

RESOLUTION NO. 2022-187

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE TERMS, CONDITIONS, PROVISIONS, AND REQUIREMENTS OF THE CONTRACT TEMPLATE FOR UTILITY TRANSMISSION CAPACITY RESERVATION AGREEMENTS BETWEEN ST. JOHNS COUNTY AND CERTAIN DEVELOPERS ALONG THE IDENTIFIED STATE ROAD 207 WASTEWATER TRANSMISSION CORRIDOR; AUTHORIZING THE COUNTY ADMINISTRATOR, OR DESIGNEE, TO EXECUTE THE AGREEMENTS ON BEHALF OF THE COUNTY; INSTRUCTING THE CLERK TO FILE EXECUTED AGREEMENTS IN THE PUBLIC RECORDS; PROVIDING AN EFFECTIVE DATE.

WHEREAS, due to the rapid rate of development along the SR 207 Wastewater Forcemain Corridor (Corridor), and due to the inefficiencies of having multiple capacity mitigation projects occur along the Corridor, the St. Johns County Utility Department (SJCUD) has determined that it serves the County's best interests for all developers utilizing this Corridor for service to facilitate improvement of the Corridor by the County's installation of 4,825 linear feet of sixteen (16)-inch forcemain (Project) in a timeframe which will not inhibit development along the Corridor; and

WHEREAS, the template Utility Transmission Capacity Reservation Agreement (Template Agreement), attached as Exhibit A hereto and incorporated herein by reference, sets forth the responsibilities of the participating developer for payment of proportional share contributions towards the costs of the Project to be designed and constructed by the County; and

WHEREAS, the Template Agreement includes provisions to address scenarios where specific Developers were previously assigned individual capacity mitigation projects prior to the development of the Project; and

WHEREAS, the Template Agreement also provides for the County to enter into a Unit Connection Fee Refund Agreement with a participating developer to partially refund developer's contribution towards the Project by utilizing the transmission component of Wastewater Unit Connection Fees collected within the Developments; and

WHEREAS, the Template Agreement will apply as a condition for service to all new developments which will receive service from the Corridor, but are not currently connected to the system; and

WHEREAS, the County has determined that approving the Template Agreement in form and authorizing the County Administrator, or designee, to execute final agreements with participating developers will serve the interests of the County.

NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, as follows:

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

Section 2. The Board of County Commissioners approves the form and format of the attached template for use to set forth the terms, provisions, conditions, and requirements of the Utility Transmission Capacity Reservation Agreement between St. Johns County, Florida, and developers connecting to the Corridor.

Section 3. Upon a finding of legal sufficiency by the Office of the County Attorney, the County Administrator, or designee, is authorized to execute final Utility Transmission Capacity Reservation Agreements on behalf of St. Johns County substantially in the form as the template attached hereto.

Section 4. The County Administrator is instructed to deliver Utility Transmission Capacity Reservation Agreements to the Clerk upon execution by all parties, and the Clerk is instructed to file such executed agreements in the public records of St. Johns County, Florida.

Section 5. If there are typographical or administrative errors or omissions that do not change the tone, tenor, or context of this resolution, this resolution may be revised without subsequent approval of the Board of County Commissioners.

Section 6. This Resolution shall be effective upon adoption by the Board of County Commissioners.

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, Florida, this 7 day of June, 2022.

BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA

By: Henry Dean
Henry Dean, Chair

ATTEST: Brandon J. Patty
Clerk of the Circuit and Comptroller

By: Sam Halterman
Deputy Clerk

Rendition Date: 6/9/22



UTILITY TRANSMISSION CAPACITY RESERVATION AGREEMENT

THIS UTILITY TRANSMISSION CAPACITY RESERVATION AGREEMENT (the “Agreement”) by and between [INSERT DEVELOPER NAME LLC], its successors, or assigns, (collectively, the “Developer”), and **ST. JOHNS COUNTY**, a political subdivision of the State of Florida (the “County”) (together with the Developer, the “Parties”), is entered into and effective on the date it is signed by the last party executing this Agreement (the “Effective Date”).

RECITALS:

- a) Due to the rapid rate of development along the SR 207 Wastewater Forcemain Corridor (the “Corridor”) depicted in Exhibit A attached hereto and incorporated herein by reference, and due to the inefficiencies of having multiple capacity mitigation projects occur along the Corridor, the St. Johns County Utility Department (SJCUD) has determined that it serves the County’s best interests for all Developers utilizing this Corridor for service to facilitate improvement of the Corridor by the County’s installation of 4,825 linear feet of sixteen (16)-inch forcemain in a timeframe which will not inhibit development along the Corridor (the “Project”).
- b) Developer is the developer of, and will construct improvements within, a [X] acre Mixed Use development known as the [INSERT NAME PUD], located with the parcel zoned PUD pursuant to Ordinance No. [INSERT PUD ORDINANCE NO.] recorded in Official Records Book ____, Page ____ of the public official records of St. Johns County, Florida (“PUD”). The PUD will utilize wastewater service and is located along the Corridor. The Legal Description and location of the PUD is more particularly described on the attached and incorporated Exhibit B.
- c) Developer and County wish to enter into this Agreement whereby transmission capacity in the Corridor would be reserved for the PUD by the County and the Developer would pay a proportional share contribution towards the costs of the Project as provided for in the attached and incorporated Exhibit C (“Contributed Section”), which the Parties agree will be mutually beneficial to both Parties.
- d) The County currently has an ordinance to refund unit connection fees for transmission mains and infrastructure installed by Developer. The Developer and the County will enter into a wastewater unit connection fee refund agreement pursuant to Section 25.E of the St. Johns County Utility Ordinance (Ordinance 2013-13) with the Developer in consideration of applying the Contributed Section to the Project to improve the overall transmission corridor, substantially in the form and format as attached hereto as Exhibit D. Such refund shall be limited to the lesser value of (i) the Contributed Section or (ii) the transmission component of the final wastewater unit connection fees assessed and paid for the PUD. All other connections outside the Development will not be part of the refund agreement.
- e) [DELETE PARAGRAPH IF NO EXISTING MITIGATION OBLIGATIONS] As a condition for utility service, and in accordance with Ordinance 2013-13 Section 25.E., the Developer is required to install approximately [X] linear feet of sixteen-inch (16”) sewer force main along State Road 207 as shown in Exhibit E. The County hereby recognizes that the Developer’s execution of this Agreement and payment of the Contributed Section towards the Project as defined herein, is an approved alternative in lieu of completing the original installation required as noted above.

NOW THEREFORE, in consideration of the mutual covenants of the Parties set forth in this instrument and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the Parties agree as follows:

1. **EFFECT OF RECITALS.** The above recitals are true and correct and incorporated into the body of this Agreement and adopted as findings of fact.
2. **PROJECT FUNDING.** The Developer shall pay the County directly in the amount of the Contributed Section as set forth in Exhibit C hereto, which shall address and satisfy the required proportion of capacity mitigation and requirements for utility service. Payment shall be made no later than thirty (30) days after issuance of any required permit from the Florida Department of Environmental Protection (or any successor permitting agency) (“FDEP”) for utility infrastructure for the PUD. Where FDEP permitting is not required for utility infrastructure for the PUD, payment shall be made prior to the Developer applying for building permits for the Development. The Developer understands, acknowledges, and agrees that such payment shall be final and non-refundable.

The Parties agree that, in the event modifications are made to the PUD after execution of this Agreement that increase the level of wastewater service needed for the PUD, the Contributed Section shall be increased in accordance with the final approved permitted level of service and that this Agreement shall be amended pursuant to Paragraph 6, below, to reflect such increase in the Contributed Section, which such amendment may be a condition for Design Modification Plan approval.

[DELETE PARAGRAPH IF NO IN-KIND CONTRIBUTION PROVIDED BY DEVELOPER] The Parties acknowledge that Developer may have ordered and received materials for the mitigation project described in Exhibit E hereto. Upon prior approval by the County, such materials may be provided to, and received by, the County as an in-kind contribution towards the value of the Contributed Section. Materials that are not compliant with County standards or are found to be in poor or unusable condition for the Project, as solely determined by the County, will not be accepted and will not be considered as an in-kind contribution towards the value of the Contributed Section. Contribution of approved and accepted materials shall require original delivery invoices to establish the value of the itemized materials. The cost to deliver such materials to the County’s approved storage site may be pre-approved by SJCUD to be included in the value of the in-kind contribution. The final approved In-Kind Contribution is summarized on Exhibit C, and the appropriate documentation for received materials and delivery is attached on Exhibit C-1.

3. **PROJECT SCOPE.** Upon receipt of payment for the Contributed Section, the County shall apply the funds towards the incorporation of the design and construction of the Contributed Section into the Project. The Developer understands and acknowledges that the Project will provide wastewater service to the PUD, but that the County shall own and maintain the Contributed Section upon completion of the Project.
4. **PROJECT MANAGEMENT.** The County shall be fully responsible for all project management activities to successfully complete the Project, which include but are not limited to survey, design, permitting, bidding, and construction. Nothing in this Agreement shall require or allow the Developer to perform such project management activities or be

deemed to create any contractual relationship between Developer and any contractor or subcontractor that may perform the design or construction of the Project.

5. **RELATIONSHIP OF THE PARTIES; NO THIRD PARTY BENEFICIARIES.** The Parties agree that this Agreement does not and shall not be construed as or constitute an agency, partnership, joint venture or other fiduciary or confidential relationship between the Developer and the County. Both the Developer and the County agree, and this Agreement explicitly provides, that this Agreement is for the benefit of the Parties hereto, and their respective successors and assigns, and no third party beneficiary status or interest is conveyed, conferred or inferred to any other person or entity.
6. **AMENDMENTS TO THIS AGREEMENT.** Both the Developer and the County acknowledge that this Agreement constitutes the complete agreement and understanding of the Parties. Further, both the Developer and the County acknowledge that any change, amendment, modification or revision of this Agreement shall be in writing, and shall be executed by duly authorized representatives of both the Developer and the County.
7. **PROCEDURE FOR ACHIEVING ASSIGNMENT.** In light of the scope and rationale for this Agreement, neither the Developer, nor the County shall assign, transfer, and/or sell any of the rights noted in this Agreement, or associated with this Agreement, without the prior express written approval of the other party. Approval shall not unreasonably be withheld.
8. **GOVERNING LAW AND VENUE.** This Agreement shall be construed according to the law of the State of Florida without regard to choice of law provisions. Venue for any administrative and/or legal action arising under this Agreement shall be exclusively in state court in St. Johns County, Florida.
9. **SEVERABILITY.** If any word, phrase, sentence, part, subsection, section, or other portion of this Agreement, or any application thereof, to any person, or circumstance is declared void, unconstitutional, or invalid for any reason, then such word, phrase, sentence, part, subsection, other portion, or the proscribed application thereof, shall be severable, and the remaining portions of this Agreement, and all applications thereof, not having been declared void, unconstitutional, or invalid shall remain in full force, and effect.
10. **ABILITY TO TERMINATE.** Either Party may terminate this Agreement prior to connection to the system and/or payment of the Contributed Section.
11. **AUTHORITY TO EXECUTE.** Each party covenants to the other party/parties that it has the lawful authority to enter into this Agreement and has authorized the execution of this Agreement by the party's authorized representative.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth below.

Signed, sealed and delivered
in the presence of:

BOARD OF COUNTY COMMISSIONERS
OF ST. JOHNS COUNTY, FLORIDA

Print Name: _____

By: _____

Print Name: _____

Title: _____

Print Name: _____

ATTEST: Brandon J. Patty, Clerk of the Circuit
Court and Comptroller

By: _____

Deputy Clerk

STATE OF FLORIDA
COUNTY OF ST. JOHNS

The foregoing instrument was acknowledged before me by means of physical presence
or online notarization, this _____ day of _____, 2022, by _____, as
_____ of St. Johns County, Florida.

(Print Name _____)

NOTARY PUBLIC

State of Florida at Large

Commission # _____

My Commission Expires: _____

Personally Known _____ or Produced I.D. _____

[check one of the above]

Type of Identification Produced _____

IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth below.

Signed, sealed and delivered
in the presence of:

[Insert Developer Name], LLC, a
Florida Limited Liability Company]

Print Name: _____

By: _____

Print Name: _____

Title: _____

Print Name: _____

STATE OF FLORIDA
COUNTY OF ST. JOHNS

The foregoing instrument was acknowledged before me by means of physical presence
or online notarization, this _____ day of _____, 2022, by _____, as
_____ of [INSERT DEVELOPER NAME].

(Print Name _____)

NOTARY PUBLIC

State of Florida at Large

Commission # _____

My Commission Expires: _____

Personally Known ___ or Produced I.D. _____

[check one of the above]

Type of Identification Produced _____

EXHIBIT "A"

[CORRIDOR & PROJECT MAP]

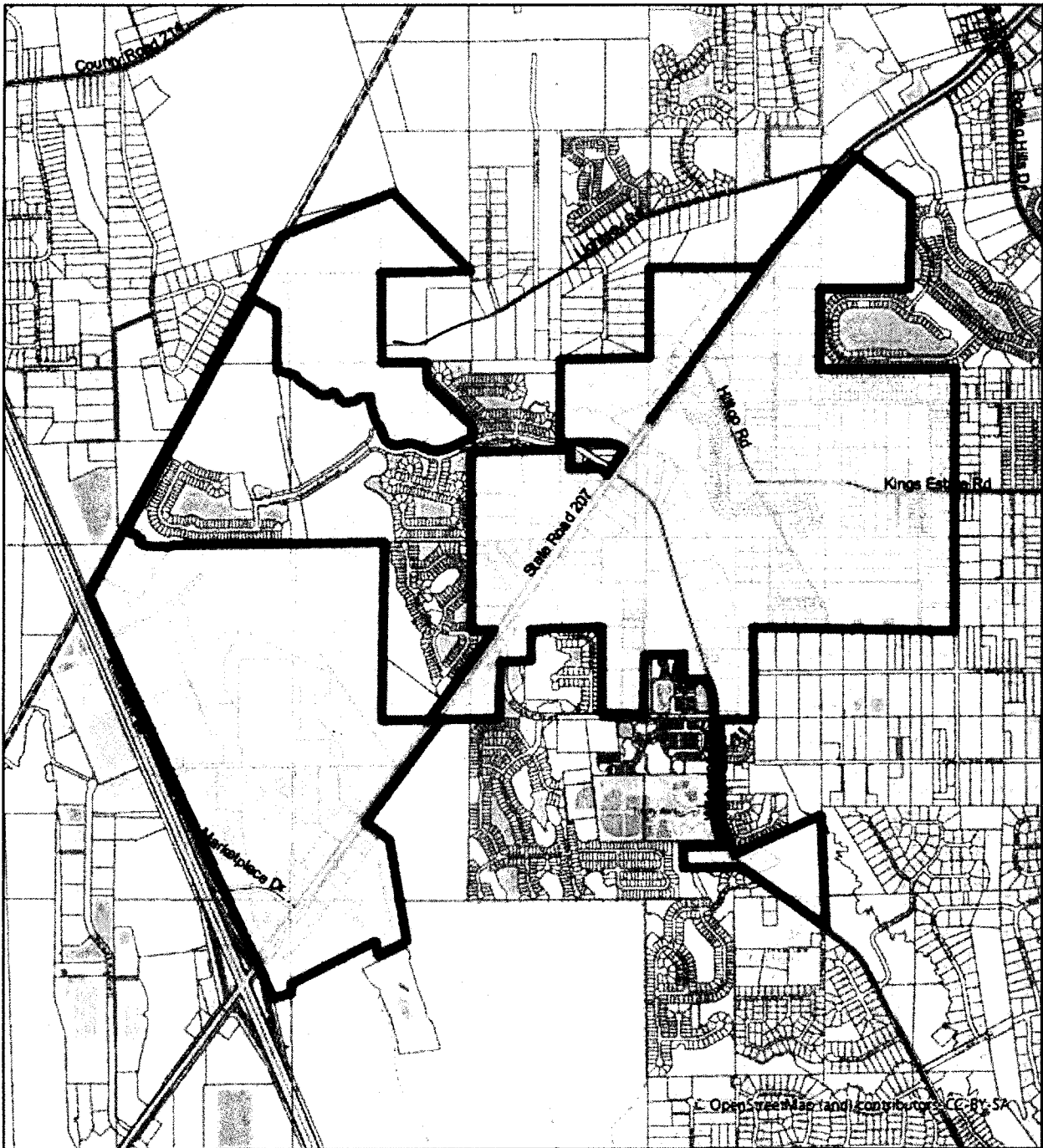





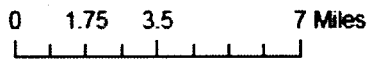


Exhibit A: SR 207 FM Extension and Transmission Corridor

Legend

-  FM Extension
-  Transmission Corridor
-  Parcels
-  I-95 and Arterial
-  Collector Road



Prepared by: SJC Utilities
 on 4/22/2022
www.sjcl.us/Utilities

EXHIBIT "B"

[DEVELOPER LEGAL DESCRIPTION & LOCATION MAP]

EXHIBIT “C”

[CONTRIBUTED SECTION PAYMENT TERMS AND SCHEDULE]

1. SR 207 Wastewater Forcemain Corridor Project Costs:

Engineering and Surveying	\$181,266.52
Construction	\$1,688,750.00
Total Project Cost (2022)	\$1,870,016.52

2. Contributed Section Cost Calculation Metrics:

Project/ERC Metrics	
Capacity made available by Project (ERC)	2,536
Cost per ERC factor	\$737.38

3. Developer Contributed Section and Estimated Unit Connection Fee Calculations

Developer ERC	136
Contributed Section Cost *	\$ 100,283.78
Approved In-kind Material Contributions (Deducted from Contributed Section Cost)	\$ -
Estimated Water UCF (May 2022 - \$2,177.58/ERC)	\$ 296,150.88
Estimated Wastewater UCF (May 2022 - \$3,506.94/ERC)	\$ 476,943.84
Total Developer UCF Fees	\$ 873,378.50
Estimated Wastewater UCF Transmission Component (May 2022 - 1/3 of total WW UCF) †	\$ 158,981.28
REFUND POTENTIAL*†	\$ 100,283.78

* The above Project and Contributed Section Costs are based on an estimated cost as of May 2022. On each October 1st and at annual intervals until full payment, the above Contributed Section Costs shall be automatically “indexed” by applying to the Contributed Section Cost as of the immediately preceding September 30th an additive increment in a percentage amount equal to the percentage increase of the Consumer Price Index for all Urban Consumers (CPI-U) according to the U.S. Bureau of Labor Statistics, during the preceding fiscal year.

† The above Estimated Unit Connection Fees are based on rates in effect as of May 2022. The actual Unit Connection Fees assessed and due for the PUD will be based on the approved rates at time of payment. Unit Connection Fees may be updated from time to time as approved by the Board and may include a CPI-U adjustment, as provided in Ordinance 2013-13 Section 35.

[DELETE IF NO IN-KIND MATERIAL CONTRIBUTION]

EXHIBIT "C-1"

[IN-KIND MATERIAL CONTRIBUTION DOCUMENTATION]

EXHIBIT "D"

[UNIT CONNECTION REFUND AGREEMENT]

Prepared by and Record
and Return to:

WASTEWATER UNIT CONNECTION
FEE REFUND AGREEMENT

THIS WASTEWATER UNIT CONNECTION FEE REFUND AGREEMENT (the “Agreement”) is entered into, and made effective, this _____ day of _____, 20____, by and between [INSERT DEVELOPER], a Florida corporation (“**DEVELOPER**”), and ST. JOHNS COUNTY, FLORIDA, a political subdivision of the State of Florida (the “**COUNTY**”).

In consideration of the mutual promises and representations contained in this instrument, and other good and valuable consideration, the receipt and sufficiency of which is acknowledged, the parties agree as follows:

1. **Background.** DEVELOPER has constructed improvements within the [insert development type] known as [insert development name], located within parcels of land zoned PUD pursuant to Ordinance [xxxx-xx] recorded in the Official Records Book [insert page], Page [insert page number] of the official records of St Johns County, Florida (collectively referred to as “**PUD**”). The PUD is located between State Road 207 and County Road 214, East of Interstate 95 and North of the intersection of State Road 207 and Wildwood Drive in St Johns County, Florida and is more particularly described on the attached and incorporated **Exhibit A**. DEVELOPER plans to develop the PUD into a 956 single-family residential unit development, and a multi-use development with various options for residential or commercial development not to exceed 65 multifamily residential units as described in the PUD.

DEVELOPER has requested a refund pursuant to Section 25-E of the St. Johns County Utility Ordinance (Ordinance 2013-13) in consideration of DEVELOPER’s participation in a Utility Capacity Reservation Agreement (the “**UCRA**”) to facilitate funding for the County to install approximately 4,825 linear feet of sixteen (16)-inch forcemain to alleviate capacity constraints along SR 207 (the “**Project**”). The DEVELOPERS contribution of \$[Insert contributed section value] towards the Project (the “**Contributed Section**”) as defined in the UCRA is required to mitigate capacity constraints specifically for Phase 3 and Phase 4 of the PUD. The Project will meet the anticipated utility transmission needs for the region.

This Agreement states the terms and conditions upon which a refund of the lesser value of the Contributed Section or the Transmission Component of wastewater unit connection fees paid by DEVELOPER to provide this Contributed Section as allowed and contemplated under Ordinance 2013-13, shall be paid by the COUNTY to the DEVELOPER.

It is expressly noted that as a condition precedent for any refund permitted under this Agreement, the DEVELOPER must first, at its expense, record this Agreement (upon proper execution by authorized representatives of both the COUNTY and DEVELOPER) with the Clerk of Courts in the official records of St. Johns County, Florida. The failure of the DEVELOPER to have this Agreement recorded as noted above shall bar the DEVELOPER from receiving any subsequent refunds on wastewater unit connection fees until this Agreement has been properly recorded.

2. **Limitation of Amount of Refund.** In accordance with the provisions of Section 25-E of Ordinance 2013-13, any refund payable to the DEVELOPER as a result of future payment by the DEVELOPER of wastewater unit connection fees relevant to the UCRA, shall be limited to the lesser value of the Contributed Section or wastewater transmission component of such unit connection fees. In addition, the cumulative amount of all refund payments to the DEVELOPER pursuant to this Agreement shall in no event exceed \$X, which is the actual total cost of the Contributed Section as verified by the UCRA.

3. **Payment of Refund in Connection with Future Connection Fee Payments.** Upon recordation of this Agreement with the Clerk of the Court, and upon payment by the DEVELOPER or others of any wastewater unit connection fees for Phase 3 and Phase 4 of the PUD, as illustrated in **Exhibit B**, which apply to the Contributed Section defined by the UCRA within six (6) years after the recordation of this Agreement with the Clerk of Court, the DEVELOPER shall be entitled to a refund of the lesser value of the Contributed Section or the wastewater transmission component of any such wastewater unit connection fees in an amount not to exceed the Contributed Section. The refund described in this Section shall be paid to the DEVELOPER quarterly upon payment by the DEVELOPER or others of such wastewater unit connection fees, whether in connection with a Capacity Commitment Agreement, or as connections are actually made. Wastewater unit connection fees paid by the DEVELOPER or Others after the six (6) year time period provided above shall not entitle the DEVELOPER to a refund under this Section 3, unless the time period in this Section 3 is extended by the COUNTY as allowed by Ordinance 2013-13 or revision thereof.

4. **Entire Agreement.** No prior Agreements or representations shall be binding upon the parties, unless included in this Agreement. No modification or change in this Agreement shall be valid or binding upon the parties, unless in writing, and executed by the party or parties to be bound thereby.

5. **Governing Law.** This Agreement shall be governed by the laws of the State of Florida. Venue for any administrative and/or legal action arising under this Agreement shall be in St. Johns County, Florida.

6. **Notice.** Any notices required or allowed to be delivered under this Agreement shall be documented in writing and shall be deemed to be delivered when (i) hand delivered to the official designated below, or (ii) upon receipt of such notice when deposited in the United States Mail, Postage Prepaid, Certified Mail, Return Receipt Requested, addressed to a party at the address set forth under the parties names below or at such other address as the part shall have specified by written notice to the other party delivered in accordance with this Agreement:

To County: St. Johns County Utilities Department

1205 State Road 16
St Augustine, FL 32084
Attention: Chief Engineer-Development
Phone: (904) 209-2700

To Developer: [INSERT Developer Contact Info]

[THIS SPACE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the parties have executed this Agreement on the date set forth above.

Signed, sealed and delivered
in the presence of:

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

Print Name:

By: _____

Print Name: _____

Title: _____

Print Name

ATTEST:

Brandon Patty
Clerk of the Court

By: _____

Deputy Clerk

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this day _____ of _____, 20____, by _____, as _____ of _____, a _____, on behalf of the entity, who is personally known to me or has produced _____ as identification.

Print Name: _____

Notary Public, State of _____

My Commission Expires: _____

Signed, sealed and delivered
in the presence of:
JACKSONVILLE

[INSERT DEVELOPER] INC. -

Print Name: _____

By: _____

Print Name: _____

Title: _____

Print Name: _____

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this day _____ of _____, 20_____, by _____, as _____ of [INSERT DEVELOPER], INC. – JACKSONVILLE, a Delaware corporation, on behalf of the entity, who is personally known to me or has produced _____ as identification.

Print Name: _____
Notary Public, State of _____
My Commission Expires: _____

EXHIBIT "A"

[PUD MAP & LEGAL DESCRIPTION]

EXHIBIT "B"
[REFUND AREA]

[DELETE IF NO EXISTING MITIGATION OBLIGATIONS]

EXHIBIT "E"

[DEVELOPERS INDIVIDUAL PROJECT SCOPE MAP]