

RESOLUTION OF THE TOWN COUNCIL OF
THE TOWN OF FORT MYERS BEACH, FLORIDA
RESOLUTION NUMBER 99-29

WHEREAS, the Town has filed an action against the Defendants, **LEE COUNTY**, a political subdivision of the State of Florida ("County"), and the **FLORIDA GOVERNMENTAL UTILITY AUTHORITY**, a legal entity created pursuant to Section 163.01(7)(g), Florida Statutes ("FGUA"); and,

WHEREAS, it is in the interest of the public that such action be settled; and,

WHEREAS, the Town's Consultant, Michael E. Burton, has estimated the County Wide Wholesale Rate, which was not increased as a result of the recent acquisition; and,

WHEREAS, the Town is willing to accept that County Wide Wholesale Rate.

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN COUNCIL OF THE TOWN OF FORT MYERS BEACH, FLORIDA that the Town Council authorizes and directs the Town Attorney to execute the attached settlement agreement on behalf of the Town.

THE FOREGOING WAS ADOPTED by the Town Council upon a motion made and seconded, and, upon being put to a vote, the result was as follows:

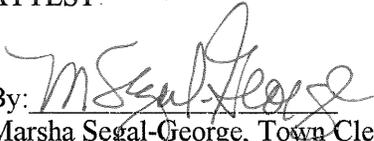
Anita T. Cereceda
Dan Hughes
John Mulholland
Garr Reynolds
Ray Murphy

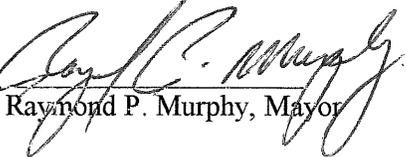
aye
aye
aye
aye
aye

DULY PASSED AND ADOPTED this 30th day of August, 1999.

ATTEST:

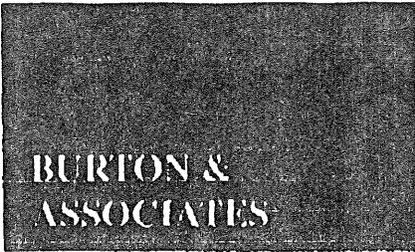
Town of Fort Myers Beach

By: 
Marsha Segal-George, Town Clerk

By: 
Raymond P. Murphy, Mayor

Approved as to form by:


Richard V.S. Roosa, Town Attorney



**BURTON &
ASSOCIATES**

June 3, 1999

Mr. Richard V.S. Roosa, Esq.
Town Attorney
Town of Fort Myers Beach
c/o Roosa, Sutton, McIver, Burandt & Adamski
Post Office Box 535
Cape Coral, Florida 33910

Re: Town of Fort Myers Beach - Lee County Wholesale Rate Analysis

Dear Dick:

I have enclosed a summary of the asset specific wholesale rate calculations proposed by Lee County (provided by Lee County - the top portion of the attached schedule) and an alternative county-wide wholesale rate calculation (developed by me - the bottom portion of the attached schedule). I developed the county-wide wholesale rate analysis using the same allocation methodology and principals embodied in the County's asset specific wholesale rate computation. I have used county-wide cost information contained in an attachment to a letter to you dated March 9, 1999 from David Owen, assistant County Attorney for Lee County (Table 6 - Analysis of Debt Service Coverage - Consolidated System). I have used Lee County billed water gallons for FY 1998 which were provided to me by Marilyn Mansfield, Lee County Customer Service, in a fax dated April 22, 1999.

As you can see from the attached schedule, the County's calculations result in a wholesale rate of \$2.71 per 1,000 gallons, whereas, my calculations on a county-wide basis result in a wholesale rate of \$2.26 per 1,000 gallons. The reason that I prepared this analysis is as follows: If the County would require the Town of Fort Myers Beach to be subject to county-wide retail rates after the acquisition of the Florida Cities Water System (FCWS), then why should the County not be held to the same standard for wholesale rates, that is rates developed based upon county-wide costs rather than isolating specific assets and operations and maintenance costs associated with the Florida Cities Water System to be included in what I have referred to herein as an asset specific wholesale rate.

The Town of Fort Myers Beach requested that the Florida Cities Water System rates remain in effect after the acquisition. However, Lee County insisted on the implementation of county-wide rates. Now, after the Town has been excluded from the initial purchase of the FCWS, the County has changed its tune and is insisting on wholesale rates based upon FCWS costs, rather than on a county-wide basis. I believe that the inconsistency is glaring and works to the detriment of the

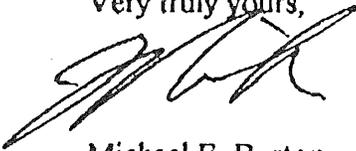
Mr. Richard V.S. Roosa, Esq.
June 3, 1999
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Town. It seems to me that the County should maintain some measure of consistency in its policies regarding rates and should not develop rates in whatever way seems to best fit their purposes under the circumstances.

I should point out that my analysis was developed using the best data and information available to me in the documents that have been provided during our analysis of this purchase transaction for the Town of Fort Myers Beach. The development of an implementable county-wide wholesale rate would require verification of all cost and billing data used. Therefore, this analysis should only be viewed as an indication of the probable order of magnitude of a county-wide wholesale rate as compared to the County's proposed rate. The attached schedule indicates that such a county-wide rate would in the order of magnitude of \$2.26, which is approximately 17% lower than the County's proposed rate.

I trust that this analysis addresses the issues that we have discussed. If you have any questions, please do not hesitate to call me at (904) 247-0787.

Very truly yours,



Michael E. Burton
President

MEB/cs
Enclosure

cc Ms. Marsha Segal-George

IN THE CIRCUIT COURT FOR THE TWENTIETH JUDICIAL CIRCUIT
LEE COUNTY, FLORIDA

TOWN OF FORT MYERS BEACH,
a municipal corporation,
Plaintiff,

vs.

Case No. 99-1753 CA-JBR

LEE COUNTY, FLORIDA, a political
subdivision of the State of Florida,
FLORIDA GOVERNMENTAL
UTILITY AUTHORITY, a legal
entity created pursuant to
Section 163.01(7)(g), Florida Statutes,
Defendants.

**STIPULATED SETTLEMENT AGREEMENT BETWEEN
THE TOWN OF FORT MYERS BEACH, LEE COUNTY, FLORIDA
AND THE FLORIDA GOVERNMENTAL UTILITY AUTHORITY**

This Settlement Agreement ("Agreement"), is entered into by and between Plaintiff, the **TOWN OF FORT MYERS BEACH**, a municipal corporation ("Town"), and Defendants, **LEE COUNTY**, a political subdivision of the State of Florida ("County"), and the **FLORIDA GOVERNMENTAL UTILITY AUTHORITY**, a legal entity created pursuant to Section 163.01(7)(g), Florida Statutes ("FGUA"), collectively, the "Parties" hereto. The Parties in consideration of the representations, covenants and agreements hereinafter set forth and intending to be legally bound hereby agree as follows:

I. TOWN ACQUISITION OF THE POTABLE WATER SYSTEM

1. The County agrees, for the consideration of One Dollar (\$1.00), to assign its right to purchase, and the Town agrees to buy, with financing without the assistance of the County or the FGUA, all of the potable water system (real and personal property) currently owned by the Florida Cities Water Company, Inc., (a private, for-profit, Florida Public Service Commission-regulated corporation) located within the corporate limits of the Town ("System"). The System will be conveyed to the Town on the same basis as the System was to be conveyed to the County by Florida Cities Water Company, Inc.

2. The Town agrees to use all reasonable efforts to close on such sale within thirty (30) days from the effective date of this Settlement Agreement.
3. Once the System has been acquired by the Town, or a not-for-profit corporation identifying the Town as it's sole beneficiary, the Town agrees not to sell said System to any private entity third party for a period of five (5) years from the date of the Town's purchase.
4. The County agrees to make its billing system available to the Town on a contract basis for as long as the Town requests the use of same following its acquisition of the System. The Town agrees to provide, on a contract basis, combined water and sewer billing services to the Town's potable water customers after the Town's acquisition of the System.
5. Once the System has been acquired by the Town, the County agrees to enter into a non-exclusive bulk water service agreement with the Town, at the current bulk water rate of \$2.26/1000 gallons, with a credit of \$.54 / 1000 representing meter reading, billing and line maintenance, for the continued providing of treated potable water to the Town through master meters located immediately adjacent to and within the corporate limits of the Town. It is understood that Lee County shall not be the exclusive supplier of water.
6. The County and the Town agree to cooperate with one another in the development of, and entering into all necessary contracts, documents and actions necessary to accomplish the sale of the System lying within the corporate limits of the Town, to the Town.

II. SETTLEMENT OF ISSUES

1. The Town, the County and the Florida Governmental Utility Authority hereby agree that the above terms and conditions shall fully and completely settle and otherwise resolve all matters and issues as plead and brought forward in the Town's action against the County and the Florida Governmental Utility Authority (Lee County Case No. 99-1753 CA-JBR). The Parties agree that each party shall bear its own attorney's fees and costs in that action.

2. In consideration of the terms and conditions as set out above, the Town agrees to voluntarily dismiss its lawsuit against the County and the Florida Governmental Utility Authority with prejudice, and specifically and unequivocally agrees to waive forever, any and all claims, rights or interests it may have or had, or asserts or alleges that it may have or had with respect to the County's and the Florida Governmental Utility Authority's issuance of the 1999 Water and Sewer Revenue Bonds (Series A and B issued by Lee County, and the several series issued by the Florida Governmental Utility Authority) or the acquisition of the Florida utilities owned by Florida Cities Water Company, Inc. and Poinciana, Inc., by Lee County and the Florida Governmental Utility Authority.
3. The Parties intend that this Agreement shall be enforceable as an Order of the Circuit Court in and for Lee County, Twentieth Judicial Circuit, and that said Court shall retain jurisdiction for the sole purpose of enforcing any of the terms or conditions of this Agreement.
4. In any litigation arising in connection with this Agreement or in any effort to enforce the terms hereof, the prevailing party shall be entitled to reimbursement of its reasonable attorneys fees and costs from the non-prevailing party.
5. This Agreement shall constitute the entire understanding between the Parties and shall supersede all prior communications, whether written or oral, with respect to the settlement of the matters as articulated in the subject lawsuit.
6. This Settlement Agreement shall become effective upon its acceptance and entry of an Order by the Circuit Court in and for Lee County of the Twentieth Judicial Circuit.

IN WITNESS WHEREOF, the Town, the County and the Florida Governmental Utility Authority have caused this Settlement Agreement to be executed by its duly authorized representatives on the day, month and year as indicated below.

DATED AS OF:
August 30, 1999

TOWN OF FORT MYERS BEACH

By: _____
Attorney for the Town of Fort Myers Beach

DATED AS OF:

September , 1999

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

By: _____
County Attorney

DATED AS OF:

September , 1999

FLORIDA GOVERNMENTAL
UTILITY AUTHORITY

By: _____
Attorney for the Florida Governmental Utility Authority

I. TOWN ACQUISITION OF THE POTABLE WATER SYSTEM

1. The County agrees, for the consideration of One Dollar (\$1.00), to assign its right to purchase, and the Town agrees to buy, with financing without the assistance of the County or the FGUA, all of the potable water system (real and personal property) currently owned by the Florida Cities Water Company, Inc., (a private, for-profit, ~~profit, Florida Public Service Commission-regulated~~ Commission-regulated corporation) located within the corporate limits of the Town ("System"). The System will be conveyed to the Town on the same basis as the System was to be conveyed to the County by Florida Cities Water Company, Inc.
2. ~~The County and the Town agree~~ Town agrees to use all reasonable efforts to close on such sale within ~~twenty-four (24) months from the execution~~ thirty (30) days from the effective date of this Settlement Agreement. Any extensions to this schedule will be made upon the mutual agreement of the County and the Town.
3. ~~The County agrees to keep the Town on its currently existing water rates during the time required for the Town to acquire the System as set out above. If for any reason(s), the closing on the sale of the System does not occur within the twenty-four (24) month period, the Town agrees that the County may transition the Town's water customers to the then existing Lee County comprehensive water rates until such time as the closing on the sale has been concluded.~~
4. ~~3.~~ Once the System has been acquired by the Town, or a not-for-profit ~~not-for-profit~~ corporation identifying the Town as its sole beneficiary, the Town agrees not to sell said System to any private entity third party for a period of five (5) years from the date of the Town's purchase.
5. ~~4.~~ The Town agrees to utilize the County's billing system (to be performed by Florida Cities Water Company under contract with the County through May 31, 2000) for the Town's potable water customers during the time prior to the closing on the Town's acquisition of the System. The County agrees to make its billing system available to the Town on a contract basis for as long as the Town requests the use of same following its acquisition of the System. The Town agrees to provide, on a contract basis, combined water and sewer billing services to the Town's potable water customers after the Town's acquisition of the System.