

BEFORE THE PUBLIC SERVICE COMMISSION

In re: Application for amendment of Certificates 592-W and 509-S to extend water and wastewater service area to include certain land in Polk County by Cypress Lakes Utilities, Inc.	DOCKET NO. 070275-WS ORDER NO. PSC-07-0718-PAA-WS ISSUED: September 4, 2007
--	---

The following Commissioners participated in the disposition of this matter:

LISA POLAK EDGAR, Chairman  
MATTHEW M. CARTER II  
KATRINA J. McMURRIAN  
NANCY ARGENZIANO  
NATHAN A. SKOP

FINAL ORDER AMENDING CERTIFICATE NOS. 592-W AND 509-S  
TO INCLUDE ADDITIONAL TERRITORY IN POLK COUNTY  
AND  
PROPOSED AGENCY ACTION ORDER APPROVING SPECIAL DEVELOPER  
AGREEMENT

BY THE COMMISSION:

NOTICE is hereby given by the Florida Public Service Commission that the action discussed herein regarding the special developer agreement is preliminary in nature and 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.

Background

On April 17, 2007, Cypress Lakes Utilities, Inc. (Cypress Lakes or utility) filed an application to amend Certificate Nos. 592-W and 509-S to add water and wastewater territory to its service area in Polk County, pursuant to section 367.045, Florida Statutes. Cypress Lakes is a Class B utility which provides water and wastewater service in Polk County to approximately 1,218 water customers and 1,123 wastewater customers. The utility's 2006 annual report shows combined water and wastewater annual operating revenues of \$745,699, and a net income of \$35,352. The proposed area is in the Southwest Florida Water Management District. Cypress Lakes proposes to serve 120 potential water and wastewater residential customers. The area consists of approximately 50 acres which is the site of a new development (Phase 12) located inside Cypress Lakes Golf and Country Club. We have jurisdiction pursuant to section 367.045, Florida Statutes.

DOCUMENT NUMBER-DATE

07925 SEP-4 07

FPSC-COMMISSION CLERK

### Amendment

The application is in compliance with the governing statute, section 367.045, Florida Statutes, and Rule 25-30.036, Florida Administrative Code. The application contains proof of compliance with the noticing provisions set forth in Rule 25-30.030, Florida Administrative Code.

The utility has demonstrated its ability to serve the proposed extended areas and that it has the necessary financial and technical expertise to do so. The Department of Community Affairs has indicated that the utility's application is consistent with the Polk County Comprehensive Plan. The utility operates a .448 MGD water treatment facility, which consists of pumping and chlorine disinfection, with no storage capability. For wastewater, there is a .175 MGD extended aeration wastewater treatment facility with effluent disposal by means of reuse to two golf courses inside the Cypress Lakes community. To accommodate the additional flows from the proposed area, the utility indicated in its application that its water treatment plant has sufficient capacity. However, expansion will be needed for the wastewater treatment plant. Pursuant to an agreement between the utility and the developer of the property, the developer has agreed to share in funding the \$250,000 estimated cost of the improvements to the wastewater treatment plant. The agreement also indicates that the water distribution and sewer collection lines will be contributed.

The utility also provided verification of a deed to the water and wastewater treatment plant sites. Adequate service territory maps and a territory description have also been provided. No objections to the application have been received and the time for filing such has expired.

Based on the foregoing, we find that it is in the public interest to approve the application filed by Cypress Lakes to amend its territory to reflect the area described in Attachment A. The resultant order shall serve as Cypress Lakes' amended certificates and shall be retained by the utility. The utility shall charge the customers in the territory added herein the rates and charges contained in its current tariff until authorized to change by this Commission.

### Special Developer Agreement

The utility's amendment application included an agreement for water and wastewater service for the new 120 connection, Phase 12, development located inside Cypress Lakes Golf and Country Club. Pursuant to Rule 25-30.550(2), Florida Administrative Code, each special service availability contract shall be approved by this Commission prior to becoming effective. Contained within the agreement, the developer agrees to construct and install the complete distribution, collection and interconnection facilities needed to serve Phase 12. Ownership of this property will be conveyed to the utility. The water treatment plant has sufficient capacity. However, expansion of the utility's wastewater treatment plant will be necessary to accommodate additional flows from the proposed amended area. In the proposed agreement, the developer agrees to pay the utility half of the \$250,000 estimated cost for necessary improvements to the utility's wastewater treatment plant. The utility will in turn provide water

and wastewater service to all customers within the proposed area. Existing monthly service rates approved by this Commission shall apply.

Currently, the utility's service availability fees and charges do not include plant capacity charges for water or wastewater. Pursuant to Order No. PSC-07-0199-PAA-WS, issued March 5, 2007, in Docket No. 060257-WS,<sup>1</sup> we proposed to authorize plant capacity charges of \$1,500 each for water and wastewater service for new connections. However, the order was protested by the developer. A hearing has been set for September 2007. Negotiations are ongoing among the parties to address the appropriateness of plant capacity charges for the proposed new development as well as the remaining undeveloped lots in Cypress Lakes. The appropriateness of service availability charges will be addressed in the pending rate case in Docket No. 060257-WS.

Pursuant to Rule 25-30.550(3), Florida Administrative Code, each special service availability contract and developer's agreement shall be accompanied by a statement from the utility affirming the current treatment plant connected load, the current treatment plant capacity, and the amount of capacity reserved under the agreement or contract. This information shows that the utility has the capacity to serve the customers in the proposed area with the wastewater expansion.

We recognize that developers' agreements are negotiated transactions. If they are not approved and the utility declines to amend its service territory, the developers might have to provide their own water and wastewater service by building small water and wastewater plants, or installing individual wells and septic tanks, which are not the best environmental option.

Based on the above, we find that the special developer agreement in Attachment B between Cypress Lakes Associates, Ltd. and Cypress Lakes Utilities, Inc. is hereby approved. The appropriateness of service availability charges will be addressed in the pending rate case in Docket No. 060257-WS.

Based on the foregoing, it is

ORDERED by the Florida Public Service Commission that Cypress Lakes Utilities, Inc.'s application for amendment of Certificate Nos. 592-W and 509-S is hereby approved as set forth herein. It is further

ORDERED that all attachments attached hereto are incorporated herein by reference. It is further

ORDERED that Cypress Lakes Utilities, Inc. shall charge the customers in the territory added herein the rates and charges approved in its tariff until authorized to change by this Commission in a subsequent proceeding. It is further

---

<sup>1</sup> In re: Application for increase in water and wastewater rates in Polk County by Cypress Lakes Utilities, Inc.

ORDERED that the special developer agreement between Cypress Lakes Associates, Ltd. and Cypress Lakes Utilities, Inc. is hereby approved. It is further

ORDERED that if no protest is filed to the special developer agreement within 21 days of the issuance of this Order, this docket shall be closed upon the issuance of a Consummating Order.

By ORDER of the Florida Public Service Commission this 4th day of September, 2007.



---

ANN COLE  
Commission Clerk

( S E A L )

KEF

NOTICE OF FURTHER PROCEEDINGS OR JUDICIAL REVIEW

The Florida Public Service Commission is required by Section 120.569(1), 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 regarding the special developer agreement is preliminary in nature. Any person whose substantial interests are affected by the action proposed by this order may file a petition for a formal proceeding, in the form provided by Rule 28-106.201, Florida Administrative Code. This petition must be received by the Office of Commission Clerk, at 2540 Shumard Oak Boulevard, Tallahassee, Florida 32399-0850, by the close of business on September 25, 2007. If such a petition is filed, mediation may be available on a case-by-case basis. If mediation is conducted, it does not affect a substantially interested person's right to a hearing. In the absence of such a petition, this order shall become effective and final upon the issuance of a Consummating 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.

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 Office of Commission Clerk, 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 wastewater utility by filing a notice of appeal with the Office of Commission Clerk 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.

**CYPRESS LAKES UTILITIES, INC.**

**EXTENSION OF SERVICE TERRITORY**

TO BE ADDED TO WATER AND WASTEWATER CERTIFICATES:

The East  $\frac{1}{2}$  of the Northwest  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of Section 3, Township 27 South, Range 23 East, all lying and being in Polk County, Florida, LESS AND EXCEPT the East 132.0 feet of the South 330.0 feet thereof:

TOGETHER WITH

The West  $\frac{1}{2}$  of the Northeast  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of Section 3, Township 27 South, Range 23 East, Polk County, Florida; LESS AND EXCEPT the East 330.0 feet thereof an LESS AND EXCEPT the South 330.0 feet thereof.

TOGETHER WITH

The East 330.0 feet of the West  $\frac{1}{2}$  of the Northeast  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of Section 3, Township 27 South, Range 23 East, Polk County, Florida; LESS AND EXCEPT the South 330.0 feet thereof. Excepting therefrom any portion of the above described land lying within the maintained right-of-way known as Max Cash Road as depicted on Polk County Maintained Right-of-Way Map recorded May 16, 1990, in Map Book 11, Page 55, of the Public Records of Polk County, Florida.

TOGETHER WITH

The West  $\frac{1}{2}$  of the Northwest  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of Section 3, Township 27 South, Range 23 East, all lying and being in Polk County, Florida

TOGETHER WITH

The South 30.0 feet of the West  $\frac{1}{2}$  of the Northeast  $\frac{1}{4}$  of the Northwest  $\frac{1}{4}$  of Section 3, Township 27 South, Range 23 East, all lying and being in Polk County, Florida.

**FLORIDA PUBLIC SERVICE COMMISSION**

Authorizes

**Cypress Lakes Utilities, Inc.**  
Pursuant to  
**Certificate Number 592-W**

to provide wastewater service in Polk County in accordance with the provisions of Chapter 367, Florida Statutes, the Rules, Regulations and Orders of this Commission in the territory described by the Orders of this Commission. This authorization shall remain in force and effect until superseded, suspended, cancelled or revoked by Order of this Commission.

<u>Order Number</u>	<u>Date Issued</u>	<u>Docket Number</u>	<u>Filing Type</u>
PSC-00-0264-FOF-WS	02-08-2000	971220-WS	Transfer
PSC-07-0718-PAA-WS	09-04-2007	070275-WS	Amendment

**FLORIDA PUBLIC SERVICE COMMISSION**

Authorizes

**Cypress Lakes Utilities, Inc.**  
Pursuant to  
**Certificate Number 509-S**

to provide wastewater service in Polk County in accordance with the provisions of Chapter 367, Florida Statutes, the Rules, Regulations and Orders of this Commission in the territory described by the Orders of this Commission. This authorization shall remain in force and effect until superseded, suspended, cancelled or revoked by Order of this Commission.

<u>Order Number</u>	<u>Date Issued</u>	<u>Docket Number</u>	<u>Filing Type</u>
PSC-00-0264-FOF-WS	02-08-2000	971220-WS	Transfer
PSC-07-0718-PAA-WS	09-04-2007	070275-WS	Amendment



**AGREEMENT FOR WATER AND WASTEWATER SERVICE -  
CYPRESS LAKES, PHASE 12**

This Agreement is entered into this 22 day of December, 2006 by and between Cypress Lakes Associates, Ltd. (hereinafter referred to as "Developer"), and Cypress Lakes Utilities, Incorporated, a Florida corporation (hereinafter referred to as "Utility").

**WITNESSETH**

WHEREAS Developer is the owner of or is duly authorized to act on behalf of the owners of certain real estate in Polk County, Florida, hereinafter referred to as "Property" and more fully described in Exhibit A attached hereto, and

WHEREAS, Utility is engaged in the business of furnishing water and wastewater service to the public in its service territory as authorized by its Certificate of Public Convenience and Necessity and

WHEREAS, Developer desires Utility to provide water and wastewater service to the Property to serve 120 residential building lots and Utility desires to provide water and wastewater service to the Property according to the terms and conditions of this Agreement.

WHEREFORE, in consideration of the mutual covenants as hereinafter set forth, the parties hereto agree as follows:

**ARTICLE I**

**Representations and Warranties of Developer**

Developer represents and warrants:

1. That Developer is the owner of or is duly authorized to act on behalf of the owners of the Property, and;
2. That Developer will cooperate fully with the Utility in any and all applications or petitions to public authorities deemed necessary or desirable by Utility in connection with the construction and installation of the water and wastewater systems contemplated by this Agreement.
3. That Developer will convey to the Utility or provide by recorded subdivision plats such easements or rights of way as the Utility may require for the Utility's performance of its obligations under this Agreement. Any such plats, conveyances or licenses will be in form satisfactory to Utility's legal counsel, and in conformance with the amendment to the Declaration of Covenants, Conditions, Restrictions, and Easement Agreement, substantially in the form attached hereto as Exhibit B (the "Amendment Declaration").

**ARTICLE II**

**Construction and Installation of Facilities by Developer**

1. The Developer hereby agrees to construct and install the complete distribution, collection and interconnection facilities (hereinafter collectively referred to as "Facilities") including but not limited to water and wastewater mains, pumping stations, valves, services, and other facilities as are reasonably required to provide adequate water and wastewater service (in accordance with applicable governmental standards) to all units to be constructed within the Property. Developer shall be responsible for interconnecting the Facilities with adequate diameter water and wastewater mains to Utility's existing water and wastewater systems at a point specified by Utility.
2. The Facilities to be constructed by Developer pursuant to Paragraph 1 of this Article II when installed, will meet the reasonable needs of the customers within the Property. All plans, specifications and construction shall be in accordance with applicable standards, requirements, rules and regulations and agencies of the State of Florida and respective County authority.
3. All materials used shall be new, first-class, and suitable for the uses made thereof.
4. Developer warrants all construction, materials, workmanship, and the trouble-free operation of the Facilities for one year after completion of each phase or section.
5. Developer shall save and hold Utility harmless from and against all suits or claims that may be based upon any injury to any person or property that may occur in the course of the performance of the construction of the Facilities by Developer or by anyone acting on Developer's behalf, or under Developer's supervision and control, including but not limited to claims made by employees of Developer, and Developer shall, at its own cost and expense, pay all costs and other expenses arising therefrom, or incurred in connection therewith, including reasonable attorneys' fees.
6. All of the Facilities installed by Developer pursuant to this Agreement shall become the property of Utility as installed. Developer shall execute all conveyances, licenses and other documents reasonably requested by Utility that are necessary or desirable in its opinion to ensure its ownership of, ready access to, and operation of the Facilities. Developer shall furnish Utility with lien waivers in a form satisfactory to Utility's counsel from Developer and from all suppliers, subcontractors and all others who furnish labor, equipment, materials, rentals, or who perform any services in connection with the Facilities construction herein.

7. Developer shall, prior to the transfer to Utility of the Facilities, grant permanent, assignable easements satisfactory to Utility, authorizing Utility to own, operate and maintain the Facilities and providing reasonably adequate rights of access and working space for such purposes.
8. Developer shall, upon transfer to Utility of the Facilities, provide to Utility operating manuals, permits, as-built drawings, and all other information reasonably required to operate, maintain, and repair the Facilities.

#### **ARTICLE III**

##### **Developer Contribution/Connection Fees**

Developer agrees to pay Utility half of the cost of necessary improvements to the Utility's wastewater treatment facility, including costs associated with engineering, design, permitting, and construction activities, and whose total estimated cost is \$250,000. Developer agrees to pay Utility \$125,000 upon execution of this Agreement, which will be applied toward its obligation to pay half of the actual cost of engineering design, permitting, and construction activities.

#### **ARTICLE IV**

##### **Utility Service, Rates and Charges**

1. Upon installation of the Facilities, completion of the interconnection and payment of fees by Developer, Utility agrees to supply all customers within the Property with adequate and customary water and wastewater service.
2. Water and wastewater usage charges shall be rendered by Utility in accordance with Utility's rates, rules and regulations and conditions of service from time to time on file with the Florida Public Service Commission and then in effect.

#### **ARTICLE V**

##### **Inclusion in Service Area**

Upon the execution of this Agreement, Utility shall petition the Florida Public Service Commission for permission to include the Property in Utility's service area as approved by the Florida Public Service Commission. In the event that the Florida Public Service Commission shall fail to approve and grant said petition to include the Property in Utility's service area within twelve (12) months from the date hereof, either party hereto shall have the right to terminate this Agreement at any time until the Property is included in the said service area. The Developer shall be responsible for payment of all costs associated with said

petition and make a deposit in the amount of \$12,000 with the Utility for said expenses

**ARTICLE VI**

**General**

1. This Agreement is intended to be performed in the State of Florida and shall be governed by the laws of the State of Florida.
2. Except as provided for in this Agreement, neither party to this Agreement shall be liable to the other for failure, default or delay in performing any of its obligation hereunder, if such failure, default or delay is caused by strikes or other labor problems; by forces of nature, unavoidable accident; fire; acts of the public enemy; interference by civil authorities, acts or failure to act, decisions or orders or regulations of any governmental or military body or agency, office or commission; delays in receipt of materials; or any other cause, whether of similar or dissimilar nature, not within the control of the party affected and which, by the exercise of due diligence such party is unable to prevent or overcome, except as otherwise provided for herein. Should any of the foregoing events occur, the parties hereto agree to proceed with diligence to do what is reasonable and necessary so that each party may perform its obligations under this Agreement.
3. The failure of either party hereto to enforce any of the provisions of this Agreement or the waiver thereof in any instance by either party shall not be construed as a general waiver or relinquishment on its part of any such provisions, but the same shall, nevertheless, be and remain in full force and effect.
4. Utility agrees to indemnify Developer, its successors and assigns, and hold Developer harmless against any loss, damage, liability, expense or cost accruing or resulting from any misrepresentation or breach of any representation, warranty or agreement on the part of Utility under this Agreement; Developer agrees to indemnify Utility, its successors and assigns, and hold it and them harmless against any loss, damage, liability, expense or cost of Utility, accruing or resulting from any misrepresentation or breach of any representation, warranty or agreement on the part of Developer under this Agreement or from any misrepresentation in or material omission from any certificate or other document furnished or to be furnished to Utility by Developer.
5. This Agreement sets forth the complete understanding between Developer and Utility, and any amendments hereto to be effective must be made in writing.
6. Notices and correspondence required hereunder shall be given to Developer and to Utility at the following addresses, or at any other addresses designated in writing by either party subsequent to the date hereof:

If to Utility: Cypress Lakes Utilities, Inc  
2335 Sanders Road  
Northbrook, Illinois 60062  
Attn: Ms. Lisa Crossell, Chief Operating Officer

If to Developer: Cypress Lakes Associates, Ltd.  
C/o Community Investment Corporation  
11306 4th Street North, STE 130  
St. Petersburg, Florida 33716  
Attn: Mr. Alan Taylor


With copy to: Ballast Point Group  
11300 4th Street North, Ste 200  
St. Petersburg, FL 33716  
Attn: Julie Fanelli

Delivery when made by registered or certified mail shall be deemed complete upon mailing.

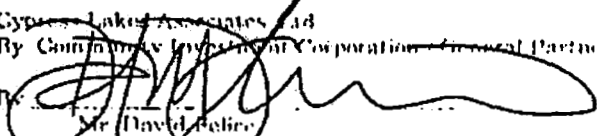
7. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.
8. The Exhibits to this Agreement are a part hereof and are hereby incorporated by this reference.
9. If this Agreement is not executed prior to December 27, 2006, then the terms and conditions contained herein will be waived, with no further obligations or responsibilities to either party.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals the day and year above first written.

Cypress Lakes Utilities, Incorporated

By   
Mr. John Hov, Regional Vice President

ATTEST:

Cypress Lakes Associates, Ltd.  
By Community Investment Corporation, General Partner  
By   
Mr. David Pelice

  
ATTEST:

**EXHIBIT "A"**

The East ¼ of the Northwest ¼ of the Northwest ¼ of Section 3, Township 27 South, Range 23 East, all lying and being in Polk County, Florida; LESS AND EXCEPT the East 132 feet of the South 330 feet thereof;

**TOGETHER WITH**

A non-exclusive easement for ingress, egress and utility purposes as provided for and described in an instrument entitled "Declaration of Easement" recorded in Official Records Book 2978, Page 1031, of the public records of Polk County, Florida, over and across the following described land:

The South 30 feet of the West ¼ of the Northeast ¼ of the Northwest ¼ of Section 3, Township 27 South, Range 23 East, Polk County, Florida;

**TOGETHER WITH**

The West ¼ of the Northeast ¼ of the Northwest ¼ of Section 3, Township 27 South, Range 23 East, Polk County, Florida; LESS AND EXCEPT the East 330.0 feet thereof and LESS AND EXCEPT the South 330.0 feet thereof;

**TOGETHER WITH**

The East 330.0 feet of the West ¼ of the Northeast ¼ of the Northwest ¼ of Section 3, Township 27 South, Range 23 East, Polk County, Florida; LESS AND EXCEPT the South 330.0 feet thereof. Excepting therefrom any portion of the above described land lying within the maintained right of way known as Max Cash Road as depicted on Polk County Maintained Right-of-Way Map recorded May 16, 1990, in Map Book 11, Page 55, of the public records of Polk County, Florida;

**TOGETHER WITH**

The West ¼ of the Northwest ¼ of the Northwest ¼ of Section 3, Township 27 South, Range 23 East, all lying and being in Polk County, Florida;

**TOGETHER WITH**

A non-exclusive easement for ingress, egress and utility purposes as provided for and described in an instrument entitled "Declaration of Easement" recorded in Official records Book 2978, page 1031, of the public records of Polk County, Florida, over and across the following described land:

The South 30 feet of the East ¼ of the Northwest ¼ of the Northwest ¼ of Section 3, Township 27 South, Range 23 East, Polk County, Florida;

**AND**

The South 30 feet of the West ¼ of the Northeast ¼ of the Northwest ¼ of Section 3, Township 27 South, Range 23 East, all lying and being in Polk County, Florida.