's
18 Degree in Business Administration from Notre Dame University.

19

20 **Q. What is your occupation and the nature of your work?**

21 A. I am the principal of my company, Gary L. Moyer, P.A. My firm provides
22 management services to special-purpose taxing districts, including community

1 development districts. These services include planning, finance, staffing,
2 purchasing, reporting and intergovernmental coordination.

3

4 **Q. How long have you served as Manager of the Dunes Community**
5 **Development District?**

6 A. Since the District's establishment in 1985.

7

8 **Q. What is a community development district and what does it do?**

9 A. A community development district, or CDD, is a unit of local special-purpose
10 government created pursuant to Chapter 190, F.S. A CDD has special powers
11 to provide for the installation and maintenance of infrastructure facilities to
12 coincide with the development of property within the district. Infrastructure
13 that may be provided by a CDD includes water management, water supply,
14 sewer, wastewater treatment, roads, street lighting, bridges and, when
15 authorized by the local general-purpose government, may also include parks and
16 recreation, fire prevention and control, security, mosquito control, school
17 buildings, and waste collection and disposal.

18

19 **Q. Where is the Dunes Community Development District located?**

20 A. The District is located in unincorporated Flagler County, and is bounded on the
21 north by Malacompra Road and the Johnson Beach Subdivision, on the west by
22 the Atlantic Intracoastal Waterway, on the east by the Atlantic Ocean and on the

1 south by Beverly Beach. The District consists of approximately 2,114 acres.
2 The District is adjacent to PCUC's service territory. As shown on the map
3 attached as Exhibit ____ (GLM-1), PCUC's wastewater treatment plant site is
4 across the Intracoastal Waterway from the District.

5

6 **Q. What are your responsibilities as Manager of the District?**

7 A. As District Manager, my responsibilities include supervising work undertaken
8 by the District, preserving and maintaining any improvements or facilities
9 provided by the District, and ensuring the smooth operation of the equipment
10 and facilities owned by the District. I also provide administrative services to
11 the District, including the generation of various required reports. In short, I
12 have overall responsibility for managing the day-to-day operations of the
13 District.

14

15 **Q. To whom do you report?**

16 A. I report to the Board of Supervisors of the District. This is the governing body,
17 and consists of five members currently elected by the landowners of the
18 District.

19

20 **Q. Please describe the District's facilities and services.**

21 A. The District owns, operates and maintains major infrastructure for the
22 Hammock Dunes community in Flagler County. This infrastructure includes

- 1 A. The District purchases potable water from PCUC under an agreement dated
2 April 8, 1988, pursuant to which PCUC is obligated to sell water to the District
3 on a bulk basis (the "Water Agreement"). The Commission approved the terms
4 of the Water Agreement in Order No. 21606. PCUC provides water to the
5 District through meters located within PCUC's service territory at the junction
6 of Highway A1A and Jungle Hut Road. The District performs additional
7 chlorination, then provides this water to its customers through an extensive
8 distribution system owned, operated and maintained by the District.
9
- 10 **Q. Please describe generally the terms of the bulk water agreement between**
11 **the District and PCUC.**
- 12 A. Under the Water Agreement, the District initially paid for the right to receive
13 potable water from PCUC based on an estimated maximum average demand of
14 100,000 gallons per day (GPD). The District paid an Advance Capacity Charge
15 (ACC) and a Water Facility Tax Impact Charge (WFTIC) of \$715,000.00 and
16 \$335,389.55, respectively, for this initial capacity purchase. The District also
17 pays monthly charges to PCUC, consisting of a tariffed base facility charge and
18 gallonage charges based on actual consumption, at rates set by the Commission.
19 The Water Agreement provides a mechanism for the District to purchase
20 additional capacity upon payment of additional sums to PCUC. Both the ACC
21 and WFTIC for future purchases are subject to adjustment pursuant to the
22 Water Agreement.

1 **Q. Has Dunes purchased additional capacity from PCUC since the date of the**
2 **original agreement?**

3 A. Yes. An additional 100,000 gpd bulk purchase of potable water advanced
4 capacity was made in August, 1995 for \$1,125,000. Thus the District currently
5 has a commitment from PCUC for up to 200,000 gpd of bulk potable water.

6

7 **Q. What is the District's position on PCUC's application for an increase in the**
8 **base facility charge and the gallonage rate for bulk water service?**

9 A. The District has not taken a position on the magnitude of the proposed increase.
10 With respect to the rate structure, it appears that PCUC has proposed a rate
11 structure which spreads the requested water rate increase on an equal percentage
12 basis to all of its water customers. The District is interested in ensuring that
13 the final rates approved by the Commission equitably treat all water purchasers.

14

15 **Q. You mentioned that the District also provides wastewater utility services.**
16 **Could you describe that operation?**

17 A. Yes. Wastewater is collected by the District and treated to secondary standards
18 at a 250,000 gpd wastewater treatment plant owned and operated by the
19 District.

20

21 **Q. Is the unfiltered effluent from that plant suitable for reuse?**

1 A. Not without further treatment. It is my understanding that secondary treated
2 effluent can be disposed of through percolation ponds or through land
3 application only at non-public access areas such as a traditional spray irrigation
4 fields. Such unfiltered effluent must be treated to higher standards before it can
5 be used for general irrigation purposes, particularly if used on public access
6 areas.

7

8 **Q. Please describe the District's effluent reuse facilities.**

9 A. The District owns and operates effluent reuse facilities with a permitted capacity
10 of 1.6 MGD average daily flow. These facilities consist of a sand media filter
11 rated at 3.2 MGD, two chlorine contact chambers for high level disinfection,
12 and two effluent storage ponds with a combined capacity of approximately
13 15,200,000 gallons. In addition, the District operates the pumps and effluent
14 transmission and distribution system necessary to provide reuse water to its
15 irrigation customers. One customer, a golf course, takes reuse water from the
16 District at the plant site and is responsible for its own pumping, transmission
17 and irrigation system. In total, the District has over \$4 million of investment in
18 its effluent reuse facilities.

19

20 **Q. What is the source of effluent for the District's reuse facilities?**

21 A. There are two sources. The first source is secondarily treated effluent from the
22 District's own wastewater treatment plant. This source currently provides about

1 61,000 gpd of effluent. The second source is secondarily treated effluent
2 obtained from PCUC under an effluent agreement.

3

4 **Q. Is this effluent agreement the first such agreement between the District and**
5 **PCUC?**

6 A. No. The District's first effluent agreement with PCUC was dated February 23,
7 1990. A copy of that agreement is attached as Exhibit ___ (GLM-2). Under
8 the 1990 agreement, the District installed, at its own expense, a pump station
9 located at PCUC's wastewater treatment plant site. The District also installed,
10 at its own expense, a 12" effluent transmission main approximately 19,400 feet
11 in length to transport unfiltered effluent from the pumping station, across the
12 Intracoastal Waterway, to the District's effluent treatment facilities. In addition
13 to these capital facilities, the District supplies the utilities (primarily electricity)
14 necessary to operate the effluent pumping station. Under the 1990 agreement,
15 PCUC agreed to provide up to 920,000 gallons per day of secondary treated
16 effluent, as and when available, to the District's pumping station. The 1990
17 agreement was approved by the Commission in Order No. 23372 issued August
18 20, 1990.

19

20 **Q. Was this agreement subsequently amended?**

21 A. Yes. On May 13, 1994, the District and PCUC entered into an Addendum to
22 the 1990 agreement. At that time, PCUC needed additional effluent disposal

1 capacity and additional wet weather effluent storage capacity while additions to
2 its own disposal and storage facilities were under construction. The District
3 provided this assistance to PCUC under the 1994 Addendum, a copy of which
4 is attached as Exhibit ____ (GLM-3).

5

6 **Q. Is the 1990 Agreement, as amended by the 1994 Addendum, still in effect?**

7 A. No. On September 20, 1995, the District and PCUC entered into a new
8 effluent agreement (1995 Agreement) which replaced the prior agreements. A
9 copy of the 1995 Agreement is attached as Exhibit ____ (GLM-4).

10

11 **Q. Please describe in general terms how effluent is provided under the 1995**
12 **Agreement.**

13 A. PCUC provides secondary treated effluent to the District at the District's pump
14 station at the PCUC wastewater treatment plant site. This unfiltered effluent is
15 delivered to the District from a closed system -- that is, it comes either directly
16 from PCUC's wastewater treatment process (the chlorine contact chamber) or
17 from PCUC's 6.0 MGD effluent storage tank. As under the prior agreement,
18 the District continues to pay all costs of operating and maintaining its effluent
19 pumping station and the effluent transmission line.

20

21 **Q. Does PCUC have any obligation to deliver specific amounts of unfiltered**
22 **effluent to the District?**

- 1 A. No. PCUC is not obligated to provide any specific amounts of unfiltered
2 effluent to the District. The District does, however, have a "first call" on up to
3 1.6 MGD of PCUC's unfiltered effluent. This means that PCUC must provide
4 up to this amount of unfiltered effluent to the District before it provides effluent
5 to any other third party.
6
- 7 **Q. Does the District have any obligation to take specific amounts of unfiltered**
8 **effluent from PCUC?**
- 9 A. Yes. The District has committed to take an annual average of 600,000 gpd of
10 unfiltered effluent, with no less than 300,000 gpd to be taken on any given day.
11 The District also has agreed to use its best efforts to take up to 1.6 MGD of
12 unfiltered effluent on an annual average basis. In effect, this allows PCUC to
13 use this agreement as part of its effluent disposal system.
14
- 15 **Q. Does the District pay PCUC for this unfiltered effluent?**
- 16 A. No. Inasmuch as the District has been disposing of PCUC's unfiltered effluent,
17 which has only been treated to secondary standards, the District does not pay
18 PCUC for the effluent it gets from PCUC. The District has, however,
19 reimbursed PCUC for any operational costs incurred.
20

1 **Q. Other than the pump station and the effluent transmission main, has the**
2 **District paid for any other capital improvements at PCUC's plant site in**
3 **connection with its acceptance of effluent from PCUC?**

4 **A. Yes. In 1993, the District paid for the installation of an additional effluent line**
5 **connecting the District's pump station to the PCUC percolation/holding pond**
6 **located closest to the PCUC wastewater treatment plant. That line was**
7 **subsequently sold to PCUC at cost when PCUC completed its recent wastewater**
8 **treatment plant improvements and wanted to reconfigure and use the line on its**
9 **plant site. Because the new Effluent Agreement had clarified the point and**
10 **source of delivery, the District determined that line was no longer needed by**
11 **the District.**

12
13 **Q. Does the District oppose PCUC's application to create a new class of**
14 **effluent service and to impose a rate of \$0.67 per 1,000 gallons for effluent**
15 **delivered to the District?**

16 **A. Yes. Mr. Milian will discuss this matter in more detail. From the perspective**
17 **of District management, we are providing a benefit to PCUC by enabling them**
18 **to dispose of unfiltered effluent that they would otherwise have to build**
19 **additional disposal facilities to handle. The District owns and operates the**
20 **pumping station and effluent main used to transport unfiltered effluent from**
21 **PCUC to our effluent plant, where further treatment is required before the**
22 **effluent is suitable for application in public access areas. I am unaware of any**

1 cost incurred by PCUC in providing unfiltered effluent to the District that they
2 would not incur in any event as part of their normal treatment process. In this
3 situation, we believe that it is inequitable and unfair to charge the District for
4 this unfiltered effluent.

5

6 **Q. Does the District charge its customers for the various utility services it
7 provides, including effluent provided for irrigation purposes?**

8 A. Yes. As a special-purpose unit of local government governed by Chapter 190,
9 Florida Statutes, the District follows the provisions of Section 190.035, F.S., in
10 setting its utility rates. These rates are set in an administrative rulemaking
11 process under Chapter 120, F.S. The District sets its rates to recover the costs
12 incurred by the District in providing utility service. This includes the capital
13 and operating expenses of the District for its treatment and distribution
14 facilities, and any payments to third parties, such as the cost of bulk potable
15 water purchased from PCUC.

16

17 **Q. Are those rates set to earn a return or profit for the District?**

18 A. No. As a governmental body, the District operates on a non-profit basis. Its
19 rates are set solely to recoup its costs, including debt service on the bonds used
20 to fund the construction of the utility system.

21

1 **Q. What will be the impact on the District and its ratepayers from this PCUC**
2 **rate case?**

3 A. To the extent that the Commission approves an increase in the bulk water rate
4 charged to the District, the District will have to reset rates to recover this
5 additional cost from its customers. Similarly, if the Commission were to
6 approve an effluent rate, the District would have no choice but to increase its
7 rates and pass this charge along to its customers. The District is required by
8 law and by its bond covenants to maintain an adequate revenue stream to pay
9 the District's operating costs, and to make debt service payments on its bonds.

10

11 **Q. Has the District attempted to quantify the impact on its customers of**
12 **PCUC's proposal for an effluent rate of \$0.67 per 1,000 gallons?**

13 A. Yes. The District's current rate for effluent water service consists of a monthly
14 base charge which varies with meter size (\$21.25 for a 5/8" x 3/4" meter) plus
15 a commodity charge of \$0.70 per 1,000 gallons. The golf course, which
16 provides its own pumping equipment and irrigation lines, pays a base charge of
17 \$10,362 per month plus a commodity charge of \$0.35 per gallon. If PCUC's
18 proposed effluent rate were adopted and passed-through directly to the District's
19 customers as an increased gallonage charge, the residential gallonage rate would
20 almost double and the golf course gallonage rate would be increased almost
21 200%. Of course the District's Board would have to approve the rates used to
22 recover these additional costs. Any rate study would have to consider a number

1 of factors, such as the effect of price on demand for effluent reuse, and the
2 proper price relationship between potable water and effluent reuse water.

3

4 **Q. What action are you asking the Commission to take in this proceeding?**

5 A. The District is asking the Commission to deny PCUC's request for a new class
6 of service, and not to approve an effluent rate. We are also asking the
7 Commission to ensure that any water rate increase is spread equitably among
8 PCUC's various classes of water service.

9

10 **Q. Does that conclude your testimony?**

11 A. Yes.

12

13

14

15

16

17

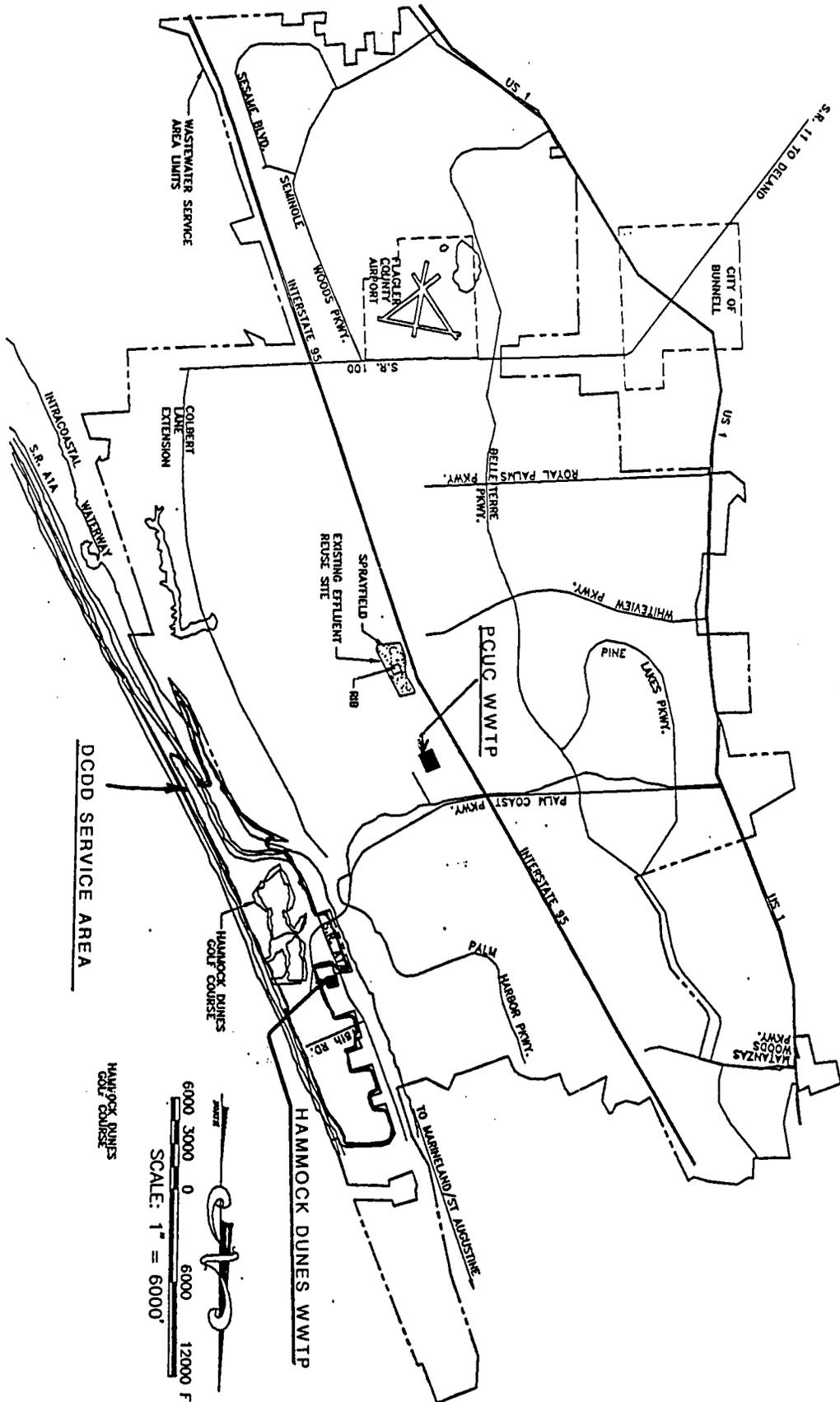
18

19

20

21

22



Agreement

This Agreement, executed on the 23 rd day of February, 1990 is between the Dunes Community Development District (hereinafter referred to as "DCDD") and Palm Coast Utility Corporation (hereinafter referred to as "PCUC").

WHEREAS, DCDD owns land and is developing a utility system in Flagler County, Florida, in accordance with the rules and regulations of the Florida Department of Environmental Regulation including the collection, treatment and disposal of wastewater; and

WHEREAS, DCDD intends to use treated wastewater effluent on the property described on Exhibit "A" and known as Hammock Dunes, Flagler County, Florida; and

WHEREAS, the DCDD may need additional treated wastewater effluent to supplement its own effluent; and

WHEREAS, PCUC owns and operates private utility systems in Flagler County, Florida, in accordance with the rules and regulations of the Florida Public Service Commission and the Florida Department of Environmental Regulation including the collection, treatment and disposal of wastewater; and

WHEREAS, during certain periods PCUC has a surplus of wastewater effluent that can be made available to DCDD; and

WHEREAS, it is the express policy of the State of Florida that it is in the public interest to utilize treated effluent for irrigation purposes; and

WHEREAS, in recognition of State policy favoring utilization of treated effluent for irrigation purposes, it is the desire of the parties hereto to utilize PCUC's effluent for irrigation purposes even though there may not be a direct benefit to PCUC and DCDD may incur substantial cost to provide additional treatment of said effluent for irrigation purposes; and

WHEREAS, it is the intent of this agreement that PCUC recover from DCDD only its out of pocket cost associated with providing effluent to DCDD.

Now, therefore, DCDD and PCUC hereto agree to as follows;

I. Facilities, Effluent Standards and Volume

- A. DCDD shall install, own and maintain, at its expense, a pump station at the PCUC wastewater treatment plant along with the necessary effluent force main from said pump station to the DCDD's wastewater treatment plant site. Location of said pump station and the portion of the effluent force main within the PCUC wastewater treatment plant site as defined as Exhibit "B" shall be approved by PCUC prior to commencement of construction.
- B. DCDD shall obtain all necessary utility services (i.e. electrical, telephone, etc.) for the DCDD pump station directly from the utilities providing service. Utility services rendered to PCUC and PCUC's stand-by electrical power supplies shall not be shared with DCDD.
- C. PCUC will furnish secondary treated wastewater effluent to the inlet of the DCDD pump station. All effluent provided by PCUC to DCDD under the terms of this agreement shall meet the permitting criteria contained in PCUC's permits. In the event such permitting criteria are changed, PCUC will notify DCDD of any changes in standards.
- D. PCUC agrees to provide secondary treated wastewater effluent, when it is available as determined by PCUC, to the DCDD pump station located at the PCUC wastewater plant in amounts not to exceed a maximum daily volume of 0.920 million gallons. If at any time PCUC should determine that sufficient effluent is not available to meet DCDD's requirements at the time, PCUC shall not be obligated to satisfy DCDD's unmet requirements with potable water.

DCDD shall coordinate transfer pumping with PCUC at least 24 hours in advance of when effluent is required by DCDD.

- E. DCDD shall install a flow meter on the discharge of the pump station located at the PCUC wastewater treatment plant. Design and specifications of the flow meter shall be approved by PCUC prior to installation.
- F. As a condition precedent to acceptance of the completed flow meter and appurtenances by PCUC, the completed flow meter and appurtenances shall be conveyed to PCUC by a bill of sale together with, 1) accurate cost records establishing the construction cost of the completed flow meter installation which shall include a copy of related construction contracts duly certified by a Notary Public in the State of Florida as true and correct copies of the originals, 2) complete as-built plans and 3) an amount equal to the Sewer Facility Tax Impact Charge based on the formula described in Numbered Paragraph IV-G which shall be due and payable to PCUC upon 60 days written notice. Once accepted, PCUC will be responsible for all subsequent maintenance of the flow meter.
- G. At some unspecified time in the future, DCDD may request that PCUC accept treated wastewater effluent for disposal. In the event that PCUC agrees to accept DCDD's wastewater effluent, the volume and quality of effluent to be accepted by PCUC and PCUC's rates, fees and charges for such acceptance shall be subject to separate agreement. The quality of the wastewater effluent shall meet the requirements of the Operating Permit issued by the Florida Department of Environmental Regulation to the DCDD or PCUC, whichever is more stringent. Any such separate agreement shall require DCDD to contribute the cost of any necessary expansions to PCUC's wastewater effluent disposal facilities as determined by PCUC and any associated sewer facility tax impact charge.

II. PCUC Support Rates and Charges

- A. DCDD agrees to pay PCUC a monthly charge based on actual services provided as determined by PCUC at PCUC's hourly rates associated with:
 - 1. The operation of DCDD pump station
 - 2. Collection and analysis of one special effluent sample taken weekly at the inlet to the DCDD pump station testing for
 - a. BOD5
 - b. TSS
 - c. Nutrients
 - d. Fecal Coliform
 - e. Total Coliform
 - 3. Operating maintaining and calibrating the effluent flow meter.
- B. Terms of monthly charge:
 - 1. PCUC shall invoice DCDD for all costs incurred during any calendar month by the 20th of the following month. DCDD shall remit payment within 30 days of the billing date or be subject to a late fee of 1.5% per month.
 - 2. PCUC's bill to DCDD will include hourly rates and hours incurred for all labor as well as copies of invoices for any subcontracted services.
 - 3. PCUC shall notify the DCDD by December 31st of each year of the hourly rates to be used as a basis for labor related charges during the following year.

III. Duration of Agreement

- A. At any time the DCDD or PCUC shall have the right to cancel this Agreement in its entirety. Notice of intent to cancel must be provided in writing to the other party, by registered or certified United States mail, at least eighteen (18) calendar months prior to its effective date. There are no understandings between DCDD and

PCUC concerning the future use of effluent after cancellation of this agreement, and once this agreement is cancelled any future use of PCUC effluent by DCDD will be subject to a separate agreement. Nothing herein shall be construed to grant to the DCDD an option or right to acquire, by purchase or otherwise, any components of PCUC's system, inclusive of any components contributed by DCDD.

Upon cancellation the DCDD shall be responsible to pay PCUC the actual costs of disconnection as determined by PCUC including legal and administrative costs, if any. Disconnection costs shall be due and payable to PCUC upon 30 days written notice.

- B. PCUC and DCDD shall have the right to assign and transfer this Agreement at any time provided, however, that no such assignment or transfer shall impair the rights or increase the obligations to PCUC or DCDD pursuant to this agreement. This agreement shall be binding upon and shall inure to the benefit of DCDD and PCUC, their successors and assigns. However, this agreement shall not be assigned, transferred or otherwise disposed of by either party without first obtaining the written consent of the other, which consent shall not be unreasonably withheld.

IV. Other Provisions

- A. DCDD shall bear all costs as determined by PCUC associated with the removal of abandoned DCDD facilities constructed at the PCUC wastewater treatment plant site, as defined on Exhibit "B". Removal costs will be due and payable to PCUC upon 30 days written notice. For purposes of this agreement DCDD facilities shall be considered abandoned at the conclusion of this agreement or after a continuous period of twelve months has elapsed without DCDD having requested PCUC to furnish effluent, whichever occurs first. Notwithstanding the foregoing, DCDD facilities shall not be considered abandoned if the initial request for effluent is more than twelve months from the date of this agreement.
- B. DCDD agrees to and does hereby indemnify and save PCUC and ITT Corporation (hereinafter referred to as "ITT") harmless from and against any and all losses, damages, claims, actions, attorney fees and court costs, liabilities and expenses in contract or in tort, in connection with the loss of life, bodily injury, and/or property damage occurring in or about or as a result of accepting and disposing of PCUC's secondary treated wastewater effluent, to the fullest extent allowed by law with the exception of negligent acts, wilful misconduct on behalf of PCUC or ITT, or their respective agents, officers or employees.
- C. During the period that effluent is provided to DCDD pump station DCDD shall secure and maintain in effect at all times at its expense General Liability Insurance or such other equivalent surety as approved by PCUC covering DCDD's legal liability for bodily injury and property damage, including sudden and accidental pollution liability, with the exception of negligent acts, wilful misconduct on behalf of PCUC or ITT, or their respective agents, officers or employees, with limits of \$2,000,000.00 combined single limit and agrees to add both PCUC and ITT as additional insured thereunder and will deliver satisfactory proof of same to PCUC prior to DCDD receiving effluent, to protect

and indemnify PCUC and ITT from any liability whatsoever which might arise from its obligation to supply wastewater treatment plant effluent to the DCDD and to provide that PCUC and ITT are additional insured. No certificate shall be acceptable to PCUC unless it provides that any change or termination of the insurance coverages, as certified, shall not be effective without ten (10) days prior written notice to PCUC.

- D. Access to DCDD owned facilities at the PCUC wastewater treatment plant site, as defined on Exhibit "B", shall be limited to normal working hours as determined by PCUC except as otherwise agreed to by PCUC at least 24 hours in advance of access being required.
- E. Should the Florida Public Service Commission at any time during the term of this agreement issue an interim or final order that results in PCUC's total used and useful revenue being adversely affected as a result of PCUC providing treated wastewater effluent to DCDD, then PCUC shall bill and DCDD shall pay, consistent with the provisions of Numbered Paragraph II.B.1 of this agreement, the amount by which used and useful revenue is adversely affected, as determined by PCUC.
- F. DCDD shall obtain, or cause to be obtained, all necessary state and federal permits for wastewater treatment plant operation and wastewater effluent disposal required in order to effectuate the terms of this agreement. If any additional permits or modifications of existing permits are required for PCUC, DCDD shall obtain those permits. DCDD recognizes specifically that PCUC has no responsibility for effluent once it reaches the DCDD pump station, and that all regulatory responsibility regarding permitting, additional treatment, and monitoring of effluent disposal becomes that of DCDD once the effluent reaches the DCDD pump station. DCDD shall provide PCUC copies of all permits applicable to the treatment and utilization of effluent.
- G. Prior to the Congressional Tax Reform Act of 1986, Section 118(b) of the Internal Revenue Code provided for the exclusion of certain types of CIAC from the taxable income of a corporate PCUC. Such amounts, were, therefore, tax exempt.

Section 118(b) of the Internal Revenue Code, pursuant to the Congressional Tax Reform Act of 1986, was amended to reclassify CIAC (both cash and property) as a taxable source of revenue, effective January 1, 1987. The net result of this action is that a PCUC which is a corporation must now pay income tax on the CIAC it collects.

Since the amount of this additional tax liability is directly attributable to the contributors (developers, builders, etc.) of the CIAC, the PCUC is authorized to collect this amount from those contributors.

Therefore, in accordance with Order No. 16971 issued on December 18, 1986 in Docket No. 860184-PU, the Public Service Commission adopted and approved specific guidelines for PCUC to administer in the calculation, collection, and reporting of CIAC tax liabilities as follows:

- 1) On and after January 1, 1987, PCUC may collect from developers and others who convey cash and/or property to PCUC as CIAC, an amount equal to the tax impact of the CIAC.
- 2) The tax impact amount to be collected shall be determined using the following formula:

Tax impact =
 $(R/(1-R))\{(F+P+L)-(((F+P)/DP)(1-(1+A)-DP))/A\}(S/R)$ where:

- R= Applicable marginal rate of federal and state corporate income tax if one is payable on the value of contributions which must be included in taxable income of the PCUC: $R = ST+FT(1-ST)$, where
- ST= Applicable marginal rate of state corporate income tax
- FT= Applicable marginal rate of federal corporate income tax
- F= Dollar amount of charges paid to PCUC as CIAC which must be included in taxable income of PCUC, and which had been excluded from taxable income pursuant to section 118(b) of the Internal Revenue Code;
- P= Dollar amount of depreciable property conveyed to PCUC which must be included in taxable income of PCUC and which had been excluded from taxable income pursuant to section 118(b) of the Internal Revenue Code
- L= Dollar amount of land conveyed to PCUC which must be included in taxable income of PCUC and which had been excluded from taxable income pursuant to Section 118(b) of the Internal Revenue Code;
- DP= The period of time used in calculating the tax depreciation;
- S= Applicable rate of federal and state corporate income tax during the future periods when tax depreciation benefits will be derived:
- S= $FST+FFT(1-FST)$, where
- FST= Applicable future rate of state corporate income tax;
- FFT= Applicable future rate of federal corporate income tax;
- A= Rate of return of 9.84%.

3) Consistent with the terms of an Agreement dated February 11, 1987 between ITT Community Development Corporation (ICDC) and the PCUC, both being wholly owned subsidiaries of ITT Corporation, tax impact amounts received by the PCUC from ICDC that are specifically related to ICDC projects shall not be required to be deposited as received into an escrow account as would otherwise be required by order No. 16971. However, CIAC tax impact funds received from anyone other than ITT Community Development Corporation must be escrowed pursuant to Order No. 16971.

H. Each party shall furnish to the other such notice, as may be required from time to time required, pursuant to the administration of this Agreement, and shall be in writing, posted in the U.S. mail and addressed as follows:

To PCUC Palm Coast Utility Corporation
 2 Utility Drive
 Palm Coast, Florida 32037

To the DCDD Dunes Community Development District
 10200 N.W. 11th Manor
 Coral Springs, Florida 33071

- I. This Agreement may be amended and modified from time to time as necessary by mutual written agreement of the parties hereto.
- J. This Agreement has been negotiated fully between the parties as an arms length transaction. Both parties participated fully in the preparation of this Agreement. In the case of a dispute concerning the interpretation of any provision of this Agreement, both parties are deemed to have drafted, chosen and selected the language, and the doubtful language will not be interpreted or construed against either part.
- K. It is expressly agreed and understood between DCDD and PCUC that there are no other written or verbal agreements applicable herein between DCDD and PCUC.

In Witness Whereof, DCDD and PCUC have caused these presents to be executed and their respective corporate seals to be hereunto affixed, by their duly authorized officers, the day and year first above written.

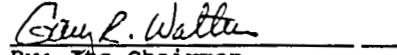
Signed, sealed and delivered
in the presence of:




Signed, sealed and delivered
in the presence of:




Dunes Community Development
District


By: Its Chairman

(CORPORATE SEAL)

PALM COAST UTILITY CORPORATION


By: Its President

(CORPORATE SEAL)

GW/11

Palm Coast Utility Corporation
A Subsidiary of ITT Corporation

May 11, 1992

Mr. Fred Annon
Dunes Community Development District
5000 Palm Coast Parkway
Palm Coast, FL 32137

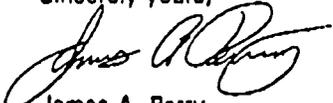
Dear Fred:

It is Palm Coast Utility Corporation's (PCUC) understanding that the Dunes Community Development District (DCDD) is planning to increase the use of treated effluent for irrigation purposes.

PCUC agrees to provide secondary treated wastewater effluent when it is available as determined by PCUC to the DCDD pump station located at the PCUC wastewater plant in amounts not to exceed a maximum daily volume of 1.6 million gallons. If at any time PCUC should determine that sufficient effluent is not available to meet DCDD's requirements at the time, PCUC shall not be obligated to satisfy DCDD's unmet requirements with potable water. DCDD shall coordinate transfer pumping with PCUC at least 24 hours in advance of when effluent is required by DCDD.

If you need additional information or have any questions please contact me at your convenience.

Sincerely yours,



James A. Perry
Vice President of Finance

cc: T. Trace
D. Schlobohm

JAP/bb

RECEIVED

MAY 13 1992

D. C. D. D.



2 Utility Drive, Palm Coast, FL 32137-7392 (904) 445-3311



ADDENDUM AGREEMENT

This Agreement is between the Dunes Community Development District, a local unit of special-purpose government created pursuant to and governed by Chapter 190, F.S., (hereinafter referred to as "DCDD") and Palm Coast Utility Corporation, a Florida corporation (hereinafter referred to as "PCUC").

RECITALS

WHEREAS, PCUC and DCDD have previously entered into an agreement, dated February 23, 1990 governing the provision of effluent to DCDD by PCUC attached here as Exhibit "A" (hereafter the "1990 Agreement"); and

WHEREAS, at DCDD's request and for the benefit of both parties, PCUC agreed to increase the amount of effluent available under the 1990 Agreement, which increase is documented in the May 11, 1992 letter attached hereto as Exhibit "B"; and

WHEREAS, PCUC and DCDD desire to amend the 1990 Agreement; and

WHEREAS, PCUC and DCDD intend that to the extent the terms of the 1990 Agreement and this Addendum Agreement conflict, the terms of this Addendum Agreement shall control and be given effect; and

WHEREAS, PCUC has applied for a new Construction Permit and a modification of their Operation Permit and has a surplus of effluent which it must dispose; and

WHEREAS, PCUC has approached DCDD and requested that DCDD increase its use of effluent until construction of new effluent disposal systems can be completed at PCUC; and

WHEREAS, PCUC needs to dispose of this additional effluent during the construction of the new systems and has proposed that the DCDD use a minimum of 600,000 GPD and provide an additional 1,000,000 GPD wet weather storage capacity for up to seven (7) days; and

WHEREAS, DCDD has incurred costs to provide treatment of effluent for irrigation purposes for its residents and landowners; and

WHEREAS, it is the intent of this Addendum Agreement that DCDD recover from PCUC all DCDD's reasonable out of pocket fees and costs associated with entering into this Addendum Agreement.

Now, therefore, in consideration of the recitals, agreements, and mutual covenants set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, DCDD and PCUC hereto agree as follows:

I. The recitals so stated above are true and correct and by this reference are incorporated into and form a material part of this Agreement.

II. Facilities and Volume

- A. DCDD agrees to accept 600,000 Gallons Per Day ("GPD") of secondary treated effluent from PCUC for the time period ending March 31, 1995, provided that DCDD has first entered into a reciprocal agreement with the owner of the Hammock Dunes golf course located within the boundaries of the District or some other customer, for the acceptance of such effluent. PCUC shall coordinate such effluent transfers with DCDD at least 24 hours in advance of said transfer.
- B. In addition to accepting the effluent described in paragraph IIA above, DCDD agrees to lease storage capacity in its holding ponds to PCUC sufficient to supply to PCUC wet weather storage capacity in DCDD's holding ponds for a maximum of 1,000,000 GPD for up to seven days, for total maximum of 7,000,000 gallons per 7 day period, through March 31, 1995. PCUC shall coordinate such storage and prior to the disposal of effluent in DCDD's ponds, PCUC shall contact DCDD to coordinate such effluent transfers at least 24 hours in advance.
- C. Notwithstanding the above, nothing herein shall obligate the DCDD to accept effluent pursuant to paragraphs II. A and B due to acts of God, war, civil disturbance, natural disaster, regulatory directive, mechanical problems or other circumstances beyond the reasonable control of the DCDD. In addition, notwithstanding any other provision contained in this Addendum Agreement, nothing herein shall be construed to require DCDD to accept any effluent for storage if to do so would violate any permit requirement imposed upon it by any other government or governmental entity, state, local or federal.
- D. If this Addendum Agreement requires approval by the Florida Public Service Commission (FPSC), PCUC and DCDD

agree to cooperate and use their best efforts to secure FPSC approval.

III. Rates and Charges

- A. PCUC agrees to pay to DCDD all of DCDD's reasonable costs associated with entering into and obtaining any necessary regulatory approval of this Addendum Agreement within 30 days of the execution of this Addendum Agreement by both parties, regardless of whether this Addendum Agreement is approved by the Florida Department of Environmental Protection or the Florida Public Service Commission. Such costs shall include, by way of example, but shall not be limited to, consultant and legal fees, cost of studies performed, etc.
- B. PCUC agrees to pay DCDD \$558 per month for the right to dispose of 600,000 gallons per day of effluent as described in paragraph IIA above through March 31, 1995. PCUC agrees to pay DCDD the sum of \$3,341 per month for the lease of 7 million gallons of wet weather storage capacity described in paragraph IIB above through March 31, 1995.
- C. Partial months shall be prorated based on a 30 day month. DCDD shall invoice PCUC monthly in arrears, which invoice shall be due and payable upon issuance. Failure to pay within 20 days of issuance of the invoice shall subject outstanding amounts to a late fee of 1.5% per month.
- D. PCUC agrees that it will be responsible for payment of all taxes and assessments imposed on this lease arrangement, and all taxes and assessments that may be imposed on the DCDD's facilities or property which are the subject of this Addendum Agreement, if any. This includes, but is not limited to, any ad valorem taxes imposed by Flagler County on the holding pond capacity leased to PCUC.

IV. Term of Addendum Agreement

- A. This Addendum Agreement shall expire on March 31, 1995. Nothing herein shall be construed to grant to PCUC the right to acquire, by purchase or otherwise, any portion of the system or facilities leased herein.

IN WITNESS WHEREOF, DCDD and PCUC have caused these presents to be executed and their respective corporate seals to be hereunto affixed, by their duly authorized officers.

Signed, sealed and delivered in the presence of:

David Palm

Fred A. Green

Dunes Community Development District

W. J. Palm
By: Its Chairman

Date: *5/13/94*
(Corporate Seal)

Signed, sealed and delivered in the presence of:

Lucie P. Smith

Elizabeth A. Green

Palm Coast Utility Corporation

Thomas L. Green
By: Its President

Date: *5/13/94*
(Corporate Seal)

/mee

DCDD-PCUC EFFLUENT AGREEMENT

This Agreement, executed this 20 day of SEPTEMBER, 1995, is between the Dunes Community Development District, a local unit of special purpose government created pursuant to and governed by Chapter 190, Florida Statutes, (hereinafter referred to as "DCDD") and Palm Coast Utility Corporation, a Florida corporation (hereinafter referred to as "PCUC").

RECITALS

WHEREAS, PCUC and DCDD (hereinafter referred to collectively as "the Parties") have previously entered into an agreement dated February 23, 1990 governing the provision of effluent to DCDD by PCUC which provided that said agreement may be amended and modified from time to time as necessary by mutual written agreement of the Parties; and

WHEREAS, for the benefit of both Parties, DCDD and PCUC agreed to increase the amount of effluent available under the 1990 Agreement, by an Addendum Agreement executed and dated May 13, 1994; and

WHEREAS, both Parties have been diligently pursuing the resolution of various operating matters between them and using their best efforts to reach this Agreement since the execution of the Addendum Agreement; and

WHEREAS, the Parties agree that it is mutually beneficial to each of them to incorporate the relevant provisions of that Addendum Agreement into this new Agreement, thereby attempting to treat all matters relating to effluent in one document; and

WHEREAS, the DCDD requires additional treated wastewater effluent to supplement its own effluent; and

WHEREAS, PCUC owns and operates a utility system in Flagler County, Florida, governed by Chapter 367, Florida Statutes, the rules and regulations of the Florida Public Service Commission (FPSC), and the Florida Department of Environmental Protection (FDEP); and

WHEREAS, during certain periods PCUC has wastewater effluent that can be made available to DCDD for irrigation purposes; and

WHEREAS, DCDD owns land and is developing a utility system in Flagler County, Florida, in accordance with the rules and regulations of the Florida Department of Environmental Protection including the collection, treatment and disposal of wastewater; and

WHEREAS, DCDD has been permitted by the Department of Environmental Protection for effluent re-use irrigation, and intends to use treated wastewater effluent on the property described on Exhibit "A" and known as Hammock Dunes, Flagler County, Florida; and

WHEREAS, it is the express policy of the State of Florida that it is in the public interest to utilize treated effluent for irrigation purposes; and

NOW THEREFORE, in consideration of the foregoing and mutual covenants set forth herein, the Parties agree as follows:

I. Standards, Volume and Operational Responsibilities

A. During the effective period of this Agreement, DCDD shall be responsible for all costs associated with the operation and maintenance of the pump station, including but not limited to labor, materials, utilities and additional and replacement equipment.

B. DCDD shall obtain directly from utility providers and pay directly to those providers the cost of all utility services (i.e., electricity, telephone, etc.) to be used at the pump station which will service DCDD. Utility services purchased for PCUC, including PCUC's stand-by electrical power supplies, shall not be shared with DCDD.

C. PCUC will furnish DCDD with secondary treated wastewater effluent under the terms of this Agreement. Delivery of effluent to DCDD shall be from the ground storage tank, chlorine contact chamber or other closed system via piping owned and maintained by PCUC. The point of delivery shall be the DCDD pump station located at PCUC's wastewater treatment facility. DCDD shall have sole and exclusive responsibility for the operation and maintenance of the pump station. PCUC shall not be responsible for and shall not participate in the operation of DCDD's pump station, except as requested by DCDD or in response to an operating emergency condition requiring immediate action.

D. All effluent provided by PCUC to DCDD under the terms of this Agreement shall meet the permitting criteria contained in PCUC's operating permits. In the event such permitting criteria are changed, PCUC will immediately notify DCDD of any changes in standards. PCUC shall provide DCDD with copies of all existing current operating permits prior to commencement of service under this Agreement. DCDD shall provide PCUC copies of all of its existing operating permits prior to commencement of service under this Agreement.

E. During the term of this Agreement, DCDD shall have "first call" on up to 1.6 million gallons per day (non-cumulative) of PCUC's secondary treated wastewater effluent, under the terms of this Agreement. By "first call", the parties intend that PCUC will provide effluent to DCDD prior to making such available to others. Any agreement entered into by PCUC for the provision of effluent shall reflect the priority granted herein to DCDD. If DCDD shall fail to accept the full 1.6 million gallons on any day or if PCUC shall generate more than 1.6 million gallons in any single day, PCUC shall be entitled to dispose

of the excess under such terms and to such other entities as PCUC shall deem expedient. Further, PCUC makes no representation and does not guarantee to DCDD that any quantity or level of effluent will be available to DCDD. PCUC's obligation to provide DCDD with secondary treated wastewater effluent shall be limited to availability as determined by PCUC. If at any time PCUC should determine that effluent is not available to meet DCDD's requirements at the time, PCUC shall not be obligated to provide effluent or to satisfy DCDD's unmet requirements with potable water.

F. PCUC shall supply, and DCDD agrees to use its best efforts to accept, an average annual daily volume of 1.6 million gallons of secondary treated wastewater effluent. Notwithstanding, DCDD agrees to accept not less than an annual average of 600,000 gallons per day of secondary treated effluent from PCUC, provided that nothing herein shall be construed to require DCDD to violate any permit imposed upon it by any governmental entity, whether state, local or federal provided, however:

1. That DCDD has first entered into a reciprocal agreement with the owner of the Hammock Dunes golf course located within the boundaries of the District or some other customer, for the acceptance of such effluent. PCUC shall coordinate such effluent transfers with DCDD at least 24 hours in advance of said transfer; and

2. At a minimum DCDD will take each and everyday 300,000 gallons of effluent from PCUC regardless of weather conditions or demand and will use their best effort to accept 600,000 gallons per day.

G. PCUC shall be responsible for the collection and analysis of effluent samples from its effluent system. PCUC shall pay all costs associated with the collection and analysis of such samples from its system. DCDD shall be responsible for the collection and analysis of effluent samples from its effluent system. DCDD shall pay all costs associated with the collection and analysis of such samples from its system.

H. In the event testing by a certified lab at the point of delivery reveals non-conformance with PCUC's DEP permit standards, DCDD shall have the option to immediately discontinue acceptance of effluent until such time as PCUC demonstrates compliance with DEP permit standards; provided, however, that the exercise of this option by DCDD shall not constitute cancellation by DCDD under section II of this Agreement. DCDD shall notify PCUC of test results showing a non-conformance.

I. DCDD acknowledges and agrees that PCUC shall have no responsibility for effluent once it has been delivered to DCDD. DCDD acknowledges that all regulatory responsibility regarding permitting, additional treatment, and monitoring of effluent disposal becomes that of DCDD once the effluent has been delivered to it.

J. If this Agreement requires approval by the Florida Public Service Commission (FPSC), the Parties agree to cooperate and use their best efforts to secure prompt FPSC approval.

K. Access to the DCDD pump station at the PCUC wastewater treatment plant site shall be limited to normal working hours except as otherwise determined by PCUC. DCDD personnel shall abide by all PCUC rules of conduct and safety while on PCUC property and shall comply with all directives given by PCUC personnel. DCDD personnel shall notify PCUC personnel on each occasion of their presence on PCUC facilities.

II. Duration and Termination

A. This Agreement shall commence on the day first written above and shall continue until terminated by the Parties or by either of the Parties as hereinafter provided. At any time, either party shall have the right to terminate this Agreement in its entirety, by giving to the other party written notice of intent to terminate, by registered or certified United States mail, at least twenty-four (24) calendar months prior to its effective date. In the event that this Agreement is terminated pursuant to this paragraph, the rights and obligations of paragraphs II.B, III.B, and III.E., shall survive termination and remain separately enforceable.

B. In the event of termination, DCDD shall remove, at its expense, all DCDD effluent facilities located at the PCUC wastewater plant site. All such facilities shall be removed by DCDD within 45 days of the date of termination. Any DCDD equipment not removed from PCUC property within forty-five (45) days of receipt of written notice to do so may be removed by PCUC. DCDD shall reimburse PCUC for all removal costs and any subsequent costs to store the DCDD equipment. Time of removal is of the essence. Removal costs shall be due and payable to PCUC upon thirty (30) days written notice.

III. Other Provisions

A. There are no understandings or agreements between the Parties concerning the future use of effluent after termination, and once this Agreement is terminated, any future use of PCUC effluent by DCDD will be dependent upon a separate agreement. Nothing herein shall be construed to grant to the DCDD an option or right to acquire, by purchase or otherwise, any components of PCUC's system, inclusive of any components contributed by DCDD. This is the entire Agreement between the Parties concerning effluent and supersedes and replaces all prior and contemporaneous agreements and discussions on the subject matter addressed herein. No modification, amendment, waiver or alteration of this Agreement shall be binding upon either party unless agreed to in writing and signed by both parties.

B. PCUC agrees to and does hereby indemnify and save DCDD harmless from and against any and all losses, damages, claims, actions, attorney fees and court costs, liabilities and expenses in contract or in tort or under any other theory of liability, in connection with the loss of life, bodily injury, and/or property damage occurring in or about or as a result of PCUC's delivery of effluent, to the fullest extent allowed by law, with the exception of willful misconduct on behalf of DCDD, or its agents, officers or employees.

To the DCDD

Dunes Community Development District
5000 Palm Coast Parkway
Palm Coast, FL 32137
Attn: Fred Annon

with copy to:

Hopping, Green, Sams & Smith
P.O. Box 6526
Tallahassee, FL 32314
Attn: Cheryl Stuart, Esq.

F. The parties agree to keep and maintain reasonable insurance coverage for their respective employees to protect against injury which may be suffered on the premises of the other Party. Such insurance may include liability and workers' compensation. Nothing herein shall preclude either Party from self-insuring such risks. In addition, each Party agrees to require contractors who may be providing operational services to their respective utility system to carry insurance to cover similar risks.

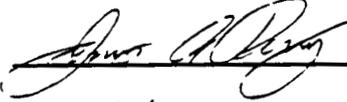
G. No partnership or joint venture shall be created by this Agreement or by PCUC's transfer of effluent to DCDD. Each of the parties shall be solely responsible for the management of their own system; DCDD shall be solely responsible for the management of their own system; DCDD shall be solely responsible for the disposition of effluent subsequent to the point of delivery. DCDD is not an employee of PCUC or of any company affiliated with PCUC. DCDD shall have no power or authority to act for, represent, or bind PCUC or any company affiliated with PCUC in any manner. Neither DCDD nor DCDD's employees are entitled to any medical coverage, life insurance, or other benefits which may be offered to PCUC's employees. DCDD shall be responsible for withholding and making periodic payments of federal income taxes, Social Security taxes and all other employment related taxes as may be applicable. PCUC shall not be responsible for any such payments nor shall PCUC provide Workers' Compensation insurance or any other payments to third persons, including governmental bodies, on account of DCDD's services.

H. This Agreement shall not be assigned by either party without first obtaining the prior written consent of the other, which consent shall not be unreasonably withheld. This Agreement shall be binding upon and shall inure to the benefit of the Parties, their successors and assigns.

I. This Agreement has been negotiated fully between the Parties as an arms length transaction. Both Parties participated fully in the preparation of this Agreement. In the case of a dispute concerning the interpretation of any provision of this Agreement, both Parties are deemed to have drafted, chosen and selected the language, and the doubtful language will not be interpreted or construed against either part.

IN WITNESS WHEREOF, the Parties have caused these presents to be executed and their respective corporate seals to be hereunto affixed, by their duly authorized officers.

Signed, Sealed and Delivered
in the Presence of:

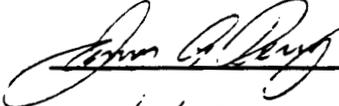

9/20/95

DUNES COMMUNITY DEVELOPMENT
DISTRICT

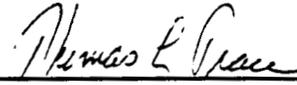
By: 
Its Chairman
Date: 9/20/95

(CORPORATE SEAL)

Signed, Sealed and Delivered
in the Presence of:


9/20/95

PALM COAST UTILITY CORPORATION

By: 
Its President
Date: 9/20/95

(CORPORATE SEAL)