

RESOLUTION NO. 2013 - 285

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, A POLITICAL SUBDIVISION OF THE STATE OF FLORIDA, APPROVING A SETTLEMENT AGREEMENT AND THIRD ADDENDUM TO THE ST. JOHNS COUNTY/JEA WATER AND WASTEWATER INTERLOCAL AGREEMENT BETWEEN ST. JOHNS COUNTY ("COUNTY") AND JACKSONVILLE ELECTRIC COMPANY ("JEA"); AND PROVIDING AN EFFECTIVE DATE.

WHEREAS, the County and JEA entered into the St. Johns County/JEA Water and Wastewater Interlocal Agreement on July 20, 1999 to establish terms and conditions related to the provision of water, wastewater, and reclaimed (or reuse) water services by JEA in the County in connection with the acquisition by JEA of the JCP utility; and

WHEREAS, the County and JEA thereafter reached an agreement relating to JEA's acquisition of various assets and territory and other utility services in the northern portion of St. Johns County which resulted in the negotiation and execution of the First Addendum to the Agreement dated December 19, 2001; and

WHEREAS, pursuant to the Second Addendum to the Agreement dated July 2, 2003 the County and JEA modified the provisions of Section 24 of the First Addendum for purposes of implementing the Municipal Service District septic tank phase out and Sewer Project described in the Agreement; and

WHEREAS, on January 11, 2012, JEA paid the County \$12,176,152.00 as JEA had calculated its obligations under the Agreement; and

WHEREAS, the County disagreed with the particular amount of the 2012 JEA Payment, believing the County was due a greater amount under the Agreement; and

WHEREAS, the parties after dispute resolution process have negotiated a proposed Settlement Agreement and Third Amendment to the Agreement to resolve the disputed payment amount, and simplify and clarify the future payment obligations of JEA.

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

Section 1. The above Recitals are hereby adopted as Findings of Fact.

Section 2. The County Administrator, or his designee, is hereby authorized to execute the Settlement Agreement and Third Addendum to the St. Johns County/JEA Water and Wastewater Interlocal Agreement on behalf of the County for the purposes mentioned above.

Section 3. To the extent that there are typographical and/or administrative errors and/or omissions that do not change the tone, tenor, or context of this Resolution, then this Resolution may be revised without subsequent approval of the Board of County Commissioners of St. Johns County.

PASSED AND ADOPTED by the Board of Board of County Commissioners of St. Johns County, Florida this 17 day of December, 2013.

ATTEST: Cheryl Strickland, Clerk

By: *Pam Halterman*
Deputy Clerk

Effective Date: 12/17/13

BOARD OF COUNTY COMMISSIONERS OF
ST. JOHNS COUNTY, FLORIDA

By: *[Signature]*
John H. Morris, Chairman

Re rendition Date: 12/19/13



**SETTLEMENT AGREEMENT AND THIRD ADDENDUM
TO THE ST. JOHNS COUNTY/JEA
WATER AND WASTEWATER INTERLOCAL AGREEMENT**

THIS SETTLEMENT AGREEMENT AND THIRD ADDENDUM TO THE ST. JOHNS COUNTY/JEA WATER AND WASTEWATER INTERLOCAL AGREEMENT (“Third Addendum”), is made and entered in duplicate on the _____ day of _____, 2013 (“Effective Date”), by ST. JOHNS COUNTY, 500 San Sebastian View, St. Augustine, Florida 32084 (the “County”), and JEA, 21 West Church Street, Jacksonville, Florida 32202-3139 (“JEA”).

RECITALS:

1. The parties entered into the St. Johns County/JEA Water and Wastewater Interlocal Agreement on July 20, 1999 (the “Agreement”), to establish terms and conditions related to the provision of water, wastewater, and reclaimed (or reuse) water services by JEA in the County in connection with the acquisition by JEA of the JCP utility.

2. The County and JEA thereafter reached an agreement relating to JEA’s acquisition of various assets and territory of United Water and JCP, and other utility services in the northern portion of St. Johns County (collectively “United Water/JCP Assets”), which resulted in the negotiation and execution of the First Addendum to the Agreement dated December 19, 2001 (“First Addendum”).

3. Pursuant to the Second Addendum to the Agreement dated July 2, 2003 (“Second Addendum”), the County and JEA modified the provisions of Section 24 of the First Addendum for purposes of implementing the Municipal Service District septic tank phase out and Sewer Project described in the Agreement.

4. Pursuant to Section 23 of the First Addendum, JEA is required to pay the County, in lieu of any franchise fees or taxes, “the net present value of five percent (5%) of all projected gross revenues from the retail sale of water and wastewater (excluding reclaimed water) which JEA expects to realize in providing such services” to the United Water and JCP territories for the 10-year period beginning on the date specified in the First Addendum and ending 10 years thereafter (hereafter, the “United Water/JCP Projected Revenues Payment” as to any applicable 10-year period of the Agreement with respect to the United Water/JCP Assets).

5. At the end of the foregoing 10-year period, the First Addendum in Section 23 also required JEA to “calculate a “true-up” to adjust for the net present value of the actual retail revenues realized if the revenues exceed the projected amount.” The First Addendum also required JEA to make such United Water/JCP Projected Revenues Payment and true-up payment for two additional 10-year periods to coincide with the 30-year term of the Agreement.

6. On January 11, 2012, JEA paid the County \$12,176,152.00, which according to JEA represents the United Water/JCP Projected Revenues Payment for the second 10-year period in the amount of \$10,576,759 plus the true-up payment pertaining to the first 10-year period in the amount of \$1,599,393 (collectively the “2012 JEA Payment”).

7. The County objected to the 2012 JEA Payment on three grounds as follows: (1) the County claimed that the payment should have included JEA’s environmental fee in the calculation of both the true-up payment (since the implementation in 2009 of the fee) and the United Water/JCP Projected Revenues Payment for the second 10-year period; (2) the County disagreed with the methodology of calculating the value of the true-up payment applicable to the

first 10-year period; and (3) the County disagreed with the assumptions JEA used in determining its projected gross revenues for the second 10-year period.

8. Pursuant to Section 23 of the First Addendum, the foregoing Projected Revenues Payment and true-up payment apply to any acquisitions of other private water and wastewater facilities in the County. In October 2003 JEA acquired certain assets and territories of the Florida Water utility company (the "Florida Water Assets"), and in December 2004 JEA acquired certain assets and territories of the Nocatee/St. Joe utility company (the "Nocatee/St. Joe Assets"). (The Florida Water Assets, Nocatee/St. Joe Assets and United Water/JCP Assets are hereafter collectively referred to as the "JEAs Assets".) As a condition to acquiring the Florida Water Assets and Nocatee/St. Joe Assets, JEA was required under section 23 of the First Addendum to "apply the same procedures as described above in this Section 23 so as to pay the County within ten (10) business days after the day JEA closes on the purchase of the assets of each such private utility the net present value of 5% of the expected gross revenues from 10 years of retail water and wastewater sales to such acquired utility's customers." Such 10-year projected revenues payments with respect to the Florida Water Assets and Nocatee/St. Joe Assets are hereafter referred to as the "Florida Water Projected Revenues Payment" and "Nocatee/St. Joe Projected Revenues Payment," respectively, and the United Water/JCP Projected Revenues Payment, Florida Water Projected Revenues Payment and Nocatee/St. Joe Projected Revenues Payment are sometimes collectively referred to herein as the "Projected Revenues Payments."

9. The parties desire (a) for the County to release JEA from all amounts claimed, known and unknown, to be due to the County as to revenues billed under the terms of the Agreement and all addenda to the Agreement as of January 1, 2013 (collectively the

"County's Claim"); (b) to revise the Agreement, as amended, to simplify and clarify the future payment obligations of JEA under the Agreement, as amended, pertaining to the JEA Assets beginning with billings as of January 1, 2013, by eliminating any future Projected Revenues Payments and decennial true up payments after such date, and instead requiring JEA to make annual payments to the County based on JEA's actual revenues received in connection with the applicable service territories pertaining to the JEA Assets (excluding reclaimed water sales) for each of the territories comprising the JEA Assets.

NOW, THEREFORE, in consideration of the premises and mutual covenants contained herein, the parties hereby agree as follows:

A. The above recitals are true and correct, and form a material part of this Third Addendum and the Agreement, as amended by the First Addendum, Second Addendum and this Third Addendum is referred to as the "Amended Agreement."

B. In full and complete settlement of the County's Claim, JEA is simultaneously herewith paying the County the additional sum of \$725,000 (to be received by the County within thirty (30) days of this third Addendum to the Agreement being fully executed). The parties agree that upon making such payment, JEA will not owe any additional sums to the County under the Agreement and the Addenda to the Agreement with respect to any water or wastewater revenues received by JEA in connection with the JEA Assets billed prior to January 1, 2013.

C. Section 23 of the First Addendum is hereby amended by adding the following to the end of such section:

23.1 Payments to the County after January 1, 2013. During the remaining term of this Agreement beginning with billings on and after January 1,

2013, and anything to the contrary notwithstanding in the foregoing provisions of this Section 23, JEA will not make any additional Projected Revenues Payments to the County with respect to any of the JEA Assets, or any future water and wastewater utility assets or territories that JEA may acquire in the County. Instead, as more specifically described below, JEA will make annual payments to the County based on five percent (5%) of JEA's gross billings from the retail sale of water and wastewater, excluding reclaimed water, which JEA actually bills in connection with the respective JEA Assets during the prior calendar year, less the credits in respect of Calendar Years 2013 through 2021 reflected on Exhibit A.

23.2 Credit for Projected Revenue Payments.

(a) United Water/JCP Territories. A portion of the 2012 JEA Payment includes the United Water/JCP Projected Revenues Payment for the 10-year period ending December 31, 2021 and the agreed upon credit in respect of such payment is reflected on Exhibit A.

(b) Florida Water Territory. JEA made the Florida Water Projected Revenues Payment upon the acquisition of the Florida Water Assets and territory in October 2003, and such payment covered the 10-year period from November 1, 2003 through October 31, 2013 and the agreed upon credit in respect of such payment is reflected on Exhibit A.

(c) Nocatee/St. Joe Territories. JEA made the Nocatee/St. Joe Projected Revenues Payment upon the acquisition of the Nocatee/St. Joe Assets

and territory in December 2004, and such payment covered the 10-year period from January 1, 2005 through December 31, 2014 and the agreed upon credit in respect of such payment is reflected on Exhibit A.

23.3 Payments through end of the Amended Agreement.

(a) JEA's "gross billings" as described in Section 23.1 shall mean: all charges included in monthly retail billings for water, wastewater, irrigation, fire protection and any other monthly retail water or wastewater services, except reclaimed water, obtained by JEA from all such services rendered within the County, now or in the future, including service availability charges, volume charges and environmental charges. This includes the environmental charge, but only so long as JEA continues to bill such environmental charge, but does not include one-time fees such as capacity fees or connection fees, or pass-through taxes or fees paid to third parties. In no event will the JEA's contribution to the City of Jacksonville in lieu of taxes be excluded from revenues from billings in St. Johns County.

(b) JEA payments to St. Johns County shall be made annually with an annual reconciliation such that JEA shall get credit for overpayments made after January 1, 2013 against future year payments due with the condition that no refunds from SJC, or return of funds paid to SJC, shall be claimed. Any such amounts owed by the County to JEA shall be carried forward to the next year and deducted from any payment that JEA may owe to the County the next year with respect to any JEA Assets. If not deducted in full the next year, then the remaining amount owed will be accumulated and carried forward to successive years until the cumulative amount owed to JEA is deducted in full from any future JEA payments to the County under this Addenda to the Agreement; however, no refunds from the

County, or return of funds from the County, shall be claimed.

23.4 Payment Method; No Out-of-Pocket Payments by County; No Interest. JEA shall each year make only one payment to the County. Such payment from JEA to the County shall be made on or before January 31 of each year during the remaining term of the Amended Agreement, beginning January 31, 2014 (as determined from gross billings for calendar year 2013), and will consist of the payments described in Section 23.1 for the JEA Assets. Except for such one-time payment each year, JEA shall not be required to make any other payments under the Amended Agreement other than the initial \$725,000 in section B.

D. County Release.

With respect to any outstanding or unfulfilled obligations or liabilities, known and unknown, of JEA due to the County prior to January 1, 2013 under the Agreement as amended by the First Addendum and the Second Addendum, including without limitation all amounts related to the County's Claim (collectively, the "Prior JEA Obligations"), County hereby remises, releases, acquits, satisfies, and forever discharges JEA, its officers, employees, directors, agents, representatives and assigns (collectively, "JEA Parties"), of and from all, and all manner of, action and actions, cause and causes of action, suits, debts, dues, sums of money, accounts, reckonings, bonds, bill, specialties, covenants, contracts, controversies, agreements, promises, variances, trespasses, damages, judgments, executions, claims and demands whatsoever in law or in equity, which the County together with its officers, employees, commissioners, agents, and representatives (collectively, "County Parties") had, now have, or which any successor or assign of the County Parties hereafter can, shall, or may have, known or unknown, from the beginning of the world through December 31, 2012, against any of the JEA Parties related to the Prior JEA Obligations.

E. Approval of Third Addendum.

By the execution hereof, the parties certify as follows:

(1) The County certifies that:

- (a) the execution and delivery hereof has been approved by all parties whose approval is required under the terms of the governing documents creating the County;
- (b) this Third Addendum does not violate any of the terms or conditions of such governing documents and this Third Addendum is binding upon the County and enforceable against the County in accordance with its terms; and
- (c) the person or persons executing this Third Addendum on behalf of the County are duly authorized and fully empowered to execute the same for and on behalf of the County.

(2) JEA certifies that:

- (a) the execution and delivery hereof has been approved by all parties whose approval is required under the terms of the governing documents creating JEA;
- (b) this Third Addendum does not violate any of the terms or conditions of such governing documents and this Third Addendum is binding upon JEA and enforceable against JEA in accordance with its terms; and
- (c) the person or persons executing this Third Addendum on behalf of JEA are duly authorized and fully empowered to execute the same for and on behalf of JEA.

F. Miscellaneous

(1) Severability. The invalidity, illegality or inability to enforce of any one or more of the provisions of this Third Addendum shall not affect any other provisions of this Third Addendum, but this Third Addendum will be construed as if such invalid, illegal or unenforceable provision had never been contained herein.

(2) Incorporation by Reference. All exhibits and other attachments to this Third Addendum that are referenced in this Third Addendum are by this reference made a part hereof and are incorporated herein.

(3) Counterparts. This Third Addendum may be executed in several counterparts, each of which shall be deemed an original, and all of such counterparts together shall constitute one and the same instrument.

(4) Parties to Third Addendum; Successors and Assigns. This is an agreement solely between the parties hereto, and the execution and delivery hereof shall not be deemed to confer any rights or privileges on any person not a party hereto. This Third Addendum shall be binding upon the parties hereto and their successors and assigns, and shall inure to the benefit of the parties hereto, and their successors and assigns.

(5) Construction. All parties acknowledge that they have had meaningful input into the terms and conditions contained in this Third Addendum. Each party further acknowledges that it has had ample time to review this Third Addendum and related documents with counsel of its choice. Any doubtful or ambiguous

provisions contained herein shall not be construed against the party who drafted this Third Addendum. Captions and headings in this Third Addendum are for convenience of reference only and do not in any way limit, amplify, or otherwise modify the provisions of this Third Addendum.

(6) Supersedes all Prior Agreements. This Third Addendum constitutes the entire agreement between the parties with respect to the subject matter herein. All prior discussions and agreements pertaining to the subject matter of this Third Addendum are subsumed within and superseded by this Third Addendum.

SAVE AND EXCEPT as hereby expressly amended by, or inconsistent with, this Third Addendum, all terms and conditions of the Agreement dated July 20, 1999, as previously amended, shall be and remain in full force and effect.

IN WITNESS WHEREOF, the parties hereby have duly executed this Third Addendum in duplicate as of the day and year above first written.

[signatures begin on next page]

ATTEST: Cheryl Strickland, Clerk

BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, FLORIDA

By: _____

Deputy Clerk

By: _____

Name:
Title:

Effective Date: _____

Rendition Date: _____

ATTEST:

JEA

Name:

By: _____

Name:
Title:

Form Approved

Office of General Counsel

St. Johns County/JEA Interlocal Agreement - Settlement Agreement and Third Addendum Payment Calculation Format

Exhibit A

Year	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022-2034
Account 511, JEA Assets Revenue Shield	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD
Florida Water Credited Revenue	(\$55,149)									
Northcoke Credited Revenue	(\$1,145,195)	(\$1,196,029)								
St. Joe Credited Revenue	(\$82,684)	(\$87,465)								
United Water/JCP Credited Revenue	(\$27,521,066)	(\$27,530,560)	(\$27,573,258)	(\$27,616,162)	(\$27,659,280)	(\$27,702,610)	(\$27,746,154)	(\$27,789,910)	(\$27,833,883)	\$0
Difference for 5% Calculation	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD
5% Difference to SSC or credit to JEA against next year	x 5%	x 5%	x 5%	x 5%	x 5%	x 5%	x 5%	x 5%	x 5%	x 5%
	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD	TBD

TBD = to be determined