

**Marguerite McLean**

090459-WS

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**From:** Bronwyn Revell [brevell@sfflaw.com]  
**Sent:** Tuesday, January 03, 2012 3:48 PM  
**To:** Filings@psc.state.fl.us; Caroline Klancke; Ralph Jaeger; Daniel McIntyre; David Acton; Phillip C. Gildan  
**Cc:** Marty Deterding; jwharton@rsbattorneys.com  
**Subject:** {BULK} Docket No. 090445-WS and 090459-WS  
**Importance:** Low

12 JAN -4 AM 8:55

COMMISSION  
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**Attachments:** Grove Land Motion & Exhibit.pdf

a. The full name, address, telephone number, and e-mail address of the person responsible for the electronic filing:

John L. Wharton  
Marty Deterding  
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b. The docket number and title if filed in an existing docket: 090445-WS and 090459-WS

Application of Grove Land Utilities, LLC and Application of Bluefield Utilities, LLC

c. The name of the party on whose behalf the document is filed:

Grove Land Utilities, LLC and Bluefield Utilities, LLC

a. The total number of pages in each attached document: 12 pages total; Motion 4 pages; Exhibit 1 consists of 8 pages

b. A brief but complete description of each attached document.

Motion to Rescind Order Consolidating Dockets; Motion for Acknowledgment of Settlement Agreement; and Motion for Issuance of Certificates to Grove Land with attached Agreement between Grove Land Utilities, LLC, Evans Properties, Inc. and St. Lucie County, Florida.

**BRONWYN REVELL**

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Attorneys | Counselors



1/5/2012

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**PLEASE NOTE: Our new firm name and email address. Update your contacts accordingly.  
Thank you.**

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for original certificates for proposed water and wastewater system and request for initial rates and changes in Indian River, Okeechobee and St. Lucie counties by Grove Land Utilities, LLC.

DOCKET NO. 090445-WS

In re: Application for original certificates for proposed water and wastewater system and request for initial rates and charges in Martin and St. Lucie Counties by Bluefield Utilities, LLC.

DOCKET NO. 090459-WS

MOTION TO RESCIND ORDER CONSOLIDATING DOCKETS; MOTION FOR ACKNOWLEDGEMENT OF SETTLEMENT AGREEMENT; AND MOTION FOR ISSUANCE OF CERTIFICATES TO GROVE LAND UTILITIES, LLC

Grove Land Utilities, LLC and Bluefield Utilities, LLC, by and through undersigned counsel, hereby file this Motion to Rescind Order Consolidating Dockets; Motion for Acknowledgment of Settlement Agreement; and Motion for Issuance of Certificates to Groveland Utilities, LLC, and in support thereof would state and allege as follows:

1. In September of 2009, Grove Land and Bluefield (each subsidiaries of Evans Properties) filed separate applications for original Certificates for proposed water and wastewater utility systems. Several protests were filed in response to the filings of Grove Land and Bluefield. Almost immediately, Evans Properties initiated negotiations with those public entities (each of the protestors was, in fact, a public entity) who had filed petitions in opposition or for intervention into these dockets.

2. Specifically, as to Grove Land, St. Lucie County and Indian River County filed objections to the application on October 7, 2009. On October 9, 2009, the Fort Pierce Utility Authority ("FPUA") filed its objection to the Grove Land application. On October 13, 2009, the

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Okeechobee Utility Authority ("OUA") filed its Petition for Leave to Intervene and objection to the application.

3. After a period of active negotiations, on March 26, 2010, Indian River County withdrew its objection. On April 8, 2010, FPUA withdrew its objection. On October 18, 2010, OUA withdrew its petition to intervene and objection to the application. Each withdrawal was preceded by the execution of a Settlement Agreement. On the date that these dockets were consolidated (October 25, 2010), only St. Lucie County remained as a protestor in Docket No. 090445-WS (the Grove Land application). Evans Property has continually engaged St. Lucie County in a dialogue post-consolidation in the same form and fashion as it did with St. Lucie (and the other governmental entities with whom Evans Properties has now settled) pre-consolidation.

4. While negotiations with St. Lucie County in this docket continued, Commission staff remained engaged and aware that such negotiations were continuing and accommodated those negotiations through a series of abatements and/or periods in which critical dates remained unset in this proceeding. Staff's actions in this regard facilitated the above-referenced settlements as well as the settlement embodied in the attached Settlement Agreement.

5. The attached Settlement Agreement represents the final resolution (collectively when read in concert with the settlement agreements referenced in paragraph 3 above) of the concerns of the protestors/intervenors in Docket No. 090445-WS, each of whom in turn has negotiated an agreement with Evans Properties resulting, *inter alia*, in the withdrawal of their respective formal protests. The complete resolution of these issues as to Grove Land obviates the need for an administrative hearing in that docket and the public expense and devotion of public and private resources normally attendant to such litigation.

6. Accordingly, Grove Land respectfully requests that the Order Consolidating Dockets, Order No. PSC-10-0637-PCO-WS issued October 25, 2010, be dissolved such that the only remaining docket in which any protestor/intervenor remains as a party (Bluefield: Docket No. 090459-WS) stands alone and the Grove Land application may be considered by the Commission and the requested certificate issued. The Settlement Agreement between St. Lucie County and Grove Land, attached hereto as Exhibit 1, is contingent upon the review of and acknowledgement of the Settlement Agreement by the Commission and the certification of Grove Land consistent with the request in its application.

7. On December 6, 2011, the Board of County Commissioners unanimously approved and adopted the Settlement Agreement attached as Exhibit 1.

8. In an abundance of caution even though Martin County did not file an objection to the Grove Land application, the undersigned consulted with Mr. Gildan, counsel for Martin County, who did not take a position.

WHEREFORE, based on the above, Grove Land respectfully requests that the Commission:

- (a) Dissolve the Order Consolidating Dockets (Order No. PSC-10-0637-PCO-WS).
- (b) Issue an Order acknowledging the Settlement Agreement and issuing the certificate to Grove Land as requested in its application.

Respectfully submitted this 3rd day of  
January, 2012, by



JOHN L. WHARTON  
FL BAR ID NO. 563099  
SUNDSTROM, FRIEDMAN & FUMERO, LLP  
2548 Blairstone Pines Drive  
Tallahassee, FL 32301  
(850) 877-6555/(850) 656-4029 FAX

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by electronic mail this 3<sup>rd</sup> day of January, 2012, to:

Caroline Klancke & Ralph Jaeger  
Office of General Counsel  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850  
[cklancke@psc.state.fl.us](mailto:cklancke@psc.state.fl.us)  
[rjaeger@psc.state.fl.us](mailto:rjaeger@psc.state.fl.us)

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West Palm Beach, FL 33401  
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JOHN L. WHARTON

Exhibit 1

**AGREEMENT BETWEEN  
GROVE LAND UTILITIES, LLC  
EVANS PROPERTIES, INC.  
AND  
ST. LUCIE COUNTY, FLORIDA**

**THIS AGREEMENT** is made and entered into this 6<sup>th</sup> day of December, 2011, by and between St. Lucie County, a political subdivision of the State of Florida (hereinafter referred to as the "County"), Grove Land Utilities, LLC, a Florida limited liability company (hereinafter referred to as "Grove Land"), Evans Utilities Company, Inc., a Florida corporation and Evans Properties, Inc., a Florida corporation (each a "Party" and collectively the "Parties").

**RECITATIONS**

**WHEREAS**, Grove Land is a subsidiary of Evans Utilities Company, Inc. ("Evans Utilities"), which is a subsidiary of Evans Properties, Inc.

**WHEREAS**, Evans Properties, Inc. ("Evans") is a family owned company that currently predominately grows citrus on its properties.

**WHEREAS**, following the lead of other progressive, diversified agricultural businesses in Florida, Evans has undertaken to form and certificate utilities for a number of its properties across the state.

**WHEREAS**, Evans is undertaking these steps in order to diversify its business activities and position itself to take advantage of potential opportunities to meet water and wastewater needs.

**WHEREAS**, such opportunities may include, but not be limited to (a) supplying water for bio-fuel production, which requires large quantities of water and close proximity to crop-lands, (b) bulk-water sales to municipalities or other large water users, (c) providing water and wastewater service for future development as approved by the Board of County Commissioners, to the extent such approval is required by the County Land Development Code or (d) fees for environmental services, such as water retention or cleansing facilities to meet coming water quality standards. Water retention and storage capacity could be provided under contract to one or more governmental entities or credits could be sold to agri-business or other users that are required to have retention and storage capacity.

**WHEREAS**, the granting of a certificate to provide water or wastewater service in a territory does not imply that the certificate is issued for any specific class of service, and it is common for the Florida Public Service Commission ("FPSC") to grant an original water certificate and approve rates for services which may be in demand at a future time.

**WHEREAS**, the benefits to Evans of having a certificated utility include, but will not be limited to, Evans' improved position to enter into contracts with bulk users, governmental entities, and other



utilities, Evans' ability to obtain more favorable financing for constructing infrastructure improvements, and Evans' ability to provide water and wastewater services for the Grove Land proposed certified properties as and when needed.

**WHEREAS**, on or about September 11, 2009, Grove Land filed an application before the Florida Public Service Commission ("FPSC") for the certification of a public utility with territory in St. Lucie County, Indian River County and Okeechobee County, PSC Docket No. 090445-WS (the "Grove Land Application").

**WHEREAS**, on or about October 15, 2009, the County filed an objection to the Grove Land Application with the FPSC, raising certain concerns as set forth therein.

**WHEREAS**, this Agreement is intended to address the County's concerns with respect to the Grove Land Application.

**NOW, THEREFORE**, for and in consideration of the mutual promises, covenants, representations, and warranties entered into between the Parties, and in consideration of the benefits to accrue to each, it is agreed as follows:

1. **Utility Boundaries:** As an inducement for the County to withdraw its objections, Grove Land agrees that within St. Lucie County, Grove Land shall not provide domestic utility service outside the boundaries of Grove Land's territory, as such territory is certificated by the FPSC (the "Utility Territory"). Grove Land's Utility Territory, as set forth in the Grove Land Application, is depicted in Exhibit "A", attached hereto and made a part hereof. Grove Land shall not apply to the FPSC for any expansion of its Utility Territory, nor shall Grove Land otherwise extend domestic potable water and/or wastewater utility service outside its Utility Territory, within the utility service territory of the St. Lucie County Water and Sewer District ("District"), without prior written approval from the County Commission sitting as the District governing board. This paragraph shall not prohibit Grove Land from, (a) providing surface water retention and/or cleansing services that would require Grove Land to take surface water from outside of Grove Land's Utility Territory, cleanse and/or retain it inside its Utility Territory and deliver it back outside of its Utility Territory, (b) selling water retention or cleansing services or credits to customers outside of Grove Land's Utility Territory, or (c) selling bulk potable or non-potable water to the City of Port St. Lucie or the Fort Pierce Utility Authority, or any other customers not located within the District's utility service area, even though the utility lines delivering such water may pass through the District's utility service area, provided the District does not waive any authority it has pursuant to Chapter 153, Part II, Florida Statutes. The parties hereto agree that the County may enforce the provisions of this paragraph by specific performance or injunctive relief and Grove Land waives any defense that the FPSC has jurisdiction to reject the contractual right provided in this section.
2. **County Review:** The County shall have the right to review and approve the engineering plans for any Water or Wastewater Plant to be constructed within the Utility Territory in St. Lucie County. For the purposes of this Agreement, a "Water or Wastewater Plant" shall be defined as a potable water plant or wastewater treatment plant, and related pipelines, lift stations, pumps and other potable water or wastewater facilities, serving residential development or non-agricultural commercial development. The County shall provide approval or comments on any such engineering plans submitted or

resubmitted to the County within forty-five (45) days of receipt of such plans. The County's comments, if any, shall set forth the changes required to such engineering plans in order for them to receive the County's approval. Approval of such engineering plans shall not be unreasonably withheld. As an example, which shall not be considered exclusive, requiring the design of such Water or Wastewater Plant to include either (a) significant overcapacity (above the capacity required by the Florida Department of Environmental Protection ("FDEP")) thereby resulting in materially increased costs to utility rate payers, or (b) design elements that the FPSC would deem "not used or useful", and therefore would prohibit Grove Land from charging rate payers for the cost of such design elements, shall be considered "unreasonable" for purposes of this Agreement. Any Water or Wastewater Plant constructed within the Utility Territory in St. Lucie County shall also be required to comply with the applicable requirements of the St. Lucie County Land Development Code relating to land use, zoning, site planning and construction permitting, provided however, that Grove Land does not waive any of its rights as a FPSC regulated utility.

3. Preemption by Public Service Commission: Utility facilities serving biofuel production, energy or alternative energy production or uses related to biofuel or energy production, or serving agriculture or agriculture related uses, or serving a surface water cleansing, retention or treatment facility, shall not be considered a Water or Wastewater Plant for the purposes of this Agreement. Grove Land shall be permitted to provide water and wastewater services to the foregoing uses, pursuant to applicable regulation by the FPSC and/or the FDEP, which shall preempt any regulation by St. Lucie County. Any Water or Wastewater Plant serving the foregoing uses constructed within the Utility Territory in St. Lucie County shall also be required to comply with the applicable requirements of the St. Lucie County Land Development Code relating to land use, zoning, site planning and construction permitting, provided however, that Grove Land does not waive any of its rights as a FPSC regulated utility .

4. Withdrawal of County Objection: Promptly upon the execution of this Agreement, the County agrees to file with the FPSC a withdrawal of its objections to the Grove Land Application, together with a copy of this Agreement to be included as a part and condition of the FPSC approval of the certificates requested by the Applications.

5. FPSC Approval: This Agreement shall be submitted to the FPSC for its recognition and for the issuance of a utility certificate for Grove Land. In the event that the Grove Land Application is withdrawn, or the issuance of a utility certificate for Grove Land is denied by the FPSC, then this Agreement shall be null and void and have no further force or effect.

6. Bluefield Utilities Excluded: This Agreement shall not be binding upon or with respect to Bluefield Utilities, LLC ("Bluefield") or with respect to any utility other than Grove Land, nor shall it require the County to withdraw its objections to Bluefield's application before the FPSC for the certification of a public utility in St. Lucie County and Martin County, PSC Docket No. 090459-WS.

7. Notices: The Parties designate the following persons to be contacted and to receive all notices regarding this Agreement:

If to St. Lucie County, such notice shall be addressed to St. Lucie County at:

St. Lucie County Administration Office  
2300 Virginia Avenue  
Fort Pierce, Florida 34952  
Attention: County Administrator  
With a copy to:

St. Lucie County Attorney's Office  
2300 Virginia Avenue  
Fort Pierce, Florida 34952  
Attention: County Attorney

If to Grove Land, Evans, or Evans Utilities such notice shall be addressed to such party at:

Evans Properties, Inc.  
660 Beachland Boulevard  
Vero Beach, FL 32963  
Attention: Ron Edwards

With a copy to:

Dean, Mead, Minton & Zwemer  
1903 South 25<sup>th</sup> Street, Suite 200  
Fort Pierce, FL 34947  
Attention: Michael D. Minton

Any Notice or other document required or allowed to be given pursuant to this Agreement shall be in writing and shall be delivered personally, or by overnight courier, or sent by Certified Mail, Postage Prepaid, Return Receipt Requested. The use of electronic communication is not considered as providing proper notice pursuant to this Agreement.

8. Assignment: This Agreement shall be binding upon, and inure to the benefit of, the County's, Grove Land's, Evans's and Evans Utilities's successors and assigns, excluding Bluefield. However, if the District or the District's utility is conveyed to or merges with another municipality, utility authority, or other entity, the terms and restrictions set forth in Paragraphs 1 and 2 hereof shall have no further force or effect and shall not be assignable to any successor entity.

9. Beneficiaries: This Agreement is solely for the benefit of the County, the District, Grove Land, Evans, and Evans Utilities and no causes of action shall accrue upon or by reason hereof to or for the benefit of any other party, who or which is not a Party to this Agreement.

10. Amendment: This Agreement cannot be modified or amended except by a written instrument executed by all Parties and supported by valid consideration.

11. Applicable Law and Venue: This Agreement will be interpreted in accordance with the laws of the State of Florida. Except to the extent that such matters are specifically within the exclusive jurisdiction of the FPSC or other governmental authority, venue for any action related to, arising out of, or in any way connected to this Agreement shall be in the state and federal courts located in and for St. Lucie County, Florida and nowhere else, and the Parties agree to submit to the jurisdiction of such courts.

12. Entire Agreement and Effective Date: This Agreement constitutes the entire agreement and understanding between the Parties with regard to the content herein and has been entered into voluntarily and with independent advice and legal counsel and has been executed by authorized representatives of each Party on the date written above. This Agreement shall become effective (the "Effective Date") when the last party to this Agreement executes the Agreement. There are no representations, warranties or covenants of any nature, oral or written, which are not included herein.

13. Severability: If any provision or part of a provision of this Agreement shall be determined to be void or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall, to the extent possible to ensure that the Agreement satisfies the intent of the Parties, remain valid and enforceable by any Party.

14. Construction of Agreement: If any provision of this Agreement requires judicial interpretation, the Parties agree that they have each collectively participated in the negotiation and drafting of this Agreement and that there shall be no judicial or other presumption against either Party regarding the construction of this Agreement.

15. Time is of the Essence: Time is of the essence with respect to each provision of this Agreement.

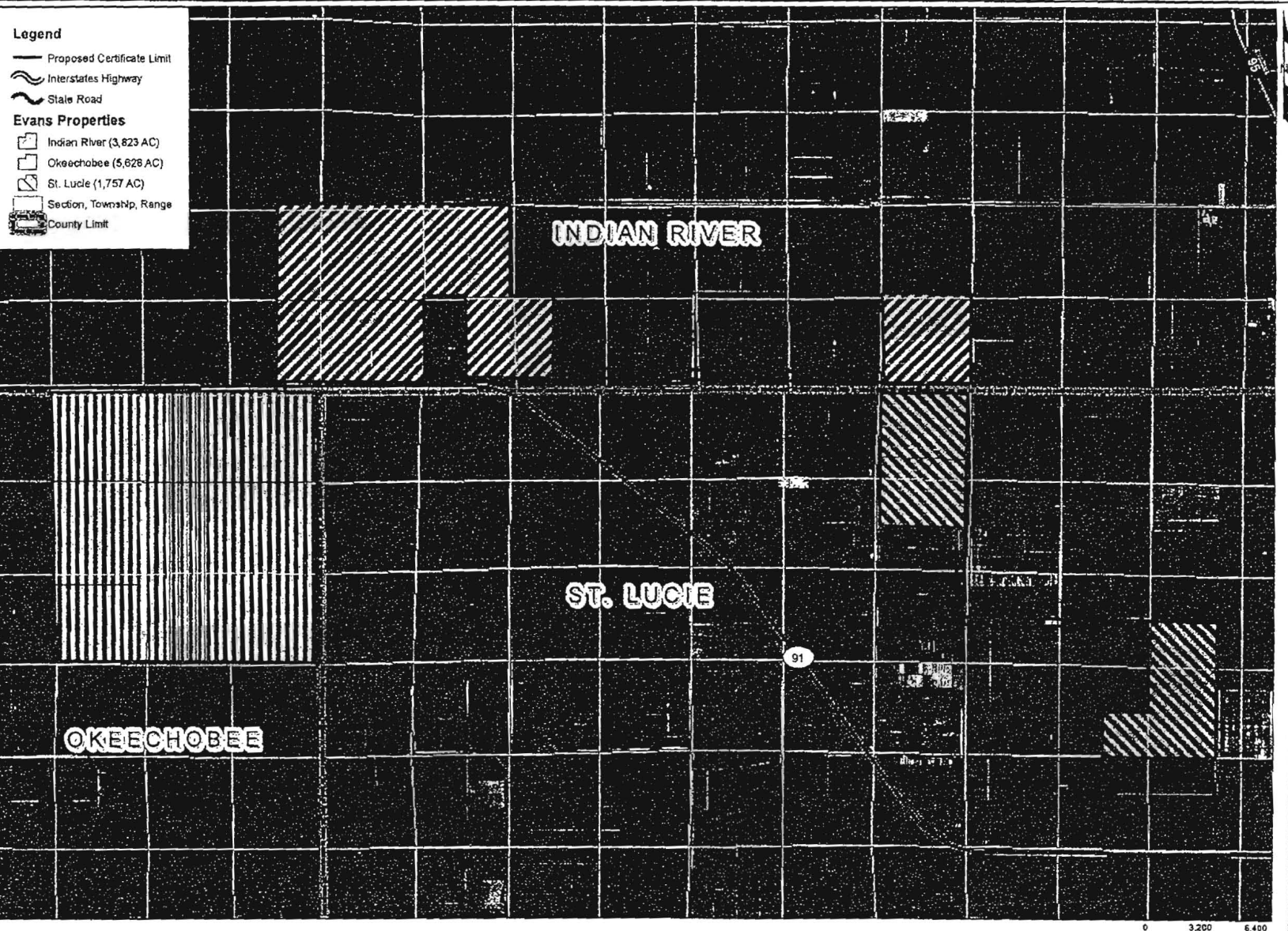
16. Interpretation: Words used in this Agreement in the singular shall be held to include the plural and vice versa, and words of one gender shall be held to include other genders as the context requires. The terms hereof, herein, and herewith and words of similar import shall be construed to refer to this Agreement in its entirety and not to any particular provision unless otherwise stated.

17. Counterparts: This Agreement may be executed in a number of identical counterparts. If so executed, each of such counterparts is to be deemed an original for all purposes and all such counterparts shall, collectively, constitute one agreement, but, in making proof of this Agreement, it shall not be necessary to produce or account for more of such counterparts than are required to show that each party hereto executed at least one such counterpart.

[SIGNATURE PAGES TO FOLLOW]



P:\ORLHC\DCADD\DWG\2009\A081265.DWG\GIS\New\Figs\Final\GroveLand 2011\Exhibit A.mxd



**gai consultants**  
 transforming ideas into reality  
 618 E. South Street, Suite 700  
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 Phone 407.423.8398 Fax 407.843.1070

GROVE LAND UTILITIES  
 PROPOSED SERVICE AREA  
 ST. LUCIE COUNTY SETTLEMENT AGREEMENT EXHIBIT

EXHIBIT  
**A**

EXHIBIT "A"