

RESOLUTION NO. 2007- 397

**A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, ACCEPTING AND AUTHORIZING THE COUNTY ADMINISTRATOR TO EXECUTE A HOLD HARMLESS AGREEMENT FROM JEA FOR THE CONSTRUCTION OF A SIDEWALK WITHIN THE JEA UTILITY EASEMENT ALONG THE WEST SIDE OF LINDE AVENUE.**

**RECITALS**

**WHEREAS**, JEA, has presented to St. Johns County an executed Hold Harmless Agreement attached hereto as Exhibit "A", incorporated by reference and made a part hereof; and

**WHEREAS**, St. Johns County Engineering Department requested this Hold Harmless Agreement for construction of a sidewalk running along the west side of Linde Road, which portions overlap onto JEA Utility Easement; and

**WHEREAS**, it is in the best interest of the public for the County to accept this Hold Harmless Agreement for the construction of a sidewalk for the health, safety, and welfare of the citizens in that area.

**NOW THEREFORE, BE IT RESOLVED**, by the Board of County Commissioners of St. Johns County, Florida, as follows:

Section 1. The above recitals are incorporated by reference into the body of this Resolution and such recitals are adopted as findings of fact.

Section 2. The Board of County Commissioners hereby approves the terms of the Hold Harmless Agreement and authorizes the County Administrator to execute the Hold Harmless Agreement.

Section 3. The Clerk of Circuit Court is instructed to record the original Hold Harmless Agreement in the Official Records of St. Johns County, Florida.

**PASSED AND ADOPTED** this 11<sup>th</sup> day of December, 2007.

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

By: *Thomas G. Manuel*  
**Thomas G. Manuel, Chair**

**ATTEST:** Cheryl Strickland  
Clerk of Circuit Court  
By: *Ram Haltem*  
Deputy Clerk

**RENDITION DATE** 12/14/07

EXHIBIT "A" TO RESOLUTION

Prepared by and return to:  
Brian Dawes  
Edwards Cohen  
6 East Bay Street, Suite 500  
Jacksonville, FL 32202

**USE AND HOLD HARMLESS  
AGREEMENT  
(JEA Easement)**

**THIS USE AND HOLD HARMLESS AGREEMENT**, ("Agreement") made this \_\_\_\_ day of \_\_\_\_\_, 2007, between **ST. JOHNS COUNTY, FLORIDA**, a political subdivision of the State of Florida, whose address is \_\_\_\_\_, ("County") and **JEA**, a body politic and corporate with offices at 21 West Church Street, Jacksonville, Florida 32202 ("JEA").

**RECITALS:**

- A. JEA is the beneficiary of a certain 7.5' utility easement as shown on the plat recorded in Map Book 47 , Page 56 of the current public records of St. Johns County, Florida, a copy of said plat being attached hereto as Exhibit A (the "Easement"); and
- B. County plans to build and maintain a sidewalk (the "Sidewalk") on a portion of the Easement (the "Easement Area").
- C. County for itself, its successors and assigns is willing to indemnify, defend and hold JEA harmless from damages and expenses which may be incurred as a direct or indirect result of County's use of the Easement Area, as more particularly described in this Agreement.
- D. The purpose of this Agreement is to set forth the terms and conditions under which JEA has granted permission to County to construct and maintain the Sidewalk on the Easement Area.

**NOW THEREFORE**, for Ten and No/100 Dollars (\$10.00) and in consideration of the premises and of the mutual covenants contained herein, the receipt and legal sufficiency of which is hereby acknowledged, the parties hereto agree as follows

- 1. JEA hereby permits County, its agents, employees, invitees, licensees, successors and assigns the right to improve and use the Easement Area for the construction and maintenance of the Sidewalk, subject to the terms, conditions and restrictions more particularly detailed herein.
- 2. It is understood and agreed that County's use of the Easement Area and installation and maintenance of the Sidewalk pursuant to the terms of this Agreement shall not constitute any interference or impermissible use in violation of the terms of the Easement. Subject to the foregoing provisions, County shall not interfere with JEA's use of the Easement or otherwise conduct any activities in violation of the Easement. In the event of any such interference or violation, County, upon receipt of notice and description of such interference or violation from JEA shall cause any such interference to cease and modify its use of the Easement Area as may be reasonably required to prevent such interference in the future. If County fails or is unable to cure such interference or violation within fifteen (15) days of receipt of JEA's notice, JEA may terminate this Agreement. Provided, however, and notwithstanding any other terms in this Agreement, JEA may suspend or temporarily terminate all or a portion of

County's use of the Sidewalk and Easement Area: (a) immediately, without prior notice to County, during emergency situations requiring immediate repairs to JEA's equipment and facilities within the Easement until such time as the emergency is resolved, and (b) upon not less than five (5) days' prior written notice for the purpose of any scheduled maintenance or repair of JEA's equipment and facilities within the Easement until such time as the maintenance or repair is completed. Based on reasons shared with the County, JEA may remove, relocate and rebuild any of the Improvements, with cost of such Improvements borne by the County, unless JEA and the County agree, in writing, to an alternative cost-sharing approach. Notwithstanding the foregoing, in the event that JEA determines, in its sole and absolute discretion, that circumstances require the immediate removal of the Sidewalk, JEA shall have the right to perform the removal of the Sidewalk, with the costs incurred by JEA for such removal to be reimbursed by County, unless JEA and the County agree, in writing, to an alternative cost-sharing approach.

3. County and JEA acknowledge and agree that JEA shall have the right to expand its use of the Easement Area in the future in accordance with the terms of the Easement, including but not limited to the addition of additional utilities, equipment and facilities. In the event that JEA decides, in JEA's sole and absolute discretion, that County's use of the Easement Area pursuant to this Agreement is inconsistent with JEA's current or future use of the Easement Area in accordance with the terms of the Easement, JEA shall have the right to modify County's use of the Easement Area in accordance with JEA's current or future use.

4. To the extent permitted by law, which specifically includes the provisions and limitations of Section 768.28, Florida Statutes, County hereby indemnifies and holds JEA harmless from and against any and all damages, claims, actions, costs, losses and expenses incurred in connection with the injury or death of any person, or damage to the property of any person arising out of or in connection with the use by County or its agents, contractors, servants or employees of the Easement Area or rights granted by this Agreement, except for claims, actions, costs, losses and expenses arising from the gross negligence or willful act or omission of JEA or its agents, contractors, servants or employees.

5. County shall, at its own expense, maintain the Sidewalk on the Easement Area in a good, safe and attractive condition. County is solely responsible and agrees to repair any damages to JEA's Easement that result from County's use of the Easement Area. In addition to the foregoing, County shall be solely responsible for any damages to the Sidewalk resulting from JEA's reasonable and proper use and activities within the Easement in accordance with the terms of the Easement.

6. County shall not install any additional improvements, other than the Sidewalk, on the Easement without written permission from JEA.

7. Any notice, demand, or request required or authorized by this Agreement shall be deemed properly given if mailed postage prepaid to the following addresses, or to such other locations that either party may designate in writing:

To JEA: 21 W. Church Street, CC-6  
Jacksonville, Florida 32202  
Attention: Donald L. Burch, Jr., Director, Real Estate Services

To County: St. Johns County  
4020 Lewis Speedway  
St. Augustine, Florida 32084  
Attention Real Estate Department

8. The rights contained within this Agreement shall run with the land and inure to, and be for the benefit of, County and JEA, their respective successors and assigns, and the tenants, subtenants, licensees, concessionaires, mortgagees in possession, customers and business invitees of such parties.

9. Any waiver at any time by JEA of its rights with respect to County or with respect to any matter arising in connection with this Agreement shall not be considered a waiver with respect to any other prior or subsequent default or matter.

10. This Agreement may be revoked immediately by JEA, at any time, if County violates any of the material provisions, terms, or conditions contained in this Agreement. If the JEA revokes this Agreement, then responsibility/liability for the sidewalk immediately transfers from the County to JEA.

IN WITNESS WHEREOF, County and JEA have caused these presents to be executed on the day and year first above written.

WITNESSES:

ST. JOHNS COUNTY, FLORIDA

\_\_\_\_\_  
Print: \_\_\_\_\_

\_\_\_\_\_  
Print: \_\_\_\_\_

By: \_\_\_\_\_  
Print : **Michael D. Wanchick**  
Its: **County Administrator**

STATE FLORIDA  
COUNTY OF ST. JOHNS

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2007, by **Michael D. Wanchick**, the St. Johns County, Florida, County Administrator of on behalf of St. Johns County, Florida, who ( ) is personally known to me or ( ) has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Print: \_\_\_\_\_  
NOTARY PUBLIC, State of Florida  
Commission No.: \_\_\_\_\_  
My commission expires: \_\_\_\_\_

**WITNESSES:**

**JEA:**

Print: \_\_\_\_\_

\_\_\_\_\_  
Donald L. Burch, Jr.  
Director, Real Estate Services

Print \_\_\_\_\_

**STATE FLORIDA  
COUNTY OF DUVAL**

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2007, by Donald L. Burch, Jr., the Director of Real Estate Services of JEA, a body politic and corporate, on behalf of the JEA, and who is personally known to me or has produced \_\_\_\_\_ as identification.

\_\_\_\_\_  
Commission No.: \_\_\_\_\_

(print) \_\_\_\_\_

**NOTARY PUBLIC, STATE OF FLORIDA**

My commission expires: \_\_\_\_\_



