

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of Rookery Bay)	DOCKET NO. 891264-SU
Utility Company for amendment of)	ORDER NO. 23109
Certificate No. 383-S in Collier)	ISSUED: 6-25-90
County.)	
)	

The following Commissioners participated in the disposition of this matter:

MICHAEL McK. WILSON, Chairman
 THOMAS M. BEARD
 BETTY EASLEY
 GERALD L. GUNTER

ORDER GRANTING APPLICATION FOR
AMENDMENT OF CERTIFICATE
AND NOTICE OF PROPOSED AGENCY ACTION
ESTABLISHING RATES

BY THE COMMISSION:

NOTICE IS HEREBY GIVEN by the Florida Public Service Commission that the action discussed herein establishing rates is preliminary in nature, and as such, will become final unless a person whose interests are substantially affected files a petition for a formal proceeding pursuant to Rule 25-22.029, Florida Administrative Code.

Case Background

Rookery Bay Utility Company (Rookery Bay or utility) is a Class C wastewater utility. It provides service in the rural areas of Collier County to approximately 10 wastewater customers, some of which are large mobile home parks. Water is provided by Collier County Utilities.

Rookery Bay was issued Certificate No. 383-S in 1986, after this Commission received jurisdiction of privately owned water and wastewater utilities in Collier County. The utility has not had a rate case before the Commission, but has been involved in an overearnings investigation (Docket No. 860554-SU), which resulted in a reduction of rates. On November 3, 1989, the utility filed the present application for amendment of Certificate No. 383-S to include approximately 40 acres of territory.

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05559 JUN 25 1990

FSC-RECORDS/REPORTING

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The utility has no established rates which can be charged to the customer affected by this amendment. Rather, the utility attempted to set rates through a developer agreement--the same approach the utility took with two other developer agreements. At the May 1, 1990 Agenda Conference, we required the utility to file for a new class of service which would become the basis for determining appropriate rates and charges in the new territory. The developer agreement's rates will be evaluated against the new class service rates established in a separate docket.

Notice and Objection

Pursuant to Section 367.061, Florida Statutes, Rookery Bay began noticing for this amendment application between September 7-24, 1989. The noticing was done improperly, and the utility renoticed in November, 1989. The utility had completed the installation of the lines by October 19, 1989, and the application was filed on November 3, 1989. On December 4, 1989, Collier County filed a timely objection in response to the utility's second notice.

Under Section 367.061(1), Florida Statutes, the utility must notice, install lines, and have service available prior to filing an application for amendment. Since Rookery Bay did not correctly notice until November, 1989, it was technically in violation of Section 367.061(3)(a), Florida Statutes, for extending service before the end of the 30-day objection period. When advised that the noticing was incorrect, the utility promptly renoticed. Had the first notice been correct, the utility would not have violated the Statute by installing the lines. Therefore, since the utility installed the lines under the assumption the noticing requirements had been satisfied, we will not penalize the utility.

Collier County timely objected to the second notice of intent published by Rookery Bay. After lengthy negotiations, the parties resolved their differences and filed a Settlement Stipulation on May 22, 1990. Pursuant to the Stipulation, the County agrees to withdraw its objection, and Rookery Bay agrees to execute the County's facility agreements. We believe the Settlement Stipulation is a reasonable resolution of the dispute and hereby approve it. A copy of the Settlement Stipulation is attached to this Order as "Attachment 1" and by reference is incorporated herein.

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Amendment

The primary purpose of the utility in extending service to the noticed area is to allow the inclusion of the Imperial Wilderness Subdivision into the utility's service area. Two objectives are met by extending the utility's territory. First, the customer will avoid having to install a small wastewater treatment plant, which is difficult to maintain, operate and keep within state standards. Secondly, the utility will be able to more fully utilize its new 300,000 gallons per day wastewater treatment plant.

Except as discussed previously, the application is in compliance with Section 367.061, Florida Statutes, and other pertinent statutes and administrative rules concerning an application for an amendment of certificate. In particular, the notarized application contains:

- A. One check totaling \$150 which, upon calculation, equates to the correct filing fee as prescribed by rule 25-30.020, Florida Administrative Code.
- B. Adequate service territory and system depiction maps and a territory description, as prescribed by rule 25-30.035(h) and (i), Florida Administrative Code. Said territory to be served is described as being in Collier County, and more particularly as described in Attachment 2 attached to this Order and by reference incorporated herein.
- C. Proof of notice to all interested governmental/regulatory agencies, and all utilities within a four-mile radius of the territory to be served, and proof of advertisement in a newspaper of general circulation in the county, as prescribed by rule 25-30.030, Florida Administrative Code.
- D. Evidence that the utility owns the land in which the utility's facilities are located as required by rule 25-30.035(3)(f), Florida Administrative Code.

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The utility has been providing satisfactory service to its customers. The Department of Environmental Regulation currently has no outstanding Notices of Violation or corrective orders against the utility. Based on the above, we find that the utility has the ability to provide service to the additional territory described on Attachment 2; and we also find that it is in the public interest for the utility to be granted said territory as part of its certificated area. The utility is directed to submit revised tariff sheets reflecting the additional territory within thirty days of the date of this order and to return Certificate No. 383-S to the Division of Water and Sewer for entry reflecting the additional territory.

Rates

When the Commission obtained jurisdiction over Rookery Bay Utility on April 16, 1985, all rates were grandfathered.

On November 21, 1989, the utility filed a developer's agreement for the Imperial Wilderness RV park, which is the sole customer within the amended territory. This filing was preceded by a developer's agreement for Six L's Farm and closely followed by another agreement for Rookery Bay Ltd. - Wentworth Development Corporation. We are at this time, unable to properly evaluate the Imperial Wilderness agreement (as well as the other two agreements) because the utility took the inappropriate approach of establishing rates through each separate developer's agreement and had never filed a service availability policy.

Commission Staff informed the utility of its concerns with the utility's approach to setting rates in the developer's agreements, as well as other specific concerns, in a letter dated January 8, 1990. Commission Staff requested a cost justification for the proposed rates in all three of the developer agreements and an explanation for the non-uniform application of the "plant capacity" charge. The company was also informed that it should file a service availability policy.

The utility has been providing service and charging the rates listed in the Imperial Wilderness developer's agreement since October 1, 1989. Since the utility does not have an existing service availability policy, the developer's agreement could not be deemed approved within 30 days of filing as provided for in Rule 25-30.550(1), Florida Administrative Code. Furthermore, the developer's agreement in this case would be akin to a special service availability contract which must

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be approved by the Commission prior to becoming effective under Rule 25-30.550(2), Florida Administrative Code. Thus, the utility has been charging illegal rates.

A developer's agreement is "a written agreement setting forth, in detail, the terms and conditions under which a utility will render service to a developer's property." Rule 25-30.515(6), Florida Administrative Code. It is not stated in the rule that a developer's agreement shall set rates. The rates in the agreement must be consistent with the approved rates in the utility's tariff. The utility here, however, has been using the agreements to set rates. We reiterate that this approach is inappropriate and unlawful.

On April 25, 1990, the utility refiled all three developer agreements as new classes of service; and on May 31, 1990, the utility filed a service availability policy. We recognize that the utility is now working towards compliance with the statute and rules. In light of the spirit of compliance demonstrated by the utility, we will not penalize the utility at this time. Rather, we hereby approve the rates specified in the Imperial Wilderness Developer's Agreement as an interim measure. Since our Staff has not completed its review of the new class of service filing, we believe it best to allow the utility to continue charging the same rate that has been assessed since October 1, 1989. This will prevent a sporadic changing of rates in the event that the final approved rate differs from the proposed new class of service rate.

All of the revenues collected pursuant to the Imperial Wilderness developer's agreement will be held subject to refund. We will address the new class of service issue in Docket No. 900328-SU which was opened upon receipt of the new class of service tariff filing.

As a guarantee to protect the rates collected subject to refund, we will require a corporate undertaking. The amount of the corporate undertaking, \$29,975, is based upon an estimate of the total revenue to be collected.

Pursuant to Rule 25-30.360(6), Florida Administrative Code, the utility shall file a report by the 20th of each month indicating the monthly and total revenue collected subject to refund.

It is, therefore,

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ORDERED by the Florida Public Service Commission that the Settlement Stipulation entered into between Collier County and Rookery Bay Utility Company, attached hereto as Attachment 1, is hereby approved. It is further

ORDERED that Rookery Bay Utility Company is hereby granted the territory set forth in Attachment 2 to this Order. It is further

ORDERED that within 30 days of the date of this Order, Rookery Bay Utility Company shall file revised tariff sheets reflecting the additional territory and shall return Certificate No. 383-S for entry reflecting the additional territory. It is further

ORDERED that the rates specified in the Imperial Wilderness developer's agreement are approved as an interim measure, subject to refund with interest, and the resolution of such matter shall be addressed in Docket No. 900328-SU. It is further

ORDERED that Rookery Bay Utility Bay shall submit a corporate undertaking in the amount of \$29,975, and shall file a monthly report indicating the monthly and total revenue collected subject to refund. It is further

ORDERED that those provisions of this Order, issued as proposed agency action, shall become final, unless an appropriate petition in the form provided by Rule 25-22, Florida Administrative Code, is received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the date set forth in the Notice of Further Proceedings below. It is further

ORDERED that this docket be closed if no timely protests are received.

By ORDER of the Florida Public Service Commission
this 25th day of June, 1990.



STEVE TRIBBLE, Director
Division of Records and Reporting

(S E A L)

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NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.59(4), Florida Statutes, to notify parties of any administrative hearing or judicial review of Commission orders that is available under Sections 120.57 or 120.68, Florida Statutes, as well as the procedures and time limits that apply. This notice should not be construed to mean all requests for an administrative hearing or judicial review will be granted or result in the relief sought.

As identified in the body of this order, our action herein establishing rates is preliminary in nature and will not become effective or final, except as provided by Rule 25-22.029, Florida Administrative Code. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, as provided by Rule 25-22.029(4), Florida Administrative Code, in the form provided by Rule 25-22.036(7)(a) and (f), Florida Administrative Code. This petition must be received by the Director, Division of Records and Reporting at his office at 101 East Gaines Street, Tallahassee, Florida 32399-0870, by the close of business on July 16, 1990. In the absence of such a petition, this order shall become effective on the date subsequent to the above date as provided by Rule 25-22.029(6), Florida Administrative Code, and as reflected in a subsequent order.

Any objection or protest filed in this docket before the issuance date of this order is considered abandoned unless it satisfies the foregoing conditions and is renewed within the specified protest period.

If the relevant portion of this order becomes final and effective on the date described above, any party adversely affected may request judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or by the First District Court of Appeal in the case of a water or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days of the effective date of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

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Any party adversely affected by the Commission's final action in this matter may request: 1) reconsideration of the decision by filing a motion for reconsideration with the Director, Division of Records and Reporting within fifteen (15) days of the issuance of this order in the form prescribed by Rule 25-22.060, Florida Administrative Code; or 2) judicial review by the Florida Supreme Court in the case of an electric, gas or telephone utility or the First District Court of Appeal in the case of a water or sewer utility by filing a notice of appeal with the Director, Division of Records and Reporting and filing a copy of the notice of appeal and the filing fee with the appropriate court. This filing must be completed within thirty (30) days after the issuance of this order, pursuant to Rule 9.110, Florida Rules of Appellate Procedure. The notice of appeal must be in the form specified in Rule 9.900(a), Florida Rules of Appellate Procedure.

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ATTACHMENT 1

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of Rookery)	
Bay Utility Company for Amendment)	Docket No. 89-1264-SU
of Certificate 383-S in Collier)	
County.)	Filed: May <u>22</u> , 1990

SETTLEMENT STIPULATION

Rookery Bay Utility Company (Utility) and the Collier County Water-Sewer District (County), by and through their undersigned counsel, enter into this settlement stipulation and acknowledge the following:

1. That the Utility provided notice of application to amend its sewer certificate, and that the County filed an objection to that notice with the Florida Public Service Commission on December 8, 1989 (copy attached hereto as Exhibit A and incorporated herein); this Docket No. 891264-SU was opened by the Florida Public Service Commission.

2. Utility's notice of application to amend its sewer certificate seeks a service area expansion which is wholly within the boundaries of the Collier County Water-Sewer District.

Florida Public Service Commission

MAY 23 1990

LEGAL DIVISION

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04486 MAY 22 1990

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3. The County and Utility have resolved their differences without need for administrative hearing. Collier County land development regulations require development which necessitates water and/or sewer service within the boundaries of the Collier County Water-Sewer District to provide or employ interim treatment until such time as the regional facilities of the Collier County Water-Sewer District are available. Further, Collier County land development regulations require developers to disconnect from such interim treatment facilities at such time as the Collier County Water-Sewer District is able to serve the subject lands through its regional treatment facilities. To this end, Utility has agreed to enter into facilities agreements with the County (copy of the form attached hereto as Exhibit B) within the territory described in the Corrected Notice filed in this docket on November 29, 1989.

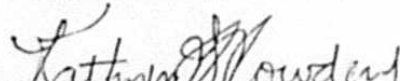
4. The acknowledgements contained herein and Utility's willingness to, in good faith, execute the facilities agreements (copy of form attached hereto as Exhibit B) have resolved the objections by Collier County to Utility's application for amendment of certificate 383-S, and the County hereby withdraws its objection in this docket.

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5. Each party shall bear its own costs and attorney's fees related to this proceeding.

Executed on the later date indicated below.

Respectfully submitted,



ROOKERY BAY UTILITIES, INC.

DATE: 5-22-90

By: Kathryn G.W. Cowdery
Gatlin, Woods, Carlson & Cowdery
1709-D Mahan Drive
Tallahassee, FL 32308
(904) 877-7191

Attorneys for
Rookery Bay Utility Company



COLLIER COUNTY WATER-SEWER DISTRICT

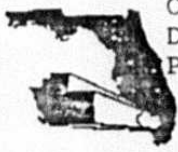
DATE: 5-17-90

By: Mark G. Lawson
Assistant County Attorney
3301 E. Tamiami Trail
Building "F"
Naples, FL 33942
(813) 774-8400

Attorney for
Collier County Water-Sewer District

mgl/dp/1575

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COLLIER COUNTY GOVERNMENT

OFFICE OF THE
COUNTY ATTORNEY

UTILITIES DIVISION
WATER AND WASTEWATER SERVICES

2800 NORTH HORSESHOE DRIVE
NAPLES, FL 33942
(813) 643-8480

December 4, 1989

A CERTIFIED BLUE CHIP COMMUNITY

Florida Public Service Commission
Director of Division of Records
and Reporting
101 East Gaines Street
Tallahassee, Florida 32399-0870

OFFICE OF THE
COUNTY ATTORNEY
90 MAY 17 AM 9:24

Attention: Steve Tribble

RE: Notice Received by Collier County Utilities Division
Which Indicates An Additional Rookery Bay Utility
Company Intention to Expand Its Water and Sewer Service Area
(See Copy Attached)

Dear Mr. Tribble:

Attached please find a copy of a notice from Rookery Bay Utility advising of its intention to seek an expansion of its water and sewer service area to include approximately five (5) acres along U.S. 41, in Collier County, Florida. The Collier County Water-Sewer District by the undersigned Assistant Utilities Administrator notifies you of its qualified objection to the above referenced expansion of water and/or sewer service to the lands described in the above referenced and attached notice.

Prior to the issuance or granting of any expansion to the already existing water and sewer service certificates for Rookery Bay Utility to serve the lands described in the above mentioned notice, the Collier County Water-Sewer District requests an appropriate administrative hearing. To this end, and pursuant to the Florida Administrative code, the Collier County Water-Sewer District, on behalf of itself and its ratepayers both present and future, advises that its substantial interest will be affected by the Public Service Commission's determination to grant the above referenced expansion. Should an administrative hearing be necessary, the Collier County Water-Sewer District reserves the right to file an amended petition.

The initial water and sewer service certificates for the Rookery Bay Utility was granted at a time when the subject area was not included in the Collier County Water-Sewer District nor was it governed by the 201 Wastewater Plan as updated in 1986 or any master plan for either water or sewer service to said area. At this time the subject area is governed by the 201 Wastewater Plan as updated in 1986 and subject to an adopted South County Sewer Master Plan.

EXHIBIT A

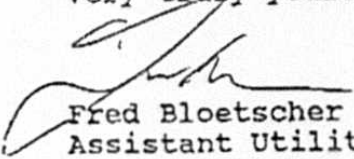
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Any development done on any of the parcels in the area noted in the above-mentioned notice will require as a part of the planned unit development process an agreement that utility facilities other than treatment facilities be dedicated to Collier County and any utility treatment facilities not provided by the Collier County Water-Sewer District shall be interim and shall be dismantled upon service availability through the Collier County Water-Sewer District's regional water and sewer systems. Such requirements comport with and carry out the objectives of the Growth Management Act and Collier County's recently adopted Comprehensive Plan.

Wherefore, the Collier County Water-Sewer District requests that the Public Service Commission either deny the above referenced application for expansion, or preferably in the alternative, require that any service expansion into the area described in the above referenced notice be subject to Collier County land development regulations which require water and/or sewer service within the boundaries of the Collier County Water-Sewer District to be interim and such treatment facilities or connections to be disconnected and dismantled at such time as the Collier County Water-Sewer District is able to serve the subject lands through its regional treatment facilities.

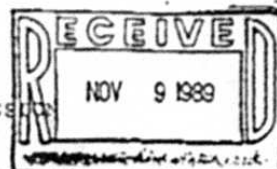
Very truly yours,


Fred Bloetscher
Assistant Utilities Administrator

FB:smc

cc: Wayne Schiefelbien, Attorney
Michael K. Arnold, Utilities Administrator
Mark G. Lawson, Assistant County Attorney

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BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application of ROOKERY)
BAY UTILITY COMPANY for Amendment) Docket No. 891264-SU
of Sewer Certificate No. 383-S in)
Collier County, Florida)
(Imperial Wilderness).)

Misc. Corres
Date _____
Item # _____
Copies to: *Neil Dornell*
Bill Whitebrook
Ken Cuyler

CORRECTED NOTICE

ROOKERY BAY UTILITY COMPANY, 5610 Cynthia Way, Naples, Florida 33962, has filed an application with the Florida Public Service Commission pursuant to Section 367.061, Florida Statutes, for an amendment of its Sewer Certificate so as to include the following described territory, all situated in Collier County, Florida.

The property located within Township 51S Range 26E Section 12, accurately described as:

That portion of the NW 1/4 of the SW 1/4 lying South of U.S. Highway #41 (Tamiami Trail) and that portion of the SW 1/4 of the NW 1/4 lying South of U.S. Highway #41;

AND

The SW 1/4 of the SW 1/4.

LESS THE FOLLOWING DESCRIBED PARCEL

Starting at the Northwest corner of the property at the intersection of the South Right of Way of U.S. 41 and the West line of Section 12, Township 51 South, Range 26 East, Collier County, Florida; and proceeding Southerly along the Section line for approximately 870 feet, thence Easterly for 330 feet, thence Northerly for 660 feet, thence Westerly along U.S. 41 Southerly Right-of-Way for approximately 390 feet to the point of Beginning, comprising approximately 5.8 acres.

Any objection to the said application must be made in writing within thirty (30) days from this date to Mr. Steve Tribble, Director, Division of Records and Reporting, Florida Public Service Commission, 101 E. Gaines Street, Tallahassee, Florida 32399-0850, and a copy of said objection mailed to the below named attorney for the applicant.

Wayne L. Schiefelbein
Gatlin, Woods, Carlson & Cowdery
1709-D Mahan Drive
Tallahassee, FL 32308
(904) 877-7191

[*identify type of treatment facility by inserting
either water or sewer in title of this instrument]

* FACILITIES AGREEMENT

THIS AGREEMENT is made and entered into this [day] day of [month], 19[year],
by and between

[name of Developer - see Instruction No. 2]

(hereinafter referred to as "Developer"),

[name of interim utility service - See Instruction No. 2]

(hereinafter referred to as "Utility") and THE BOARD OF COUNTY COMMISSIONERS OF
COLLIER COUNTY, FLORIDA, AS THE GOVERNING BODY OF COLLIER COUNTY AND AS
EX-OFFICIO THE GOVERNING BOARD OF THE COLLIER COUNTY WATER-SEWER DISTRICT
(hereinafter referred to as "County"). Developer and Utility are used as singular
or plural, as the context requires.

R E C I T A L S :

WHEREAS, for the purposes of this Agreement the term "Developer" shall
include the Developer, the Developer's heirs successors, and assigns, including
but not limited to any wholly owned or controlled subsidiary entity who leases
back any utility facilities from the County; and

WHEREAS, for the purposes of this Agreement the term "Utility" shall include
the Utility, the Utility's heirs, successors and assigns; and

WHEREAS, the Developer is the Owner of the [insert name of project shown on
below referenced construction plans] development, (hereinafter "Project") and has
submitted construction plans to the County for review and approval which employ
interim [identify type of treatment by inserting water or sewer] treatment
(hereinafter "interim treatment" to the Project; and

WHEREAS, the Developer acknowledges and agrees that the Developer is
required to provide interim utility facilities which service the Project until
the utility facilities within the Project can be connected to the off-site
utility facilities operated by the County and the County facilities have the
available capacity to service the Project; and

WHEREAS, Utility represents that it is authorized, or will be authorized
prior to connection, by all appropriate regulatory agencies to provide interim
treatment to the Project as contemplated herein.

WHEREAS, Collier County land development regulations require, Developer
covenants and agrees, and Utility acknowledges, that the Developer shall connect
any interim utility system serving that Project to the off-site utility system
operated by the County when the County's system has been extended to within two
hundred (200) feet of the Project and the available off-site utility system has
available capacity to service the entire Project; and

WHEREAS, Developer and Utility have entered into an agreement under which
Utility has agreed to provide interim treatment until the utility facilities
within the Project are connected to the off-site utility facilities operated by
the County and the County facilities have available capacity to service the
Project.

AGENDA ITEM
No. 4 (D) (3)

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WHEREAS, the extension of the off-site utility system operated by the County to within two hundred (200) feet of the boundary of the Project shall be not required of the County as performance under this Agreement; and

WHEREAS, all parties to this Agreement acknowledge and agree that the decision as to whether or not any off-site utility system operated by the County has the capacity to service the Project shall be made solely by the County; and

WHEREAS, at such time as connection of the Project to the County's off-site utility system appears imminent, County shall supply sufficient notice to Utility and Utility shall thereafter take the requisite action, if any, required by the Public Service Commission to effectuate connection of the Project to the County's off-site system; and

WHEREAS, all parties to this Agreement acknowledge and covenant to assist and cooperate with each other and expeditiously advance the intention and terms of this Agreement relative to actions or prior approvals, if any, required by the Public Service Commission in order to effectuate connection of the Project to the County's off-site system, and

WHEREAS, the Developer acknowledges its obligation to dedicate all appropriate collection, distribution and transmission facilities and appropriate easements to the County prior to placing said facilities into service; and

WHEREAS, if required by the County the Developer, or other successor entity satisfactory to the County, will maintain and operate the associated on-site collection, distribution and transmission plant pursuant to a lease agreement with the County as set forth hereinbelow; and

WHEREAS, the Developer has previously accepted the terms and conditions set forth in this Agreement as part of the County's review and approval of the Developer's land use petitions.

W I T N E S S E T H :

NOW, THEREFORE, in consideration of the covenants hereinafter contained the parties agree as follows:

- 1. RECITALS INCORPORATED. The above Recitals are true and correct and shall be incorporated herein.
- 2. INTERIM FACILITY. The appropriate collection, distribution and transmission facilities are to be constructed as part of the proposed Project and shall be used as an interim facility; all utility facilities shall be constructed to State and Federal standards and are to be owned, operated and maintained by the Developer or other successor entity satisfactory to the County until such time as the County's off-site utility facilities are available to service the project. The interim facilities shall supply services only to the Project or, subject to the County's approval, other lands owned by the Developer. The interim facilities may not provide service outside the Project without the written consent of the County.
- 3. DEVELOPER TO DISMANTLE. Upon connection to the County's off-site utility facilities the Developer shall abandon, dismantle and remove from the site those portions of the interim facilities not required for connection to or service by the County's off-site system. All work related with this activity shall be performed at no cost to the County whatsoever.
- 4. CONNECTION TO COUNTY'S OFF-SITE SYSTEM AT NO COST TO COUNTY. Connection to the County's off-site utility facilities will be made by the Developer at no cost to the County within ninety (90) days after such facilities become available. The cost of connection shall include, whenever the County requires, but not be limited to, all engineering design and preparation of construction documents, permitting, modification or refitting of existing pumping facilities, construction of new pumping facilities, interconnection with County off-site utility facilities, any transmission, distribution or collection lines necessary

AGENCY
NO. 14(A)-13

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to make the connection and any required environmental audits, including the expense of bringing the subject facilities into compliance and response costs for clean-up removal or remediation.

5. CONVEYANCE OF INTERIM TREATMENT FACILITIES NEEDED FOR CONNECTION AND OPERATION OF COUNTY'S OFF-SITE SYSTEM. At the time the County's off-site facilities are available for the Project to connect with, all utility facilities required by the County to make the connection with the County's off-site utility facilities shall be conveyed to the County pursuant to County ordinances and regulations then in effect, together with all utility easements required by the County. All construction plans and technical specifications related to the connection of the County's off-site utility facilities shall be submitted to the County for review and approval prior to commencement of construction.

6. CUSTOMER TURNOVER. All customers served within the Project on an interim basis by Utility shall become customers of the County at the time when the County's off-site [identify type of treatment by inserting water or sewer] facilities are available to serve the Project and such connection is made. Prior to connection of the interim facilities system serving the Project to the County's off-site utility facilities, Developer, and Utility if applicable, shall turn over to the County a complete list of customers served by the interim utility system within the Project and shall not compete in any way with the County for the service of those customers. The Developer, and Utility if applicable, shall also provide the County with a detailed inventory of the facilities served within the Project and cooperate fully in the transfer of any billing procedures.

7. SYSTEM DEVELOPMENT CHARGES TO BE PAID PRIOR TO PERMIT ISSUANCE. The Developer agrees to pay all applicable system development charges at the time that Building Permits are required, pursuant to County Ordinances and Regulations then in effect. This requirement shall be made known to all prospective buyers of properties within the Project for which building permits will be required.

8. LEASEBACK OF DEDICATED FACILITIES. If required by County, the County and the Developer shall enter into a leaseback of the collection, distribution and transmission facilities to the Developer to allow for continued operation of the interim utility system. Such a leaseback shall be upon terms comparable to utility facilities lease agreements then entered into by the County as required by and in accordance with applicable County land development regulations and/or utility standards and procedures. Any such lease agreement shall be in a form approved by the Office of the Collier County Attorney.

9. BINDING EFFECT. This Agreement shall be binding upon the parties, their successors and assigns.

IN WITNESS WHEREOF, the parties have executed this Agreement as of the date and year first above written.

[Developer's witness and signature block - see Instruction No. 3]

[Utility's witness and signature block - see Instruction No. 3]

ATTEST:
 JAMES C. GILES, Clerk

BOARD OF COUNTY COMMISSIONERS
 OF COLLIER COUNTY, FLORIDA, AS
 THE GOVERNING BODY OF COLLIER
 COUNTY AND AS EX-OFFICIO THE
 GOVERNING BOARD OF THE COLLIER
 COUNTY WATER-SEWER DISTRICT

BY: _____
 Chairman

Approved as to form and
 legal sufficiency

 Assistant County Attorney

AGENDA ITEM
 11-A(D)(3)

MAY 08 99

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[Developer's acknowledgment and notary block - see Instruction No. 4]
[Utility's acknowledgment and notary block - see Instruction No. 4]

STATE OF FLORIDA
COUNTY OF COLLIER

I HEREBY CERTIFY that on this day, before me, an officer duly authorized in the State and County aforesaid to take acknowledgments, personally appeared _____, well known to me to be the Chairman of the Board of County Commissioners, Collier County, Florida, As The Governing Body of Collier County and as Ex-Officio the Governing Board of The Collier County Water-Sewer District, being authorized so to do, executed the foregoing [insert exact name of instrument] for the purposes therein contained under authority duly invested by the Board of County Commissioners, and that the seal affixed thereto is the true seal of said Board.

WITNESS my hand and official seal in the County and State last aforesaid this ____ day of _____, 19__.

(Notarial Seal)

Notary Public

My Commission Expires:

mjl/dp/1663

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ATTACHMENT 2

DESCRIPTION FOR ROOKERY BAY UTILITY COMPANY

COLLIER COUNTY

SERVICE TERRITORY DESCRIPTION (Imperial Wilderness)

Township 51 South, Range 27 East

In Section 12

That portion of the NW 1/4 of the SW 1/4 lying South of U.S. Highway #41 (Tamiami Trail) and that portion of the SW 1/4 of the NW 1/4 lying South of U.S. Highway #41;

AND

The SW 1/4 of the SW 1/4.

LESS THE FOLLOWING DESCRIBED PARCEL

Starting at the Northwest corner of the property at the intersection of the South Right of Way of U.S. 41 and the West line of Section 12, Township 51 South, Range 26 East, Collier County, Florida; and proceeding Southerly along the Section line for approximately 870 feet, thence Easterly for 330 feet, thence Northerly for 660 feet, thence Westerly along U.S. 41 Southerly Right-of-Way for approximately 390 feet to the Point of Beginning, comprising approximately 5.8 acres.