



PASCO COUNTY, FLORIDA

BOARD OF COUNTY COMMISSIONERS

T [Signature]

Mike Wells
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ORIGINAL
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August 28, 1991

Mr. Richard Sims
S&D Utility
Post Office Box 280012
Tampa, FL. 33608-0012

900025-WS

RE: Bulk Wastewater Treatment Agreement for Shady Oaks Mobile Home Park

Dear Sir

At the Pasco County Board of County Commissioners' meeting of August 27, 1991, the above-mentioned agenda item was approved. Enclosed you will find an original agreement for your files.

If you have any questions, please contact the Board Records Department at the address or telephone number indicated below.

Sincerely,

Jed Pittman
By: Elaine H. Mitchell, DC

JED PITTMAN
Clerk to the Board

JP/ehm

Enclosure

Reply to:

- 705 East Live Oak Avenue - Dade City, Florida 33525 - (904) 521-4274
7530 Little Road - New Port Richey, Florida 34654 - (813) 847-2411

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FPSC-RECORDS/REPORTING

AGREEMENT BETWEEN  
S & D UTILITY AND PASCO COUNTY

THIS AGREEMENT, made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 1991, by and between S & D UTILITY, organized under the laws of the State of Florida, hereinafter referred to as "S & D", and PASCO COUNTY, a political subdivision of the State of Florida, acting by and through its Board of County Commissioners, the governing body thereof, hereinafter referred to as "COUNTY".

W I T N E S S E T H:

WHEREAS, S & D has received a certificate from the Florida Public Service Commission authorizing the provision of public sewer service to an area located in the southeast portion of the COUNTY pursuant to Chapter 367.041, Florida Statutes; and,

WHEREAS, S & D is seeking to eliminate interim disposal systems; and,

WHEREAS, S & D has requested the COUNTY to provide such bulk wastewater treatment service for its existing customers and any proposed expansion of S & D'S system; and,

WHEREAS, subject to the conditions and limitations set forth herein, the COUNTY desires to provide bulk wastewater treatment services to S & D for the purpose of offering centralized wastewater services from the COUNTY'S Southeast Subregional Wastewater Treatment Plant, which presently possesses sufficient excess capacity to provide such treatment; and,

WHEREAS, in conjunction with the requested service, the COUNTY desires to provide certain standards for S & D'S wastewater treatment system and certain requirements for the quality of influent delivered by S & D to the COUNTY for treatment.

NOW, THEREFORE, in consideration of the premises which shall be deemed an integral part of this Agreement and of the mutual covenants and conditions set forth herein, the COUNTY and S & D intending to be legally bound thereby, agree as follows:

Section 1. Purpose.

It is the purpose and intent of this Agreement to provide for central public sewer services to existing homes and structures and future homes and structures located in the certificated area of S & D UTILITY and to provide for additional assurances of timely payment to the COUNTY of all costs incurred in the provision of such service by the COUNTY, including, but not limited to, cost of operation and maintenance, debt service costs, capital costs, renewal and replacement costs, and expansion costs. All terms and conditions contained herein shall be read and interpreted in a manner consistent with and in furtherance of this purpose and intent.

Section 2. Bulk Wastewater Treatment Service.

1. Subject to the conditions and limitations set forth herein, the COUNTY shall provide bulk wastewater treatment services to S & D. Such services shall be provided through a Pasco County approved connection with S & D UTILITY system. The location and type of connection shall be approved by the COUNTY prior to the time that the work is actually performed. Such work shall be supervised and directed by the COUNTY and must meet all applicable State and COUNTY standards. It shall be the responsibility of S & D to furnish proof from its staff, engineer, or other appropriate source to the COUNTY'S Utilities Director and/or other appropriate members of the staff of the compatibility and equivalency of all such material and standards of performance as previously mentioned.

a. S & D shall install, as part of its connection to the COUNTY system, an appropriate metering device at a point of connection which is acceptable to the COUNTY for the purposes of determining the amount of wastewater treatment services being provided by the COUNTY pursuant to this Agreement. It shall be the responsibility of S & D to pay all costs associated with the purchase, installation, and repairs of such meter. The COUNTY shall own and operate the meter and the COUNTY shall have the absolute right of access for testing, reading purposes, and for any necessary repairs to maintain the integrity of the COUNTY'S wastewater collection system. S & D shall also be provided reasonable access to the meter for testing and reading purposes.

2. Meter Reading and Payments. The COUNTY will invoice S & D on a monthly basis in accordance with meter readings taken. S & D shall make payment based upon the meter readings within thirty (30) days after receipt of the invoice from the COUNTY. In the event that the payment is not made within thirty (30) days after receipt of the invoice, S & D agrees to pay interest or penalties as established from time to time in the COUNTY'S utility service regulations on the outstanding balance until paid in full. Nothing contained herein, including the charging of interest, shall extend the due date for any payment and any failure to pay on or before the due date shall be considered a default under the terms of this Agreement. S & D shall be liable for the costs of the purchase and installation of any meters or similar equipment or devices used to measure the amount of wastewater treated. In the event S & D disputes the accuracy of any meter reading, it must demonstrate through appropriate calibration testing that the meter is either not properly calibrated or is not functioning properly.

3. Monthly Service Rate. S & D agrees to pay the COUNTY a service rate of Four and 13/100 Dollars (\$4.13) per thousand gallons of wastewater treated based upon the meter readings; provided, however, this rate, including any or all components thereof, as

identified in Section 1, may be adjusted upward or downward by the Board of County Commissioners from time to time in accordance with the COUNTY'S rate-setting procedures.

4. Impact Fees. In addition to the monthly service rate, S & D agrees to pay impact fees to the COUNTY as follows:

a. New Development. S & D agrees that any new development within its service area will pay to the COUNTY, uniform commitment and impact fees in amounts equivalent to those fees charged by the COUNTY for its retail utility customers as established from time to time by the Board of County Commissioners, which fees will be collected by the COUNTY in accordance with its Sewer Use Ordinance. However, in the event the COUNTY adopts a bulk wastewater impact fee for new development subsequent to the execution of this Agreement, said new development shall pay the bulk impact fees established by the Board of County Commissioners from time to time for connections made to S & D'S system after such adoption. Said fees shall be paid to the COUNTY prior to connection of any new development to S & D'S systems and will be collected by the COUNTY in the same manner as the COUNTY collects impact fees for its utility system.

b. Existing Development. S & D and the COUNTY agree that no separate, up-front impact fees will be charged for existing structures or development as of the date of this Agreement which are presently connected to S & D'S system.

5. Treatment Capacity. The COUNTY agrees to treat wastewater pursuant to this Agreement, provided sufficient capacity is available at the COUNTY'S wastewater treatment facilities and all appropriate permits have been obtained by S & D from State regulatory agencies.

a. S & D agrees to abide by the Pasco County Sewer Use Ordinance including the Regulations for Discharge to Pasco County Wastewater System (attached as Exhibit "B") in its entirety and as it may be changed from time to time by requirement of Federal or State authorities and/or by the COUNTY.

b. S & D agrees that it shall not engage in wastewater treatment services on its own, or utilize treatment services from others during the term of this Agreement provided the COUNTY has available capacity to adequately treat wastewater flows from S & D.

6. Coordination of Flows. S & D will cooperate in every possible way with the COUNTY to coordinate flows into the plant so that they shall not exceed the permitted per-day maximum for the plant.

7. Notwithstanding any other provisions contained herein, the COUNTY shall not be liable for any damages as the result of the inability or failure to provide sewage treatment services pursuant to this Agreement either on a temporary, emergency or permanent basis. The COUNTY shall use its best efforts to provide the treatment capacity

needed by S & D to service its customers. Notwithstanding the foregoing, the COUNTY reserves the right to proportionately reduce the gallonage made available under this Agreement to comply with reduced treatment capacity as restricted from time to time by governmental regulatory authorities.

8. Public Sewer Collection System. S & D shall, at its expense:

a. Purchase, install, repair, or maintain its entire wastewater collection system, including all sewer lines, master meters, and other facilities and appurtenances that may be necessary in order to tap into or make connections with the COUNTY'S wastewater system;

b. Cause to be conducted all investigations and testing that may be required in order for S & D to tap into said system, including all design, construction, repair, and maintenance of said connection equipment; and,

c. Cause all sewer lines, master meters, and all other facilities required for the connection to the COUNTY system to be repaired and maintained in accordance with appropriate standards and specifications.

9. Permits. S & D shall have the responsibility of securing and maintaining all necessary permits from all governmental agencies having regulatory authority of S & D'S public sewer collection system. The COUNTY shall have the same responsibility as to its sewer system.

10. Quantity Deficiencies. The COUNTY shall not be liable in damages to S & D in the event that the quantity of sewage to be treated under this Agreement shall be curtailed or diminished at no fault of the COUNTY.

### Section 3. General Provisions.

1. This Agreement shall be executed in two (2) counterparts, each of which will be considered an original. This Agreement is binding upon the successors and assignees of the parties hereto. The provisions of this Agreement constitute the entire terms and provisions of this Agreement between the parties hereto, and no amendment or alteration shall be binding unless the party affected thereby shall have executed a written instrument amending the Agreement. Whenever one (1) party gives notice to the other party concerning any of the provisions of this Agreement, such notice shall be given by certified mail, return receipt required. Said notice shall be deemed given when it is deposited in the United States mail with sufficient postage prepaid (notwithstanding that the return receipt is not subsequently received). Notices shall be addressed as follows:

PASCO COUNTY:                   County Administrator  
                                  Pasco County Government Center  
                                  7530 Little Road, Room 203  
                                  New Port Richey, FL 34654

S & D UTILITY:

Mr. R. D. Sims  
Post Office Box 280012  
Tampa, FL 33682-0012

These addresses may be changed by giving notice as provided for in this paragraph.

2. No waiver of breach of any of the terms of this Agreement shall be construed to be a waiver of any succeeding breach.

Section 4. Default.

1. If either party materially fails or defaults in keeping, performing, or abiding by the terms and provisions of this Agreement, then the nondefaulting party shall give written notice to the defaulting party specifying the nature of the default. If the defaulting party does not cure the default within thirty (30) days after the date of written notice, then this Agreement, at the option of the nondefaulting party, shall terminate. Neither party shall be relieved of liability to the other for damages sustained by virtue of any party wrongfully exercising this provision. This paragraph is not intended to replace any other legal or equitable remedies available to any nondefaulting party under Florida law, but it is in addition thereto. Notwithstanding the foregoing, any failure to make timely payments shall be considered a material default under the terms of this Agreement without the necessity for any written notice to S & D.

Section 5. Term.

This Agreement shall have a term of twenty-five (25) years commencing on the date of execution of this Agreement. This Agreement shall not be considered an obligation on the part of PASCO COUNTY to perform in any way other than as indicated in this Agreement. The COUNTY shall not be obligated under the terms of this Agreement to treat additional sewage from S & D in or from areas outside its certificated area unless the COUNTY issues written notification that it does not object to such additional service. PASCO COUNTY also affirmatively states as part of this Agreement that its first responsibility is to the customers inside its own service limits and that it reserves the right to act in the best interest of those customers in all circumstances.

Section 6. Utility System Charges.

S & D shall fix, revise, maintain, and collect such fees, rates, rentals, or other charges for the use of the products, services, and facilities of its utility system as shall be necessary to fund the timely payment of its respective obligations and liabilities under this Agreement. S & D shall maintain its utility system operation and maintain accounts throughout the term of this Agreement for the purpose of paying its obligations and liabilities hereunder.

Section 7. Miscellaneous Provision.

1. In the event the COUNTY'S performance of this Agreement is prevented or interrupted by consequent of an act of God, or of the public enemy, or national emergency, allocation, or other governmental restrictions upon the use or availability of labor or materials, rationing, civil insurrection, riot, racial or civil rights disorder or demonstration, strike, embargo, flood, tidal wave, fire, explosion, bomb detonation, nuclear fallout, windstorm, hurricane, sinkholes, earthquake, or other casualty or disaster or catastrophe, unforeseeable failure or breakdown of pumping, transmissions, or other facilities, governmental rules or acts or orders or restrictions of regulations or requirements, acts or actions of any government, except the COUNTY, or public or governmental authority or commission or bond or agency or official or officer, or judgment or a restraining order or injunction of any court, the COUNTY shall not be liable for such nonperformance, and the time of performance shall be extended for such time period that the COUNTY is diligently attempting to perform.

2. The parties hereto agree that from and after the date of execution hereof, each will, upon the request of the other, execute and deliver such other documents and instruments and take other actions as may be reasonably required to carry out the intent of this Agreement.

3. This Agreement shall be binding upon the heirs, representatives, and assigns of the parties hereto, and the provisions hereof shall constitute covenants running with the land for the benefit of the heirs, representatives, and assigns of the party. However, this Agreement shall not be assigned by S & D without the express permission of the COUNTY; however, such consent shall not be unreasonably withheld by the COUNTY.

4. In the event the COUNTY ever elects to exercise its power of eminent domain for the purpose of acquiring all or any part of the utility system which may be owned by S & D, the COUNTY will not be required to pay S & D for any value which might be attributable to the services provided by the COUNTY under the terms of this Agreement. In other words, such services provided by the COUNTY under this Agreement shall have no residual value in the event the COUNTY seeks to condemn all or any part of S & D'S system. This shall not be construed as a waiver of any defense, including the defense of lack of authority, S & D may have to such an action by the COUNTY or to any claim for compensation as an ongoing business concern.

5. S & D agrees that, upon execution of this Agreement, it will immediately file the same with the Florida Public Service Commission and, in the event Commission approval is required, S & D shall use its best faith efforts to obtain such approval. Notwithstanding any other provisions of this Agreement, in the event the Florida Public Service Commission

approval of this Agreement is required prior to its effectiveness, the same must be approved in its entirety as a condition precedent to the effectiveness of the Agreement and the effective date of this Agreement shall be the date of approval by the Florida Public Service Commission.

EXECUTED this 27<sup>th</sup> day of August, 1991, in Pasco County, Florida.

(SEAL)

ATTEST:

BY:

Jed Pittman

JED PITTMAN, CLERK

By: Elaine H. Mitchell, DC

WITNESSES:

Kenneth W. Hurst

Alma S. Hurst

BOARD OF COUNTY COMMISSIONERS  
OF PASCO COUNTY, FLORIDA

BY:

Mike Wells  
MIKE WELLS, CHAIRMAN

S & D UTILITY

BY:

Richard D. Lewis

APPROVED AS TO LEGAL FORM AND CONTENT  
Office of the County Attorney

BY:

[Signature]  
Attorney