

18**AGENDA ITEM
ST. JOHNS COUNTY BOARD OF COUNTY COMMISSIONERS***Deadline for Submission - Wednesday 9 a.m. – Thirteen Days Prior to BCC Meeting***2/16/2021****BCC MEETING DATE****TO:** Hunter S. Conrad, County Administrator**DATE:** January 21, 2021**FROM:** Larry Miller, Chief Engineer - Development**PHONE:** 904 484-6448**SUBJECT OR TITLE:** Fruit Cove Agreement for Sewer Capacity Charge Deferral between JEA and St Johns County**AGENDA TYPE:** Consent Agenda, Resolution**BACKGROUND INFORMATION:**

The County and JEA are currently negotiating a potential utility service area swap between the Fruit Cove and Roscoe Road utility service area corridors. Recently the County completed a project to abandon the aging sewer treatment plant in the Fruit Cove service area and connected to the JEA sewer collection system. JEA has proposed to defer payment of sewer capacity charges that would typically be required for connection to the JEA system to allow time for the negotiations for the potential service area swap to be completed. The estimated capacity charges are \$51,913.68. Attached is the proposed Agreement for Sewer Capacity Charge Deferral.

1. IS FUNDING REQUIRED? No**2. IF YES, INDICATE IF BUDGETED.** No**IF FUNDING IS REQUIRED, MANDATORY OMB REVIEW IS REQUIRED:****INDICATE FUNDING SOURCE:****SUGGESTED MOTION/RECOMMENDATION/ACTION:**

Motion to adopt Resolution 2021-_____, approving the terms, provisions, conditions, and requirements of the Agreement for Sewer Capacity Charge Deferral between St. Johns County, Florida and JEA, and authorizing the County Administrator to execute the agreement on behalf of St. Johns County.

For Administration Use Only:**Legal:** RL 1/22/2021**OMB:** N/A**Admin:** Brad Bradley 2/4/2021

RESOLUTION NO. 2021-_____

A RESOLUTION BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING THE TERMS, PROVISIONS, CONDITIONS, AND REQUIREMENTS OF AN AGREEMENT FOR SEWER CAPACITY CHARGE DEFERRAL BETWEEN ST. JOHNS COUNTY, FLORIDA, AND JEA, TO ALLOW DEFERRAL OF SEWER CAPACITY CHARGES FOR THE CONNECTION OF THE FRUIT COVE SEWER AREA UNTIL SERVICE AREA SWAP NEGOTIATIONS ARE COMPLETE AND AUTHORIZING THE COUNTY ADMINISTRATOR TO EXECUTE THE AGREEMENT ON BEHALF OF ST. JOHNS COUNTY

WHEREAS, JEA and the County are currently negotiating a territory swap of certain water and sewer services; and

WHEREAS, the proposed territory swap could take more than two years to fully negotiate and implement; and

WHEREAS, included among the assets and equipment proposed to be a part of the territory swap is a lift station in the Fruit Cove service area presently owned by the County, that is depicted in Exhibit A of the Agreement; and

WHEREAS, such Lift Station is metered and is subject to the payment of sewer capacity charges (the "Capacity Fee") pursuant to Section 105 of the latest edition of the JEA Water and Sewer Rate Document; and

WHEREAS, as part of the proposed territory swap negotiation, the parties agree to temporarily defer the Capacity Fee assessable to the subject lift station for a period of time as described in the Agreement, which is attached hereto, and incorporated herein, will serve the interests of the County.

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

Section 1. The above recitals are hereby incorporated into the body of this resolution and are adopted as findings of fact.

Section 2. The Board of County Commissioners approves the terms, provisions, conditions, and requirements of the Agreement for Sewer Capacity Charge Deferral between St. Johns County, Florida and JEA, and authorizes the County Administrator to execute the Agreement on behalf of St. Johns County substantially in the form attached hereto.

Section 3. 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 4. 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 ____ day of _____, 2021.

BOARD OF COUNTY COMMISSIONERS OF
ST. JOHNS COUNTY, FLORIDA

By:

Jeremiah R. Blocker, Chair

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

By: Deputy Clerk

**AGREEMENT
FOR SEWER CAPACITY CHARGE DEFERRAL
BETWEEN
JEA
AND
ST. JOHNS COUNTY**

THIS AGREEMENT (“**Agreement**”) is made and entered into as of the ___ day of _____, 2021 (the “**Effective Date**”) by and between **JEA**, a body politic and corporate in the City of Jacksonville, Florida (“**JEA**”), and **ST. JOHNS COUNTY**, a political subdivision of the state of Florida with its principal address at 500 San Sebastian View, St. Augustine, Florida 32084 (“**County**”).

WHEREAS, JEA and the County are currently negotiating a territory swap of certain water and sewer services; and

WHEREAS, the proposed territory swap could take more than two years to fully negotiate and implement; and

WHEREAS, included among the assets and equipment proposed to be a part of the territory swap is a lift station presently owned by the County, that is depicted in Exhibit A, attached hereto (the “**Lift Station**”); and

WHEREAS, such Lift Station is metered and is subject to the payment of sewer capacity charges (the “**Capacity Fee**”) pursuant to Section 105 of the latest edition of the JEA Water and Sewer Rate Document; and

WHEREAS, as part of the proposed territory swap negotiation, the parties agree to temporarily defer the Capacity Fee assessable to the subject lift station for a period of time as described below.

NOW THEREFORE, in consideration of the mutual covenants contained below, JEA and County agree as follows:

1. **Recitals.** The recitals set forth above are true and correct and incorporated in this Agreement by reference.

2. **JEA’s Obligations.** JEA agrees to temporarily defer collection of the payment due for the Capacity Fee for the Lift Station for the term of this Agreement. If the territory swap referenced herein is completed while this agreement is in effect, JEA agrees to fully and permanently waive payment of the Capacity Fee for the Lift Station

3. **County’s Obligations.** Should this Agreement be terminated for any reason other than transfer of ownership of the Lift Station, County agrees, with no further demand from JEA necessary, to pay the Capacity Fee within thirty (30) days after the termination date.

4. **Term.** The term of this Agreement shall commence on the Effective Date and shall continue through the earlier of the date JEA acquires ownership of the Lift Station pursuant to the territory swap, or two (2) years from the Effective Date. Nothing in this Agreement shall be construed as providing the County or any third party with a cause of action against JEA for failure to complete the territory swap. This agreement shall automatically terminate in the event either Party elects to not execute the territory swap, and notifies the other Party in writing with thirty (30) day notice.

5. **Notices.** All notices under this Agreement shall be in writing and shall be effective upon receipt or rejection if delivered by certified mail, return receipt requested, or by other recognized delivery service with receipt to the following:

As to JEA:

JEA
21 W. Church Street
Jacksonville, Florida 32202
Attn: _____

As to County:

St. Johns County
Utilities Department
1205 FL-16
St. Augustine, Florida 32084
Attn: Director

6. **Authority.** County represents and warrants to JEA that County has full right and authority to execute and perform its obligations under this Agreement, and the person(s) signing this Agreement on County's behalf represent and warrant to JEA that such person(s) are duly authorized to execute this Agreement on County's behalf without further consent or approval by anyone. County shall deliver to JEA promptly upon request all documents reasonably requested by JEA to evidence such authority.

7. **Entire Agreement.** This Agreement constitutes the entire agreement between the parties hereto. No statement, representation, writing, understanding, agreement, course of action or course of conduct, made by either party or any representative of either party, which is not expressed herein, shall be binding. County acknowledges that it is entering into this Agreement for its own purposes and not for the benefit of any third party.

8. **Amendments.** All changes to, additions to, modifications of, or amendment to this Agreement, or any of the terms, provisions and conditions hereof, shall be binding only when in writing and signed by the authorized officer, agent or representative of each of the parties to this Agreement.

9. Counterparts. This Agreement, and all amendments hereto, 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. This Agreement may be delivered by facsimile or by email transmittal of a PDF image, and such facsimile or PDF counterparts shall be valid and binding on JEA and County with the same effect as if original signatures had been exchanged.

10. Limitations of Government Liability. Nothing in this Agreement shall be deemed a waiver of immunity or limits of liability of JEA or the County beyond any statutory limited waiver of immunity or limits which may have been adopted by the Florida Legislature in Florida Statutes 768.28 or other statutes as amended from time to time, and nothing in this Agreement shall inure to the benefit of any third party for the purpose of allowing any claim that would otherwise be barred under the Doctrine of Sovereign Immunity or by operation of law.

[Remainder of page left blank intentionally. Signature page follows immediately.]

IN WITNESS WHEREOF, the Parties have executed this Amendment as of the Effective Date.

Witness:

ST. JOHNS COUNTY

By: _____

(Printed Name of Signer)

Title

Witness:

JEA

By: _____

(Printed Name of Signer)

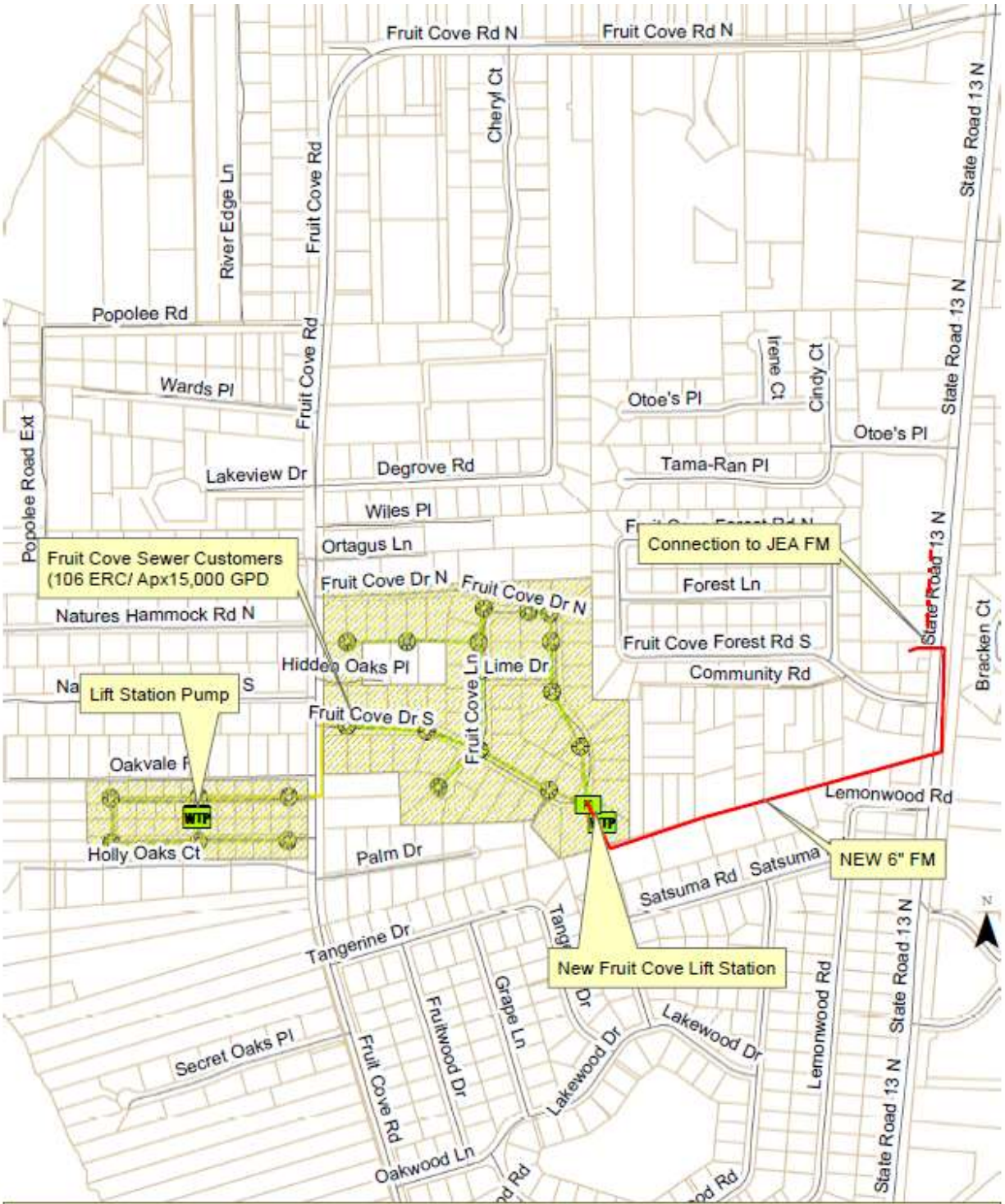
Title

Form Approved:

Office of General Counsel

GC-#1392191-v1-v2-JEA_Capacity_Fee_Deferral_Agreement_with_St_Johns_County.docx

Exhibit A



Disclaimer
 This map is for reference use only. Data provided are derived from multiple sources with varying levels of accuracy. The St. Johns County GIS Division disclaims all responsibility for the accuracy or completeness of the data shown herein.
 Map Filename: 1116221

St. Johns County
Exhibit A: Fruit Cove Lift Station & Sewer Service Area

Scale: 0 50 100 Feet