

**LEE COUNTY BOARD OF COUNTY COMMISSIONERS**  
**AGENDA ITEM SUMMARY** **BLUE SHEET NO: 20020327-UTL**

**1. REQUESTED MOTION:**

**ACTION REQUESTED:**

Approve Petition from Bonita Springs Utilities, Inc. (BSU) to extend term of Franchise Agreement with Lee County including the Exhibit A.

**WHY ACTION IS NECESSARY:**

As the franchising authority for this not-for-profit utility, Board approval is required for the approval of extension of Franchise Agreement.

**WHAT ACTION ACCOMPLISHES:**

The renewal and extension of the Franchise Agreement to a term of 30 years, in order to assist in the marketing and sale of the approximately \$60,000,000 Lee County Industrial Development Authority Bond Issue (Series 2002) with a 30-year maturity from 2002.

**2. DEPARTMENTAL CATEGORY: 10 - UTILITIES** *C 10A*  
**COMMISSION DISTRICT #: 3**

**3. MEETING DATE:** 4-16-02

**4. AGENDA:**

- CONSENT
- ADMINISTRATIVE
- APPEALS
- PUBLIC
- WALK ON
- TIME REQUIRED: \_\_\_\_\_

**5. REQUIREMENT/PURPOSE:**

- (Specify)*
- STATUTE
  - ORDINANCE
  - ADMIN. CODE
  - OTHER *Franchise Agmt*

**6. REQUESTOR OF INFORMATION:**

- A. COMMISSIONER: \_\_\_\_\_
- B. DEPARTMENT: Lee County Public Works
- C. DIVISION/SECTION: Utilities Division
- BY: Rick Diaz, Utilities Director

DATE: *4/1/02*

**7. BACKGROUND:**

On February 11, 1970 the Board of County Commissioners granted a franchise to Bonita Springs Water System. As the franchising authority for this not-for-profit utility, Board approval is required for all future changes in the tariffs or franchise area.

On May 2, 1990, the Board of County Commissioners confirmed their desire to have the Bonita Springs Water System as the County's franchisee to provide water and sewer services within its franchise area.

On November 21, 1990, the Board of County Commissioners adopted an "Amended and Restated Franchise Agreement by and between the Bonita Springs Water System and Lee County" which significantly added to the service territory of BSU; and revised name to Bonita Springs Utilities, Inc.

(CONT'D.)

**8. MANAGEMENT RECOMMENDATIONS:**

**9. RECOMMENDED APPROVAL**

(A) DEPARTMENT DIRECTOR	(B) PURCH. OR CONTRACTS	(C) HUMAN RESOURCES	(D) OTHER	(E) COUNTY ATTORNEY	(F) BUDGET SERVICES				(G) COUNTY MANAGER
					OA	OM	Risk	GC	
<i>J. Lavender</i> Date: <i>4/3/02</i>	N/A Date:	N/A Date:	<i>SLJ</i> Date: <i>4-1-02</i>	<i>W. Area</i> <i>Issue for scheduling</i> Date: <i>4/3/02</i>	<i>4/3</i>	<i>4/3/02</i>	<i>4/4</i>	<i>4/3/02</i>	<i>J. Lavender</i> Date: <i>4/3/02</i>

**10. COMMISSION ACTION:**

- APPROVED
- DENIED
- DEFERRED
- OTHER

REVIEWED BY COUNTY ADMIN. <i>4/3 10:25</i>
APPROVED BY COUNTY ADMIN. <i>4/4 9:00</i>

4/3/02  
 APPROVED BY  
*J. Lavender*  
 10:20 AM

On May 1, 1996, the Board of County Commissioners adopted a second "Amended and Restated Franchise Agreement by and between Bonita Springs Utilities Inc.", and Lee County, amending the term of the franchise which is extended 30 years from May 1, 1996; and revised language for the County's option for any purchase of the Bonita Springs Utilities System.

On April 28, 1998, the Board of County Commissioners approved BSU's Petition for a modification to water and wastewater tariffs and adjustments of certain charges.

On September 14, 1999, the Board of County Commissioners approved BSU's Petition amending the wastewater tariff to establish a special service charge for customers formerly served by Hacienda Treatment Plant.

On August 29, 2000, BSU submitted its Petition for the third amendment which was approved by the Board on April 24, 2001.

On December 28, 2000, BSU submitted its Petition for the fourth amendment.

On May 8, 2001, the Board of County Commissioners approved BSU's Petition to adopt a fourth amendment to its Franchise Agreement, by Resolution, to reflect changes to its service territory; and to approve an Agreement for Water and Sewer Service for the Mediterra Planned Unit Development between BSU, Long Bay Partners, LLC and Collier County Board of County Commissioners.

LAW OFFICES  
ROSE, SUNDS'TROM & BENTLEY, LLP  
2548 BLAIRSTONE PINES DRIVE  
TALLAHASSEE, FLORIDA 32301  

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(850) 877-6555

CHRIS H. BENTLEY, P.A.  
F. MARSHALL DETERDING  
MARTIN S. FRIEDMAN, P.A.  
JOHN R. JENKINS, P.A.  
STEVEN T. MINDLIN, P.A.  
JOSEPH P. PATTON  
DAREN L. SHIPPY, LL.M. TAX  
WILLIAM E. SUNDS'TROM, P.A.  
DIANE D. TREMOR, P.A.  
JOHN L. WHARTON

MAILING ADDRESS  
POST OFFICE BOX 1567  
TALLAHASSEE, FLORIDA 32302-1567

TELECOPIER (850) 656-4029

November 20, 2001

ROBERT M. C. ROSE  
OF COUNSEL

David M. Owen, Esquire  
Assistant County Attorney  
Lee County, Florida  
2115 Second Street  
Fort Myers, Florida 33902

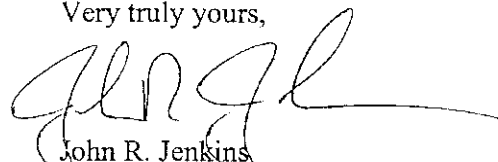
Re: Bonita Springs Utilities, Inc.;  
Petition to Extend Franchise  
Our File No. 20989.08

Dear David:

Attached hereto please find seven copies of Bonita Springs Utilities, Inc.'s Petition to Extend its Franchise Agreement with Lee County including Exhibit "A" which was inadvertently left off the Petition sent to you on October 22, 2001. As the exhibits to the Franchise are rather lengthy and are already on file with the County, they have been omitted. However, they will be provided if necessary.

Should you have any questions regarding the enclosed, please do not hesitate to call.

Very truly yours,

  
John R. Jenkins  
For the Firm

JRJ:lts

Enclosure

cc: Mr. Fred Partin  
Ms. Patti Garrett  
G. Donald Thomson, Esquire

COPY TO: J. LAVENDER  
R. DIAZ  
I. VELEZ

Bonita/Franchise/Owen6.ltr

NOV 27 2001

THANKS.

D.

BONITA SPRINGS UTILITIES, INC.

PETITION TO EXTEND FRANCHISE

BONITA SPRINGS UTILITIES, INC., f/k/a Bonita Springs Water System, Inc. (hereinafter "BSU"), a not-for-profit Florida corporation, by and through its undersigned attorneys, presents this Petition to Extend Franchise and would show unto the Honorable Board of County Commissioners of Lee County, Florida, the following:

1. On February 11, 1970, Lee County did, by Resolution bearing the same date, grant to BSU an exclusive right, privilege and franchise to construct, maintain, equip and operate a water and sewer collection, disposal and distribution system over and in the areas as detailed in the Resolution granting the exclusive franchise.

2. The County has from time to time, by resolution, amended, extended, and restated BSU's Franchise.

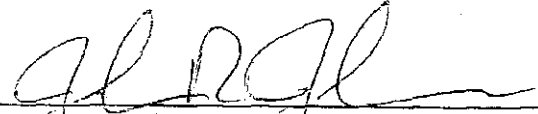
3. The financial advisors to BSU have indicated that a renewal and extension of the Company's Franchise, in accordance with current law, extending the Franchise term from its remaining years to a term of 30 years hence, is necessary in order to assist in the marketing and sale of the approximately \$60,000,000 Lee County Industrial Development Authority Bond Issue (Series 2002) with a 30-year maturity. Through the Series 2002 Bond Issue, BSU plans to undertake and continue a Capital Improvement Program to meet the needs of existing and future customers and increasing regulatory standards.

4. The purpose of this Petition is to obtain Lee County's approval for an extension of the Franchise, such that the Franchise term of 30 years will begin to run as of the date of the Board's action by resolution approving this Petition.

WHEREFORE, Petitioner requests that this Honorable Commission renew, approve, and extend its Amended and Restated Franchise Agreement in the form attached hereto as Exhibit "A."

The Petitioner further requests that this Honorable Commission set a Public Hearing as may be required by law to hear this Petition, and that this Honorable Commission grant the terms of this Petition by County resolution.

Respectfully submitted this 22<sup>nd</sup> day of October, 2001, by:



JOHN R. JENKINS, ESQ.  
STEVEN T. MINDLIN, ESQ.  
Rose, Sundstrom & Bentley, LLP  
2548 Blairstone Pines Drive  
Tallahassee, Florida 32301  
(850) 877-6555

## EXHIBIT A

Lee County Contract No. \_\_\_\_\_

BONITA SPRINGS UTILITIES, INC.  
AMENDED AND RESTATED FRANCHISE AGREEMENT  
BY AND BETWEEN THE BONITA SPRINGS UTILITIES, INC.  
AND LEE COUNTY, FLORIDA

A RESOLUTION GRANTING TO THE BONITA SPRINGS UTILITIES, INC., ITS SUCCESSORS AND ASSIGNS, THE EXCLUSIVE RIGHT, PRIVILEGE OR FRANCHISE FOR A PERIOD OF THIRTY YEARS TO CONSTRUCT, MAINTAIN, EQUIP AND OPERATE A WATER SUPPLY, TREATMENT AND DISTRIBUTION SYSTEM AND A SEWER COLLECTION, TREATMENT AND DISPOSAL SYSTEM AND GRANTING THE EXCLUSIVE RIGHT AND PRIVILEGE TO PROVIDE WATER AND SEWER SERVICES TO THE FOLLOWING DESCRIBED PROPERTY IN LEE COUNTY, FLORIDA, TO WIT:

Bonita Springs and Bonita Beach area, more particularly described in EXHIBIT "A" hereto.

[legal description has been moved to EXHIBIT "A"]

WHEREAS, on February 11, 1970, Lee County did, by Resolution, grant to the Bonita Springs Water System, Inc., an exclusive right, privilege and franchise to construct, maintain, equip, and operate a water and sewer collection, disposal, and distribution system over and in the areas as described in the Resolution granting the exclusive franchise; and,

WHEREAS, on May 2, 1990, the Board of County Commissioners ratified and confirmed their desire to have the Bonita Springs Water System engage in a substantial financing and construction effort in order to provide central sanitary sewer service to the Bonita Springs area; and,

WHEREAS, on November 21, 1990, the Board of County Commissioners adopted an "Amended and Restated Franchise Agreement by and between the Bonita Springs Water System, Inc. and Lee County, Florida" which significantly added to the service territory of the Grantee; and

WHEREAS, BONITA SPRINGS WATER SYSTEM, INC. has subsequently changed its name to BONITA SPRINGS UTILITIES, INC.; and,

WHEREAS, BONITA SPRINGS UTILITIES, INC. has made application to the County Commissioners of Lee County, Florida, to grant, ratify, confirm and restate the Amended Franchise as granted in the Franchise Agreement of May 1, 1996, to provide sewerage and water services within the area in Lee County, Florida, described heretofore; and,

WHEREAS, the laws of Florida authorize the granting of such franchise;

NOW BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF  
LEE COUNTY, FLORIDA:

1. BONITA SPRINGS UTILITIES, INC., a Florida corporation, hereinafter referred to as the "Grantee", is hereby granted the exclusive right, privilege or franchise to construct, maintain and operate in, under, upon, over and across the present and future streets, roads, terraces, alleys, bridges, easements and other public places located anywhere within the foregoing described franchise area in accordance with established practice with respect to sewerage and water service or services, construction, operation and maintenance of sewerage collection facilities (including pumping stations, gravity water services and all service or services incidental or necessary with respect thereto, to the above described franchise area and all buildings located thereon and the occupants thereof.

2. The Grantee shall possess and exercise the exclusive privileges and authorities herein granted, except as may hereinafter be provided, for the term of thirty (30) years from this date.

3. All work done hereunder, in, under, upon, over and across the present and future streets, avenues, alleys, highways, bridges, easements, and other public places in Lee County, Florida, for the purpose of carrying out the provisions of this exclusive franchise shall be done and performed in a good workmanlike manner, and all excavations or damage by Grantee by reason of such work shall within a reasonable time and as early as practicable after such excavation or damage, be replaced by Grantee in as good a condition as it was at the time of such excavation and damage.

4. In consideration for the granting of this Franchise, the Grantee agrees, (a) to prevent the creation of any obstructions or conditions which are or may become dangerous to the travelling public; (b) to repair any damage or injury to the road or highway by reason of the exercise of the privileges granted herein and to repair the road or highway promptly, restoring it to a condition at least equal to that which existed immediately prior to the infliction of such damage or injury; (c) to hold the Board of County Commissioners and members thereof harmless from the payment of any compensation or damage resulting from the exercise of the privileges granted herein; (d) to keep the facilities properly insured for the protection of the County and the public; and, (e) Grantee agrees that in the event of widening, repair, or reconstruction of any road, that Grantee shall move or remove such water or sewer lines at no cost to the County, unless specifically otherwise agreed to by and between the parties hereto.

5. The Grantee is authorized and empowered to establish, charge and enforce the initial rates to individual users of the sewerage and water system shown on the rate schedules attached hereto as Exhibit "A"; however, notwithstanding such rate schedules, Grantee is authorized and empowered to establish, amend, revise and enforce from time to time or times to times in the future, different rates or rate schedules reflecting rates lower or higher than those shown on Exhibit "A"; however, any such lower or higher rates or rate schedule so established and enforced from time to time by Grantee shall at all times be reasonable and must have the prior written consent of the Board

of County Commissioners of Lee County, Florida, before the said revised rates can be placed into effect.

Grantee may further establish, amend or revise from time to time in the future and enforce rules and regulations for sewerage and water services and covering the sewerage and water services within or on the franchised property; provided, however, all such rules and regulations established by service company from time to time shall at all times be reasonable and subject to the approval of the Board of County Commissioners of Lee County, Florida.

6. All water and sewerage system facilities used, useful or held for use in connection with the sewerage and water services under the terms of this franchise and installed and furnished by the Grantee, shall at all times remain the sole, complete and exclusive property of Grantee and under its exclusive, complete and sole ownership, title control and operation. No person, firm or corporation shall have the right to connect to the facilities of the Grantee or to obtain any sewerage or water services furnished by Grantee under the terms of this franchise except with the consent of the Grantee and upon full compliance with the rules and regulations promulgated from time to time by the Grantee and payment of any contribution in aid of construction (*a/k/a* aid to new construction fees), connecting charges, fees or rates which may be established or charged by the Grantee under the terms of this franchise.

7. Neither this franchise, nor any of the rights hereunder, may be sold, assigned, or transferred by the Grantee without first obtaining the written consent of the Board of County Commissioners. All assignees shall be bound to the same extent as the original Grantee.

8. The County Commissioners agree to adopt all resolutions and take all actions necessary or suitable, both for the reasonable protection of the rights and property of the Grantee and to enable the Grantee to enforce any of said Grantee's reasonable rules and regulations for the management, operation and control of the sewerage and water system to be provided hereunder and to pass any reasonable resolutions and take any reasonable action that may be necessary or suitable in order to fully confirm to said Grantee the rights herein or hereby granted or intended so to be.

9. In accordance with the provisions of this franchise the Grantee will provide at its cost and expense sewerage and water services to the property described above and to the buildings located thereon and the occupants thereof in a manner to conform with all reasonable requirements of the State of Florida Board of Health and all other public or governmental agencies or bodies having jurisdiction over the Grantee's water service operations. No installations or alterations shall be made by Grantee prior to the plans therefor being submitted to the Board of County Commissioners, or its duly authorized agent, which shall have the right at all times to inspect the facilities installed by Grantee to see that they are constructed according to sound engineering practices.

10. Failure on the part of the Grantee to comply in any substantial respect with the provisions of the franchise shall be grounds for forfeiture of this grant. Provided, however, that no such forfeiture shall be exercised until written notice of such failure to comply has been given to Grantee. Upon receipt of such notice, Grantee shall have ninety (90) days within which to comply or show cause to the Board of County Commissioners its failure so to do.



11. The Board of County Commissioners of Lee County, Florida, shall have the option at any time after this grant to proceed with eminent domain in order to acquire the Grantee's sanitary sewerage and water system if the purchase price for same cannot be agreed upon, should the Grantor elect to pursue acquisition of the Grantee's utility system. Nothing herein contained, however, shall be so construed so as to prevent the Grantee from contesting the issue of public necessity, or otherwise opposing the condemnation of its system.

12. Within thirty (30) days after the first anniversary date of this grant and within thirty (30) days after each such succeeding anniversary date of this grant, Grantee shall pay to the Board of County Commissioners of Lee County, Florida, an amount which is six percent (6%) of Grantee's gross revenues derived from the sale of sewerage and water services to residential and commercial customers within the limits of the area hereinabove described, excluding connection charges for the twelve (12) fiscal months preceding the actual anniversary date. At the time the Grantee pays the amount herein required to be paid, it shall furnish to the Board of County Commissioners, Lee County, Florida, an audit verified by a competent CPA as to the total gross revenues collected by Grantee. In addition thereto, Grantee's books, records and accounts shall, at all times, remain available to the Board of County Commissioners, Lee County, Florida, for the purpose of verifying the payments made to it under this provision. Provided, however, that in the event the Grantee is a non-profit association or corporation that this provision as to the payment of six percent (6%) of the gross revenues to Lee County shall not apply. It shall be the Grantee's burden to file the necessary instruments and proof to show that it is a non-profit association or corporation in order to be relieved and released from the operation of this paragraph.

13. As a part of the consideration for this franchise, the Grantee agrees that it will construct at its sole cost and expense, all of the buildings, plants, systems and appurtenant facilities necessary, proper or required to furnish a central sanitary sewerage and water system and will extend the required collection lines or other facilities, to and within the franchise area, as, when, and where the same are necessary, and economically feasible, so that the said franchise area and the buildings located thereon and the occupants thereof, will be provided when and as necessary and when economically feasible with sewerage and water services satisfactory to and meeting the approval of all public, governmental and other agencies having supervision, regulation, direction or control of such sewerage system and services rendered in connection therewith.

14. The Grantee shall have the first right to provide sewerage and water services to all parts of the franchise area, but in the event that there is any portion of the franchise area with respect to which the Grantee is not providing such sewerage and water service, then the Board of County Commissioners, after first giving the Grantee a reasonable opportunity in which to provide such services, may grant such right to any other person or firm which is ready, willing and able to provide sewerage and water services to such area.

15. This franchise shall take effect and be in force from the date of its adoption by the Board of County Commissioners of Lee County, Florida, and its acceptance in writing by the Grantee.

ADOPTED this 1st day of June, 2001.

BONITA SPRINGS UTILITIES, INC.

Attest:

T. Harry Hoines  
Secretary

By: [Signature]  
John Mathes  
President

LEE COUNTY, A political subdivision  
of the State of Florida

Attest:

Charlie Green  
Clerk of the Court

By: Michelle S. Lissmer  
Deputy Clerk

By: [Signature]  
Chairman

Bonita\05\Franchis.05

[Signature]  
[Faint text]