

CITY OF BONITA SPRINGS
ORDINANCE NO. 19-01

AN ORDINANCE OF THE CITY OF BONITA SPRINGS APPROVING THE PETITION OF BONITA SPRINGS UTILITIES, INC., MODIFYING ITS WASTEWATER TARIFF TO APPROVE A SPECIAL SERVICE CHARGE FOR THE LEISURE TIME SUBDIVISION; AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, BONITA SPRINGS UTILITIES, INC. ("BSU") provides water and wastewater service within and outside the City of Bonita Springs pursuant to that certain Franchise Agreement By, Between and Among Bonita Springs Utilities, Inc., The City of Bonita Springs, Florida, and Lee County, Florida ("Franchise"); and,

WHEREAS, in September 2018 the City of Bonita Springs received the Petition dated September 23, 2018, to amend its Tariff for special service charges to the Leisure Time Campsites & Club Association, Inc. adult community ("Leisure Time"), which Petition was accepted by the City Council at its regular meeting of January 16, 2019 and is attached hereto as Exhibit A; and,

WHEREAS, the City Council has set the said Petition for a public hearing on February 6, 2019, at 5:30 p.m., and caused due notice thereof to be published in the Fort Myers News-Press, a copies of which said notice are on file with the City Clerk; and,

WHEREAS, a public hearing was held on February 6, 2019, in the City Council Chambers, Bonita Springs, Florida, at which time BSU presented evidence and testimony in support of its Petition, and all interested parties were permitted to address the Board and to make a statement of record, and the Board, after being fully advised in the premises, makes the following determinations:

NOW THEREFORE, the City of Bonita Springs hereby Ordains:

1. The revised Water and Wastewater Tariffs, to include a special service charge to Leisure Time, as proposed by BSU in its Petition, is hereby approved and granted.
2. The provisions of this Ordinance shall take effect 30 days following its adoption by the City Council by official vote at the conclusion of the public hearing.

DULY PASSED AND ENACTED by the City Council of the City of Bonita Springs, Lee County, Florida, this 6th day of February, 2019.

AUTHENTICATION:



Mayor



City Clerk

APPROVED AS TO FORM: 

City Attorney

Vote:

| | | | |
|--------|-----|----------|-----|
| Carr | Aye | O'Flinn | Aye |
| DeWitt | Aye | Quaremba | Aye |
| Forbes | Aye | Simmons | Aye |
| Gibson | Aye | | |

Date filed with City Clerk: 2/13/19

**PETITION TO APPROVE SPECIAL SERVICE CHARGE
FOR LEISURE TIME PARK**

Bonita Springs Utilities Inc. ("BSU"), a not-for-profit Florida corporation, files this Petition to Approve Special Service Charge for Leisure Time Campsites & Club Association, Inc. ("Leisure Time" or "Park"), and in support thereof states:

1. Leisure Time is a resident owned adult park located at 24400 S. Tamiami Trail, Bonita Springs. It consists of two hundred and six single-family homes, one clubhouse/office building and one laundry building.

2. In the early 1990s, BSU developed a central wastewater system in the Bonita Springs area. In 1993, Leisure Time abandoned its package wastewater treatment plant and connected to the BSU central wastewater system. However, the Park retained ownership of the internal wastewater collection system.

3. In recent years, the Park's wastewater collection system may have experienced problems with infiltration and inflow. Leisure Time and BSU have determined it to be in the best interest of the residents to transfer ownership and responsibility for operation of the sewage infrastructure in the Park to BSU and have BSU undertake repairs and improvements to the sewer collection system. BSU shall pay for such repairs and improvements, subject to City approval of a Special Service Charge to be collected from the Leisure Time residents for such improvements.

4. BSU operations and engineering staff, along with selected underground contractors, evaluated the system and identified repairs and replacements which include reconditioning manholes, installation of cleanouts, pipeline repairs and other miscellaneous repairs. Attached as Exhibit "A" is a Leisure Time Special Service Charge Report (the "Report") which identifies a cost of One Hundred Ninety Six Thousand Two Hundred and Ninety Six Dollars (\$196,296) for collection system facilities improvements and upgrades within the Park ("Repair Cost").

5. A Special Service Charge will recover the cost of improvements specific to the Park, and will be used for the special benefit of its residents. Utility rate making principles require that a charge of this type be paid by the residents who will directly benefit from the funded improvements. The Report identifies a Special Service Charge based on the project cost of Nine Hundred and Forty Three Dollars and Seventy Three Cents (\$943.73) per single family home and the clubhouse building and laundry building. The Charge fairly allocates cost among the Park residents.

6. Residents of the Park may pay the Special Service Charge in a single up-front payment, or through a monthly payment option of Six Dollars and Twenty Three Cents (\$6.23) based on a twenty (20) year term at five percent (5%) interest per annum. The Charge may be paid off at any time without penalty. The Special Service Charge shall not be increased if the actual cost of repairs identified in the Report exceeds the estimated Repair Cost.

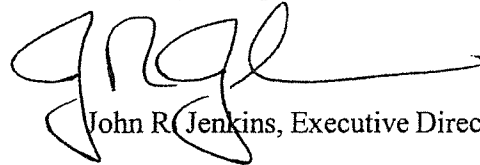
7. On July 25, 2018 the residents of Leisure Time took formal action to approve this transaction. On August 21, 2018 the BSU Board of Directors approved the transaction. By implementing this charge BSU is committing to make the improvements identified in the Report.

8. BSU requests approval of a new Wastewater Tariff Section 45.7 as set forth in Exhibit "B" attached hereto, authorizing collection of the Leisure Time Special Service Charge.

9. Pursuant to the Franchise Agreement enacted as City of Bonita Springs Ordinance No. 02-14, BSU's Water and Wastewater Tariffs changes are subject to City approval.

Bonita Springs Utilities, Inc. respectfully requests City Council set a public hearing and take such action as may be required by law to hear this Petition and approve the Leisure Time Special Service Charge as set forth herein.

Respectfully submitted this
24th day of September, 2018 by:

A handwritten signature in black ink, appearing to read "John R. Jenkins", with a long horizontal flourish extending to the right.

John R. Jenkins, Executive Director

Leisure Time Park Special Service Charge Report



August 2018

Introduction

This report summarizes the location, history, physical condition and anticipated costs associated with the acquisition by Bonita Springs Utilities, Inc. (BSU) of the wastewater collection system owned by Leisure Time Campsites & Club Association, Inc. and serving the area known as Leisure Time Park. Leisure Time Park is located at 24400 S. Tamiami Trail, Bonita Springs. Leisure Time was established in 1987 and incorporated in in 1993. It consists of two hundred and six single-family homes, one clubhouse/office, and one laundry building as shown in the image below.



Wastewater Collection System History

In the early 1990s, BSU developed a central wastewater system in the Bonita Springs area. In 1993, Leisure Time abandoned its package wastewater treatment plant and connected to the BSU system. As a condition of this service arrangement, ownership of the wastewater collection system remained with the Park. In recent years, the system has experienced problems with groundwater infiltration and inflow. This can be a common problem among wastewater collection systems

Exhibit "A"

depending on the quality of construction and maintenance. The residents recognize that transfer of ownership and maintenance responsibilities to BSU will provide the best long term solution to these problems.

BSU Inspection

In recent years BSU staff has worked with representatives of Leisure Time regarding the condition of the wastewater collection system. BSU installed a flow meter at the lift station to measure wastewater flows as compared to water consumption. BSU operations and engineering staff performed an evaluation to determine the condition of the system and assess necessary repairs and replacements which include reconditioning of manholes, installation of cleanouts, pipeline repairs and other miscellaneous repairs. In this evaluation the parties utilized the services of, and received repair quotes from Paints & Coatings, Inc. and Sewer Viewer, Inc., experienced local underground contractors. A list of associated repair and replacement costs was then developed.

Real Property Issues

Wastewater infrastructure is located almost entirely within the roadways which will require a grant of easement or other property interest conveyed to BSU. A small number of pipelines are located in platted public utility easements.

System Repair and Replacement Costs

The wastewater collection system in Leisure Time Park is comprised of approximately 4,604 LF of gravity main, 28 manholes, 112 Sewer Laterals. The 1 pump station and 730 LF of force main are currently owned by BSU. The costs of the repairs BSU will undertake to the system are as follows:

| <u>Description</u> | <u>Quantity</u> | <u>Cost/Cleanout</u> | <u>Total</u> |
|-----------------------------------|-----------------|----------------------|------------------|
| Install Cleanouts | 110 | \$400.00 | \$44,000 |
| Manhole Rehab (Paints & Coatings) | 28 | Varies | \$123,556 |
| Sewer Repairs (Sewer Viewer) | | | \$8,740 |
| Misc. Repairs | | | \$20,000 |
| Total Repair Costs | | | \$196,296 |

Special Service Charge Calculation

The methodology used in apportioning cost among properties in Leisure Time Park reflects a fair and reasonable allocation to each parcel. In furtherance of state law and ratemaking principals, all parcels located within the Leisure Time Park will share in the cost of wastewater improvements. The apportionment of cost among units within Leisure Time Park is based on equivalent residential connections (ERC). An ERC is a unit of measurement of utility service based on the usage of an average single family home. There are 208 units or ERC's within Leisure Time Park.

In order to improve water and wastewater service to existing subdivisions, BSU has previously implemented special service charges. These charges defray the cost of improvements necessary to repair and upgrade developed residential areas. Customers benefiting from the improvements pay a special service charge either in a lump sum, or may amortize the charge in a monthly fee, including interest.

In the Leisure Time Park, it has been determined that, based on utility service usage, all parcels will be considered 1.0 ERC. Customer classifications subject to the proposed wastewater special service charge are as follows:

| <u>Customer Type</u> | <u>Number of ERCs</u> |
|----------------------|-----------------------|
| Single Family | 206 |
| Clubhouse | 1 |
| Laundry | <u>1</u> |
| Total | 208 |

Based on the ERC count and improvement costs, the special service charge is as follows:

| <u>Customer Type</u> | <u>Units</u> | <u>Total Cost</u> | <u>Charge per ERC</u> |
|-----------------------------|--------------|-------------------|-----------------------|
| Single Family and Clubhouse | 208 | \$196,296 | \$943.73 |

The \$943.73 charge is a one-time payment. Consistent with other special service charge arrangements, BSU would make available a monthly installment payment option based on a 20-year term at five percent (5%) interest per annum. The resulting charge per ERC is \$6.23 per month, placed on the customer's monthly utility bill. The outstanding balance may be paid in full at any time without penalty.

Exhibit "B"

- 45.7 SPECIAL SERVICE CHARGE TO LEISURE TIME PARK – In addition to the other rates and charges contained in this Tariff, customers in the Leisure Time Park are required to pay a Special Service Charge which is intended to defray the cost of necessary improvements in order to render service to such customers, and which provide a special benefit to those customers. Customers may pay the Special Service Charge in a lump sum, or amortize the cost over 20 years with an interest rate of 5.0% interest per annum. The charges are set forth below:

Single Family/Clubhouse

| | |
|-------------------|-------------------|
| One Time Payment: | \$ 943.73 per ERC |
| or | |

| | |
|-----------------------|-----------------|
| Monthly Amortization: | \$ 6.23 per ERC |
|-----------------------|-----------------|

Any customer electing to pay the amortized monthly charge may request from the Company the outstanding balance due on such Special Service Charge and pay off the charge in full at any time. Customers electing to pay the monthly amortized charge shall be subject to the terms of payment for monthly rates as set forth herein, including being subject to disconnection of service for nonpayment. In the event a customer elects to amortize the special service charge, the customer shall allow the Company to place a lien on the property to secure repayment.

**Memorandum
from the
Bonita Springs City Attorney**

Date: September 25, 2018

To: Bonita Springs City Council

From: 
Audrey E. Vance
City Attorney

Re: Bonita Springs Utilities Petition to Approve Special Service Charge
Leisure Time Campsites and Club Association, Inc.

On September 25, 2018, I received the petition from Bonita Springs Utilities Executive Director John R. Jenkins on behalf of Bonita Springs Utilities requesting revisions to its wastewater tariff for a special service charge for the Leisure Time Subdivision, consisting of 206 dwelling units, clubhouse / office and laundry facilities. Attached is a copy of the documents provided, for your review. In accordance with City of Bonita Springs Ordinance No. 02-14, which created the Franchise Agreement between Bonita Springs Utilities, City of Bonita Springs and Lee County, Section 5 states the following:

SECTION FIVE: RATES AND CHARGES

- (A) Utility is hereby authorized and empowered to establish, charge and enforce such rates and charges as are shown on the rate schedules (tariffs) attached hereto as Exhibit "C," however, notwithstanding such existing rate schedules, Utility 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 either lower or higher than those shown in Exhibit "C", however, any such lower or higher rates or rate schedules so established and enforced from time to time by Utility shall at all times be reasonable, fair and just, and must have the prior consent by Resolution of the City Council, before said revised rates can be placed into effect.
- (B) Notwithstanding the foregoing, Utility may file and enforce amended tariffs showing proposed rates and charges and impose such new rates and charges upon sixty (60) days notice to the City, subject to final review by the City and refund to Utility's members of the difference between the prior tariff rates and the revised tariff rates in the event such rates are found to be excessive, unjustified and/or unwarranted. Upon filing of any amended tariffs, the Utility will produce to the City a copy of its rate study for review by the public and the City. This provision shall not be construed to require a rate study for any "pass through" expenses, franchise fee charges or other charges or indexing, as referenced in

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Subsection (D) below. The City further acknowledges that a "rate study", as defined herein and as used by the industry, may be satisfied by a letter report or other similar documentation, depending upon the complexity of the rate(s) adjustments.

- (C) The City shall hold a Public Hearing in order to consider the Utility's proposed rates and charges, but at such Public Hearing, the City may not deny the Utility's reasonable request to increase its rates and charges in order to pay for its prudent cost of operation and maintenance of its system, plus satisfy its debt service obligations. If the City believes that any portion of the Utility's proposed rates are excessive or unreasonable, the City must find there is competent substantial evidence in the form of a City rate study, which is subject to review and challenge by the Utility. As an alternative, the City may hire a Hearing Examiner to take public input and issue a recommendation to City Council, in accordance with the Florida Administrative Procedures Act, Florida Statutes Chapter 120. Any rate study procured by the City or any affected third party must be prepared by a qualified professional using the generally accepted standards for preparing such rate studies for utilities tariffs. Failure by the City to issue a final determination of the appropriate level of rates and charges for the Utility within six months of the date of the Utility's filing of amended tariffs shall constitute firm acceptance by the City of the Utility's proposed amended tariffs. In all cases, the actions of the Utility, or the City, may be appealed to the 20th Judicial Circuit Court by writ of certiorari.
- (D) At all times, however, Utility shall be authorized to charge and collect revenues sufficient to cover 100% of its reasonable cost of operation and maintenance on its facilities, plus fully comply with its debt service coverage obligations. Utility shall further be authorized to amend its rates and charges so as to "pass through" any franchise fees, or increases in its imbedded cost of operation, such as increases in the cost of purchased power, chemicals, taxes, insurance and other foreseeable expenses. It may additionally, no more than once annually, index its rates so as to take into effect the normal cost of living and inflation indices, provided, however, that in no event may Utility increase its rates by such "indexing" mechanism more than the cost of living index [CPI] as published by the U.S. Department of Labor, Bureau of Labor Statistics "All Goods and Services," S.E. Region, without the prior approval of the City. Moreover, Utility may not compound indexings for more than any two year period. Stated otherwise, if Utility fails to index in year one, it may index in year two for years one and two, but if it fails to do so, it may not, for example, in year three index for more than years two and three. In all cases, Utility's rates shall be just, reasonable, compensatory, and

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not unfairly discriminatory. In all cases, Utility's rates shall be just, reasonable, compensatory, and not unfairly discriminatory.

- (E) Utility may further establish, amend or revise from time to time in the future and enforce rules and regulations for water, wastewater and reuse utility services within its franchise service area; provided, however, all such rules and regulations established by Utility from time to time shall be at all times reasonable and subject to review and approval by the City.

Please note that consistent with the City Charter, Section 27, actions requiring an ordinance, dictates that "in addition to other acts required by law or by specific provision of this Charter to be done by ordinance, those acts of the city council shall be by ordinance which:

- (a) ...
- (b) Grant, renew, or extend a franchise;
- (c) *Regulate the rate charged for its services by a public or private utility when not regulated or pre-empted by state law;*
- (d) -(f) ...

Acts other than those referred to in this section may be done either by ordinance or by resolution.

In addition to City Council reviewing the enclosed petition, I also asking that they be reviewed by the City Manager, Public Works Director, City Clerk, Finance Director and incoming City Attorney to determine whether the rates appear just, reasonable, compensatory and not unfairly discriminatory. By copy to the City Manager, I am further recommending that she coordinate with the City Clerk to determine when to schedule this matter for City Council to discuss the rates and determine whether the City wishes to enter into a "rate study", should it have questions as to the rates. After there is a determination whether or not to have a rate study, City Council can direct the City Attorney to schedule the ordinance through the adoption process.

AEV/

Enclosure

cc: Arleen M. Hunter, City Manager
Matt Feeney, Director, Public Works / Assistant City Manager
Debbie Filipek, City Clerk
Anne Wright, Director, Finance
Derek Rooney, Incoming Bonita Springs City Attorney
(Above with enclosure)
G. Donald Thomson, Esquire BSU
John Jenkins, Esquire, BSU Executive Director
Richard Wesch, Lee County Attorney
Above without enclosure