

*ORIGINAL  
ONE COPY*

SHADY OAKS MOBILE-MODULAR ESTATES, INC.

DOCKET NO. 930944-SW

REBUTTAL TESTIMONY OF RICHARD D. SIMS

RESPONDING TO THE DIRECT TESTIMONY OF PETE BURGHARDT

FILED: JUNE 13, 1994

ACK   1  

AFA \_\_\_\_\_

APP \_\_\_\_\_

CAT \_\_\_\_\_

CMH \_\_\_\_\_

CTR \_\_\_\_\_

ENG \_\_\_\_\_

LCS *Johes*

LHM *aris x3*

CRS \_\_\_\_\_

ESP \_\_\_\_\_

\_\_\_\_\_

*D. Hallenay*

*mos*

DOCUMENT NUMBER-DATE

06129 JUN 22 1994

FPSC-RECORDS/REPORTING

1 REBUTTAL TESTIMONY OF RICHARD D. SIMS

2 Q. In his direct testimony Mr. Burghardt testified  
3 that the Utility's quality of service was unsatisfactory.  
4 What was the Utility's quality of service prior to  
5 inspections performed by Southwest Florida Utility Corp?

6 A. It appears to have been satisfactory. If,  
7 however, the Utility were not operating in conformance with  
8 the various Commissions orders, it would be due to the lack  
9 of rate base.

10 Q. Why has the Utility has been unable to comply with  
11 DEP requirements to divert its flow to Pasco County's sewage  
12 treatment system and to maintain operation and maintenance  
13 levels?

14 A. This also is due to the lack of rate base.

15 Q. Mr. Burghardt testified that, in his opinion, the  
16 Utility has not acted responsibly when it comes to  
17 compliance with PSC rules and regulations. Is this an  
18 accurate statement?

19 A. No. The utility has tried to comply with PSC  
20 rules and regulations, but has been severely hindered by the  
21 lack of a rate base. As Mr. Burghardt points out in his  
22 testimony, the Utility did obtain a collection system permit  
23 for the construction of the interconnect with Pasco County.  
24 In addition, the Utility has entered into the necessary Bulk  
25 Wastewater Treatment Agreement with Pasco County, a copy of

1 which is attached hereto as Exhibit "A". To date, my wife  
2 has personally financed construction of the interconnect out  
3 of her own estate to the tune of approximately \$30,000.00  
4 and more subject to new accounting. With this money, our  
5 construction engineer has been able to install most of the  
6 1,200 feet of necessary sewage force main both on and off  
7 the project site. The 16" jack-in-bore along highway 301 and  
8 Chancey Road necessary to complete the pipework has also  
9 been accomplished. Thus, although we are well on our way to  
10 completing the interconnect, completion may be delayed  
11 shortly due to lack of rate increases by the PSC. We have  
12 endeavored to obtain the private financing necessary to  
13 order pumps for the lift station, but again are encountering  
14 difficulties due to the lack of sufficient rate base.

15 Q. Are you aware of whether the Utility ever been  
16 inspected by the DEP?

17 A. It is my understanding that we should be notified  
18 upon a visit of an official of DEP. We have never received  
19 notification of any inspections.

20 Q. What is the Utility doing to bring the Utility  
21 into conformity with DEP requirements?

22 A. As previously indicated, construction is currently  
23 underway to connect the Utility to the Pasco County system.  
24 We also have a licensed operator at the facility as  
25 required. His name is Mike Daly, license no. S3609 and  
26 W6302.

1           Q. Will these improvements solve your infiltration  
2 problems?

3           A. Yes. Once the interconnection to the Pasco system  
4 is complete, the pond will be drained and the system  
5 dismantled.

6

*Marcinw*  
*BCC*  
*8-27-91*  
*3.E.5.a*  
*Approved*  
*See links*



PASCO COUNTY, FLORIDA  
INTER-OFFICE MEMORANDUM

TO: Honorable Chairman and  
Members of the Board of  
County Commissioners

DATE: 8/6/91

FILE: UTOM91-1314

SUBJECT: Pasco County and S&D Utility -  
Bulk Wastewater Treatment  
Agreement for Shady Oaks  
Mobile Home Park

FROM: *Robert J. Sigel (jr)*  
Douglas S. Bramlett  
Assistant County Administrator  
(Utilities Services)

REFERENCES: Commission District *72*

It is recommended that the data herein presented be given formal consideration by the County Commission.

DESCRIPTION AND CONDITIONS:

Attached are four copies of a proposed agreement between Pasco County and S&D Utility, developer of Shady Oaks Mobile Home Park. The purpose of the agreement is for the provision of wastewater utility services to Shady Oaks Mobile Home Park and any adjacent areas which are in S&D Utility's Public Service Commission certificated service area. The provisions of the agreement have been determined in negotiation by Pasco County staff with S&D Utility and are in accordance with the mutual best interests of both parties.

The terms and conditions of the proposed contract provide the best and most cost-effective method of furnishing wastewater treatment services to the S&D Utility service area.

ALTERNATIVES AND ANALYSIS:

Approval of the agreement will define the terms under which wastewater treatment service will be provided to Shady Oaks Mobile Home Park and will provide for construction of facilities to service future customers in the area.

Disapproval of this agreement would result in the lack of proper wastewater treatment services to resolve a problem with the S&D Utility Wastewater Treatment Facility located at the Shady Oaks Mobile Home Park.

RECOMMENDATION AND FUNDING:

It is recommended that the Board of County Commissioners approve the proposed agreement, authorize the Chairman to execute the attached four copies, and direct Board Records to distribute the copies as follows: one original copy to OMB, New Port Richey; one original copy to be retained by Board Records; one original copy to be returned to the Utilities Services Branch, New Port Richey; and one original copy to be mailed to:

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

No funding is required at this time.

ATTACHMENTS:

- 1. Agreement (four original copies).

DSB/*my*MM/s080601:ai

APPROVED AGENDA ITEM

FOR \_\_\_\_\_

BY \_\_\_\_\_



AGREEMENT BETWEEN  
S & D UTILITY AND PASCO COUNTY

THIS AGREEMENT, made and entered into this 27<sup>th</sup> day of August,  
1991, by and between S & D UTILITY, organized under the laws of the State of Florida,  
hereinafter referred to as "S & D", and PASCO COUNTY, a political subdivision of the State  
of Florida, acting by and through its Board of County Commissioners, the governing body  
thereof, hereinafter referred to as "COUNTY".

W I T N E S S E T H:

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

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

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

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

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

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

Section 1. Purpose.

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

Section 2. Bulk Wastewater Treatment Service.

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

### Section 3. General Provisions.

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

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

S & D UTILITY:

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

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

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

Section 4. Default.

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

Section 5. Term.

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

Section 6. Utility System Charges.

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

Section 7. Miscellaneous Provision.

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

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

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

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

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

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

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



BY: Jed Pittman  
JED PITTMAN, CLERK  
By: Elaine H. Mitchell, DC

BOARD OF COUNTY COMMISSIONERS  
OF PASCO COUNTY, FLORIDA

BY: Mike Wells  
MIKE WELLS, CHAIRMAN

S & D UTILITY

WITNESSES:  
Kenneth W. Hurst  
Thomas D. Hurst

BY: Richard Olms

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

BY: [Signature]  
Attorney