

RESOLUTION NO. 2007- 359

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, AUTHORIZING AND APPROVING A SETTLEMENT AGREEMENT BETWEEN ST JOHNS COUNTY AND INTERCOASTAL UTILITIES, INC. IN CONNECTION WITH ST. JOHNS COUNTY'S ACQUISITION OF INTERCOASTAL UTILITIES, INC.'S UTILITY SYSTEM BY EMINENT DOMAIN AND AUTHORIZING THE CHAIRMAN OR VICE CHAIRMAN OF THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY TO EXECUTE THE SETTLEMENT AGREEMENT ON BEHALF OF ST JOHNS COUNTY

WHEREAS, St. Johns County (the "County") has determined to acquire through the power of eminent domain substantially all of the water and wastewater utility assets which are owned and used by Intercoastal Utilities, Inc. ("ICU") in providing services through its water and wastewater utility systems in St. Johns County, Florida;

WHEREAS, on October 16, 2007, the Board of County Commissioners (the "Board") of the County authorized the County's outside eminent domain counsel to enter into a \$24.5 million settlement in the eminent domain litigation proceedings; and

WHEREAS, a proposed form Settlement Agreement has been prepared for consideration by the Board, and the Settlement Agreement will be in substantially the form attached hereto, with such omissions, insertions and variations as shall be approved by the County Attorney and County officer hereinafter authorized to execute and deliver such Settlement Agreement as described herein (such final form hereinafter referred to as the "Settlement Agreement"); and

WHEREAS, ICU will transfer such assets to the County, all upon the terms and conditions set forth in the Settlement Agreement;

WHEREAS, the County has reviewed the terms, provisions, conditions, and requirements of the proposed form of Settlement Agreement attached hereto; and

WHEREAS, the County has determined that accepting the terms of the Settlement Agreement and entering into the Settlement Agreement will serve the interests of the County.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, AS FOLLOWS:

Section 1. The above Recitals are hereby incorporated into the body of this Resolution, and are adopted as Findings of Fact.

Section 2. The proposed form of Settlement Agreement attached hereto, with such omissions, insertions and variations as may be necessary and/or desirable and approved by the County Attorney and the Chairman or Vice Chairman of the Board prior to the execution and delivery thereof, is hereby authorized and approved, such necessity and/or desirability and approval by the County Attorney and the Chairman or Vice Chairman to be evidenced conclusively by the Chairman's or the Vice Chairman's execution thereof; and the Chairman or the Vice Chairman of the Board is hereby authorized to execute and deliver the Settlement Agreement on behalf of the County.

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, Florida, this thirteenth day of November, 2007.

BOARD OF COUNTY COMMISSIONERS OF  
ST. JOHNS COUNTY, FLORIDA

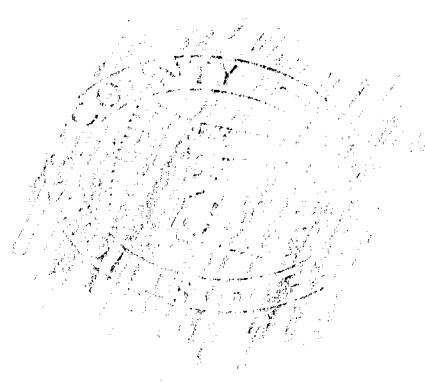
Attest:

  
Clerk

By:

  
Chairman

RENDITION DATE 11/15/07



IN THE CIRCUIT COURT, SEVENTH  
JUDICIAL CIRCUIT, IN AND FOR ST.  
JOHNS COUNTY, FLORIDA

Case No: CA06-669

Division: 55

ST. JOHNS COUNTY, a municipal )  
corporation of the State of Florida, )  
 )  
                    Petitioner, )  
 )  
v. )  
 )  
INTERCOASTAL UTILITIES, INC., a )  
Florida corporation, )  
 )  
                    Defendant. )  
 )  
\_\_\_\_\_ )

STIPULATED ORDER OF TAKING AND FINAL JUDGMENT

This cause having come before the Court on the joint motion of petitioner St. Johns County (the “County”) and defendant Intercoastal Utilities, Inc. (“Intercoastal”) for entry of this Stipulated Order of Taking and Final Judgment as to the eminent domain taking of the property described in Exhibit A (fee parcels), Exhibit B (easements) and Exhibit C (other property) (collectively, the “Property”), and the Court finding that the parties are authorized to enter into their joint motion, proper notice has been given to all persons having or claiming any equity, lien, title or other interest in or to the Property, and the compensation to be paid by the County is full, just and reasonable, it is

ORDERED AND ADJUDGED:

1. The Court has jurisdiction of the subject matter and the parties to this cause pursuant to Chapter 73, Florida Statutes.

2. The pleadings in this cause are sufficient and the County is properly exercising its delegated authority to acquire the Property for the public purpose described in the Petition.

3. The Property condemned in this action is set forth in the attached Exhibits A, B and C, and includes all of the those facilities or improvements located within or upon the lands that make up the water and sewer system of defendant Intercoastal.

4. Intercoastal does have and recover from the County the total sum of TWENTY-FOUR MILLION FIVE HUNDRED THOUSAND AND 00/100 DOLLARS (\$24,500,000.00) as full compensation for the taking of the Property and in satisfaction of all damages, interest or other sums recoverable in this action, inclusive of all attorneys' fees or costs, including all fees and costs for any and all monetary and non-monetary benefits obtained.

5. Within two days of the date of this judgment, the County shall deposit into the Registry of the Court the sum of TWENTY-FOUR MILLION FIVE HUNDRED THOUSAND AND 00/100 DOLLARS (\$24,500,000.00) (the "Deposit").

6. Upon the making of the Deposit, Intercoastal shall relinquish possession of the Property to the County, title to the Property shall vest in the County, and any estate or claim in the Property asserted by Intercoastal or by any person claiming under or against Intercoastal since the recording of the notice of lis pendens shall be extinguished. All taxes on the Property are prorated as of the date of deposit.

7. The Clerk of the Court is ordered and directed upon receipt of the Deposit, without further order of the Court, to disburse the sum of TWENTY-FOUR

MILLION FIVE HUNDRED THOUSAND and 00/100 DOLLARS (\$24,500,000.00)

as follows:

TO: MARK M. ARNOLD, ESQ., AS ATTORNEY  
FOR DEFENDANT INTERCOASTAL, as full  
compensation for the Property and in satisfaction  
of all damages, interest, fees, costs or other sums  
due Intercoastal in this action.....\$ \_\_\_\_\_

TO: \_\_\_\_\_, AS ATTORNEY  
FOR ST. JOHNS COUNTY TAX COLLECTOR,  
in payment of prorated ad valorem and personal  
property taxes.....\$ \_\_\_\_\_

TO: \_\_\_\_\_, AS ATTORNEY  
FOR \_\_\_\_\_, in satisfaction of the  
mortgage lien against the Property.....\$ \_\_\_\_\_

The Clerk shall notify Mark M. Arnold, Esq., Rogers Towers, P.A., 1301 Riverplace  
Boulevard, Suite 1500, Jacksonville, Florida 32207, Telephone No. (904) 346-5540,  
at such time as the funds are ready to be disbursed.

8. The foregoing disbursement represents full compensation to  
Intercoastal for the Property and is subject to all claims, liens or encumbrances of  
record, if any.

9. The Court reserves jurisdiction to enforce the terms of this Stipulated  
Order of Taking and Final Judgment and the Agreement in Settlement of  
Condemnation Litigation between the parties dated November \_\_\_\_, 2007.

DONE AND ORDERED in Chambers at St. Augustine, St. Johns County,  
Florida this \_\_\_\_\_ day of December, 2007.

\_\_\_\_\_  
Circuit Judge

Copies to:

Mark M. Arnold, Esq.  
Joel Settembrini, Jr., Esq.

MOTION

The parties jointly move for entry of the foregoing Stipulated Final Judgment  
this \_\_\_\_ day of November, 2007.

ROGERS TOWERS, P.A.

SMITH HULSEY & BUSEY

By: \_\_\_\_\_  
Mark M. Arnold

By: \_\_\_\_\_  
Joel Settembrini, Jr.  
Lee D. Wedekind, III

Florida Bar Number 346942  
1301 Riverplace Boulevard, Suite 1500  
Jacksonville, Florida 32207  
(904) 398-3911  
(904) 396-0663 (facsimile)

Florida Bar Number 689572  
Florida Bar Number 670588  
225 Water Street, Suite 1800  
Jacksonville, Florida 32202  
(904) 359-7700  
(904) 359-7708 (facsimile)

Attorneys for Intercoastal Utilities, Inc.

Attorneys for St. Johns County

583196

## AGREEMENT IN SETTLEMENT OF CONDEMNATION LITIGATION

**THIS AGREEMENT** is made and entered into as of this thirteen day of November, 2007, by and between St. Johns County, a political subdivision of the State of Florida (the "County"), and Intercoastal Utilities, Inc., a Florida corporation ("ICU").

### WITNESSETH:

**WHEREAS**, the County has determined to acquire through the power of eminent domain substantially all of the water and wastewater utility assets which are owned by ICU in providing services through its water and wastewater utility systems in St. Johns County, Florida; and ICU will transfer such assets to the County, all upon the terms and conditions set forth in this Agreement.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements contained herein, and other good and valuable consideration the parties to this Agreement do undertake, promise and agree for themselves, their permitted successors and assigns as follows:

### ARTICLE I

#### DEFINITIONS AND CONSTRUCTION

**SECTION 1.01. DEFINITIONS.** As used in this Agreement to the following terms shall have the meanings as defined herein unless the context requires otherwise:

**"Acquired Assets"** means all or substantially all of the Water System and Wastewater System utility assets owned by ICU as described and referenced in Section 3.03 hereof, but excluding the Excluded Assets.

**"Acquisition Cost"** means (1) the acquisition price provided for in Section 3.02 hereof and the Stipulated Final Judgment and (2) the Transaction Cost.

**"Acquisition Debt Obligations"** means any series of bonds, notes or other evidence of indebtedness issued or incurred by the County to provide funding for the Acquisition Cost. In no event shall such Acquisition Debt Obligations pledge or require the pledge of any ad valorem taxes.

**"Agreement"** means this Agreement in Settlement of Condemnation Litigation including the appendices and schedules hereto and any amendments and supplements hereto executed and delivered in accordance with the terms hereof.

**"Board"** means the Board of County Commissioners of St. Johns County, Florida.

**"CERCLA"** means Comprehensive Environmental Response, Compensation and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. 9601, et seq.

**"CERCLIS"** means Comprehensive Environmental Response, Compensation Liability Information System.



**“County”** means St. Johns County, a political subdivision of the State of Florida.

**“Easements”** means, exclusive of the Excluded Assets, all existing claims, rights, privileges, easements, licenses, prescriptive rights, rights-of-ways, claims or rights to use public and private roads, highways, streets and other areas owned, available for use, or used by ICU in connection with the construction, reconstruction, installation, expansion, maintenance and operation of all or any part of the Utility System, as described in Appendix B hereto.

**“Environmental Law”** shall mean any and all federal, state and local statutes, laws, ordinances, rules and regulations relating to pollution or protection of the environment.

**“Excluded Assets”** means those assets, business properties, rights, obligations or liabilities, both tangible and intangible, of ICU described in Appendix C hereto which shall not be and are not to be acquired, transferred to, or assumed by the County pursuant to this Agreement and the Stipulated Final Judgment.

**“Fiscal Year”** means the period commencing on October 1 each year and continuing through the next succeeding September 30, or such other period as may be prescribed by law as the fiscal year for the County.

**“Hazardous Material”** means petroleum or petroleum products, natural gas (whether in gaseous or liquid form), or any substance, material, or waste which is regulated under any Environmental Law in the jurisdiction in which ICU conducts its business, including, without limitation, any material or substance that is defined as or considered to be a “hazardous waste,” “hazardous material,” “hazardous substance,” “extremely hazardous waste,” “restricted hazardous waste,” “pollutant,” “toxic waste,” or “toxic substance” under any provision of Environmental Law. The term “Hazardous Material(s)” does not include chlorine or other such substances necessarily associated with the operation of water and wastewater utilities.

**“ICU”** means Intercoastal Utilities, Inc., a Florida corporation.

**“Jax Management”** means Jax Utilities Management, Inc., a Florida corporation.

**“Materiality”** or **“material”** means the effect of any action, event or circumstance that would materially and adversely affect the financial condition, assets, liabilities, properties or results of operations of the Utility System, or materially interfere with the County’s future operation thereof.

**“Operations Agreement”** means the operations agreement to be entered into by the County and Jax Management in the form attached as Appendix H.

**“PCB”** means polychlorinated biphenyl.

**“Permitted Exceptions”** means those title exceptions described in Appendix D hereto.

**“Release”** means any release, spill, emission, leaking, pumping, injection, deposit, disposal, discharge, or dispersal into the environment or upon the real estate and easements to be acquired by

the County, originating or emanating from any property owned or operated by ICU or related to Hazardous Material generated by ICU.

**“Remedial Action”** means all actions required to (1) clean up, remove, or treat any Hazardous Material; (2) prevent the Release or threat of Release, or minimize the further Release of any Hazardous Material so it does not endanger or threaten to endanger public health or welfare or the environment; or (3) perform pre-remedial studies and investigations or post-remedial monitoring and care directly related to or in connection with any such Remedial Action.

**“State”** means the State of Florida.

**“Stipulated Final Judgment”** means the Stipulated Order of Taking and Final Judgment to be entered into by the County and ICU in the form attached hereto as Appendix G.

**“Transaction Cost”** means for any series of Acquisition Debt Obligations, the reasonable and necessary costs, fees and expenses incurred by the County in connection with the preparation, issuance, and sale of the Acquisition Debt Obligations, including but not limited to (1) underwriters’ discounts; (2) original issue discount; (3) rating agency and other financing fees; (4) the fees and disbursements of the County’s consulting engineers; (5) the fees and disbursements of the County’s special acquisition counsel, bond counsel, disclosure counsel, issuer’s counsel and consultants; (6) the fees and disbursements of the County’s financial advisor; (7) the costs of preparing or printing the Acquisition Debt Obligations and the documentation supporting the issuance of such Debt Obligations; (8) the fees payable in respect of any municipal bond insurance policy or other credit enhancements; (9) costs related to surveys, environmental reviews, title insurance, documentary taxes, intangible taxes or other transactional costs, and (10) any other costs of a similar nature reasonably incurred.

**“Transfer Date”** means the date on which the transfer of the Acquired Assets occurs as provided in the Stipulated Final Judgment.

**“Utility System”** means and is comprised of the Water System and the Wastewater System which provide services to unincorporated portions of St. Johns County, Florida.

**“Utility System Report”** means the Draft Appraisal Report prepared by Lampe, Roy & Associates, Inc., with a Date of Value date of July 7, 2007.

**“Wastewater System”** means any and all wastewater collection, treatment and disposal facilities of every kind and description whatsoever, including but not limited to pumps, plants, tanks, lift stations, transmission mains, distribution mains, supply pipes, collection pipes or facilities, reclaimed or effluent disposal facilities, valves, meters, meter boxes, service connections and all other physical facilities, equipment and property installations owned by ICU to provide wastewater service and facilities to the unincorporated portions of St. Johns County, Florida.

**“Water System”** means any and all water treatment plants, water supply and distribution systems of every kind and description whatsoever, including but not limited to pumps, plants, tanks, transmission mains, distribution mains, supply pipes, collection pipes or facilities, irrigation quality water and effluent distribution facilities, valves, meters, meter boxes, service connections and all

other physical facilities, equipment and property installations owned by ICU to provide water service and facilities to unincorporated portions of St. Johns County, Florida.

## ARTICLE II

### REPRESENTATIONS

**SECTION 2.01. REPRESENTATIONS OF THE COUNTY.** The County makes the following representations, which shall survive any transfer of the Acquired Assets for a period of two years from the effective date hereof.

(A) The County is duly organized and validly existing as a political subdivision of the State of Florida.

(B) The County has full power and authority to enter into the transactions contemplated by this Agreement and assuming the due authorization, execution and delivery by other party hereto, this Agreement constitutes a valid and legally binding obligation of the County, enforceable in accordance with its terms, except to the extent that the enforceability thereof may be limited by any applicable bankruptcy, insolvency, reorganization or other similar laws affecting creditors' rights generally, or by the exercise of judicial discretion of a court of competent jurisdiction in accordance with general principles of equity.

**SECTION 2.02. REPRESENTATIONS OF ICU.** ICU makes the following representations, which shall survive any transfer of the Acquired Assets for a period of two years from the effective date hereof.

(A) ICU is a corporation duly organized, validly existing and in good standing in the State of Florida, authorized to do business in the State, and has all requisite corporate power and authority to enter into and fully perform this Agreement.

(B) All necessary corporate action on the part of ICU relating to the authorization of ICU's execution and delivery of this Agreement and ICU's performance of its duties and obligations contained herein have been duly taken, and assuming the due authorization, execution and delivery by the other party hereto, this Agreement will be valid and enforceable against ICU, in accordance with its terms, except to the extent that the enforceability thereof may be limited by any applicable bankruptcy, insolvency, reorganization or other similar laws affecting creditors' rights generally, or by the exercise of judicial discretion of a court of competent jurisdiction in accordance with the general principles of equity.

(C) There is no action, suit, investigation, or proceeding pending, or to ICU's knowledge, threatened against or affecting ICU, at law, or in equity, or before any federal, state, municipal, or other governmental department, commission, board, bureau, agency or instrumentality, wherein, any decision, ruling, or finding would adversely affect the validity of this Agreement, or any other agreement or instrument to which ICU is a party which is used, or contemplated for use, in the consummation of the transactions contemplated hereby, except the condemnation proceedings contemplated herein, and as set forth in Schedule 2.02(C).

(D) To the best of ICU's knowledge and belief, neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated herein, nor compliance with the terms and provisions of such instruments will violate the provisions of any applicable law or any applicable order or regulation of any governmental authority having jurisdiction over ICU and will not conflict with or result in a material breach of any terms, conditions or provisions of any agreement or instrument to which ICU is now a party, or constitute a default thereunder.

(E) As provided herein, ICU has the power and authority to deliver sole and exclusive possession of the Acquired Assets to the County free and clear of all encumbrances or secured interests, subject only to the Permitted Exceptions.

(F) The real property identified in Appendix A hereof represents the real property owned, used or controlled by ICU in the operation of the Utility System composing the real property portion of the Acquired Assets which are to be acquired by the County as described in this Agreement.

(G) The easement interests identified in Appendix B hereto represent the easements used or available to ICU for use in connection with the construction, reconstruction, installation, expansion, maintenance and operation of the Utility System composing the Easements to be included in the Acquired Assets which are to be acquired by the County as described in this Agreement.

(H) From and after the date of execution of this Agreement, ICU will continue to operate the Acquired Assets in the normal ordinary course of business, maintain the Acquired Assets in a state of repair and condition that complies with all applicable law and consistent with the requirements and normal conduct of a water and waste water utility, comply with all applicable laws and contractual obligations applicable to the operations of the Acquired Assets, including paying bills for services, materials and supplies rendered in connection with the operation of the Acquired Assets, maintain all books and records of ICU and Jax Management relating to the Acquired Assets, maintain all current insurance coverage relating to the Acquired Assets and retain all risk of loss until the Transfer Date.

(I) From and after the date of the execution of this Agreement, ICU will not, without the prior written consent of the County, dispose of or encumber any of the Acquired Assets, with the exception of non-material transactions occurring in the ordinary course of ICU's business that do not materially and adversely affect the financial condition, assets, liabilities, properties, or results of operations of the Utility System, or materially interfere with operation thereof, consistent with current practices. ICU will fully apprise the County in writing of all such transactions prior to the Transfer Date.

(J) From and after the date of the execution of this Agreement, there will be no material depletion of the Acquired Assets, nor any adverse material change in the condition of the Acquired Assets, and the Utility System and all of the Acquired Assets will be properly maintained within the custom and usage of the industry up until and through the Transfer Date. The inventory described in the certificate relating to Inventory and Personal Property delivered by ICU under to this Agreement shall be maintained in accordance with custom and usage in the industry.

(K) ICU has not been cited nor notified, and is not aware of any violation of any governmental rule, regulation, permitting condition, or other governmental requirement of any type

or nature applicable to the ownership, maintenance, construction or operation of the Utility System, nor is ICU aware of any conditions which by reason of the passing of time or the giving of notice by the appropriate governmental agency would constitute such a violation, except as set forth in Schedule 2.02(C).

(L) To the best of ICU's knowledge and belief, the subject water and wastewater plants, facilities and appurtenances are located on real property which has been zoned by appropriate authorities under zoning certifications, special exceptions or variances which will permit the respective use of such parcels for water and wastewater utility purposes.

(M) To the best of ICU's knowledge and belief, ICU is and has been in material compliance with all applicable Environmental Laws and has no material liability thereunder, and there is no reasonable basis for any such liability.

(N) ICU has obtained all permits required or submitted applications for such permits in a timely manner, under applicable Environmental Laws necessary for the operation of its business as presently conducted as of the date of this Agreement.

(O) ICU has not received within the last ten (10) years, and is not aware of, any pending communication from any governmental authority or other party with respect to (1) the actual or alleged violation of any Environmental Laws; (2) any actual or proposed Remedial Action; or (3) any Release or threatened Release of a Hazardous Material.

(P) To the best of ICU's knowledge and belief, no PCBs or asbestos-containing materials, in material violation of Environmental Law are, or have been, present at any property when owned, operated, or leased by ICU, nor to the best of ICU's knowledge and belief, are there any underground storage tanks, active or abandoned, at or under any property owned, leased or operated by ICU.

(Q) To the best of ICU's knowledge and belief, there is no Hazardous Material located at any site that is owned, leased, or operated by ICU in material violation of Environmental Law; no site that is owned, leased, or operated by ICU is listed or formally proposed for listing under CERCLA, CERCLIS or on any similar state list that is the subject of federal, state, or local enforcement actions or other investigations that may lead to claims against ICU for clean-up costs, remedial work, damages to natural resources, or for personal injury claims, including, but not limited to, claims under CERCLA; and ICU is aware of no reasonable basis for ICU to be named in such claims or for any similar action to be brought against ICU.

(R) No written notification of a Release of a Hazardous Material has been filed by or on behalf of ICU or with respect to any property when owned, leased or operated by ICU. No such property is listed or, to the best of its knowledge, proposed for listing on the National priority List promulgated pursuant to CERCLA, CERCLIS or any similar state list of sites requiring investigation or clean up.

(S) To the best of ICU's knowledge and belief, no Hazardous Material has been released in material violation of Environmental Law at, on, or under any property now owned lease or operated by ICU.

(T) To the best of ICU's knowledge and belief, none of the real property or Easements have been or, prior to the Transfer Date, will be used by ICU or by any other party, for the processing, storing, or other utilization of asbestos or PCBs. ICU has received no notice that any of the foregoing materials are present on or at any of the parcels of real property or easements, and in the event that ICU receives any such notice prior to the Transfer Date, ICU shall immediately give notice thereof to the County, in which case, the County shall have the right, at its option, to elect to terminate this Agreement.

(U) To the best of ICU's knowledge and belief, all Hazardous Material resulting from the operations of ICU on or at any of the parcels of real property has been or, prior to the Transfer Date will be, disposed of in compliance with law, and none of those wastes have been or, prior to the Transfer Date will be, disposed of in any site where they have been, are, or due to the manner of disposition by ICU, will be Released into the environment in a manner requiring Remedial Action. ICU has received no notice from any local, state or federal environmental agency of ICU's possible involvement with any disposal site under investigation by such agency and, in the event that ICU receives any such notice prior to the Transfer Date, ICU shall immediately give notice thereof to the County, in which case the County shall have the right, at its option, to elect to terminate this Agreement.

(V) There are no facts actually known to the officers or management of ICU materially affecting the physical condition of the Utility System or the Acquired Assets which are not readily observable upon reasonable review or which have not been disclosed or provided to the County in connection with this transaction. ICU has disclosed to the County all violations of Environmental Laws by ICU, with respect to the Acquired Assets, of which ICU is aware in each instance, whether material or not.

(W) ICU has no existing agreements, contracts, commitments, and/or promises with other persons, parties, entities, companies, corporations, or the like that would have the impact of prohibiting the County financing this acquisition with tax-exempt debt.

(X) For all agreements, contracts, commitments, and/or documents that the County is assuming from ICU, ICU states that ICU is not in default under any such agreements, contracts, commitments, or documents.

(Y) ICU owns, and the Acquired Assets include, all wastewater collection, treatment and disposal facilities and all water treatment plants, water supply and distribution systems, as more fully described in the definitions of "Wastewater System" and "Water System" contained in Section 1.01 hereof, that are required, necessary or important for the continued operation of the Utility System after the Transfer Date in the same manner as it has been operated prior to the Transfer Date, other than the vehicles, tools and office equipment and supplies currently owned by Jax Management and used by, or useful to, ICU in connection with the operation of the Utility System.

**ARTICLE III**

**ACQUISITION OF UTILITY ASSETS**

**SECTION 3.01. ACQUISITION.** The County shall acquire from ICU and ICU shall transfer to the County the Acquired Assets upon the terms and subject to the conditions set forth in this Agreement and the Stipulated Final Judgment.

**SECTION 3.02. ACQUISITION PRICE.**

(A) The acquisition price for the Acquired Assets shall be \$24,500,000.00 (TWENTY-FOUR MILLION FIVE HUNDRED THOUSAND DOLLARS, subject to the terms, adjustments and prorations as provided herein, and payable as provided herein and in the Stipulated Final Judgment.

(B) The County and ICU agree to diligently defend against any third party attempt to prevent the acquisition contemplated herein; provided, however, that the County may choose not to defend this Agreement, if a legally valid reason to terminate this Agreement is raised by a third party, or presented in an administrative or judicial action that is commenced by a third party.

(C) The County and ICU shall hold in abeyance all outstanding or threatened legal actions pending between them, including civil, appellate or administrative proceedings of any nature, before any court, tribunal, or regulatory body whatsoever, including the St. Johns County Water and Sewer Authority, and shall refrain from further prosecution thereof or filing any further action of any nature, except an action arising from breach of this Agreement, against the other until the acquisition or cancellation of this Agreement. Upon acquisition, the County and ICU shall jointly take all actions necessary to effectuate the dismissal with prejudice of any, and all, such actions, and the County will use its best efforts to provide its assistance so that ICU shall have no further obligations to the St. Johns County Water and Sewer Authority.

**SECTION 3.03. ACQUIRED ASSETS.**

(A) The Acquired Assets, exclusive of the Excluded Assets, shall include those assets, business properties, and rights both tangible and intangible, that ICU owns and has the lawful right to use in conjunction with the operation of the Utility System, including the following:

(1) All of ICU's interest in the real property and interests relating to the Utility System described in Appendix A hereof.

(2) All water treatment plants, water supply and distribution systems of every kind and description whatsoever, including but not limited to pumps, plants, tanks, transmission mains, distribution mains, supply pipes, collection pipes or facilities, irrigation quality water and effluent disposal facilities, valves, meters, meter boxes, service connections and all other physical facilities, equipment and property installations owned by ICU and used in connection with the Water System.

(3) All wastewater collection, treatment and disposal facilities of every kind and description whatsoever, including but not limited to pumps, plants, tanks, lift stations, transmission mains, distribution mains, supply pipes, collection pipes or facilities, irrigation quality water and effluent disposal facilities, valves, meters, meter boxes, service connections and all other physical

facilities, equipment and property installations owned by ICU and used in connection with the Wastewater System.

(4) All equipment, vehicles, tools, parts, laboratory equipment, and other personal property owned by ICU in connection with the operation of the Utility System.

(5) All Easements in favor of ICU or its predecessors in interest to the Utility System described in Appendix B of this Agreement.

(6) All current customer records and supplier lists, customer correspondence relating to the current level or quality of service which have not been addressed or resolved as of the Transfer Date, as-built surveys and water plans, plats, engineering and other drawings, designs, blueprints, plans and specifications, maintenance and operating manuals, engineering reports, calculations, computer models and studies, accounting, budget and non-proprietary business records and all other information controlled by or in the possession of ICU that relates to the description and operation of the Utility System, inclusive of all pertinent computer records and the lawful use of all computer software and/or digital files (in any form and/or format including, but not limited to Auto-CADD and Wonderware) which is or was used in the operation of the Utility System for billing or customer record keeping purposes. The lawful use of any licensed software or proprietary software developed for ICU shall be limited to the recovery and transfer of data to County computers. In any event, ICU shall provide, or cause to be provided, at ICU's expense, all computer records in a format, to the extent reasonably available, which enables the County's information technology professionals or consultants to successfully transfer to and utilize such data on the County's computer systems.

(7) All necessary regulatory approvals subject to all conditions, limitations or restrictions contained therein; all existing permits and other governmental authorizations and approvals of any kind necessary to construct, operate, expand, and maintain the Utility System according to all governmental requirements; including any certificates, immunities, privileges, permits, license rights, consents, grants, ordinances, leaseholds, and all rights to construct, maintain and operate the Utility System and its plants and systems for the procuring, treatment, storage and distribution of potable water and every right or every character whatever in connection therewith, and the obligations thereof; all agreements for the supply of water to the Utility System or others; all water rights, flowage rights and riparian rights and renewals, extensions, additions or modifications of any of the foregoing.

(B) The Acquired Assets shall be transferred by ICU to the County on the Transfer Date, subject to the Permitted Exceptions, but otherwise free and clear of all liens or encumbrances.

(C) The Acquired Assets do not and shall not include the Excluded Assets. The Excluded Assets are more particularly described in Appendix C hereto.



## **ARTICLE IV**

### **AGREEMENTS AND CONDITIONS PRECEDENT TO ACQUISITION**

#### **SECTION 4.01. AUTHORIZATION OF ACQUISITION DEBT OBLIGATIONS.**

(A) In conjunction with the execution hereof, or as soon as reasonably practicable after execution hereof, the County shall use all reasonable efforts to authorize and issue Acquisition Debt Obligations meeting the conditions specified in Section 4.01(B).

(B) The Acquisition Debt Obligations shall be obligations, the interest on which is excluded from gross income, issued as additional bonds under the resolution of the County authorizing the County's outstanding Ponte Vedra Utility System Revenue Bonds, Series 2006, insured by Financial Security Assurance Inc., with a true interest cost not to exceed five and one-half percent (5.5%), with a term of years not exceeding thirty-one (31) years, in a principal amount not exceeding thirty-one million one hundred thousand dollars (\$31,100,000.00), which will be at least sufficient with other available funds to fund (1) the acquisition price set forth in Section 3.02 hereof, (2) payment of the Transaction Costs, (3) capitalized interest, (4) a reserve to accommodate necessary repairs and (5) payment for noted and/or necessary capital improvements. In the event that the County is unable, for any reason, to issue Acquisition Debt Obligations meeting these conditions, then the County shall have the option of either (1) waiving this condition precedent prior to the Transfer Date, or (2) canceling this Agreement, subject to the provisions of Section 6.07(E) hereof.

#### **SECTION 4.02. PROVISION OF INFORMATION BY ICU.**

(A) No later than three (3) days after entering into this Agreement, ICU shall prepare and deliver to the County, at ICU's expense, in an electronic format, whenever practicable, to the extent reasonably available, the information described and to be encompassed by the acquisition certificates included in Appendix E hereof. Whenever practicable, ICU shall timely deliver, in an electronic format, the information required, in substantially the form attached hereto in Appendix E.

(B) The information shall be prepared and delivered in a fashion that is conducive to copying.

(C) The County acknowledges that it has, prior to execution hereof, obtained, reviewed and considered a part of the information to be provided pursuant to this Article. The County shall have the opportunity to review and examine all of the information developed and provided pursuant this Article for material consistency with the Utility System Report considered by the County prior to the execution hereof. In the event the County reasonably determines the information to be provided pursuant to this section is not materially consistent with the Utility System Report, the County shall have the option of either (1) waiving this condition precedent prior to the Transfer Date, or (2) canceling this Agreement, subject to the provisions of Section 6.07(E) hereof.

#### **SECTION 4.03. FINANCIAL MATTERS.**

(A) No later than three (3) days after entering into this Agreement, ICU shall prepare, at its expense, and deliver to the County a written (or electronic, if reasonably available) billing

analysis of all revenues of the Utility System for the 12 month period ending no sooner than September 30, 2007. Said billing analysis shall be prepared in accordance with generally accepted utility practices.

**SECTION 4.04. FINALIZING ENGINEERING.** Within fourteen (14) days after entering into this Agreement, and subject to Appendix I, the County shall have the opportunity to cause and complete at its expense a final investigation of the Utility System and the Acquired Assets and ICU shall reasonably and timely cooperate in such an endeavor. In the event the County determines that the required aggregate expenditure for capital improvement and renewal and replacement of Acquired Assets is substantially in excess of the capital improvement program anticipated in the Utility System Report, the County shall have the option of either (1) waiving this condition precedent prior to the Transfer Date, or (2) canceling this Agreement, subject to the provisions of Section 6.07(E) hereof.

**SECTION 4.05. ENVIRONMENTAL ASSESSMENT.**

(A) Within ten (10) days after entering into this Agreement, and subject to Appendix I, the County shall order and obtain an environmental assessment of the real property to be acquired hereunder as described in Appendix A hereto. Such environmental assessment shall be at the County's expense. The environmental assessment shall be in general accordance with the scope and limitations of the American Society for Testing and Materials Designation: E 1527-00 (Standard Practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process). Any such environmental assessment, together with a written declaration from an environmental consultant selected by the County and acceptable to ICU, shall verify that the real property and other facilities to be acquired hereunder appear to be in compliance with all applicable state and federal environmental laws, and that the facilities and property surrounding the facilities are free of unlawful contamination and, if necessary, provide an itemized estimate of all costs associated with bringing the subject real property and facilities into compliance and the response cost for clean-up, removal and remediation. If requested, the environmental consultant shall provide its qualifications to the satisfaction of ICU. The environmental consultant's qualifications shall be presumptively established if the project manager is a professional engineer who is registered and in good standing with the State of Florida, or a certified environmental professional by the National Association of Environmental Professionals or some other like national professional organization. ICU's acceptance of the environmental consultant shall not be unreasonably withheld.

(B) The environmental assessment or any preliminary determinations shall be delivered simultaneously to the County and ICU. The receipt of an environmental assessment shall be a condition precedent to acquisition, unless waived by the County.

(C) If the environmental consultant's aggregate estimate of the costs associated with bringing the subject real property and facilities into compliance and the response costs for clean-up, removal, and remediation is in excess of \$75,000, then the County shall have the option of (1) waiving this condition precedent prior to the Transfer Date, or (2) canceling this Agreement, subject to the provisions of Section 6.07(E) hereof.

**SECTION 4.06. SURVEY.** Within ten (10) days after entering into this Agreement, and subject to Appendix I, the County shall order and obtain a survey of the fee simple parcels

expected to be insured by the title insurance policy described in Section 4.09 hereof. Such survey shall be at the County's expense. Any such survey shall (1) be satisfactory and sufficient for the title insurer to delete the standard exceptions of title insurance coverage concerning encroachments, overlays, boundary line disputes or any other adverse matter which would be disclosed by an accurate survey; (2) be certified as of the current date to the County, ICU, the title insurer or any other parties requested by ICU or the County; and (3) show the location of all improvements and easements. Adverse matters which materially interfere with the use of the property in the operation of the Utility System disclosed by such a survey shall be resolved by ICU so that such matters may be removed as an exclusion to coverage on the title insurance commitment prior to the issuance of any policy on the Transfer Date. If ICU is unable or unwilling to resolve such adverse matters prior to the Transfer Date, the County shall have the option of either (1) waiving this condition precedent prior to the Transfer Date, or (2) canceling this Agreement, subject to the provisions of Section 6.07(E) hereof.

#### **SECTION 4.07. TITLE VERIFICATION.**

(A) Within five (5) days after entering into this Agreement, the County shall order and obtain a title commitment from an ALTA form owner's title insurance policy as to the insurable property comprising the Acquired Assets. A copy of the title commitment shall be simultaneously delivered to ICU. Subject to subsection (D) of this section, any encumbrances or defects in title must be removed from any title insurance commitment and the subsequent title insurance policy issued free and clear of encumbrances, title defects, materialman's liens or other adverse matters, created or potentially created by ICU, with the exception of (1) taxes for the current year which are not yet due and payable, (2) the Permitted Exceptions, and (3) any encumbrance of or created by the County, including any instruments evidencing debt executed by the County on the Transfer Date.

(B) The estate or interests to be insured by any title insurance policy shall consist of all fee simple parcels and the easements identified and described in Appendices A and B hereof, to extent same are determined to be insurable.

(C) Upon issuance of the title insurance policy, the owner's title insurance policy shall show marketable title to the fee simple parcels insured vested in the County. All charges for the issuance of the owner's title insurance commitment and policy shall be the County's expense.

(D) Marketable title shall be determined according to applicable Title Standards adopted by authority of The Florida Bar and in accordance with law. The County shall have five (5) days from receiving the title commitment or any endorsement thereto to examine it. If title is found defective or the title commitment reflects title exceptions other than those shown on the schedule attached hereto as Appendix D, the County shall thereafter within five (5) days, notify ICU in writing specifying the defects. If the defects render the title to the fee simple parcels unmarketable, or the County otherwise reasonably objects to such defects, ICU shall have up to ten (10) days from receipt of notice within which to remove the defects, failing which the County shall have the option of either (1) opting to accept the title and waive this condition precedent prior to the Transfer Date, or (2) canceling this Agreement, subject to the provisions of Section 6.07(E) hereof.

(E) Within three (3) days after entering into this Agreement, ICU shall order and obtain a search of the records of the Florida Secured Transaction Registry for uniform commercial code

financing statements evidencing a secured interest in the Acquired Assets. A copy of the results of such a search shall be simultaneously delivered to the County. Any secured interests in the Acquired Assets revealed by a search of such records must be paid off, released or terminated at ICU's expense at or prior to the Transfer Date. In the event all such secured interests in the Acquired Assets are not paid off, released or terminated at or prior to the Transfer Date, the County shall have the option of (1) waiving this condition precedent prior to the Transfer Date, or (2) canceling this Agreement, subject to the provisions of Section 6.07(E) hereof.

**SECTION 4.08. TRANSFER OF PERMITS AND ACCOUNTS.**

(A) Within five (5) days after the execution of this Agreement, the County and ICU shall commence all requisite action to apply for and cause the transfer of the permits and governmental approvals described in Appendix E hereof, including, but not limited to the procedures referenced in Rule 62-4.120, Florida Administrative Code, Rule 40C-1.612, Florida Administrative Code, and 40 C.F.R. Section 122.63(d) (2004) and shall use all reasonable efforts to obtain the transfer of such permits. Each party shall timely cooperate and provide all reasonably necessary assistance in this endeavor. Upon transfer, the County shall assume all obligations under the permits and governmental approvals necessary for the continued operation of the Utility System. Prior to the Transfer Date ICU shall diligently pursue, at its expense, all requisite action necessary to renew any existing permits that may have expired, or may expire within 90 days after the Transfer Date, provided that any out of pocket third party expenses, including consultants retained by ICU with the County's consent, incurred after the date of this Agreement relating to such permits shall be at the County's expense.

(B) Within five (5) days after the execution of this Agreement, the County and ICU shall commence all requisite action to apply for and cause the transfer of the accounts for water, wastewater, power, telephone, solid waste collection, pest control, sludge hauling, general maintenance and similar operational matters, and shall use all reasonable efforts to obtain the transfer of such accounts as of the Transfer Date. Each party shall timely cooperate and provide all reasonably necessary assistance in this endeavor. Upon transfer, the County shall assume obligations under such accounts as necessary for the continued operation of the Utility System. Prior to the Transfer Date ICU shall not terminate or cancel any such accounts without prior written notice to the County detailing all information relating to such account, including but not limited to the account party, the account number, the contact person and the services provided.

**SECTION 4.09. POST-TRANSFER RECONCILIATION.** In lieu of any post-transfer reconciliation with respect to any charge, fee or rate for services furnished to the Utility System through the Transfer Date for water, wastewater, power, telephone, solid waste collection, pest control, sludge hauling or general maintenance, any permit expenditures, any connection charges, accounts receivables, customer deposits or unexpended application fees or other charges not otherwise considered or accounted for at the time of escrow prior to the Transfer Date, the County and ICU shall, based upon all available information and estimates, establish an adjustment amount to be applied to the acquisition price and the acquisition price shall be adjusted by such amount.

**SECTION 4.10. REVIEW SCHEDULE.** Appendix I hereto summarizes certain activities to be undertaken by the County in the conduct of its financial, engineering, legal and environmental review pursuant to Sections 4.04 through 4.07 and the expected start and completion

date for each activity. The County shall have the right to conduct its review in accordance with the schedule set forth in Appendix I, and, if it has timely received all information required and necessary for its review, shall be deemed to have satisfactorily conducted any activity by the completion date therefor unless it has given notice of unsatisfactory findings prior to such date, or unless the County elects to re-open its review in a previously examined area based on subsequent findings. Such subsequent findings must have a direct impact on (a) the financial integrity of ICU; (b) the engineering integrity and/or stability of any Acquired Assets; (c) the legal ability of ICU to perform under this Agreement; and/or (d) environmental compliance issues that would impact the County's ability to operate the Utility System.

## **ARTICLE V**

### **ACQUISITION PROCESS**

**SECTION 5.01. TRANSFER DATE AND PLACE.** It is anticipated that the transactions contemplated by this Agreement will be concluded on a mutually agreed upon date which is expected to occur no later than thirty (30) days after entering into this Agreement. The execution of documents shall be held at such place or offices mutually agreed upon between the County and ICU.

#### **SECTION 5.02. DOCUMENTS.**

(A) On or prior to the Transfer Date, ICU shall execute and furnish the Stipulated Final Judgment and the following: (1) a non-foreign affidavit as required by the title insurer, (2) a no-lien affidavit as required by the title insurer, (3) a "gap" affidavit as required by the title insurer and (4) a transfer, assignment and assumption agreement in substantially the form attached hereto as Appendix F, together with any necessary assignments, releases, satisfactions, terminations or any corrective instruments reasonably required to effect the transactions contemplated herein. On or prior to the Transfer Date, ICU shall use its best efforts to cause Jax Management to execute and furnish the Operations Agreement.

(B) From time to time after the Transfer Date, each party hereto shall, upon request of the other, execute, acknowledge and deliver, or shall cause to be executed, acknowledge or delivered, all such further acts, deeds, assignments, transfers or other documentation for (1) confirming or correcting title in the name of the County or perfecting undisputed possession by the County of any or all of the Acquired Assets without additional cost to ICU, including the establishment of record of any Easements, reasonably capable of enforcement by the County without resort to litigation or other extraordinary means, for all water and wastewater utility facilities which are a part of the Utility System and in existence or use on the Transfer Date or (2) otherwise fulfilling the obligations of the parties hereunder.

#### **SECTION 5.03. RECORDING FEES AND DOCUMENT TAXES.**

(A) Recording fees to record any instruments necessary to deliver title to the County or effect the transactions contemplated hereby shall be paid by the County.

(B) The Acquired Assets shall be deemed to be acquired by the County through eminent domain and for a public purpose and any intangible or documentary stamp tax liability arising from the transaction contemplated hereby shall be paid by the County.

**SECTION 5.04. PROPERTY TAXES.** All taxes on the Acquired Assets shall be prorated as of the day of transfer and ICU shall be required to escrow with the Tax Collector of St. Johns County, Florida, such prorated taxes in accordance with Section 195.295, Florida Statutes.

**SECTION 5.05. ACCOUNTS RECEIVABLE.**

(A) All accounts receivable as of the Transfer Date shall remain the property of ICU, provided, however, that credit shall be given to the County on the Transfer Date for any such account receivables allocable to charges billed in advance for the period after the Transfer Date and a credit shall be given to ICU on the Transfer Date for any such account receivables for the period prior to the Transfer Date. In the event that a former customer of ICU does not timely pay any invoice for services rendered prior to the Transfer Date, the County will, to the extent permitted by law, discontinue service to such customer in order to assist ICU in enforcing payment of such invoice as if such customer were a customer of the County, provided that ICU provides written notice to the County of such nonpayment, handles all communications with the customer, sends the County copies of all written communications to the customer and pays in advance the County's charges for taking such action.

(B) Credit shall be given to the County on the Transfer Date for the liabilities assumed for customer deposits or unused application fees or charges, including any interest due thereon through the Transfer Date, and the County and ICU shall, based upon all available information and estimates, establish an adjustment amount to be applied to the acquisition price and the acquisition price shall be adjusted by such amount. Within seven (7) days after entering into this Agreement, and subject to Appendix I, ICU shall furnish to the County, and shall update same to the Transfer Date, (1) a listing of customer deposits by customer account (including name, account number and address information) and an aggregate total thereof, and (2) a listing of all unexpended application fees or charges (including the name, account number and address of the applicant and identification of the agreement under which the fee was collected or charged, if any) and an aggregate total thereof.

(C) The Transfer Date may occur during the normal billing cycle of ICU. ICU shall send its regular December billings prior to the Transfer Date. An estimate of gross revenues for water and wastewater services rendered but not yet billed shall be prorated and credited to ICU on the Transfer Date for the number of days elapsed in the current billing cycle, and the County and ICU shall, based upon all available information and estimates, establish an adjustment amount to be applied to the acquisition price and the acquisition price shall be adjusted by such amount. Upon credit to ICU for unbilled service on the Transfer Date as provided for herein, the County shall be entitled to all revenue collected and derived from the Utility System and the Acquired Assets.

**SECTION 5.06. CONNECTION CHARGES.**

(A) Sums collected by ICU in the ordinary course of business for connection charges, including capacity and deferred standby fees, prior to the Transfer Date, shall remain ICU's sole and separate property with no claim of the County therefore. Within seven (7) days after entering into

this Agreement, and subject to Appendix I, ICU shall furnish to the County, and update same to the Transfer Date, a listing of all customer accounts (including name and address information) that have paid for such charges for which service has not been actually furnished through physical connection to the Utility System prior to the Transfer Date.

(B) Credit shall be given to the County on the Transfer Date for sums collected by ICU in the ordinary course of business for meters, meter installation and similar products and services for which such products and services have not been actually furnished or provided by ICU prior to the Transfer Date, and the County and ICU shall, based upon all available information and estimates, establish an adjustment amount to be applied to the acquisition price and the acquisition price shall be adjusted by such amount. Within seven (7) days after entering into this Agreement, and subject to Appendix I, ICU shall furnish to the County, and update same to the Transfer Date, a listing of such charges by customer account (including name and address information) and an aggregate total thereof.

(C) All sums collected from and after the Transfer Date relative to the use of, or connection to, the Utility System shall be paid to the County, with no claim of ICU therefore.

(D) From and after the day of execution of this Agreement, ICU shall not enter into any agreement, without the prior written consent of the County, which would obligate the County to provide service after the Transfer Date to any customer who is not physically connected to the Utility System prior to the Transfer Date. The County shall not unreasonably withhold its consent provided such agreement does not provide for payment of any charges, rates or fees, other than refundable inspection or application fees, prior to physical connection to the Utility System.

#### **SECTION 5.07. ACQUISITION PROCEDURE.**

(A) ICU and the County shall execute and place all documents necessary for the acquisition in escrow prior to the County's issuance of the Acquisition Debt Obligations to pay the acquisition price.

(B) Prior to any escrow transaction, ICU and the County may be required to execute and enter into a document escrow agreement with the title agent designated by the County.

(C) ICU and the County, as applicable, shall execute and tender the following documents affecting the transfer of the Acquired Assets to the County at the escrow transaction; these documents shall be in final form, together with any exhibits or appendices thereto:

(1) Stipulated Final Judgment for the transfer of all real property, Easements and personal property to be acquired;

(2) A transfer, assignment and assumption agreement supplementally covering certain other interests in the Acquired Assets, together with a general assignment of all contracts, agreements, permits and approvals provided for herein;

(3) Other documents of assignment and transfer for all Acquired Assets;

(4) Operations Agreement; and

(5) Any affidavits, certificates, estoppel certificates, corrective instruments, releases, satisfactions or terminations necessary for the acquisition including, but not limited to, those instruments identified at the time of execution hereof.

(D) ICU acknowledges that the County will issue the Acquisition Debt Obligations to generate proceeds to pay the acquisition price and provide funding for the Transaction Cost. Therefore, all transfer procedures shall be subject to the requirements of the underwriter and bond counsel selected by the County, the purchasers of the revenue bonds or the provider of any interim financing. The escrow transaction shall occur prior to the County finalizing the sale of the Acquisition Debt Obligations and authorizing the disbursement of proceeds from issuance thereof. However, the parties understand that the disbursement of proceeds shall be at the direction of the title insurer, or its agent, in accordance with the document escrow agreement, in order to secure coverage against adverse matters or defects in title which are recorded during the period of time between the effective date of the title insurance commitment and the date of recording of the document creating the estate or interest to be insured.

#### **SECTION 5.08. POST-TRANSFER COOPERATION.**

(A) ICU and the County shall, after the Transfer Date, upon reasonable request of the other party, execute, acknowledge and deliver, or cause to be delivered, all such further documents, acts, deeds, assignments, transfers, powers of attorney and assurances as may be required in order to implement and perform any of the obligations, covenants and agreements of the parties.

(B) Each of the parties hereto shall provide the other with such assistance as reasonably may be requested in connection with the preparation of any tax return, audit, or other examination by any taxing authority or any judicial or administrative proceedings relating to liability for taxes relating to the transactions contemplated by this Agreement and the Stipulated Final Judgment. Subject to the provisions of subsection (D) of this Section 5.08, each party shall retain and provide the other party with any records and/or information that may be relevant to such return, audit, or examination, proceedings, or determination. Such assistance shall include making all employees (present and former) available on a mutually convenient basis to provide additional information and explanation of any material provided hereunder and shall include providing copies of any relevant tax returns and supporting work, subject to reasonable arrangements with respect to preserving the confidentiality of documents, data, and information as permissible under applicable law. The party requesting assistance shall reimburse the other for reasonable out-of-pocket expenses incurred in providing such assistance.

(C) If, after the Transfer Date, any of the parties hereto shall require the participation of the other, or of officers and employees then employed by the other, in order to aid in the defense or prosecution of litigation, governmental audit, governmental investigation, or claims relating to the Acquired Assets and business related thereto, and so long as there exists no conflict of interest between the parties, each party shall use reasonable efforts to be available, or to make such officers and employees reasonably available to participate in such defense or prosecution, provided, that the party requiring/requesting the participation of such officers or employees, shall pay all reasonable out-of-pocket costs, charges, and expenses arising from such participation.



(D) Where there is a legitimate purpose not injurious to the other party, and not related to prospective competition by such party with another party hereto, or if there is an audit by the IRS, other governmental inquiry, or litigation or prospective litigation to which the County or ICU may become a party, making necessary access to the records of, or relating to, ICU held by the County, or making necessary the County's access to records of, relating to, the operations of ICU held by any entity other than ICU, each of them shall allow representatives of the other party access to such records during regular business hours at such party's place of business for the sole purpose of obtaining information for use as aforesaid.

(E) Any party, at any time, upon not less than ninety (90) days' prior written notice to the other party, may dispose of the records in its possession relating to the Acquired Assets, and the business related thereto, in accordance with the party's respective record retention policies and subject to applicable law; provided, however, that any party may, at its own cost and expense, retain, or make arrangements for the retention of, records in the possession of the other party to which it would have a right of access under this Agreement, if the party notifies the other party in writing, that such party desires to retain such records.

(E) ICU agrees to, and shall use its best efforts to cause Jax Management to, provide reasonable assistance to the County in order to transition the administration and operation of the Utility System and Acquired Assets for a reasonable period after the Transfer Date, including such assistance specified in the Operations Agreement.

## ARTICLE VI

### GENERAL PROVISIONS

**SECTION 6.01. RIGHT TO ENTER.** Prior to Transfer Date, the County shall have the right, at any reasonable time with prior notice to ICU, to enter upon ICU's property to inspect the Utility System, to familiarize itself with day-to-day operations, to review the operational practices of ICU, and to ensure compliance with any and all federal and state regulatory requirements.

### SECTION 6.02. NOTICES.

(A) All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given when hand delivered or mailed by registered or certified mail, postage prepaid, or sent by nationally recognized overnight courier (with delivery instructions for "next business day" service) to the parties at the following addresses:

If to ICU:	Intercoastal Utilities, Inc. 6215 Wilson Boulevard Jacksonville, Florida 32210 Attention: Leland Burpee, Secretary
------------	---

With a copy to: Rogers Towers, P.A.  
Suite 1500  
1301 Riverplace Blvd.  
Jacksonville, Florida 32207  
Attention: Mark Arnold, Esq.

With a copy to: Rose, Sundstrom & Bentley, LLP  
2548 Blairstone Pines Drive  
Tallahassee, Florida 32301  
Attention: Bill Sundstrom, Esq.

If to the County: St. Johns County  
4020 Lewis Speedway  
St. Augustine, Florida 32084  
Attention: County Administrator

With a copy to: St. Johns County  
4020 Lewis Speedway  
St. Augustine, Florida 32084  
Attention: County Attorney

And a copy to: Smith Hulsey & Busey  
225 Water Street, Suite 1800  
Jacksonville, Florida 32202  
Attention: Joel Settembrini

(B) Any of the parties may, by notice in writing given to the others, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent. Any notice shall be deemed given on the date such notice is delivered by hand (or facsimile transmission) or five days after the date mailed.

**SECTION 6.03. PROFESSIONAL FEES; COSTS.** Except as expressly provided otherwise in this Agreement or the Stipulated Final Judgment, each party shall be responsible for securing its own counsel for representation relative to the negotiation, preparation and implementation of this Agreement, and all other matters associated with the implementation or performance hereunder, unless otherwise specified herein; and each party shall be responsible for the payment of the fees of its own attorneys, engineers, accountants and other professional advisors or consultants in connection therewith, subject to Section 6.07(E) hereof.

**SECTION 6.04. NO LIABILITY OF COUNTY FOR EXISTING CLAIMS OF ACTION OR LAWSUITS AGAINST ICU.**

(A) It is expressly understood that the County accepts no liability, and shall not pay or forward any money to any individual and/or entity that is associated with the settlement, final disposition, or Court-ordered payment of any lawsuit in which ICU is a party and which is associated with the negligent performance, or non-performance, or improper performance of the Utility System that occurs up to the Transfer Date. Moreover, it is expressly understood that the County accepts no

liability, and shall not pay or forward any money to any individual and/or entity for any claim or claims pursued by any individual and/or entity associated with the negligent performance, or non-performance, or improper performance of the Utility System that occurs up to the Transfer Date.

(B) ICU accepts no liability, and shall not pay or forward any money to any individual and/or entity for any claim or claims pursued by any individual and/or entity associated with the negligent performance, or non-performance, or improper performance of the Utility System that occurs after the Transfer Date.

(C) Notwithstanding the foregoing paragraphs (A) and (B), the parties acknowledge and agree that each party will bear its own costs and expenses, including the amount of any judgment or settlement, arising out of or relating to any claim, action or lawsuit brought by any third party in any way challenging this Agreement, the performance by the parties of their respective obligations, the transactions contemplated hereunder or the conclusion of such transactions.

#### **SECTION 6.05. EMPLOYMENT PREFERENCE.**

(A) To the extent the County may lawfully do so and to the extent that the County has any position available, the County may endeavor to hire current non-management employees of ICU or Jax Management as regular County employees. Any such non-management employees will be subject to the County's standard 6-month probationary period of at-will employment. Thereafter, such employees will be subject to applicable County employment policies and/or practices.

(B) The County shall not assume any executive or managerial employment agreements which may be in existence between ICU and its executives.

#### **SECTION 6.06. FAILURE OF PERFORMANCE.**

(A) A breach of this Agreement shall mean a material failure to comply with any of the provisions of this Agreement. If any party breaches any obligation herein, then, upon receipt of written notice by the non-breaching party, the breaching party shall proceed diligently and in good faith to take all reasonable actions to cure such breach and shall continue to take all such actions until such breach is cured.

(B) Unless otherwise provided herein, the parties to this Agreement may proceed at law or in equity to enforce their rights under this Agreement and the Circuit Court hearing the eminent domain proceedings shall have and retain jurisdiction for such purpose.

#### **SECTION 6.07. TERMINATION OF AGREEMENT.**

(A) In addition to the other termination provisions contained in this Agreement, this Agreement may also be terminated (1) by mutual written consent of the parties, or (2) by either party if the transactions contemplated hereby have not concluded by December 14, 2007.

(B) Upon the occurrence of any of the bases for termination of this Agreement, the party seeking to terminate this Agreement shall provide written notice of its termination of this Agreement to the other by delivering the same as provided in this Agreement.

(C) Upon termination of this Agreement as provided herein, the following shall occur: (1) to the extent permitted by Florida law, each party shall return all documents, including copies, in its possession, or in the possession of its agents and consultants to the other, as the case may be, and each party, its agents and consultants, shall treat any information previously received as confidential, and shall not disclose or use such information, unless required by either state or federal law; (2) subject to Section 6.07(E) hereof, each party shall be responsible for payment of its own attorney(s), consultant(s), financial adviser(s), and for such other professional fees, and other costs of any nature whatsoever incurred prior to the termination of this Agreement, except for such fees that either party agreed in writing to be responsible for before termination of this Agreement occurred and (3) this Agreement shall forthwith become void and (except for the willful breach of this Agreement by any party hereto) there shall be no liability on the part of the County or ICU, or their respective officers or directors, other than as provided for herein.

(D) Nothing contained in this Agreement shall be construed in any way to confer upon ICU the ability to unilaterally terminate the eminent domain proceedings relating to this acquisition.

(E) Nothing contained in this Agreement shall be construed in any way to waive the County's ability to forebear from the making of the eminent domain deposit and rendering this eminent domain acquisition null and void, or in that event to relieve the County of its statutory obligation to pay ICU's reasonable fees and costs arising out of the eminent domain proceedings.

**SECTION 6.08. BINDING EFFECT.** To the extent provided herein, this Agreement shall be binding upon the parties, their respective successors and assigns and shall inure only to the benefit of the parties, their respective successors and assigns.

**SECTION 6.09. ASSIGNMENT.** Except as provided herein, no assignment of this Agreement shall be made in whole or in part by any party without the express written consent of the other party, which may be withheld in its sole discretion.

**SECTION 6.10. SEVERABILITY.** In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

**SECTION 6.11. EXECUTION IN COUNTERPARTS.** This Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**SECTION 6.12. APPLICABLE LAW AND VENUE.**

(A) This Agreement shall be governed by and construed in accordance with the laws of the State.

(B) Unless otherwise required by law or otherwise agreed to by all parties hereto, venue for any action or proceeding to construe or enforce the provisions of this Agreement shall be in the Circuit Court in and for St. Johns County, Florida.

**SECTION 6.13. TIME IS OF THE ESSENCE.** Time is of the essence in this Agreement. The time periods specified in this Agreement shall expire at midnight on the date stated unless the parties agree in writing to a different date or time. Any time period provided for herein which ends on a Saturday, Sunday or legal holiday shall extend to 5 P.M. on the next business day.

**SECTION 6.14. ENTIRE AGREEMENT.** This Agreement constitutes the entire agreement between the parties pertaining to the subject matter hereof, and supersede all prior and contemporaneous agreements, understandings, negotiations and discussions of the parties, whether oral or written, and there are no other agreements among the parties in connection with the subject matter hereof, except as specifically set forth herein.

**IN WITNESS WHEREOF,** the County and ICU have caused this Agreement to be duly executed and entered into on the date first above written.

**BOARD OF COUNTY COMMISSIONERS OF  
ST. JOHNS COUNTY, FLORIDA**

(SEAL)

By: \_\_\_\_\_  
Chairman

ATTEST:

\_\_\_\_\_  
Clerk

STATE OF FLORIDA  
COUNTY OF ST. JOHNS

The foregoing instrument was acknowledged before me by \_\_\_\_\_, as Chairman of the St. Johns County Board of County Commissioners, who is personally known to me or has produced \_\_\_\_\_ as identification and who did not take an oath, this \_\_\_\_ day of November, 2007.

(Affix notarial seal)

Printed Name: \_\_\_\_\_  
Notary Public of the State of \_\_\_\_\_  
My commission expires: \_\_\_\_\_

**IN WITNESS WHEREOF**, the County and ICU have caused this Agreement to be duly executed and entered into on the date first above written.

INTERCOASTAL UTILITIES, INC.

(SEAL)

By: \_\_\_\_\_  
Charles Towers, President

ATTEST:

\_\_\_\_\_  
Leland Burpee, Secretary

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me by Charles Towers, as President of the Intercoastal Utilities, Inc., a Florida corporation, who is personally known to me or has produced \_\_\_\_\_ as identification and who did not take an oath, this \_\_\_\_ day of November, 2007.

(Affix notarial seal)

Printed Name: \_\_\_\_\_  
Notary Public of the State of \_\_\_\_\_  
My commission expires: \_\_\_\_\_

## APPENDICES

APPENDIX A	SCHEDULE OF REAL PROPERTY TO BE ACQUIRED FROM INTERCOASTAL UTILITIES, INC.
APPENDIX B	SCHEDULE OF EASEMENTS INTERESTS TO BE ACQUIRED FROM INTERCOASTAL UTILITIES, INC.
APPENDIX C	EXCLUDED ASSETS
APPENDIX D	PERMITTED EXCEPTIONS
APPENDIX E	FORM OF ACQUISITION CERTIFICATES <ul style="list-style-type: none"><li>• PLANS AND SPECIFICATIONS</li><li>• THIRD PARTY WARRANTIES</li><li>• CURRENT OR ACTIVE PERMITS</li><li>• MAP OF UTILITY SYSTEM</li><li>• INVENTORY AND PERSONAL PROPERTY</li><li>• OPERATING AND VENDOR CONTRACTS</li><li>• REUSE OR EFFLUENT DISPOSAL AGREEMENTS</li><li>• DEVELOPER AGREEMENTS</li><li>• OUTSTANDING WATER AND WASTEWATER SERVICE OBLIGATIONS</li><li>• ANTICIPATED WATER AND WASTEWATER SERVICE OBLIGATIONS</li><li>• CURRENT CUSTOMER RECORDS AND METER READING AND BILLING DATES</li></ul>
APPENDIX F	FORM OF ACQUISITION DOCUMENTS <ul style="list-style-type: none"><li>• NON-FOREIGN AFFIDAVIT (AS REQUIRED BY THE TITLE INSURER)</li><li>• NO LIEN AFFIDAVIT (AS REQUIRED BY THE TITLE INSURER)</li><li>• OWNER'S "GAP" AFFIDAVIT (AS REQUIRED BY THE TITLE INSURER)</li><li>• TRANSFER, ASSIGNMENT AND ASSUMPTION AGREEMENT</li></ul>
APPENDIX G	STIPULATED FINAL JUDGMENT
APPENDIX H	OPERATIONS AGREEMENT
APPENDIX I	REVIEW ACTIVITIES AND SCHEDULE

## SCHEDULES

SCHEDULE 2.02(C)	ACTION, SUIT, INVESTIGATION OR PROCEEDINGS AFFECTING ICU
------------------	--

## APPENDIX A

**SCHEDULE OF REAL PROPERTY  
TO BE ACQUIRED FROM INTERCOASTAL UTILITIES, INC.**

(A) All real property and interest, whether recorded in the public records or not, in real property owned, used or controlled by Intercoastal Utilities, Inc. in conjunction with the operation of the Utility System or the provision of water or wastewater services, unless otherwise excluded in Appendix C of the Agreement.

(B) The real property interests to be acquired from Intercoastal Utilities, Inc. include the following:

Fee Parcels

	<b>Parcel Account #</b>	<b>Parcel Address</b>
1	061901-0040	multiple addresses* see below
1-A		10052 Sawgrass/Utility Site/Parcel A
B		Pumping Station #1
C		Pumping Station #2
D		Lift Station/Village Walk Ct bet 31&30
E		Pumping Station #3
F		Pumping Station #5/Preston Tr W
G		Pumping Station #6
H		Pumping Station #11/Quail Point
I		Pumping Station #13/Garden Homes
J		Pumping Station #12/Fishermans Cv
K		Pumping Station #7/Deer Run Dr
		Parcel B behind 061901-0070
		Old Barn Rd
		inside Main E Gate on rt
		Osprey Pt & Preston Trail/P.S.#4
		Spinnaker's Reach/P.S.#9
		Fairway Condos/P.S.#10
2	061905-0003	South Nine Drive
3	066207-0040	Fairfield Blvd.
4	066214-0002	Bay Hill Ct.



	<b>Parcel Account #</b>	<b>Parcel Address</b>
5	066238-0006	Lighthouse Bend Dr.
6	066377-0001	128 Woodlands Creek Dr.
7	066391-0003	Payasada Lake Ave.
8	066641-0001	Mariela Court
9	066721-0002	Bear Pen Rd. & CR 210
10	066900-0002	Fairfield Blvd.
11	066910-0141	Muirfield Dr.
12	066913-0002	Twelve Oaks Lane/Plantation Circle South
13	066915-2003	Plantation Circle
14	067180-0020	Plantation Circle South (2), Settlers Way, and Retreat Place
15	067180-0060	Plantation Circle South
16	067180-0070 & 0080	Mickler Road
17	067345-0003	S. Lakewood Run Drive
18	067350-0003	S. Mill View Way
19	068371-0002	Clearwater Drive
20	068372-0002	Clearwater Drive
21	067385-0062	Ponte Vedra Blvd.
22	068390-0040	Landrum Lane
23	068441-0004	Odoms Mill Blvd.
24	068442-0005	Mill Stream Rd.
25	068560-0012	A1A North
26	068600-0001	4380 Mickler Road
27	068630-0050	Mickler Road
28	068810-0002	River Marsh Drive
29	069810-0010	Crossroads Lake Drive

APPENDIX B

SCHEDULE OF EASEMENT INTERESTS  
TO BE ACQUIRED FROM INTERCOASTAL UTILITIES, INC.

(A) All dedicated or platted easements available to be used by Intercoastal Utilities, Inc. in conjunction with the operation of the Utility System or the provision of water or wastewater services.

(B) All rights, privileges, easements, licenses, prescriptive rights, right-of-way, and rights to use public and private roads, highways, streets, railroads and other areas owned, used or available to be used by Intercoastal Utilities, Inc. in connection with the construction, reconstruction, installation, expansion, maintenance and operation of the Aquired Assets, or the Utility System, together with the non-exclusive right and authority, to the maximum extent permitted by law, to use all of the foregoing rights, privileges, licenses, prescriptive rights and right-of-way, now owned by Intercoastal Utilities, Inc. or hereafter acquired, for the provision of water and wastewater services.

(C) The easement interests to be conveyed and assigned include, but are not limited to, the following:

<b>Easement Number</b>	<b>Described in OR/PG</b>
1	602/602
2	642/68
3	642/69
4	642/72
5	642/818
6	647/243
7	721/780
8	741/766
9	741/1305
10	750/1920
11	770/1112
12	770/1114
13	808/1656
14	817/671
15	825/54
16	828/218
17	829/85
18	831/365
19	832/99
20	841/523
21	852/1816

<b>Easement Number</b>	<b>Described in OR/PG</b>
22	864/1284 & 901/1821
23	864/1286
24	864/1289
25	864/1293
26	864/145
27	868/1077
28	868/1079
29	871/1473
30	874/478
31	874/480
32	901/1824
33	919/1341
34	938/108
35	948/1620
36	948/1624
37	955/842
38	956/594
39	967/313
40	968/650 & 989/1434
41	984/349
42	1013/205
43	1013/853
44	1015/510
45	1016/1565
46	1145/1067
47	1148/1521
48	1210/1563
49	1210/1565
50	1248/2004
51	1260/3
52	1265/855
53	1273/358
54	1283/1327
55	1290/37
56	1290/833
57	1295/294
58	1294/298
59	1296/1591
60	1313/113
61	1344/764
62	1367/602

<b>Easement Number</b>	<b>Described in OR/PG</b>
63	1374/699
64	1388/871
65	1406/1375
66	1468/1647
67	1475/13
68	1475/18
69	1478/1159
70	1489/525
71	1507/582
72	1524/778
73	1551/1223
74	1672/1674
75	1750/761
76	2009/380
77	2067/568
78	2067/570
79	2169/828
80	2169/835
81	2169/839
82	2179/313
83	2533/1522 & 2666/1054 Corrective
84	2652/210
85	2731/1669
86	2768/695
87	602/624* assignment of easements from Sawgrass Utilities to Intercoastal Utilities
88	672/730 & 602/343
89	682/1228

## APPENDIX C

### EXCLUDED ASSETS

“Excluded Assets” means those assets, business properties, rights, obligations or liabilities, both tangible and intangible, of Intercoastal Utilities, Inc. (“ICU”) described in this Appendix. The following Excluded Assets shall not be and are not to be acquired, transferred to or assumed by St. Johns County (the “County”).

(A) Cash, bank accounts, notes or accounts receivable in the possession of or in favor of ICU which are ICU’s sole property and which are not subject to refund to customers or performance by ICU.

(B) Escrowed funds, if any, for payment of federal income taxes, state income taxes and other tax liabilities of ICU for the period through the date of closing.

(C) The off-site leasehold interest and offices used by ICU to house its executive and customer service operations.

(D) The corporation name of Intercoastal Utilities, Inc.

(E) Unless otherwise expressly assumed by the County, all of the liabilities of ICU, including all accounts payable and all other payables of ICU incurred or accruing prior to transfer.

(F) All construction claims liability for work completed prior to transfer or work in progress performed prior to transfer.

(G) All other obligations, liabilities or responsibilities of ICU not expressly assumed by the County at transfer or not otherwise expressly addressed in the Agreement.

(H) The real property described in Exhibit A hereto.

(I) The personal property described in Exhibit B hereto.

EXHIBIT A TO EXCLUDED ASSETS  
REAL PROPERTY

[None]

EXHIBIT B TO EXCLUDED ASSETS  
PERSONAL PROPERTY

[None]

## APPENDIX D

### PERMITTED EXCEPTIONS

Such easements, covenants, restrictions and other matters of records, if any, encumbering the Acquired Assets that (a) are disclosed by a current title insurance commitment or a current survey relating to the Acquired Assets and (b) are specifically approved by the County, which approval shall not be unreasonably withheld. In no event shall any mortgage or other monetary lien (other than for ad valorem real estate taxes not yet due and payable) be a Permitted Exception.



APPENDIX E

FORM OF ACQUISITION CERTIFICATES

CERTIFICATE RELATING TO  
PLANS AND SPECIFICATIONS

WHEREAS, St. Johns County, a political subdivision of the State of Florida (the "County"), and Intercoastal Utilities, Inc., a Florida corporation ("ICU"), entered into that certain Settlement Agreement as of November 13, 2007 (the "Agreement"); and

WHEREAS, Section 4.02 of the Agreement provides that ICU deliver one or more certificates to the County which reasonably identifies information necessary for the County to perform its final review of the Utility System.

NOW, THEREFORE, to comply with the Agreement, ICU does hereby certify to the County that the attached information is provided in compliance with Section 4.02 of the Agreement and is a schedule or general description of all plans and specifications of which substantially describe the major components of the Utility System's water and wastewater plants, lift or pump stations, wastewater collection system and major transmission and reuse facilities.

IN WITNESS WHEREOF, Intercoastal Utilities, Inc. has executed this certificate on the \_\_\_\_\_ day of November, 2007.

INTERCOASTAL UTILITIES, INC.

(SEAL)

By: \_\_\_\_\_  
President

ATTEST:

\_\_\_\_\_  
Secretary

CERTIFICATE RELATING TO  
THIRD PARTY WARRANTIES

WHEREAS, St. Johns County, a political subdivision of the State of Florida (the "County"), and Intercoastal Utilities, Inc., a Florida corporation ("ICU"), entered into that certain Settlement Agreement as of November 13, 2007 (the "Agreement"); and

WHEREAS, Section 4.02 of the Agreement provides that ICU deliver one or more certificates to the County which reasonably identifies information necessary for the County to perform its final review of the Utility System.

NOW, THEREFORE, to comply with the Agreement, ICU does hereby certify to the County that the attached information is provided in compliance with Section 4.02 of the Agreement and is a schedule of all existing third party warranties that relate to completed or in-progress construction.

IN WITNESS WHEREOF, Intercoastal Utilities, Inc. has executed this certificate on the \_\_\_\_\_ day of November, 2007.

INTERCOASTAL UTILITIES, INC.

(SEAL)

By: \_\_\_\_\_  
President

ATTEST:

\_\_\_\_\_  
Secretary

CERTIFICATE RELATING TO  
CURRENT OR ACTIVE PERMITS

WHEREAS, St. Johns County, a political subdivision of the State of Florida (the "County"), and Intercoastal Utilities, Inc., a Florida corporation ("ICU"), entered into that certain Settlement Agreement as of November 13, 2007 (the "Agreement"); and

WHEREAS, Section 4.02 of the Agreement provides that ICU deliver one or more certificates to the County which reasonably identifies information necessary for the County to perform its final review of the Utility System.

NOW, THEREFORE, to comply with the Agreement, ICU does hereby certify to the County that the attached information is provided in compliance with Section 4.02 of the Agreement and is a schedule of all current or active permits, application or other documents, together with effective dates and any expiration dates which relate to construction or which authorize the operation of the Utility System's water and wastewater treatment facilities by all applicable governmental authorities.

IN WITNESS WHEREOF, Intercoastal Utilities, Inc. has executed this certificate on the \_\_\_\_\_ day of November, 2007.

INTERCOASTAL UTILITIES, INC.

(SEAL)

By: \_\_\_\_\_  
President

ATTEST:

\_\_\_\_\_  
Secretary

CERTIFICATE RELATING TO  
MAP OF UTILITY SYSTEM

WHEREAS, St. Johns County, a political subdivision of the State of Florida (the "County"), and Intercoastal Utilities, Inc., a Florida corporation ("ICU"), entered into that certain Settlement Agreement as of November 13, 2007 (the "Agreement"); and

WHEREAS, Section 4.02 of the Agreement provides that ICU deliver one or more certificates to the County which reasonably identifies information necessary for the County to perform its final review of the Utility System.

NOW, THEREFORE, to comply with the Agreement, ICU does hereby certify to the County that the attached information is provided in compliance with Section 4.02 of the Agreement and is a location map of the Utility System which generally depicts the areas served by ICU.

IN WITNESS WHEREOF, Intercoastal Utilities, Inc. has executed this certificate on the \_\_\_\_\_ day of November, 2007.

INTERCOASTAL UTILITIES, INC.

(SEAL)

By: \_\_\_\_\_  
President

ATTEST:

\_\_\_\_\_  
Secretary

CERTIFICATE RELATING TO  
INVENTORY AND PERSONAL PROPERTY

WHEREAS, St. Johns County, a political subdivision of the State of Florida (the "County"), and Intercoastal Utilities, Inc., a Florida corporation ("ICU"), entered into that certain Settlement Agreement as of November 13, 2007 (the "Agreement"); and

WHEREAS, Section 4.02 of the Agreement provides that ICU deliver one or more certificates to the County which reasonably identifies information necessary for the County to perform its final review of the Utility System.

NOW, THEREFORE, to comply with the Agreement, ICU does hereby certify to the County that the attached information is provided in compliance with Section 4.02 of the Agreement and is an inventory of the equipment, vehicles, tools, parts, laboratory equipment, computer equipment and other personal property, other than the Excluded Assets, used by ICU on connection with the operation of the Utility System.

IN WITNESS WHEREOF, Intercoastal Utilities, Inc. has executed this certificate on the \_\_\_\_\_ day of November, 2007.

INTERCOASTAL UTILITIES, INC.

(SEAL)

By: \_\_\_\_\_  
President

ATTEST:

\_\_\_\_\_  
Secretary

CERTIFICATE RELATING TO  
OPERATING AND VENDOR CONTRACTS

WHEREAS, St. Johns County, a political subdivision of the State of Florida (the "County"), and Intercoastal Utilities, Inc., a Florida corporation ("ICU"), entered into that certain Settlement Agreement as of November 13, 2007 (the "Agreement"); and

WHEREAS, Section 4.02 of the Agreement provides that ICU deliver one or more certificates to the County which reasonably identifies information necessary for the County to perform its final review of the Utility System.

NOW, THEREFORE, to comply with the Agreement, ICU does hereby certify to the County that the attached information is provided in compliance with Section 4.02 of the Agreement and is a schedule of all operating and vendor contracts affecting the Utility System.

IN WITNESS WHEREOF, Intercoastal Utilities, Inc. has executed this certificate on the \_\_\_\_\_ day of November, 2007.

INTERCOASTAL UTILITIES, INC.

(SEAL)

By: \_\_\_\_\_  
President

ATTEST:

\_\_\_\_\_  
Secretary

CERTIFICATE RELATING TO  
REUSE OR EFFLUENT DISPOSAL AGREEMENTS

WHEREAS, St. Johns County, a political subdivision of the State of Florida (the "County"), and Intercoastal Utilities, Inc., a Florida corporation ("ICU"), entered into that certain Settlement Agreement as of November 13, 2007 (the "Agreement"); and

WHEREAS, Section 4.02 of the Agreement provides that ICU deliver one or more certificates to the County which reasonably identifies information necessary for the County to perform its final review of the Utility System.

NOW, THEREFORE, to comply with the Agreement, ICU does hereby certify to the County that the attached information is provided in compliance with Section 4.02 of the Agreement and is a schedule of all executory reuse or effluent disposal agreements entered into by ICU for sale or reuse of effluent delivered through the Utility System.

IN WITNESS WHEREOF, Intercoastal Utilities, Inc. has executed this certificate on the \_\_\_\_\_ day of November, 2007.

INTERCOASTAL UTILITIES, INC.

(SEAL)

By: \_\_\_\_\_  
President

ATTEST:

\_\_\_\_\_  
Secretary



CERTIFICATE RELATING TO  
DEVELOPER AGREEMENTS

WHEREAS, St. Johns County, a political subdivision of the State of Florida (the "County"), and Intercoastal Utilities, Inc., a Florida corporation ("ICU"), entered into that certain Settlement Agreement as of November 13, 2007 (the "Agreement"); and

WHEREAS, Section 4.02 of the Agreement provides that ICU deliver one or more certificates to the County which reasonably identifies information necessary for the County to perform its final review of the Utility System.

NOW, THEREFORE, to comply with the Agreement, ICU does hereby certify to the County that the attached information is provided in compliance with Section 4.02 of the Agreement and is a schedule of all executory agreements, sometimes referred to as developer agreements, entered into by ICU and owners or developers of real property for the provision of water or wastewater disposal services through the Utility System.

IN WITNESS WHEREOF, Intercoastal Utilities, Inc. has executed this certificate on the \_\_\_\_\_ day of November, 2007.

INTERCOASTAL UTILITIES, INC.

(SEAL)

By: \_\_\_\_\_  
President

ATTEST:

\_\_\_\_\_  
Secretary

CERTIFICATE RELATING TO  
OUTSTANDING WATER AND WASTEWATER SERVICE OBLIGATIONS

WHEREAS, St. Johns County, a political subdivision of the State of Florida (the "County"), and Intercoastal Utilities, Inc., a Florida corporation ("ICU"), entered into that certain Settlement Agreement as of November 13, 2007 (the "Agreement"); and

WHEREAS, Section 4.02 of the Agreement provides that ICU deliver one or more certificates to the County which reasonably identifies information necessary for the County to perform its final review of the Utility System.

NOW, THEREFORE, to comply with the Agreement, ICU does hereby certify to the County that the attached information is provided in compliance with Section 4.02 of the Agreement and is a schedule, with respect to all executory agreements under which ICU as the owner of the Utility System has any continuing or outstanding water or wastewater service obligations as of the date of the Agreement, which list individually and shows the total number of (1) contractual connections; (2) contractual connections paid for and not yet connected; (3) contractual connections not yet paid for and not yet connected; and (4) any contractual connections for which ICU has or expects to begin collecting a periodic minimum or base charge prior to transfer.

IN WITNESS WHEREOF, Intercoastal Utilities, Inc. has executed this certificate on the \_\_\_\_\_ day of November, 2007.

INTERCOASTAL UTILITIES, INC.

(SEAL)

By: \_\_\_\_\_  
President

ATTEST:

\_\_\_\_\_  
Secretary

CERTIFICATE RELATING TO  
CURRENT CUSTOMER ACCOUNT INFORMATION AND  
METER READING AND BILLING DATES

WHEREAS, St. Johns County, a political subdivision of the State of Florida (the "County"), and Intercoastal Utilities, Inc., a Florida corporation ("ICU"), entered into that certain Settlement Agreement as of November 13, 2007 (the "Agreement"); and

WHEREAS, Section 4.02 of the Agreement provides that ICU deliver one or more certificates to the County which reasonably identifies information necessary for the County to perform its final review of the Utility System.

NOW, THEREFORE, to comply with the Agreement, ICU does hereby certify to the County that the attached information is provided in compliance with Section 4.02 of the Agreement and is a schedule of (1) all current customer account information and (2) metering reading and billing dates for the last twelve months and scheduled dates for the next six months.

IN WITNESS WHEREOF, Intercoastal Utilities, Inc. has executed this certificate on the \_\_\_\_\_ day of November, 2007.

INTERCOASTAL UTILITIES, INC.

(SEAL)

By: \_\_\_\_\_  
President

ATTEST:

\_\_\_\_\_  
Secretary

APPENDIX F  
FORM OF ACQUISITION DOCUMENTS

Prepared by and  
when recorded  
return to:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

## TRANSFER, ASSIGNMENT AND ASSUMPTION AGREEMENT

THIS TRANSFER, ASSIGNMENT AND ASSUMPTION AGREEMENT (this "Agreement") is made and executed as of December \_\_, 2007 by INTERCOASTAL UTILITIES, INC., a Florida corporation ("ICU"), whose address is \_\_\_\_\_, and ST. JOHNS COUNTY, a political subdivision of the State of Florida (the "County"), whose address is 4020 Lewis Speedway, St. Augustine, Florida 32084.

### WITNESSETH:

**WHEREAS**, the County has as of even date acquired by eminent domain from ICU, pursuant to that certain Settlement Agreement dated as of November \_\_, 2007 (the "Settlement Agreement"), between ICU and the County, and that certain Stipulated Final Judgment, all of the real and personal property, both tangible and intangible, which constitutes the Acquired Assets as described in the Settlement Agreement.

**NOW THEREFORE**, in consideration of the mutual promises, covenants, representations and agreements contained herein, together with \$10 and other good and valuable consideration exchanged between the parties, the receipt and sufficiency of which are hereby mutually acknowledged, the parties do undertake, promise and agree for themselves, their permitted successors and assigns as follows:

**SECTION 1. PURPOSES AND DEFINITIONS.** Unless the context clearly requires otherwise, the capitalized terms used herein shall have the same meaning as provided in the Settlement Agreement. This Agreement is intended to: (A) transfer and assign to the County all rights, remedies, powers, title and interests of ICU in and to the Acquired Assets however arising; (B) establish certain post-closing rights and obligations between the parties; and (C) provide for the assumption by the County of the operation of the Utility System.

### SECTION 2. REPRESENTATIONS.

(A) ICU hereby certifies to the County that the representations of ICU in the Settlement Agreement are true and correct in all material respects as of the date hereof with the same effect as if such representations were made or given on the date hereof.

(B) Each party hereby warrants and represents to the other party that, to the best of such party's knowledge and belief, such party has performed in all material respects all of its obligations under the Settlement Agreement, and has complied in all material respects with all of the covenants and agreements required by the Settlement Agreement to be performed or complied with by such party, prior to or as of the date of this Agreement, unless waived in writing by the other party.

(C) ICU represents and warrants to the County that ICU is not aware of, and neither its management or officers or Jax Management have not been notified of, any pending or threatened claim, demand, breach, or default under or with respect to any of the Acquired Assets being transferred and assigned under the Settlement Agreement and this Agreement.

**SECTION 3. TRANSFER AND ASSIGNMENT.** ICU shall, and does hereby, transfer, assign, convey, grant and bargain unto the County all of ICU's rights, remedies, powers, title and interests in and to the Purchase Assets however arising, including, without limitation, any rights, remedies, powers, title or interests arising by virtue of the authorizations to provide service granted by the Board of County Commissioners of St. Johns County, Florida (the "Board"), or otherwise arising by virtue of any permits or authorizations or arising from the County's assuming the operation and control of the Utility System. The foregoing transfer and assignment is supplemental to all other instruments and actions contemplated under or effected pursuant to the Settlement Agreement.

**SECTION 4. POST-CLOSING RELATIONSHIP.** From time to time from and after the date hereof, each party hereto shall, upon request of the other party, perform, execute, acknowledge and deliver, or shall cause to be performed, executed, acknowledged and delivered, without additional material expense to the parties, all such further acts, deeds, assignments, transfers or other documentation reasonably required to: (1) confirm or correct title in the name of the County or perfect undisputed and unencumbered possession by the County of any or all of the Acquired Assets including, but without limited to, the establishment or conveyance of record of utility easements for all water and wastewater utility facilities which are a part of the Utility System and in existence as of the date hereof; (2) confirm or correct title in the name of ICU or perfect undisputed and unencumbered possession by ICU of any of the Excluded Assets; or (3) otherwise fulfill the obligations of the parties under the Settlement Agreement or this Agreement.

**SECTION 5. ASSUMPTION.**

(A) The County hereby assumes the operation of the Utility System and those obligations, duties, and liabilities accruing thereto from and after the date hereof with respect to the following:

(1) the obligation to return customer deposits in due course, but only to the extent the same have been delivered by ICU to the County or otherwise credited to the County; and

(2) the rights and obligations of ICU under the agreements, warranties, and permits described in Exhibit A attached hereto; and

(3) all obligations and liabilities of ICU for outstanding and unfulfilled purchase orders or other unfulfilled contracts for materials, supplies and services reasonably ordered by ICU relative to the operation of the Utility System and Acquired Assets in the ordinary course of business but not delivered prior to the date of closing, but such assumed obligations and liabilities shall not exceed \$10,000 in the aggregate.

(B) As of the date hereof and the transfer of possession of the Acquired Assets to the County, ICU's authorization to provide water and wastewater services to the Utility System by the Board (and any regulatory agency of the County) shall be deemed terminated and ICU is released from any further obligation or responsibility to act or serve as a provider of water or wastewater services for the Utility System. Notwithstanding the foregoing, ICU shall immediately apply for termination of all certificates of authorization issued by the Board, which shall be issued as a matter of right pursuant to Section 367.071(4)(a), Florida Statutes. Accordingly, upon execution and delivery of this Agreement, the County acknowledges and accepts the responsibility and obligation to provide water and wastewater services, as a governmental owned and controlled service provider within any unincorporated area of the County previously served by ICU. Nothing contained herein is intended or shall be construed as a release of any obligations or liabilities of ICU under the Settlement Agreement, this Agreement or any instrument or agreement delivered pursuant to the Settlement Agreement, or arising in connection with or as a result of the ownership or operation of the Utility System prior to the date hereof.

**SECTION 6. BINDING EFFECTS.** This Agreement shall inure to the benefit of and be binding upon ICU and the County and their successors and assigns.

**SECTION 7. MULTIPLE COUNTERPARTS.** This Agreement may be executed in two or more counterparts, and each such counterpart shall be deemed to be an original instrument. All such counterparts shall be considered one and the same agreement and shall become effective when one or more counterparts have been signed by each of the parties and delivered to the other parties, it being understood that all parties need not sign the same counterpart.

[Remainder of page intentionally left blank.]

**IN WITNESS WHEREOF**, ICU and the County have caused this Agreement to be executed in its name on the respective dates set forth in the acknowledgements below, but to be effective and deemed delivered for all purposes as of the day and year first above written.

**BOARD OF COUNTY COMMISSIONERS  
OF ST. JOHNS COUNTY, FLORIDA**

By: \_\_\_\_\_  
Chairman

(SEAL)

ATTEST:

\_\_\_\_\_  
Clerk

STATE OF FLORIDA  
COUNTY OF ST. JOHNS

The foregoing instrument was acknowledged before me on December \_\_\_\_, 2007 by Ben Rich, as Chairman of St. Johns County Board of County Commissioners, on behalf of said Board. He is personally known to me or has produced a Florida driver's license as identification.

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
NOTARY PUBLIC  
State of Florida  
Commission # \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_



**INTERCOASTAL UTILITIES, INC.,** a  
Florida corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

Signed, sealed and delivered  
In our presence:

\_\_\_\_\_  
Witness #1

\_\_\_\_\_  
(Witness #1 printed name)

\_\_\_\_\_  
Witness #2

\_\_\_\_\_  
(Witness #2 printed name)

STATE OF FLORDA  
COUNTY OF ST. JOHNS

The foregoing instrument was acknowledged before me on December \_\_\_\_, 2007 on behalf of \_\_\_\_\_, as President of Intercoastal Utilities, Inc, a Florida corporation, on behalf of the corporation. He is personally known to me or has produced a Florida driver's license as identification.

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
NOTARY PUBLIC  
State of Florida  
Commission # \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_

**EXHIBIT A**

(lists to come from ICU)

- (A) **UTILITY AGREEMENTS**
  
- (B) **REUSE OR EFFLUENT DISPOSAL AGREEMENTS**
  
- (C) **OPERATING AND VENDOR CONTRACTS**
  
- (D) **THIRD PARTY WARRANTIES**
  
- (E) **PERMITS**

APPENDIX G  
STIPULATED FINAL JUDGMENT

APPENDIX H  
OPERATIONS AGREEMENT

APPENDIX I  
REVIEW ACTIVITIES AND SCHEDULE

## REVIEW ACTIVITIES AND SCHEDULE

### Sections 4.02, 4.03 and 4.07 Provision of Information by ICU

Within 3 days after entering into the Agreement (November 16, 2007, which assumes the Agreement is entered into on November 13, 2007), ICU shall submit the following:

- A. All information described and to be encompassed by the acquisition certificates included in Appendix E.
- B. A written (or electronic) billing analysis of all revenues of the Utility System for the 12 month period ending no sooner than September 30, 2007.
- C. ICU shall order and obtain a search of the records of the Secretary of State for uniform commercial code financing statements evidencing a secured interest in the Acquired Assets. Results shall be simultaneously delivered to the County.

### Sections 5.05 and 5.06 Provision of Information by ICU

Within 7 days after entering into the Agreement (November 20, 2007), ICU shall submit the following:

- A. A listing of customer deposits by customer account (including name, account number and address information) and an aggregate total thereof, and a listing of all unexpended application fees or charges (including the name, account number and address of the applicant and identification of the agreement under which the fee was collected or charged, if any) and an aggregate total thereof.
- B. A listing of all customer accounts (including name and address information) that have paid for connection charges for which service has not been actually furnished as described in Section 5.06(A) of the Agreement.
- C. A listing of all charges for meters, meter installation etc. by customer account (including name and address information) and an aggregate total thereof as described in Section 5.06(B) of the Agreement.

### Section 4.04 Finalizing Engineering

Within 14 days entering the Agreement (November 27, 2007), the County shall complete a final engineering investigation of the Utility System and Acquired Assets.

Section 4.05 Environmental Assessment

Within 10 days of entering into the Agreement (November 23, 2007), County shall obtain an environmental assessment of the real property to be acquired as described in Appendix A of the Agreement.

Section 4.06 Survey

Within 10 days of entering into the Agreement (November 23, 2007), the County shall obtain a survey of the fee simple parcels expected to be insured by the title insurance policy.

Section 4.07 Title Verification

Within 5 days of entering into the Agreement (November 18, 2007), the County shall obtain a title commitment as to the insurable property comprising the Acquired Assets. The County shall have 5 days (November 23, 2007) from receiving the title commitment to examine it. If title is found defective, the County shall notify ICU with 5 days (November 28, 2007), and ICU shall have 10 days (December 8, 2007) to remove defects.

Section 4.10 Transfer of Permits

Within 5 days after entering into the Agreement (November 18, 2007), the County and ICU shall commence all requisite action to apply for and cause the transfer of permits and governmental approvals.

Section 5.01 Acquisition Process

The transfer is expected to occur no later than 30 days after entering into the Agreement (December 13, 2007).

Summary:

Assuming November 13, 2007 as the date the County and ICU enter into the Agreement and a transfer date of December 12, 2007

November 16, 2007 ICU shall submit the following:

A. All information described and to be encompassed by the acquisition certificates included in Appendix E.

B. A written (or electronic) billing analysis of all revenues of the Utility System for the 12 month period ending no sooner than September 30, 2007.

C. ICU shall order and obtain a search of the records of the Secretary of State for uniform commercial code financing statements evidencing a secured interest in the Acquired Assets. Results shall be simultaneously delivered to the County.

November 18, 2007 The County and ICU shall commence all requisite action to apply for and cause the transfer of permits and governmental approvals.

November 20, 2007 ICU shall submit the following:

A. A listing of customer deposits by customer account (including name, account number and address information) and an aggregate total thereof, and a listing of all unexpended application fees or charges (including the name, account number and address of the applicant and identification of the agreement under which the fee was collected or charged, if any) and an aggregate total thereof.

B. A listing of all customer accounts (including name and address information) that have paid for connection charges for which service has not been actually furnished as described in Section 5.06(A) of the Agreement.

C. A listing of all charges for meters, meter installation etc. by customer account (including name and address information) and an aggregate total thereof as described in Section 5.06(B) of the Agreement.

November 23, 2007 Environmental Assessment – The County shall obtain the environmental assessment.

November 23, 2007 Survey – The County shall obtain the survey.

November 23, 2007 Title Verification – completed if no defects

November 27, 2007 Engineering - The County shall complete final engineering investigation.

December 8, 2007 Title Verification – completed if defects



SCHEDULE 2.02(C)

ACTION, SUIT, INVESTIGATION OR PROCEEDINGS AFFECTING ICU