

RESOLUTION NO. 2009- 15

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE TERMS, PROVISIONS, CONDITIONS, AND REQUIREMENTS OF AN AGREEMENT BETWEEN ST. JOHNS COUNTY, FLORIDA, AND KS TONEY, NORTH CAROLINA, FOR THE PROVISION OF LEASE AGREEMENT AND AUTHORIZING THE COUNTY ADMINISTRATOR TO EXECUTE THE AGREEMENT ON BEHALF OF ST. JOHNS COUNTY

WHEREAS, St. Johns County, Florida (County) will continue operating the Moultrie Woods Wastewater Treatment Plant in accordance with state regulations, and.

WHEREAS, the County will lease the facilities from Mr. K.S. Toney until the time Brinkoff Road is developed, and.

WHEREAS, the Lease Agreement is valid for a five (5) year time limit from the date approved with an option to extend the Agreement for an additional three (3) years, and.

WHEREAS, County will compensate Mr. K.S. Toney annually the monetary value equal to the County Taxes for the referenced facilities, and.

WHEREAS, the County has determined that accepting the terms of the Agreements, **which is attached hereto, and incorporated herein**, 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 Board of County Commissioners hereby approves the terms, provisions, conditions, and requirements of water unit connection fee refund agreement between St. Johns County, Florida, and Mr. K.S. Toney, and authorizes the County Administrator to execute this Agreement and Lease on behalf of St. Johns County.

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, Florida, this 20th day of January, 2009.

BOARD OF COUNTY COMMISSIONERS OF
ST. JOHNS COUNTY, FLORIDA

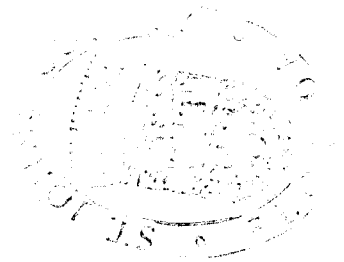
Attest:

Pam Halterman
Deputy Clerk

By:

Cyndi Stevenson
Cyndi Stevenson, Chair

RENDITION DATE 1/22/09



AGREEMENT

THIS AGREEMENT made and entered into this ____ day of _____, 2009, by and between **ST. JOHNS COUNTY, FLORIDA**, a political subdivision of the State of Florida, hereinafter called "County" and **K. S. TONEY**, hereinafter called "Owner".

WITNESSETH

WHEREAS, Owner, as the owner of the Moultrie Service District, Inc. sewer system ("System"), desires to transfer operations of said System to the County;" and

WHEREAS, the County operation of the System is in the public interest; and

WHEREAS, the County is able to make the necessary investments to the System to maintain high quality cost effective service to the citizens of St. Johns County which it services.

NOW, THEREFORE, in consideration of the mutual benefits, promises and considerations herein set forth, it is mutually agreed as follows:

1. The Owner shall;
 - a. Lease to the County the sewer plant and real property occupied by the sewer plant and percolation ponds for a period of three (3) years with an option to extend up to five (5) years, at a rental fee equal to the County taxes for the subject property per year. The lease shall provide that the County shall be responsible for maintaining, managing and insuring the sewer plant and percolation ponds.
 - b. Transfer to the County all existing exclusive or nonexclusive easements utilized in the operation of the System.
2. All "equipment" to operate the Moultrie Service District which has been transferred under the previous BILL OF SALE (O.R. 1084 PG 1566) will remain with the County. The transfer does not include the pump station, service lines or manholes located at the Moultrie Woods Townhouses.
3. Upon the completion of the improvements to Brinkoff Road and the extension of the County's wastewater collection system along Brinkoff Road:
 - a. The Owner and/or his assigns shall grant the County a non-exclusive easement of a width of 20 feet, running South from Brinkhoff Road along

the westerly property line to the southern property line adjacent to the County lands, known as Treaty Park

- b. The County shall, at its expense, allow the percolation ponds to dry and demuck and fill the ponds in accordance with State Statutes and Florida Department of Environmental Protection regulations.
 - c. The County shall, at its expense, abandon and remove the sewer plant in accordance with Florida Department of Environmental Protection regulations within six (6) months of the completion of construction of the wastewater system improvements along Brinkoff Road.
4. If the wastewater system improvements along Brinkoff Road have not been completed by the end of the lease. The lease will be renewed on ~~with~~ terms agreeable to both parties.
 5. The County shall also have the right to assess, collect, and retain fees for sewer services from persons served during the period of the lease agreement.
 6. All costs associated with the transfer of the System to the County, except the Owner's and Moultrie Service District, Inc.'s legal fees, which shall include preparation of documents to effectuate their transfer to the County shall be paid by the County.
 7. If any provision or provisions of the Agreement shall be held invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall not in any way be affected or impaired thereby.
 8. This Agreement will be governed by the laws of the State of Florida. It constitutes the complete and exclusive statement of the Agreement between the parties which supersedes all proposals, oral or written, and all other communications between the parties relating to the subject matter of this Agreement. Any further change or modification of this Agreement must be in writing and signed by both parties.
 9. Notice required to be sent to the County and Owner under this Agreement shall be sent to the County c/o Mr. Michael D. Wanchick, County Administrator, P.O. Drawer 349, St. Augustine, Florida 32085-0349 and to Owner c/o John D. Bailey, Jr., P.O. Drawer 3007, St. Augustine, Florida 32085-3007.

10. This Agreement shall be effective upon the execution of the Agreement by the County Administrator, and execution by all parties hereto. The Owner shall have executed this Agreement within ten (10) days of, or before, its execution by the County Administrator. If this Agreement is not executed by expiration of that period this Agreement and any offer associated therewith will be automatically withdrawn and void.

IN WITNESS WHEREOF the parties have hereunto set their hands and seals the say and year written above.

Signed, sealed and delivered
in the presence of:

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

Print Name: _____

By: _____
Michael D. Wanchick
County Administrator
P.O. Drawer 349
St. Augustine, FL 32085

Print Name: _____

ATTEST: Cheryl Strickland, Clerk

Dated: _____

By: _____
Deputy Clerk

“OWNER”

Print Name: _____

K.S. Toney
c/o John D. Bailey, Jr. Esquire
Upchurch, Bailey & Upchurch, PA
PO Drawer 3007
St. Augustine, FL 32085-3007

Print Name: _____

LEASE

THIS LEASE ("Lease") is made this ____ day of _____, 2009, by and between K.S. TONEY, hereinafter called "Lessor", and ST. JOHNS COUNTY, FLORIDA, a political Subdivision of the State of Florida, hereinafter called "Lessee".

1. Description of Leased Premises.

Lessor hereby leases to Lessee that certain property situate in St. Johns County, State of Florida, and more particularly described as follows:

The sewer plant and percolation ponds serving the sewer system operated by the Moultrie Service District, Inc., and the real property occupied by the sewer plant and percolation ponds including the access easement providing access from Brinkhoff Road (collectively, the "Premises").

Lessee shall accept the Premises in "as is" condition.

2. Term.

The Premises is leased for a term of three (5) years to commence _____, 2009 and end on _____, 2014.

3. Rent.

The rental due hereunder shall be equal to the sum of the County Taxes imposed on the subject property per year, if paid in the month of December, plus applicable state sales tax.

All rental payments together with applicable Florida State sales tax shall be paid in advance on the first day of December of each year. All rent due hereunder shall be paid to Lessor c/o John D. Bailey, Jr., Upchurch, Bailey & Upchurch, PA, PO Drawer 3007, St. Augustine, FL 32085-3007.

4. Use of Premises.

Lessee shall have the exclusive use of and occupancy of the Premises as a site for a sewer plant and percolation ponds and for no other purpose. Lessor represents that the Premises may lawfully be used for such purpose.

5. Care and Repair of Premises.

Lessee shall commit no act of waste and shall maintain, manage and take good care of the Premises including the plant, percolation ponds and all fixtures and appurtenances therein, including all replacements thereof, and shall use and occupy the Premises in conformity with all laws, orders, and regulations of the state and municipal governments or any of their departments. Lessee shall make all necessary repairs to the interior and exterior of the Premises. All improvements made by Lessee to the Premises which are so attached to the Premises that they cannot be removed without material injury to the

Premises, shall become the property of Lessor upon installation. Lessee shall also be responsible for dredging and fencing the percolation ponds and for performing any and all other maintenance or improvements required by the Florida Department of Environmental Protection.

Upon the earlier of the termination of this Lease or completion of the extension of Lessee's wastewater collection system along Brinkhoff Road, Lessee, at Lessee's expense, shall remove all of Lessee's personal property and those improvements made by Lessee, including trade fixtures, cabinetwork, movable paneling, partitions and the like; repair all injury done by or in connection with the installation or removal of the property and improvements; and surrender the Premises in as good condition as it was at the beginning of the term, reasonable wear, and damages by fire, the elements, casualty, or other cause not due to the misuse or neglect by Lessee or Lessee's agents, servants, visitors or licensees, excepted. Lessee shall also undertake those actions required by paragraph 24 hereof.

6. Alterations, Additions or Improvements.

Except as otherwise provided for herein or as required for normal maintenance, Lessee shall not, without first obtaining the written consent of Lessor, make any alterations, additions or improvements in, to or about the Premises.

7. Accumulation of Waste or Refuse Matter.

Lessee shall not permit the accumulation of waste or refuse matter on the Premises or anywhere in or near the building.

8. Assignment or Sublease.

Lessee shall not, without first obtaining the written consent of the Lessor, assign, mortgage, pledge, or encumber this lease, in whole or in part, or sublet the Premises or any part of the Premises.

9. Signs.

Lessee shall not erect any signs on the exterior of the Premises without the written consent of all applicable County agencies. Lessee shall maintain any signs erected pursuant to this paragraph.

10. Utilities.

Lessee shall secure and pay for all utilities used in connection with the Premises including, water, sewage, gas, electricity and garbage pick-up promptly when due, but in no event more than ten (10) days after the bill for same is rendered.

11. Damages to Premises.

In the event the Premises is damaged by fire or any other cause, the Lessor shall, at its expense, repair and restore the Premises with reasonable promptness, subject to delays beyond Lessor's control.

12. Requirement of Liability Insurance.

Lessor shall not be responsible for any loss or damage for injury to Lessee or to any persons or property, or death, or for any damage to the Premises. Lessee will, for the entire term of this Lease, maintain for its benefit and the benefit of Lessor, at its cost and expense, public liability insurance with limits of not less than \$100,000.00 per person and \$200,000.00 per occurrence for injury to persons or property.

13. Requirement of Hazard Insurance.

The lessee will, for the entire term of this Lease, maintain for its benefit and the benefit of Lessor, at its cost and expense, hazard insurance on the sewer plant and other improvements located on the Premises in an amount not less than \$30,000.00.

14. Lessor's Remedies on Default.

If Lessee defaults in the payment of rent, or defaults in the performance of any other covenant or condition of this Lease, Lessor may give Lessee notice of such defaults and if Lessee does not cure any default in the payment of rent within thirty (30) days, or other default within thirty (30) days, after the giving of such notice (or if such other default is of such nature that it cannot be completely cured within such period, if Lessee does not commence such curing within such thirty (30) days and thereafter proceeds with reasonable diligence and in good faith to cure such default), then Lessor may terminate this Lease on not less than thirty (30) days' notice to Lessee. On the date specified in the notice the term of this Lease shall terminate and Lessee shall then surrender the Premises to Lessor, but Lessee shall remain liable as provided below. If this Lease shall have been so terminated by Lessor, Lessor may at any time thereafter resume possession of the Premises by any lawful means and remove Lessee or other occupants and their effects.

15. Effect of Failure to Insist on Strict Compliance with Conditions.

The failure of either party to insist on strict performance of any covenant or condition of this Lease, or to exercise any option, herein contained, shall not be construed as a waiver of such covenant, condition, or option in any other instance. This Lease may not be modified or terminated orally.

16. Lessor or Lessee's Right to Cure Breach.

If Lessee or Lessor breach any covenant or condition of this Lease, the other party may, on reasonable notice to the breaching party (except that no notice need be given in case of emergency), cure such breach at the expense of the party causing the breach and the reasonable amount of all expenses, excepting attorneys' fees, incurred by the other party curing the breach shall be payable on demand by the breaching party.

17. Mechanics' Lien.

Lessee shall have 15 days after notice from Lessor to discharge any mechanics' liens for materials or labor claimed to have been furnished to the Premises on Lessee's behalf.

18. Time and Notices.

Time is of the essence of this Lease. Any notice by either party to the other shall be in writing and shall be sent by U.S., of express mail or hand delivered to the parties at the following address:

If to Lessee at: St. Johns County, Florida
Post Office Drawer 349
St. Augustine, Florida 32085-0349
Attention: Mr. Michael Wanchick

If to Lessor at: K.S. Toney
c/o John D. Bailey, Jr.
Upchurch Bailey and Upchurch, PA
Post Office Drawer 3007
St. Augustine, Florida 32085-3007

Notice shall be deemed to have been duly given upon receipt. Any reference herein to periods of less than six (6) days shall, in the computation thereof, exclude Saturdays, Sundays and legal holidays, and any time period provided for herein which shall end on a Saturday, Sunday or legal holiday, shall extend to 5:00 p.m., of the next full business day.

19. Lessor's Right to Inspection, Repair and Maintenance.

Lessor may enter the Premises at any reasonable time, upon adequate notice to Lessee (except that no notice be given in case of emergency) for the purpose of inspection or the making of such repairs, replacements, or additions in, to, on and about the Premises or the building, as Lessor deems necessary or desirable.

20. Effect of Other Representations, Agreements.

No other agreements, representations or promises shall be binding on the parties to this Lease except those agreements, representations and promises contained herein or in some future writing signed by the party making such representations or promises.

21. Renewal.

The Lessee shall have the right to renew this Lease for an additional two (2) years on the same terms and conditions as contained herein. If Lessee elects to exercise this right of renewal, it shall notify Lessor in writing at least thirty (30) days prior to the end of the initial term.

22. Section Headings.

The Section Headings in this Lease are intended for convenience only and shall not be taken into consideration in any construction or interpretation of this lease or any of its provisions.

23. Binding Effect on Successors and Assigns.

The provisions of this Lease shall apply to, bind, and inure to the benefit of Lessor and Lessee, and their respective heirs, successors, legal representatives, and assigns. It is understood that the term "Lessor" as used in this Lease means only the owner, or a mortgagee in possession, so that in the event of any sale of the Premises, the Lessor named herein shall be entirely freed and relieved of all covenants and obligations of Lessor subsequently accruing under this lease. It shall be deemed without further agreement that the purchaser, or the mortgagee in possession has assumed and agreed to carry out any and all covenants and obligations of the Lessor under this Lease.

24. Abandonment and Removal of Existing Facilities

Upon the completion of the improvements to Brinkhoff Road and the extension of the Lessee's wastewater collection system along Brinkhoff Road, the Lessee shall, at its expense, allow the percolation ponds located on the Premises to dry and demuck and fill such percolation ponds in accordance with state statutes and Florida Department of Environmental Protection regulations and within six (6) months of completion of such improvements and such extension, abandon and remove the wastewater treatment plant. compliance with the current regulations of the Florida Department of Environmental Protection.

25. Access to Records

The access to, disclosure, non-disclosure, or exemption of records, data, documents, and/or materials associated with this Lease shall be subject to applicable provisions of the Florida Public Records Law (Chapter 119, Florida Statutes), and other applicable State or Federal law. Access to such public records may not be blocked, thwarted, and/or hindered by placing the public records in the possession of a third party, or an unaffiliated party.

IN WITNESS WHEREOF, the parties have executed this Lease on the day and year above written.

Signed, sealed and delivered in the presence of:

Witness _____
(type or print name)

K.S. TONEY

Witness _____
(type or print name)

LESSOR

BOARD OF COUNTY COMMISSIONERS,
ST. JOHNS COUNTY, FLORIDA

Witness _____
(type or print name)

By: _____
Michael Wanchick
County Administrator

LESSEE

Witness _____
(type or print name)

STATE OF _____
COUNTY OF _____

THE FOREGOING instrument was acknowledged before me this _____ day of _____, 2009, by K.S. Toney, Lessor, who () is personally known to me or () has produced _____ driver's license # _____ as identification.

Notary Public

(Name of Notary, typed/printed)
My commission number: _____
My commission expires: _____

STATE OF FLORIDA
COUNTY OF ST. JOHNS

THE FOREGOING instrument was acknowledged before me this _____ day of _____, 2009, by Michael Wanchick, County Administrator of St. Johns County, Florida, a Political Subdivision of the State of Florida, on behalf of the County, Lessee, who () is personally known to me or () has produced FL driver's license # _____ as identification.

Notary Public

(Name of notary, typed/printed)
My commission number: _____
My commission expires: _____