

CITY COUNCIL AGENDA FORM

REQUESTED COUNCIL MEETING DATE 06/22/10

SUBJECT: UTILITY SERVICE AGREEMENT/Colony in the Wood Mobile Home Park				
DEPARTMENT: FINANCE				
improvements and other miscellane	egarding water/sewer services, impac eous matters related to utility service rris Boulevard, subject to the adoption of	to and on the		
2009, prior annexing into the City Department of Environmental Prote package plant) on the property and the City that establishes a timefra addresses impact fees, existing imp	was connected to the City water systemy. The property owner currently main ection (DEP) permitted stand-alone so has jointly prepared this Utility Service arms for future connection to the City provements and other miscellaneous management is attached for your reviews.	itains a Florida ewer plant (i.e. Agreement with sewer system, atters related to		
ATTACHMENTS: Ordinance	e ⊠ResolutionBudget Re	esolution		
Other Support Documents	/Contracts Available for Review in Mana	ger's Office		
DEPARTMENT HEAD ATA STO	Ashn Shelley Kinance Director	6/14//0 Date		
FINANCE DEPARTMENT	Approved as to Budget Requirements	Date		
CITY ATTORNEY MINTS MILET	Approved as to Form and Legality	Date 6, 16, 10		
CITY MANAGER	Approved Agenda Item For:	6/22/10		
COUNCIL ACTION: 1 Approved	as Recommended [] Disapproved			
[] Tabled Indefinitely [] Continued	I to Date Certain [] Approved with	Modification		

RESOLUTION NO. 10-41

A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA; APPROVING AN UTILITY SERVICE AGREEMENT FOR COLONY IN THE WOOD MOBILE HOME PARK REGARDING WATER/SEWER SERVICES, IMPACT FEES, EXISTING IMPROVEMENTS AND OTHER MISCELLANEOUS MATTER RELATED TO UTILITY SERVICE TO AND ON THE PROPERTY LOCATED AT 400 SOUTH CLYDE MORRIS BOULEVARD; PROVIDING FOR CONFLICTING RESOLUTIONS; AND PROVIDING AN EFFECTIVE DATE.

NOW THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF PORT ORANGE, VOLUSIA COUNTY, FLORIDA:

Section 1. The Mayor and City Manager are hereby authorized to make execute said Utility Service Agreement on behalf of the City of Port Orange, attached hereto as Exhibit "A".

Section 2. All resolutions or parts of resolutions in conflict with the provisions of this resolution are hereby repealed to the extent of such conflict.

Section 3. This resolution shall become effective upon adoption.

	Mayor Allen Green
ATTEST:	
Kenneth W. Parker, City Man	ager
Adopted on the day of _	, 2010
Reviewed and Approved:Ci	tyAttorney

EXHIBIT "A"

UTILITY SERVICE AGREEMENT

FOR Colony in the Wood

THIS UTILITY SERVICE AGREEMENT (this "Agreement") is made and entered into as of the of ______ 2010 by and between THE CITY OF PORT ORANGE, FLORIDA, a municipal corporation (the "City") and SHADDIX COMMUNITIES, LTD., a Florida limited partnership (the "Owner").

WITNESSETH:

WHEREAS, the Owner owns certain real property situated within Volusia County, Florida as more particularly described in Exhibit "A" attached hereto and incorporated by reference (the "Property"); and

WHEREAS, the Owner has submitted a Petition for Voluntary Annexation to the City for voluntary annexation of the Property pursuant to § 171.044, Florida Statutes; and

WHEREAS, pursuant to § 171.042(1)(c), Florida Statutes, the City shall provide for the extension of existing municipal water and sewer services to all areas subject to annexation; and

WHEREAS, the Owner has connected into the City water system prior to commencement of the annexation process and is currently paying the in-City impact fees and monthly usage charges; and

WHEREAS, the Owner has paid the City all in-City impact fees and connection fees related to the connection of municipal water service; and

WHEREAS, the Owner currently maintains a stand-alone sewage plant on the Property (the "Package Plant"); and

WHEREAS, the Package Plant has a valid Domestic Wastewater Facility Permit through the Department of Environmental Protection ("DEP") - Permit #: FLA011224; and

WHEREAS, the parties have reached agreement regarding water/sewer services, easements, engineering and design standards, existing improvements and certain other miscellaneous matters related to utility service to and on the Property; and

WHEREAS, this Agreement memorializes the understanding of the parties with respect to the foregoing and related matters.

NOW, THEREFORE, for and in consideration of the premises and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the City and the Owner agree as follows:

- 1. Recitation. The statements made above are affirmed by the parties to be correct and are hereby incorporated by reference as material elements of this Agreement.
- 2. Full City Services to the Property. Except as provided below concerning water and sewer services, the City shall make available to the Owner and the residents of the Property all urban services available to other properties within the City upon annexation, on substantially the same basis and in the same manner as such services are provided within the rest of the municipality prior to annexation, except for solid waste services. (§ 171.042(1)(c)(1), Florida Statutes). The Owner shall use a private contractor for solid waste services until such time that the City's franchisee is

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capable of delivering service to the Property. At such time that the Owner and the City agree that the City's franchisee is capable of delivering service to the Property and upon thirty (30) days written notice, the Owner shall commence solid waste services through the City's franchisee for solid waste.

- 3. Water Service to the Property. The City began servicing the Property with City water on June 30, 2009 (the "Connection Date"). As part of the City water connection process, the Owner constructed certain improvements on the property (the "Water Distribution System"). The Water Distribution System within the Property will remain owned by the Owner who shall continue maintenance responsibility of same.
 - a. City Obligations. The City shall continue to make available to the Owner and the residents of the Property all water services available to other properties within the City, subject to the following condition:
 - i. The City hereby agrees to continue charging the Owner the in-City water service rate, subject to the Owner obligations provided below.
- 4. Sanitary Sewer Service to the Property. It is the intent of the parties for the City to supply sanitary sewer connections to the Property. The Package Plant within the Property shall remain owned by the Owner who shall continue maintenance responsibility of same. The Owner anticipates connecting into the City's sewer service with all costs borne by the Owner, as detailed by this Agreement.
 - a. City Obligations. Except as provided below concerning sanitary sewer services, the City shall make available to the Owner and the residents of the Property all sanitary sewer services available to other properties within the City, subject to the following conditions:
 - i. The City hereby agrees to provide sanitary sewer service to the Property, allowing the Owner to connect into City sewage mains on the westerly side of the Property at a location mutually agreeable to the parties, as provided by this Agreement.
 - ii. The City shall provide for connection to the City's sanitary sewer service at such time that the on-site Package Plant is no longer operating under a valid DEP permit or eleven (11) years from the execution of this Agreement, whichever occurs first. Operation of the Package Plant under a valid DEP permit shall include subsequent DEP permits secured by the Owner in a manner consistent with the permit renewal process set forth by Permit #: FLA011224. In the event the Package Plant is out of compliance, the City shall provide reasonable time for the Owner to bring the Package Plant into permit compliance before requiring connection to the City sewer system. "Reasonable time" shall be limited to one hundred eighty (180) days.
 - iii. The deferral for connection to the city sanitary sewer service as detailed in the preceding subsection (ii) shall only apply to the existing residential units

within the Property, including any expansion of the residential units that are of the same type as the existing residential units, if the expansion of units are served by the on-site package plant for sanitary sewer and the on-site package plant for sanitary sewer has sufficient capacity.

- iv. The City will not reserve or guarantee that sewer capacity is available for the Property until sewer impact fees are paid by Owner.
- b. Owner Obligations. In consideration of the City performances of its obligations as set forth in Section 4(a), the Owner shall be obligated as follows:
 - Payment of sewer impact fees and connection to City sewer facilities is contingent on available capacity at the City's sewer plant at the time of anticipated sewer connection.
 - ii. In the event Owner has not connected to the sanitary sewer system and sells the Property prior to either triggering threshold referenced in Section 4(a)(ii) (no longer operating under a valid DEP permit or eleven (11) years from the execution of this Agreement, whichever occurs first) sewer impact fees shall be immediately payable by the Owner to the City at the sale date and monthly minimum sewer utility fees shall be payable to the City the earlier of twelve (12) months after the date of sale or actual sewer connection, whichever occurs first. Sewer impact fees payable by the Owner to the City at the sale date shall be contingent on the City having sanitary sewer system capacity at the time of sale. In the event that Owner does not pay the City prior to sale and provided the City has available capacity, the City shall be entitled to record a lien against the property upon receiving notice of a recorded sale of the property and the lien shall be in the amount of the outstanding sewer impact fees.
 - iii. Costs related to the Owner's connection into the City sewer service main shall be borne by the Owner.
 - iv. Construction and maintenance costs related to sewer facilities located within the Property shall be borne by the Owner.
 - v. Once the sewer connection is made, the sewer facilities located within the Property shall be maintained at the expense of the Owner. The City shall be permitted access to the Property's sewer facilities for maintenance only upon request by the Owner or in the event of an emergency. The City will charge on an actual cost basis for required maintenance and a ten (10%) percent service charge for administration related to Owner's request or emergency.
 - vi. It is the intent of the parties for the City to supply sewer services to the Owner's property at or near the City sewage mains on the westerly side of the

Property and that the sanitary sewer system within the Property will remain the property of the Owner.

- 5. Impact Fee Payment. The City acknowledges that the impact fees when paid represent an entitlement to the Property such that future development on the Property shall be credited for the number of equivalent living units for which impact fees have been paid. Reservation of water and sewer capacity via entitlement shall be reserved for up to ten (10) years following loss or damage to living units, after which time the entitlements shall cease if water and sewer are not being utilized. In the event the City adopts a policy related to sunset provisions of impact fee reservations, such ordinance shall apply to this Agreement, so long as the capacity reservation is not smaller than a ten (10) year timeframe.
- 6. Future Water/Sewer System Expansion. Joint participation by the City in any future water/sewer system expansion to accommodate over sizing or upgrading to serve adjoining properties or developments will be as subsequently and mutually agreed upon between the parties at the time that such over sizing or upgrading is requested.
- Miscellaneous. This Agreement represents the complete understanding by and between the 7. parties with respect to utility service to and on the Property. Any and all prior agreements between the Parties with respect to any subject contemplated by this Agreement is hereby voided and superseded by this Agreement. The waiver by a party of any terms or conditions of this Agreement or any breach thereof shall not constitute a waiver of any other term or condition or any subsequent breach of this Agreement. In the event of litigation regarding the terms of this Agreement, venue of the action shall be in Volusia County and Florida law shall apply. Trial shall be non-jury for any issues subject to trial. The terms and provisions of the Agreement shall be applied equally to each party and the interpretation of the Agreement shall be guided by the express intent of the parties as determined by the overall effect of the provisions herein. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or otherwise unenforceable, such holding shall not affect the validity or enforceability of any other provision of this Agreement unless the holding so states. Amendments to this Agreement shall not be effective unless in writing and signed by all parties to the Agreement. Any notice or approval required to be given under this Agreement shall also be in writing and shall be deemed to have been given when received after the same has been either personally delivered or deposited in the United States mail, registered or certified mail, return receipt requested, postage prepaid, to the respective party at the address stated below:

As to the City:

City Manager City of Port Orange 1000 City Center Circle Port Orange, FL 32129

As to the Owner:

Sharlene S. Fox Colony in the Wood 4000 S. Clyde Morris Boulevard Port Orange, FL 32129, and This Agreement shall be binding on the parties hereto, their heirs, administrators, executors, successors in interest and assigns. This Agreement is effective as of the date of execution by the last of the Parties to this Agreement. This Utility Service Agreement shall be recorded by the City at the expense of the Owner.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF the parties hereto have caused this Agreement to be executed and sealed as of the day and year first above written.

Signed in the Presence of:	CITY OF PORT ORANGE, a Florida Municipal Corporation
Witness Signature	By:Allen Green, Mayor
Witness Name Printed or Typed	
Witness Signature	
Witness Name Printed or Typed	Attest: Kenneth W. Parker, City Manager
STATE OF FLORIDA COUNTY OF VOLUSIA	
by Allen Green and Kenneth W. Parker, as !	wledged before me this day of, 2010 Mayor and City Manager, respectively, of the City of on, who are personally known to me or who have n.
	Notary Public My Commission Expires:

Signed in the Presence of:	SHADDIX COMMUNITIES, LTD., a Florida Limited Partnership
Witness Signature	By: Sharlene S. Fox, General Partner
Witness Name Printed or Typed	
Witness Signature	
Witness Name Printed or Typed	
STATE OF FLORIDA COUNTY OF VOLUSIA	
by Sharlene S. Fox, as General Partner of S	nowledged before me this day of, 2010 haddix Communities, Ltd., a Florida limited partnership,
who is personally known to me or who ha	s provided as identification.
	Notary Public My Commission Expires: