

RESOLUTION NO. 2014- 113

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE TERMS AND AUTHORIZING THE COUNTY ADMINISTRATOR, OR DESIGNEE, TO EXECUTE THE AMENDMENT TO LEASE AGREEMENT FOR THE MOULTRIE WOODS WASTEWATER TREATMENT PLANT.

RECITALS

WHEREAS, the owner, Toney Properties II, LLC has executed and presented to St. Johns County an Amendment to Lease Agreement, attached hereto as Exhibit "A," incorporated by reference and made a part hereof; and

WHEREAS, the County will lease the facilities from Toney Properties II, LLC until the time Brinkhoff Road is developed; and

WHEREAS, St. Johns County Utility Department requested the Amendment, as stated in a memo attached hereto as Exhibit "B," incorporated by reference and made a part hereof; and

WHEREAS, the Amendment to Lease Agreement provides an extension of three (3) years with an option to further extend the Lease an additional two (2) terms of one (1) year each; and

WHEREAS, the County will compensate Toney Properties II, LLC 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 Amendment to Lease 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 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 Amendment to Lease Agreement and authorizes the County Administrator, or designee, to execute said Amendment to Lease Agreement.

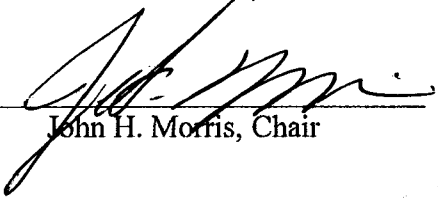
Section 3. To the extent that there are typographical and/or administrative errors that do not change the tone, tenor, or concept of this Resolution, then this Resolution may be revised without subsequent approval by the Board of County Commissioners.

Section 4. The Clerk of the Court of St. Johns County is instructed to record the original Amendment to Lease Agreement in the Public Records of St. Johns County, Florida.

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, Florida, this May day of 6, 2014.

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

By: _____


John H. Morris, Chair

ATTEST: Cheryl Strickland, Clerk

By: _____

RENDITION DATE 5/8/14

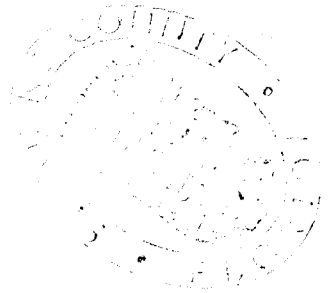


EXHIBIT "A" TO RESOLUTION

AMENDMENT TO LEASE AGREEMENT

This Amendment to Lease Agreement ("Amendment") is made this _____ day of _____, 2014, by and between **TONEY PROPERTIES II, LLC**, 404 Cliff Logan Drive, Rutherfordton, NC 28139, formerly known as K.S. Toney, ("Lessor") and **ST. JOHNS COUNTY, FLORIDA**, 500 San Sebastian View, St. Augustine, FL 32084, a political subdivision of the State of Florida ("Lessee").

- A. Lessor and Lessee executed an Agreement dated February 2, 2009, and a Lease dated February 2, 2009, approved in Resolution No. 2009-15, for the lease of certain real 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 from Brinkhoff Road (collectively, the "Premises"),

- B. Lessee desires to extend the Lease for three (3) years with an option to extend two (2) additional terms of one year each on the same terms and conditions as contained in the Lease. Lessee shall notify Lessor in writing of their desire to extend the Lease at least thirty (30) days prior to the end of the then current termination date.
- C. Lessor and Lessee are executing this Amendment to acknowledge a Lease extension per the terms and conditions contained in the original Lease.

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants and promises set forth below, the parties agrees:

1. Other Amendments. This Amendment constitutes all of the amendments to the Lease and there are no other amendments, modifications or transfers affecting the Lease.
2. No Breach. There has been no breach of any of the covenants, conditions, stipulations or other provisions of the Lease by either party and the Lease, as amended, is in full force and effect.
3. Other Terms. All other terms, conditions and provisions of the Lease shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have hereto set their hands and seals the day and year written above.

Signed, sealed and delivered

In the presence of:

TONEY PROPERTIES II, LLC

Bonnie K Sayers

Keath Toney
Keath Toney

Witness

Print Name: BONNIE K SAYERS

Margaret Duggins

Witness

Print Name: Margaret Duggins

STATE OF NC
COUNTY OF Rutherford

THE FOREGOING instrument was acknowledged before me this 19th day of March, 2014, by Keath Toney, who () is personally known to me or () has produced Driver's license, as identification.

Margaret Duggins
Notary Public
My Commission Expires: 6/2/2018

BOARD OF COUNTY COMMISSIONERS,
ST. JOHNS COUNTY, FLORIDA

Witness
Print Name: _____

Michael Wanchick, County Administrator

Witness
Print Name: _____

STATE OF FLORIDA
COUNTY OF ST. JOHNS

THE FOREGOING instrument was acknowledged before me this _____ day of _____, 2014, by Michael Wanchick, St. Johns County, Florida, a political subdivision of the State of Florida, on behalf of the County, Lessee, who is personally known to me.

Notary Public
My Commission Expires:

1
⑥

Res 09-15
LEASE

THIS LEASE ("Lease") is made this 2nd day of February, 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 February 2, 2009 and end on February 2, 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

J. & K. - P. Halterman
M+R

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 [Signature]
(type or print name)

[Signature] P.O.A.
K.S. TONEY

Witness [Signature]
(type or print name)

LESSOR

BOARD OF COUNTY COMMISSIONERS,
ST. JOHNS COUNTY, FLORIDA

Witness [Signature]
(type or print name)

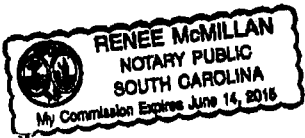
By [Signature]
Michael Wanchick
County Administrator

Witness [Signature]
(type or print name)

LESSEE

STATE OF South Carolina
COUNTY OF Hambley

THE FOREGOING instrument was acknowledged before me this 2nd day of February, 2009,
by K.S. Toney, Lessor, who is personally known to me or has produced driver's license
101642544 as identification.



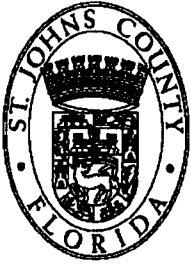
[Signature]
Notary Public
Renee McMillan
(Name of Notary, typed/printed)
My commission number:
My commission expires: June 14, 2009

STATE OF FLORIDA
COUNTY OF ST. JOHNS

THE FOREGOING instrument was acknowledged before me this 21st day of January, 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.

[Signature]
Notary Public

(Name of notary, typed/printed) PAMELA HALTERMAN
My commission number: _____
My commission expires: Notary Public, State of Florida
My Comm. expires Aug. 15, 2009
Comm. No. DB-446350



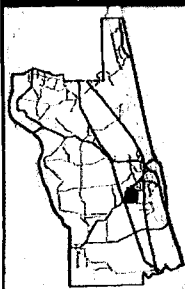
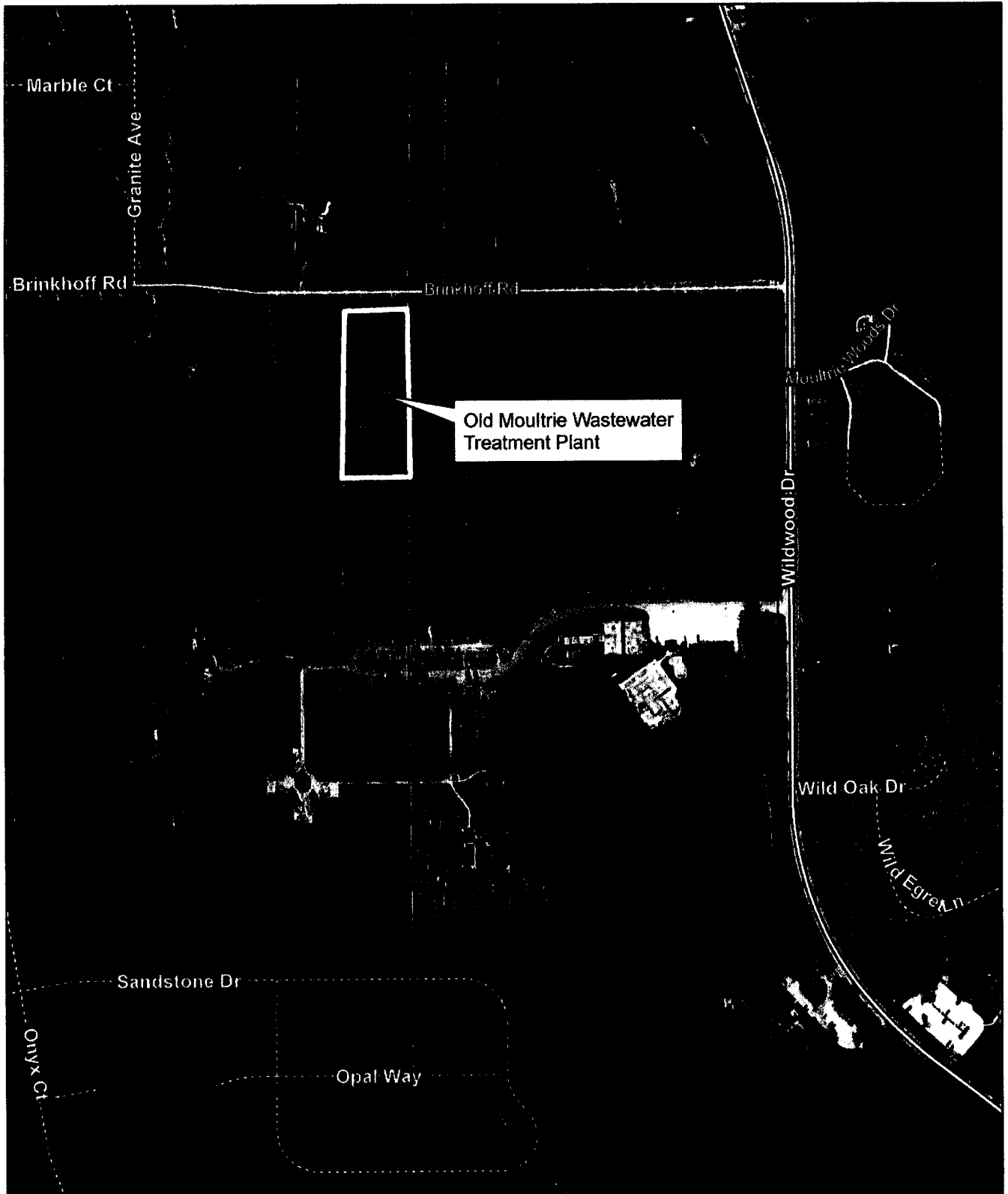
ST. JOHNS COUNTY
UTILITY DEPARTMENT
1205 S.R. 16
St. Augustine, Florida 32084-8646


I N T E R O F F I C E M E M O R A N D U M

TO: Sheri Lewis, Land Management Systems
FROM: Frank Kenton, Utility Administrative Manager
SUBJECT: Moultrie Woods Wastewater Treatment Plant Lease Renewal
DATE: March 11, 2014

As discussed earlier, please move forward with renewing the lease for the Moultrie Woods Wastewater Treatment Plant site. Please work towards a three year lease with two 1-year options, as we plan on phasing out the wastewater plant over the next three to five years.

Please call if you need additional information.




 2013 Aerial Imagery
 0 100 200
 Feet
 March 25, 2014

OLD MOULTRIE WASTEWATER TREATMENT PLANT

**Land Management
Systems
Real Estate
Division
(904) 209-0764**

 Disclaimer:
 This map is for reference use only.
 Data provided are derived from multiple
 sources with varying levels of accuracy.
 The St. Johns County Real Estate
 Division disclaims all responsibility
 for the accuracy or completeness
 of the data shown hereon.

