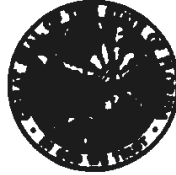


STATE OF FLORIDA

03/12/97
PSC

Commissioners:
JULIA L. JOHNSON, CHAIRMAN
SUSAN F. CLARK
J. TERRY DEASON
JOE GARCIA
DIANE K. KIESLING



DIVISION OF LEGAL SERVICES
NOREEN S. DAVIS
DIRECTOR
(904) 413-6199

Public Service Commission

March 12, 1997

B. Kenneth Gatlin
Gatlin, Schiefelbein & Cowdery
1709-D Mahan Drive
Tallahassee, Florida 32308

Re: Gulf Utility Company
Dockets Nos. ~~960229~~-WS and 960234-WS

Dear Mr. Gatlin:

Enclosed is a copy of Late Filed Exhibit No. 2 from the Gulf Utility Hearing, which was presented by the San Carlos Golf Club during the customer testimony on March 5, 1997.

Please contact me if you have any questions about this exhibit.

Sincerely,

Margaret E. O'Sullivan
Senior Attorney

- ACK _____
 - AFA _____
 - APP _____
 - CAF _____
 - CMU _____
 - CTR _____
 - EAG _____
 - JLS _____
 - ST _____
- cc: Court Reporter (Nash)
Division of Records and Reporting
Division of Water and Wastewater (Merchant, Von Fossen)

orig to Matilde for TR

DOCUMENT NUMBER-DATE
02678 MAR 13 97
FPSC-RECORDS/REPORTING

DOCUMENT NUMBER-DATE

WAS _____
OTH _____

Exhibit 2



SAN CARLOS GOLF CLUB

7420 Constitution Circle, S.E.

• Port Myers Florida 33912 •

(941) 267-3131

February 26, 1997

FAX: 433-5933

Page 1 of 12.

Law Offices: Belker & Poliakoff, P.A.

Attn: Joe Adams

The cost of the effluent holding pond is \$140,000.

Also attached is a copy of the contract to construct the pond.

If additional information is needed, please call me.

Thank you,

Bill

Bill Butler, President
Board of Directors

CONTRACT DOCUMENTS
FOR
SAN CARLOS GOLF COURSE RE-USE EFFLUENT HOLDING POND
IN
LEE COUNTY, FLORIDA
28511

FOR
SAN CARLOS GOLF, INC.
7420 Constitution Circle S.E.
Fort Myers, FL 33912

Prepared by:
Bean, Whitaker, Lutz & Barnes, Inc.
13141-8 McGregor Boulevard
Fort Myers, FL 33919

May, 1994

Revised May 26, 1994

Contractor within ten (10) days of the contractor's written notice to Club that the work on said phase has been completed. If no objections are made within this period, then payment shall be tendered to Contractor and Contractor shall submit simultaneously a Progress Payment Affidavit, Partial Release of Lien, or, if completion is final, a Contractor's Final Affidavit, on forms which the Club may provide, indicating that all subcontractors, laborers, materialmen and suppliers have been paid for the work completed.

All work under this Contract shall be subject to the approval of the Club, and no payment shall be due under the Contract, if Club does not approve of the work completed under the Contract. In the event of a dispute arising between Club and Contractor, under this provision, the parties shall agree upon and appoint a third party expert to determine whether or not the work meets the specifications set out in the Contract. If the work meets said specifications, Club shall make the payment due, whereas if the specifications are not met, all work necessary to meet the specifications shall be done by Contractor to the satisfaction of the third party expert before payment is due under the contract agreement, or Club may exercise such other rights as are provided herein. All costs associated with the retaining of the third party expert shall be divided equally between the Club and the Contractor. In the event the parties cannot agree as to the third party expert, Club may select such expert.

Payments due to Contractor may be withheld by Club on account of defective work not remedied, claims filed, reasonable evidence indicating probability of filing claims, failure of Contractor to make payments properly to subcontractor or for material or labor, or the reasonable belief of Club that the work to be performed under this contract which remains unfinished cannot be completed for the balance then unpaid. If any of the foregoing said causes is not removed, or if Contractor at any time shall refuse or neglect to supply adequate and competent supervision or sufficient properly skilled workmen or materials of the proper quality or quantity necessary for the performance of the work hereunder, or fail in any respect to prosecute the work with promptness and diligence or fail to perform or to adhere to any agreement on its part herein contained, Club shall have the option, after seven (7) days written notice to Contractor and without prejudice to any other remedy it may have, to pay such claims and provide for such labor or materials and to deduct the cost thereof from any money due or thereafter to become due by Club to Contractor. In addition to the foregoing rights and remedies, Club shall be at liberty to terminate the employment of Contractor under this contract and to enter upon the premises and take possession of all materials or appliances, of any kind whatsoever, thereon and to employ any other person or persons to finish the work and to provide the materials therefor, and in case of such discontinuance of the employment of Contractor, he shall not be entitled to receive any payment under this contract which might be due him, until said work shall be finished and payment in full therefor shall be made by Club at which time, if the unpaid balance of the amount to be paid under this contract shall exceed the expenses incurred by Club in finishing Contractor's work, such excess shall be paid by Club to Contractor, but if such expenses shall exceed such unpaid balance Contractor shall pay the difference to

Initials

_____ Club
 _____ Contractor

Club. Contractor's right to payment under this Contract shall also be subject to those conditions for payment set forth in other paragraphs of this Contract.

4. Contract Costs:

The work includes all transportation, storage, equipment, supplies, labor and materials, plans, drawings and specifications, necessary for a complete and functional installation, and the work shall comply with all applicable codes and inspection requirements. All work performed by this Contractor or by others to make this Contractor's work comply with applicable building codes, or interpretations thereof, shall be performed at no additional cost to the Club. The work shall also include all labor, materials, and everything required or claimed by Contractor's materialmen, suppliers, or laborers to complete the work in accordance with the drawings and specifications, notwithstanding that such labor, materials or other things may not be designated in the drawings and specifications.

Contractor shall give all notices and comply with all local ordinances, requirements of city and county building codes and of federal and state authorities which are applicable to the work, local sanitary laws and rules and regulations and all orders both present and future, and interpretations of such ordinances, requirements, laws, rules, and regulations by governing public authorities, regardless of whether such ordinances, requirement laws, rules and regulations are set forth in this contract, or the Drawings and Specifications. Contractor shall furnish without any extra charge any additional materials and labor which may be required to comply with such ordinances, requirements, laws, rules and regulations. Contractor shall secure, in its own name and right, and pay for all permits, inspections, fees, licenses and royalties necessary for the execution of the work to be performed.

Contractor will pay all social security and other taxes imposed upon him as an employer in connection with the performance of this contract, and will furnish evidence, when required by Club, showing that all such payments required to be made have been paid.

Contractor shall pay all applicable health and welfare charges, local state and federal taxes including sales and use taxes, and union fees in connection with its work.

Contractor shall pay for and secure prior to the commencement of work, a Performance Bond and Payment Bond, in the full contract amount, issued by a surety licensed to do business in Florida and shall provide the Club a certificate thereof.

All contract costs paid by Contractor shall be at the expense of Contractor.

Initials

_____ Club

_____ Contractor

5. Supervision:

Contractor shall supervise and direct the Work, using its best skill and attention and it shall be solely responsible for all construction means, methods, techniques, sequences and procedures and for coordinating all portions of the Work under the Contract. Contractor shall at all times enforce strict discipline and good order among its employees and shall not employ on the Work any unfit person or anyone not skilled in the task assigned to him.

Contractor shall be responsible for initiating, maintaining, and supervising all safety precautions and programs in connection with the Work. It shall take all reasonable protection to prevent damage, injury or loss to (1) all employees on the Work and other persons who may be affected thereby, (2) all the Work and all materials and equipment to be incorporated therein, and (3) other property at the site or adjacent thereto. It shall give all notices and comply with all applicable laws, ordinances, rules, regulations and orders of any public authority including but not limited to O.S.M.A., bearing on the safety of persons and property and their protection from damage, injury or loss.

Further, it is the sole responsibility of Contractor to secure, safeguard and protect his material and operation from damage or theft until formally accepted by Club.

Contractor shall promptly remedy all damage or loss to any property caused in whole or in part by Contractor, any subcontractor, or anyone directly or indirectly employed by any of them, or by anyone for whose acts any of them may be liable. Contractor shall be responsible to Club for the acts and omissions of its employees, subcontractors and their agents and employees, and other persons performing any of the Work under a contract with the Contractor, including with regard to damages to any persons or property. The foregoing obligations of the Contractor are in addition to his obligations under Paragraph 9.

Contractor shall be prohibited from utilizing subcontractors for any portion of the Work hereunder, without the written consent of the Club. The Club's consent shall be conditioned upon, but not limited to, Contractor naming the Club as a primary, intended third party beneficiary in the subcontract. In the event Contractor utilizes a subcontractor and/or enters into a subcontract, Contractor shall be deemed to have automatically assigned to Club any and all of the subcontractor's guarantees and warranties and assigned to the Club contract rights relating to enforcement of the subcontract and job specifications (which assignment shall not preclude the Contractor from pursuing any of its contract rights directly against the subcontractor), whether or not such assignments are expressed in or referred to in the subcontract or any separate document.

6. Insurance:

The Contractor agrees to furnish workmens compensation and liability insurance with limits of at least \$ 1,000,000.00 /s/ 1,000,000.00 for each occurrence and property damage of at least \$ 1,000,000.00 said

Initials

_____ Club
_____ Contractor

insurance shall be noncumulative to other jobs of Contractor and primary to the Club and shall name the Club as an additional named insured through completion of the work and final acceptance by the Club. The Contractor agrees to supply the Club with evidence of and keep said insurance policies in full force and effect during the entire course of the work to be performed. The certificate of insurance shall provide the Club with the right to receive at least ten (10) days' notice of intent to cancel the policy. It is the understanding that if any insurance cancellation notice is received by the Contractor, it will immediately notify Club and Contractor agrees to replace said policies promptly. Contractor agrees that it shall perform no work under this Agreement during such time as said insurance policies are not in full force and effect.

7. Clean Up

Contractor shall cause no waste to the premises or adjoining property in the performance of this Contract and at all times shall keep the premises free from accumulation of waste materials or rubbish caused by its operations. At the completion of the Work it shall remove all of its waste materials and rubbish from and about the Project as well as its tools, construction equipment, machinery and surplus materials and return all affected areas of the property to a broom clean condition.

If after three days notice by Club's representative to Contractor's representative at the site of the work Contractor has not diligently proceeded with the clean-up as outlined in this paragraph, then Club has the right to proceed with the clean-up work at Contractor's costs and expense.

Free, clear and unobstructed egress and ingress with respect to all units shall be maintained by Contractor.

8. Warranties

Contractor warrants to Club that all materials and equipment incorporated in the work will be new unless otherwise specified and that all work will be of good quality, free from faults and defects and in conformance with the contract documents, including but not limited to the specifications and building code requirements. All work not conforming to these standards may be considered defective.

9. Hold Harmless

To the fullest extent permitted by law, the Contractor shall indemnify and hold harmless the Club and its members, agents and employees from and against all claims, damages, losses, and expenses, including but not limited to attorneys' fees arising out of or resulting from the performance of the Work, provided that any such claim, damage, loss or expense (1) is attributable to bodily injury, sickness, disease or death, or to injury to or destruction of tangible property (other than the Work itself) including the loss of use resulting therefrom, and (2) is caused in whole or in part by any negligent act or omission of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable,

Initials

_____ Club
 _____ Contractor

regardless of whether or not it is caused in part by a party indemnified hereunder. Such obligation shall not be construed to negate, abridge, or otherwise reduce any other right or obligation of indemnity which would otherwise exist as to any party or person described in this Paragraph 9. In any and all claims against the Club or any of its members, agents or employees by any employee of the Contractor, any Subcontractor, anyone directly or indirectly employed by any of them or anyone for whose acts any of them may be liable, the indemnification obligation under this Paragraph 9 shall not be limited in any way by any limitation on the amount or type of damages, compensation or benefits payable by or for the Contractor or any Subcontractor under workers' or workmen's compensation acts, disability benefit acts or other employee benefit acts. The parties hereto specifically acknowledge and agree pursuant to Fla. Stat. Sec. 775.06(2) that a portion of the consideration given by Club to Contractor pursuant to the terms hereinabove in the specific amount of \$100 is specific consideration to Contractor for indemnification provided for in this Paragraph 9.

10. Lien:

Contractor will save and keep the free from all construction liens and all other liens by reason of his work or any materials or other things used by him therein. If Contractor fails to remove such lien(s) by bonding it or otherwise or if Contractor files a lien against the buildings(s) referred to in this contract or the lands upon which they are situated prior to the time when the amount claimed is payable to Contractor by Club under the terms of this contract, Club may retain sufficient funds, out of any money due or thereafter to become due by Club to Contractor to pay the same and to pay all costs incurred by reason thereof, including reasonable attorney's fees and the cost of any lien bonds that Club may elect to obtain, and Club may pay said lien or liens and costs out of any funds which are or which become due to Contractor and which are at any time in the possession of Club. Contractor agrees to waive the filing of a construction or materialmen's lien against the property for any claims pursuant to this agreement. Invoices shall be accompanied with a detailed breakdown of the allocation of the amount required together with copies of lien releases.

11. Waiver:

No change or modification of this Contract shall be valid unless in writing and signed by all parties hereto. No waiver of any provisions of this Contract shall be valid unless in writing and signed by the party against whom it is sought to be enforced. Further, the provisions, conditions, terms and covenants herein contained shall bind and the benefits and advantages shall inure to the respective successors, assigns, trustees, receivers and personal representatives of the parties hereto.

No failure of Club to exercise any power or right given hereunder or to insist upon strict compliance by Contractor with any of his obligations hereunder, and no custom or practice of the parties at variance with the terms of this contract, shall constitute a waiver or variation of Club's rights to demand exact compliance with the terms hereof. This

Initials

_____ Club
 _____ Contractor

agreement is the result of negotiations between the parties and shall not be construed more strictly against either party.

12. Alterations:

No alterations shall be made in the work as shown or described in the Drawings and Specifications as modified by applicable ordinances, requirements, laws, rules and regulations as set forth herein, except on the written authorization of Club, and when so made, the value of the work or materials added or omitted and any extension or deduction from the time of completion necessitated thereby shall be computed and determined by Contractor, subject to the written approval and acceptance by Club, and the amount so determined shall be added to (if Contractor has not previously agreed to perform the additional work under the terms of this contract) or deducted from the contract price or prices and time of completion. Contractor shall have no claim for the cost of additional work or for an extension of time (including, without limitation, claims for impact damages or to costs due to delay) unless such work and the cost and expenses thereof or time is stated on the face of a written change order and approved and accepted by the Club on such written change order. Any attempted reservation by Contractor of the right to subsequently claim any amount or extension of time not stated on the face of a written change order approved and accepted by Club shall be null and void. All change orders issued under this contract shall be subject to all of the terms of this contract.

13. Assignment:

Contractor shall not let, assign or transfer this Contract or any part thereof, or any interest therein, without the written consent of Club.

14. Notices:

Notices to the parties as provided herein shall be by certified mail to the following addresses:

As to Club:

San Carlos Golf, Inc.
c/o Paul Johndrow, President
7395 Laurel Valley Road
Fort Myers, FL 33912

and

Becker & Poliakoff, P.A.
c/o Joseph E. Adams, Esquire
The Colonnades
13815 Ball Tower Drive
Suite 101
Fort Myers, FL 33907

and

Initials

_____ Club
_____ Contractor

Bean, Whitaker, Lutz
& Barnes, Inc.
c/o Frank Feron, P.E.
13141 McGregor Boulevard
Fort Myers, FL 33919

As to Contractor:
CABANA CONST INC.
PO. BOX 06639
FORT MYERS FL 33906

15. Attorney's Fees and Venue:

Contractor shall reimburse Club for reasonable attorneys' fees and costs including such fees and costs for any appeal, incurred by reason of Contractor's failure to perform or adhere to any agreement on his part contained in this contract. Venue shall lie in Lee County, Florida.

Witnesses:

H. Franklin Feron
Signature
H. Franklin Feron
Printed Name
James M. Rowe
Signature
JAMES M. ROWE
Printed Name

SAN CARLOS GOLF, INC.

By: [Signature]
Carl Dagele, Vice President
Date: 6-14, 1994
(SEAL)

Witnesses:

H. Franklin Feron
Signature
H. Franklin Feron
Printed Name
James M. Rowe
Signature
JAMES M. ROWE
Printed Name

(CONTRACTOR)

By: [Signature]
VICE, President
Date: 6-14, 1994
(SEAL)

MyLibraryAccount/gerson

Initials
[Signature] Club
[Signature] Contractor

CABANA CONSTRUCTION COMPANY, INC.

7181 AUGER DRIVE, P.O. BOX 08630, FORT MYERS, FL 33906 (813) 332-1865

ST 1, 1994

CARLOS GOLF, INC
PAUL JONSDROW
LAUREL VALLEY ROAD

SAN CARLOS GOLF COURSE RENOVATION PROJECT

SAN CARLOS GC

DESCRIPTION	UNIT PRICE	QUANTITY	CURRENT	PREVIOUS	TO DATE	CONTRACT PRICE	TOTAL
-------------	------------	----------	---------	----------	---------	----------------	-------

CLEARING & GRUBBING	5,500.00	2.25 AC	0%	100%	100%	12,375.00	12,375.00
10' WIDE BERM IN LAKE	1.50	4100 CY	60%	40%	100%	6,150.00	6,150.00
5' WIDE BERM AROUND LAKE	1.50	300 CY	100%	0%	100%	450.00	450.00
LAKE EXCAVATION	3.00	10000 CY	65%	35%	100%	30,000.00	30,000.00
TURBIDITY SCREEN	6.50	1200 LF	0%	100%	100%	7,800.00	7,800.00
REMOVE/REUSE SILT SCREEN	1.00	605 LF	100%	0%	100%	605.00	605.00
SWALE EXCAVATION	5.00	480 LF	100%	0%	100%	2,400.00	2,400.00
SOD-419 BERMUDA	3.00	3120 SY	100%	0%	100%	9,360.00	9,360.00
SPRIG AREAS-419 BERMUDA	2,750.00	2.1 AC	0%	25%	25%	5,775.00	1,443.75
ARGENTINA BAHIA-EROSION	1.50	1760 SY	100%	0%	100%	2,640.00	2,640.00
RELOCATE UTILITIES	3,500.00	LUMP SUM	100%	0%	100%	3,500.00	3,500.00
RELOCATE SPRINKLER LINES	9,000.00	LUMP SUM	0%	100%	100%	9,000.00	9,000.00
PAYMENT/PERFORMANCE BOND	3,000.00	LUMP SUM	0%	100%	100%	3,000.00	3,000.00
TESTING	1,000.00	LUMP SUM	100%	0%	100%	1,000.00	1,000.00
TEE AREA RENOVATION	4,280.00	LUMP SUM	50%	50%	100%	6,420.00 ✓	6,420.00
FAIRWAY RECONSTRUCTION #13	14,670.00	LUMP SUM	60%	40%	100%	14,670.00	14,670.00
3 IRREGULAR BUNKERS	7,380.00	LUMP SUM	10%	90%	100%	7,380.00 ✓	7,380.00
NEW IRRIGATION INSTALLED	24,980.00	LUMP SUM	100%	0%	100%	24,980.00 ✓	24,980.00
SOD FOR BUNKERS INSTALLED	4,210.00	LUMP SUM	100%	0%	100%	4,210.00 ✓	4,210.00
FAIRWAY PLANTING	6,750.00	LUMP SUM	0%	0%	0%	6,750.00	0.00
CATCH BASIN/8" DRAIN LINE	3,500.00	LUMP SUM	100%	0%	100%	3,500.00	3,500.00

TOTAL COMPLETE	150,743.75
LESS 10% RETAINAGE	15,074.38
SUB-TOTAL	135,669.38
LESS PREVIOUS PAYMENTS	56,005.88
DUE APPLICATION #2	79,663.49

9412671788

02/25/1997 14:44

YDOS

APP. \$140,000

*131.2
21
140,000*

Print Time Feb. 25. 1:44PM

Print Time

Feb. 25. 1:38PM

Received Time.