

RESOLUTION NO. 2023-68

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE TERMS, CONDITIONS, PROVISIONS, AND REQUIREMENTS OF THE CONTRACT TEMPLATE UTILITY TRANSMISSION CAPACITY RESERVATION AGREEMENTS BETWEEN ST. JOHNS COUNTY AND CERTAIN DEVELOPERS CONNECTING TO THE IDENTIFIED OUTLET MALL BOULEVARD RECLAIMED WATER CORRIDOR; APPROVING THE TERMS, CONDITIONS, PROVISIONS, AND REQUIREMENTS OF THE CONTRACT TEMPLATE RECLAIMED WATER UTILITY CONNECTION FEE REFUND AGREEMENT BETWEEN ST. JOHNS COUNTY AND SAID DEVELOPERS; 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 FOR AN EFFECTIVE DATE.

WHEREAS, St. Johns County (“County”) is currently evaluating future connections to stormwater ponds located in the St. Augustine Centre DRI adjacent to the area of redevelopment for potential storage and augmentation for the County’s reclaimed water system to assist the transmission system with extreme demand events; and

WHEREAS, due to the efficiencies of coordinating improvements to facilitate this future use, the County Utility Department has determined that it serves the County’s best interest to construct 7,300 linear feet of 8-inch reuse main (“Project”), and for certain new developers identified at St. Augustine Centre DRI to proportionally fund the Project to utilize as the point of connection for reclaimed water service; and

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

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

WHEREAS, the UTCRA also provides for the County to enter into a Reclaimed Water Unit Connection Fee Refund Agreement (“RWUCFRA”), a template of which attached as Exhibit D to the UTCRA and incorporated herein by reference, with a participating developer to partially refund the developer’s contributions towards the Project by utilizing the transmission component of Reclaimed Water Unit Connection Fees collected within the developments; and

WHEREAS, the UTCRA 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 UTCRA and RWUCFRA 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. 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 Reclaimed Water Utility Connection Fee Refund Agreement between St. Johns County, Florida, and developers participating in the Utility Transmission Capacity Reservation Agreement.

Section 6. Upon a finding of legal sufficiency by the Office of the County Attorney, the County Administrator, or designee, is authorized to execute final Reclaimed Water Utility Connection Fee Refund Agreements on behalf of St. Johns County substantially in the form as the template attached hereto, and to deliver executed agreements to participating developers for recording in the public records at their sole expense.

Section 7. 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.

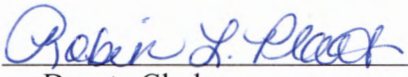
Section 8. This Resolution shall be effective upon adoption by the Board of County Commissioners.

PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, Florida, this 2ST day of February, 2023.

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

By: 
Christian Whitehurst, Chair

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

By: 
Deputy Clerk

Rendition Date FEB 21 2023



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) Developer is the owner and developer of, and will construct improvements on, a [X] acre parcel (“Development”) located within the St. Augustine Centre DRI, as described and approved in St. Johns County Resolution 97-77, as amended, and zoned Planned Unit Development (MAJMOD 2021-09 St. Augustine Centre PUD) pursuant to Ordinance No. 2021-83, recorded in Official Records Book 5425, Page 1898 of the public official records of St. Johns County, Florida. The legal description and location of the Development is more particularly described on the attached and incorporated **Exhibit A**.
- b) Pursuant to St. Johns County Ordinance No. 2022-37 (“Utility Ordinance”), the Development is within the County’s Mandatory Reclaimed Water Service Area (MRWSA), requiring the connection to and use of reclaimed water. The County is currently evaluating future connections to stormwater ponds located in the St. Augustine Centre DRI adjacent to the area of redevelopment for potential storage and augmentation for the County’s reclaimed water system to assist the transmission system with extreme demand events, as reflected in the attached and incorporated **Exhibit B**. Due to the efficiencies of coordinating improvements to facilitate this future use, the County has determined that it is in its best interest to construct 7,300 linear feet of 8-inch reuse main (“the Project”), and for certain new developers identified at St. Augustine Centre DRI to proportionally fund the Project to utilize as the point of connection for reclaimed water service.
- c) Developer and County wish to enter into this Agreement whereby transmission capacity would be reserved for the Development 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 Developer and the County will enter into a reclaimed water unit connection fee refund agreement pursuant to Section 25.G of the Utility Ordinance 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 the Contributed Section cost or the transmission component of the reclaimed water unit connection fee. All other connections outside the Development will not be part of the refund agreement.
- e) As a condition for utility service, and in accordance with Section 25.G of the Utility Ordinance, the Developer is required to install a reclaimed water main to the Development.

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 development. Where FDEP permitting is not required for utility infrastructure for the development, 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 Development or to the St Augustine Centre DRI after execution of this Agreement that increase the level of reclaimed water service needed for the Development or the St. Augustine Centre DRI, 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.

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 reclaimed water service to the Development, 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: _____
Hunter S. Conrad, County Administrator

Print Name: _____

ATTEST: Brandon J. Patty,
Clerk of the Circuit Court & 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 _____, 20____, by Hunter S. Conrad, as County Administrator of St. Johns County, a political subdivision of the State of Florida, on behalf of the County, who is personally known to me or has produced _____ as identification.

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

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: _____

Print Name: _____

Title: _____

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 NAME]. 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"

[DEVELOPER LEGAL DESCRIPTION & LOCATION MAP]

EXHIBIT "B"

[CORRIDOR & PROJECT MAP]



Exhibit B: Outlet Mall Blvd UTCRA Reuse Main Extension

Legend

- Proposed Reuse Main
- Parcel
- Major Roads
- Local Roads
- - - Proposed Roads



Prepared: 1/23/23
 This map is for reference use only. Data provided are derived from multiple sources with varying levels of accuracy. The St. Johns County Utility Department disclaims all responsibility for the accuracy or completeness of the data shown here.

EXHIBIT “C”

[CONTRIBUTED SECTION PAYMENT TERMS AND SCHEDULE]

1. Outlet Mall Boulevard Reclaimed Water Main Project Costs:

Engineering and Surveying	\$109,500
Construction	\$876,000
Total Project Cost (2023)	\$985,500

2. Developer Contributed Section and Estimated Unit Connection Fee Calculations

Development Area (Acres) within the 55 Acre Total	
Irrigated Factor	0.15
Irrigated Area (sf)	
Irrigation Demand ADF (gpd)	
Cost Apportionment based on Parcel Size	X%
Contributed Section Cost *	
Estimated Reclaimed Water UCF	
Estimated Reclaimed Water UCF Transmission Component (1/3) [†]	
REFUND POTENTIAL* [†]	

* The above Project and Contributed Section Costs are based on an estimated cost as of December 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 December 2022. The actual Unit Connection Fees assessed and due for the development 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 2022-37 Section 35.

EXHIBIT "D"

[UNIT CONNECTION REFUND AGREEMENT]

Prepared by and Record
and Return to:

RECLAIMED WATER 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 located within St. Augustine Centre DRI, as described and approved in St. Johns County Resolution 97-77, as amended, and zoned Planned Unit Development (MAJMOD 2021-09 St. Augustine Centre PUD) pursuant to Ordinance No. 2021-83, recorded in Official Records Book 5425, Page 1898 of the public official records of St. Johns County, Florida (collectively referred to as the “Development”). The Development is more particularly described on the attached and incorporated **Exhibit A**. DEVELOPER plans to develop [insert development type].

DEVELOPER has requested a refund pursuant to Section 25-G of the St. Johns County Utility Ordinance (Ordinance 2022-37) in consideration of DEVELOPER’s participation in a Utility Transmission Capacity Reservation Agreement (the “**UTCRA**”) to facilitate funding for the County to install approximately 7,300 linear feet of 8-inch reclaimed water main to serve reclaimed water from SR 16 (the “**Project**”). The DEVELOPER’S contribution of \$[Insert contributed section value] towards the Project (the “**Contributed Section**”) as defined in the UTCRA is required to utilize reclaimed water and comply with the County’s Mandatory Reclaimed Water Service Area (MRWSA) pursuant to Ordinance 2022-37.

This Agreement states the terms and conditions upon which a refund of the lesser value of the Contributed Section or the Transmissior Component of wastewater unit connection fees paid by DEVELOPER to provide this Contributed Section as allowed and contemplated under Ordinance 2022-37, 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-G of Ordinance 2022-37, any refund payable to the DEVELOPER as a result of future payment by the DEVELOPER of reclaimed water unit connection fees relevant to the UTCRA, shall be limited to the lesser value of the Contributed Section or reclaimed water 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 UTCRA.

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 reclaimed water unit connection fees of the development, as illustrated in **Exhibit B**, which apply to the Contributed Section defined by the UTCRA 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 reclaimed water transmission component of any such reclaimed water 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 reclaimed water unit connection fees, whether in connection with a Capacity Commitment Agreement, or as connections are actually made. Reclaimed water 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 2022-37 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: _____
Hunter S. Conrad, County Administrator

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 _____, 20____, by Hunter S. Conrad, as County Administrator of St. Johns County, a political subdivision of the State of Florida, on behalf of the County, 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:

[INSERT DEVELOPER]

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], 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"

[MAP & LEGAL DESCRIPTION]

EXHIBIT "B"

[REFUND AREA]