

**Lee County Board Of County Commissioners
Agenda Item Summary**

Blue Sheet No. 20060991

1. ACTION REQUESTED/PURPOSE: Approve wastewater agreement with North Fort Myers Utility and allocate funding for 275 gallons per day for a total of \$635.25 for Prairie Pines Preserve, a Conservation 20/20 preserve.

2. WHAT ACTION ACCOMPLISHES: Approves wastewater agreement and allocates funding for wastewater treatment at Prairie Pines Preserve.

3. MANAGEMENT RECOMMENDATION: Approve wastewater agreement and allocate funding.

4. Departmental Category: CIC		5. Meeting Date: 08-15-2006
6. Agenda: <input checked="" type="checkbox"/> Consent <input type="checkbox"/> Administrative <input type="checkbox"/> Appeals <input type="checkbox"/> Public <input type="checkbox"/> Walk-On	7. Requirement/Purpose: (specify)	
	<input type="checkbox"/> Statute	
	<input type="checkbox"/> Ordinance	
	<input type="checkbox"/> Admin. Code	
	<input checked="" type="checkbox"/> Other consistency	
		8. Request Initiated: Commissioner Department Parks & Recreation Division By: John Yarbrugh, Director <i>John Yarbrugh byccm</i>

9. Background:

The public infrastructure for Prairie Pines Preserve, a Conservation 20/20 preserve, is currently being designed and permitted. Facilities will include parking, stormwater treatment, multi-use trails and a restroom in accordance with the 2004 Prairie Pines Preserve Land Stewardship Plan. The attached agreement provides 275 gallons per day wastewater capacity with the North Fort Myers Utility and a total cost of \$635.25. Approval of this agreement will reserve wastewater capacity with the utility and provide adequate capacity for the preserve's wastewater needs.

Funds will be made available in #KH5723030105.504330.217

10. Review for Scheduling:

Department Director	Purchasing or Contracts	Human Resources	Other	County Attorney	Budget Services				County Manager/P.W. Director
					Analyst	Risk	Grants	Mgr.	
<i>byccm</i>				<i>Cheryl A. Baccy 7/26/06</i>	<i>CA 7/26/06</i>	<i>MP 7/26/06</i>	<i>7/26/06</i>	<i>7/26/06</i>	<i>[Signature]</i>

11. Commission Action:

- Approved
- Deferred
- Denied
- Other

RECEIVED BY
COUNTY ADMIN: *[Signature]*
7/26/06 11:30 AM

COUNTY ADMIN
FORWARDED TO: *[Signature]*
SIBK 10:30 AM

Rec. by CoAtty
Date: 7/26/06
Time: 8:55 AM
Forwarded To: *[Signature]*
7/26/06 10:55 AM

Prairie Pines Preserve
Name of Project

WASTEWATER AGREEMENT

THIS AGREEMENT made and entered into this ____ day of August, 2006, by and between the LEE COUNTY, FLORIDA, a political subdivision of the State of Florida, whose address is Post Office Box 398, Fort Myers, FL 33902 (hereinafter "Owner") and NORTH FORT MYERS UTILITY, INC., a Florida corporation, whose address is 5660 Bayshore Road, Suite 35, Fort Myers, FL 33917 (hereinafter "Service Company").

WHEREAS, Owner owns or controls lands located in Lee County, Florida, and described in Exhibit "A" attached hereto and made a part hereof as if fully set out in this paragraph and hereinafter referred to as the "Property," and the Property will be developed into a resource-based park utilizing 275 gpd of wastewater service; and,

WHEREAS, Owner desires wastewater service to the Property and has requested Service Company provide such service for the Property; and

WHEREAS, the Service Company is willing to provide, in accordance with the provisions of this Agreement and Service Company's Service Availability Policy, central wastewater services to the Property and thereafter operate applicable facilities so that the occupants of the improvements on the Property will receive an adequate wastewater collection, treatment and disposal service from Service Company;

NOW, THEREFORE, for and in consideration of the premises, the mutual undertakings and agreements herein contained and assumed, Owner and Service Company hereby covenant and agree as follows:

1.0 The foregoing recitations are true and correct.

2.0 The following definitions and references are given for the purpose of interpreting the terms as used in this Agreement and apply unless the context indicates a different meaning:

- (a) "Consumer Installation" – All facilities ordinarily on the customer's side of the Point of Delivery.
- (b) "Contribution-in-aid-of-Construction (CIAC)" – The sum of money and/or the value of property represented by the cost of the wastewater collection systems including lift stations and treatment plants constructed or to be constructed by an Owner, which Owner transfers, or agrees to transfer, to

Service Company at no cost to Service Company to provide wastewater service to the Property.

- (c) "Equivalent Residential Connection (ERC)" - A factor used to convert a given average daily flow (ADF) to the equivalent number of residential connections. For this purpose the average daily flow of one equivalent residential connection (ERC) is 275 gallons per day (gpd). The number of ERC's contained in a given ADF is determined by dividing that ADF by 275 gpd. The determination of the number of ERC's for the Property shall be subject to factoring as outlined in Service Company's Service Availability Policy.
- (d) "Point of Delivery" - The point where the pipes of Service Company are connected with the pipes of the customer, which shall be at the point where Owner's line connects with Service Company's main along the east side of US 41.
- (e) "Property" - The area or parcel of land described in Exhibit "A."
- (f) "Service" - The readiness and ability on the part of Service Company to furnish and maintain wastewater service to the Point of Delivery (pursuant to applicable rules and regulations of applicable regulatory agencies).

3.0 Connection Charges. Owner hereby agrees to pay to Service Company the following connection charges:

Contributions In Aid Of Construction: System Capacity Charges - The contribution of a portion of the cost of construction of treatment plants, and collection and disposal systems, described in Exhibit "B."

3.1 Payment of the connection charges does not and will not result in Service Company waiving any of its rates or rules and regulations, and their enforcement shall not be affected in any manner whatsoever by Owner making payment of same. Service Company shall not be obligated to refund to Owner any portion of the value of the connection charges for any reason whatsoever, nor shall Service Company pay any interest or rate of interest upon the connection charges paid.

3.2 Neither Owner nor any person or other entity holding any of the Property by, through or under Owner, or otherwise, shall have any present or future right, title, claim or interest in and to the connection charges paid or to any of the wastewater facilities and properties of Service Company, and all prohibitions applicable to Owner with

respect to no refund of connection charges, no interest payment on said connection charges and otherwise, are applicable to all persons or entities.

3.3 Any user or consumer of wastewater service shall not be entitled to offset any bill or bills rendered by Service Company for such service or services against the connection charges paid. Owner shall not be entitled to offset the connection charges against any claim or claims of Service Company.

4.0 On-Site and Off-Site Installations. On-site and Off-site installations shall be constructed and installed at the sole expense of Owner, and shall include all wastewater collection lines, facilities and equipment, located within the boundaries of the Property, and constructed for the purpose of providing wastewater service to the units to be constructed on the Property including, but not limited to, a grinder pump station and force main to connect to Service Company's force main located along the east side of US 41. Owner shall maintain the on-site and off-site installations so that inflow and infiltration are within accepted standards with the wastewater industry.

5.0 Agreement to Serve. Upon the completion of construction of the on-site and off-site wastewater collection systems, their inspection, and the other terms of this Agreement and Service Company's Service Availability Policy, Service Company covenants and agrees that it will oversee the connection of the wastewater collection systems installed by Owner to the central facilities of Service Company in accordance with the terms and intent of this Agreement. Such connection shall at all times be in accordance with rules, regulations and orders of the applicable governmental authorities. Service Company agrees that once it provides Utility Service to the Property and Owner that thereafter Service Company will continuously provide, at its cost and expense, but in accordance with the other provisions of this Agreement, including rules and regulations and rate schedules, Utility Service to the Property in a manner to conform with all requirements of the applicable governmental authority having jurisdiction over the operations of Service Company.

6.0 Application for Service: Consumers shall not have the right to and shall not connect to the facilities of Service Company until formal written application has been made to Service Company in accordance with the then effective rules and regulations of Service Company and approval for such connection has been granted.

6.1 If a commercial kitchen, cafeteria, restaurant or other commercial food preparation or dining facility, excluding the recreational facility, is constructed within the Property, the Service Company shall have the right to require that a grease trap be constructed, installed and connected so that all wastewaters from any grease producing equipment within such facility, including floor drains in food preparation areas, shall first enter the grease trap for pretreatment before the wastewater is delivered to the lines of the Service Company. Size, materials and construction of such grease trap to be approved by Service Company.

6.2 No substance other than domestic wastewater will be placed into the wastewater system and delivered to the lines of the Service Company. Should any non-domestic wastes, grease or oils, including, but not limited to, floor wax or paint, be delivered to the lines, the consumer responsible will be responsible for payment of the cost and expense required in correcting or repairing any resulting damage.

7.0 Exclusive Right to Provide Service. Owner, as a further and essential consideration of this Agreement, agrees that Owner, or the successors and assigns of Owner, shall not (the words "shall not" being used in a mandatory definition) engage in the business or businesses of providing wastewater services to the Property during the period of time Service Company, its successors and assigns, provide wastewater services to the Property, it being the intention of the parties hereto that under the foregoing provision and also other provisions of this Agreement, Service Company so long as it is in material compliance with this Agreement shall have the sole and exclusive right and privilege to provide wastewater services to the Property and to the occupants of such residence, building or unit constructed thereon. Service Company represents and warrants that it is duly licensed to provide wastewater service to Owner and that it will take all necessary steps in order to keep in good standing all permits necessary to carry out this Agreement.

8.0 Rates. Service Company agrees that the rates to be charged to Owner shall be those set forth in the tariff of Service Company approved by the applicable governmental agency. However, notwithstanding any provision in this Agreement, Service Company, its successors and assigns, may establish, amend or revise, from time to time in the future, and enforce rates or rate schedules so established and enforced and shall at all times be reasonable and subject to regulations by the applicable governmental agency, or as may be provided by law. Rates charged to Owner or consumers located upon the Property shall at all times be identical to rates charged for the same classification of service, as are or may be in effect throughout the service area of Service Company.

8.1 Notwithstanding any provision in this Agreement to the contrary, Service Company may establish, amend or revise, from time to time, in the future, and enforce rules and regulations covering wastewater services to the Property. However, all such rules and regulations so established by Service Company shall at all times be reasonable and subject to such regulations as may be provided by law or contract.

8.2 Any such initial or future lower or increased rates, rate schedules, and rules and regulations established, amended or revised and enforced by Service Company from time to time in the future, as provided by law, shall be binding upon Owner; upon any person or other entity holding by, through or under Owner; and upon any user or consumer of the wastewater service provided to the Property by Service Company.

9.0 Binding Effect of Agreement. Subject to the provisions of paragraph 20.0 hereof, this Agreement shall be binding upon and shall inure to the benefit of Owner, Service Company and their respective assigns and successors by merger, consolidation, conveyance or otherwise.

10.0 Notice. Until further written notice by either party to the other, all notices provided for herein shall be in writing and transmitted by messenger, by mail or by telegram, and if to Owner, shall be mailed or delivered to Owner at:

Lee County Board of County Commissioners
Post Office Box 398
Fort Myers, FL 33902
ATTN: David Owen , County Attorney

and if to the Service Company, at:

North Fort Myers Utility, Inc.
Post Office Box 2547
Ft. Myers, Florida 33902
ATTN: A. A. Reeves, III

with a copy to:

Rose, Sundstrom & Bentley, LLP
2180 W. State Road 434, Suite 2118
Longwood, FL 32779
ATTN: Martin S. Friedman, Esquire

11.0 Laws of Florida. This Agreement shall be governed by the laws of the State of Florida and it shall be and become effective immediately upon execution by both parties hereto, subject to any approvals which must be obtained from governmental authority.

12.0 Costs and Attorney's Fees. In the event the Service Company or Owner is required to enforce this Agreement by Court proceedings or otherwise, by instituting suit or otherwise, then the prevailing party shall be entitled to recover from the other party all costs incurred, including reasonable attorney's fees for administrative proceedings, trials and appeals.

13.0 Force Majeure. In the event that the performance of this Agreement by either party to this Agreement is prevented or interrupted in consequence of any cause beyond the control of such party, including but not limited to Act of God or of the public enemy, war, national emergency, allocation or of 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, earthquake, sinkhole or other casualty or disaster or catastrophe, unforeseeable failure or breakdown of pumping transmission or other facilities, governmental rules or acts or orders or restrictions or regulations or requirements, acts or action of any government or public or governmental authority or commission or board or agency or agent or official or officer, the enactment of any statute or ordinance or resolution or regulation or rule or ruling or order, order or decree or judgment or restraining order or injunction of any court, said party shall not be liable for such non-performance, so long as said party uses its best efforts to perform in the event of said disaster.

14.0 Indemnification. Each party agrees to indemnify and hold the other harmless from and against any and all liabilities, claims, damages, costs and expenses (including reasonable trial and appellate attorney's fees) to which the party may become subject by reason of or arising out of the other party's performance of this Agreement. This indemnification provision shall survive the actual connection to Service Company's wastewater system.

MISCELLANEOUS PROVISIONS

15.0 This Agreement supersedes all previous agreements or representations, either verbal or written, heretofore in effect between Owner and Service Company, made with respect to the matters herein contained, and when duly executed, constitutes the agreement between Owner and Service Company. No additions, alterations or variations of the terms of this Agreement shall be valid, nor can provisions of this Agreement be waived by either party, unless such additions, alterations, variations or waivers are expressed in writing and duly signed.

16.0 Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural, and the masculine, feminine and neuter genders shall each include the others.

17.0 Whenever approvals of any nature are required by either party to this Agreement, it is agreed that same shall not be unreasonably withheld or delayed.

18.0 The submission of this Wastewater Agreement for examination by Owner does not constitute an offer but becomes effective only upon execution thereof by Service Company.

19.0 Failure to insist upon strict compliance of any of the terms, covenants, or conditions herein shall not be deemed a waiver of such terms, covenants, or conditions, nor shall any waiver or relinquishment of any right or power hereunder at any one time or times be deemed a waiver or relinquishment of such right or power at any other time or times.

20.0 Because of inducements offered by Owner to Service Company, Service Company has agreed to provide wastewater services to Owner's project. Owner understands and agrees that capacity reserved hereunder cannot and shall not be assigned by Owner to Third Parties without the written consent of Service Company, except in the case of a bona-fide sale of Owner's Property. Such approval shall not be unreasonably withheld. Moreover, Owner agrees that this contract is a superior instrument to any other documents, representations, and promises made by and between Owner and Third Parties, both public and private, as regards the provisions of wastewater service to Owner's Property.

21.0 It is agreed by and between the parties hereto that all words, terms and conditions contained herein are to be read in concert, each with the other, and that a provision contained under one heading may be considered to be equally applicable under another in the interpretation of this Agreement.

22.0 The signatories warrant that they have the lawful authority to enter into this Agreement and to bind the parties.

IN WITNESS WHEREOF, Owner and Service Company have executed or have caused this Agreement, with the named Exhibits attached, to be duly executed in several counterparts, each of which counterpart shall be considered an original executed copy of this Agreement.

WITNESSES:

NORTH FORT MYERS UTILITY, INC.

Print Name: _____

BY: A. A. Reeves, III, Utility Director

Print Name: _____

ATTEST: Charlie Green, Clerk of Courts

BOARD OF COUNTY COMMISSIONERS
OF LEE COUNTY, FLORIDA

BY: _____
Deputy Clerk

BY: _____
Chairman

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY:

Office of Lee County Attorney

[NOTARY ATTESTATION ON PAGE ⁸7]

STATE OF FLORIDA
COUNTY OF LEE

The foregoing instrument was acknowledged before me this _____ day of _____, 2006, by A.A. Reeves, III, as Utility Director of North Fort Myers Utility, Inc., a Florida corporation, on behalf of the corporation. He is personally known to me or has produced _____ as identification.

Notary Public - State of Florida
My Commission Expires:
Printed Name: _____

This Instrument Prepared By: Martin S. Friedman, Esquire, 2180 W. State Road 434,
Suite 2118, Longwood, FL 32779

Exhibit A

Bean, Whitaker, Lutz & Kareh, Inc.

13041 McGregor Boulevard
Fort Myers, Florida 33919-5910
email - fmooffice@bwlk.net
(Ph) 239-481-1331 (Fax) 239-481-1073



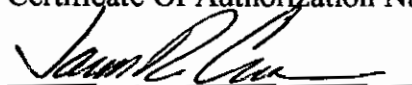
LEGAL DESCRIPTION

Prairie Pines Development Order Parcel

A parcel of land in Section 16, Township 43 South, Range 24 East, Lee County, Florida, more particularly described as follows:

Commence at the northeast corner of the southeast quarter of Sections 15 and 16, Township 43 South, Range 24 East, thence N.89°38'06"W. along the north line of said southeast quarter for 258.21 feet to the point of beginning of the herein described parcel of land; thence continue N.89°38'06"W. along said north line for 681.35 feet to an intersection with the northeasterly right of way line of State Road No. 45 (Tamiami Trail, U.S. 41); thence S.27°33'19"E. along said northeasterly right of way line for 393.04 feet; thence continue along said northeasterly right of way line, S.26°07'24"E. for 580.87 feet to an intersection with the south line of Lee County Conservation 2020 Parcel 194 as described in Official Record Book 3888 at Page 1655 of the public records of Lee County, Florida; thence S.89°40'33"E. along said south line for 670.13 feet; thence N.26°07'24"W. for 968.35 feet to the point of beginning.

Bean, Whitaker, Lutz & Kareh, Inc.
Certificate Of Authorization Number LB0004919

 Date: 5/25/06

James R. Coleman (For the firm)
Registered Land Surveyor
Florida Certificate Number 3205

338249 DO Desc.doc

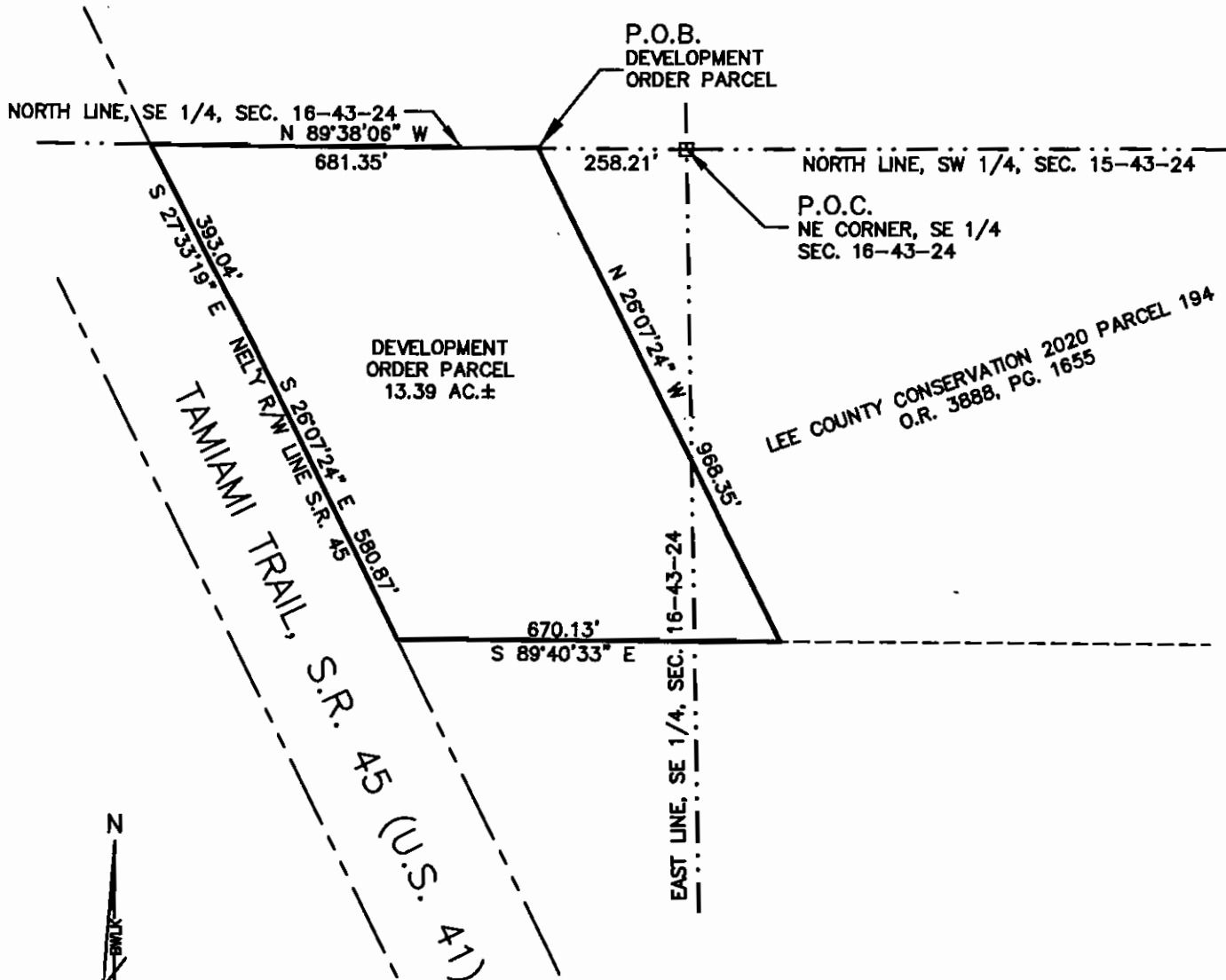
PRINCIPALS:
WILLIAM E. BEAN, PSM, CHAIRMAN
SCOTT C. WHITAKER, PSM, PRESIDENT
JOSEPH L. LUTZ, PSM
AHMAD R. KAREH, PE, MSCE, VICE PRESIDENT

CONSULTING ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS



ASSOCIATES:
TRACY N. BEAN, AICP
W. BRITT POMEROY, JR., PSM
STEPHEN H. SKORUPSKI, PSM
ELWOOD FINEFIELD, PSM
JAMES A. HESSLER, PSM
JAMES R. COLEMAN, PSM
RUDOLF A. NORMAN, PE

SKETCH TO ACCOMPANY LEGAL DESCRIPTION
 OF
 A PARCEL OF LAND IN
 SECTIONS 15 & 16, TOWNSHIP 43 SOUTH, RANGE 24 EAST,
 LEE COUNTY, FLORIDA



SURVEYORS NOTES

1. THE ATTACHED SKETCH IS INTENDED TO BE A GRAPHIC REPRESENTATION OF THE LANDS DESCRIBED HERewith AND IS NOT TO BE CONSIDERED A SURVEY.
2. THE BEARINGS SHOWN HEREON ARE BASED ON THE NORTH LINE OF THE SOUTHEAST QUARTER OF SECTION 16, TOWNSHIP 43 SOUTH, RANGE 24 EAST BEARING $N 89^{\circ}38'06'' W$.
3. REPRODUCTIONS OF THE ATTACHED SKETCH ARE NOT VALID UNLESS SEALED WITH AN EMBOSSED SURVEYORS SEAL

BEAN, WHITAKER, LUTZ & KAREH, INC.
 CERTIFICATE OF AUTHORIZATION NUMBER LB0004919

James R. Coleman DATE: 5/25/06
 JAMES R. COLEMAN (FOR THE FIRM)
 REGISTERED LAND SURVEYOR
 FLORIDA CERTIFICATE NUMBER 3205

Bean, Whitaker, Lutz & Kareh, Inc. (23 4619)

CIVIL ENGINEERS - SURVEYORS AND MAPPERS - PLANNERS

13041-1 MCGREGOR BOULEVARD, FORT MYERS, FLORIDA 33919-5910 (239) 461-1331

SK38246-DO.dwg

DATE	PROJECT NO.	DRAWN BY	SCALE	SHEET	FILE NO. (P-T-R)
05-25-06	38246	J.R.C.	1" = 300'	1 OF 1	15 & 16-43-24

SYSTEM CAPACITY CHARGES

Owner shall pay Service Company upon the execution by Service Company of DEP permit applications the following System Capacity Charges to induce Service Company to reserve the following system capacities for Owner's connections. System capacity charges to be paid by Owner are those which are set forth in Service Company's Service Availability Policy approved by the Florida Public Service Commission and, accordingly, these charges may be changed from time to time with the approval of the Commission.

Wastewater:

<u>Customer Category</u>	<u>Number of GPD</u>	<u>Charge Per GPD</u>	<u>Total Charge</u>
General Services	275	\$ 2.31	\$ 635.25