

UTILITY DEVELOPER PIONEERING AGREEMENT

This Agreement, dated this _____ day of _____, is between the City of Williston, a municipal corporation of the State of Florida, hereinafter referred to as the City, and _____, hereinafter referred to as the Developer. Whereas, the Developer has made application to the City for permission to construct water and wastewater infrastructure for the mutual benefit of the City and the Developer; now, therefore, in consideration of the mutual promises and covenants herein contained, to be kept, performed, and fulfilled by the parties hereto, it is agreed as follows:

1. Responsibilities

The Developer shall perform all work necessary to accomplish the proposed utility infrastructure construction including, but not limited to, design, specifications, permitting and construction. All work shall be performed by qualified personnel. The work shall be in accordance with this Agreement, Utilities Engineering Standards, Williston City Codes, ordinances and regulations, applicable requirements of other governmental agencies and good engineering principles.

The City will review and inspect all work performed by the Developer to assure that the work meets the purpose for which it is intended and is in compliance with all requirements and conditions contained herein. Such review and approval will not relieve the Developer from complying with all said conditions and requirements. All work shall be approved by the City's engineer for compliance with all said conditions and requirements prior to acceptance by the City. The City shall have final say in whether the work completed meets all requirements and conditions contained herein. The City's determination concerning compliance and acceptance will be final.

2. Definitions

The following terms when used in this Agreement shall have the meanings indicated:

- A. "Agreement": This Utility Developer Pioneering Agreement between the City and the Developer.
- B. "City": The City of Williston, Florida, or the area within the City limits or service area.
- C. "Utility": The City of Williston Public Works Department as defined in the Williston City Code and authorized to administer and enforce this Agreement.
- D. "Utilities System(s)": The entire system for a specific utility within the Public Works Department's service areas, described as the City of Williston.

- E. "Plans and Specifications": The official City-approved drawings or reproduction of drawings made, or to be made, pertaining to work provided for in the Agreement and the prescribed directions, requirements, explanations, terms, and provisions pertaining to the work to be done as outlined in the Technical Memorandum included as Exhibit A to this Agreement.
- F. "Or Equal": Any article, material, method or work which, by the determination and sole discretion of the Utility (City), is equally suitable for the purpose intended as compared with similar articles specifically mentioned in the Agreement, Utilities Engineering Standards or in the plans and specifications prepared under this Agreement.
- G. "Points": All survey marks, benchmarks, reference points, stakes, hubs, etc., established for maintaining horizontal and vertical control of the work.
- H. "Infrastructure": The utility infrastructure being constructed to serve the project and satisfy the Utility Code requirements under this Agreement as outlined in the Technical Memorandum included as Exhibit A to this Agreement.
- I. "Utilities Engineering Standards": The technical standards which include the minimum requirements for the design and construction of water and wastewater facilities within the City of Williston service area. Refers to the CWPWDS and all other applicable standards.
- J. "CWPWDS": The City of Williston Public Works and Developer Standards.
- K. "City Engineer": The engineer designated the City and approved to do work for the City.
- L. "Reimbursement Period": A period of 20 years commencing at the time that all of the following conditions are met: the Infrastructure has been formally accepted by the City, 80% of the proposed units on the Developer's property have been constructed (as determined in writing by the City's Engineer), and the Reimbursement Period Initiation Form (attached hereto as Exhibit ____) has been signed.
- M. "Working Condition": All Work shall not be defective but shall be operational such that it meets its intended purpose and meets all the requirements specified in the approved Plans and Specifications, field directives, change orders, or requirements referenced in any applicable federal, state, or local codes, standards, regulations, or permits.
- N. "Work": Work shall mean the entire construction, or the various separately identifiable parts thereof, required to be provided under this Agreement, the approved Plans and Specifications, field directives, change orders, or requirements referenced in any applicable federal, state, or local codes, standards, regulations, or

permits. Work includes performing or providing all labor, services, and documentation necessary to produce such construction; furnishing, installing, and incorporating all materials and equipment into such construction; and may include related services such as testing, start-up, and commissioning.

O. “Defective”: The word “defective”, when modifying the word “Work,” refers to Work that is unsatisfactory, faulty, or deficient in that it:

1. Does not conform to the Plans and Specifications, field directives, change orders, or requirements referenced in any applicable federal, state, or local codes, standards, regulations, or permits;
2. Does not meet the requirements of any applicable inspection, reference standard, test, or approval; or
3. Has been damaged prior to Engineer’s recommendation of final acceptance (unless responsibility for the protection thereof has been assumed by the City).

3. Warranty of Authority

The Developer, along with any additional owners as designated on the signature page, warrant that they are the owners of the real property located at [REDACTED] and shall provide a title report or other legal document, to the Utility (City) establishing said ownership.

The Developer may act as agent for the property owner, provided that Agency Status is legally established.

4. Location of the Utility Infrastructure.

Utility Infrastructure shall be built on only the following real property:

That real property as outlined on the attached Exhibit A ‘Technical Memorandum’.

5. Description of Utility Infrastructure.

The proposed utility Infrastructure will consist of all required water and wastewater mainline and appurtenances required for the proposal, which fall under the Technical Memorandum attached hereto as Exhibit A, the Plans and Specifications, and the terms of this Agreement. The utility Infrastructure shall be installed in accordance with this Agreement, the Utility Engineering Standards and the plans and specifications approved by the Utility, at the sole cost and expense of the Developer as hereinafter provided. The Developer shall be financially responsible for the expenses of all inspections and administrative work performed by the City (or by a third party contracted by the City) associated therewith. The Developer shall pay to the City the expenses of all inspection costs for inspections done by the City (or by a third party contracted by the City) or required by the City at cost plus 10%. The 10% added to the base cost shall be used to cover the administrative processes incurred by City staff. These fees may be subject to reimbursement as outlined herein.

6. Fees to be Paid by the Developer

Fees shall be paid by the Developer for services provided by the Utility (City), as indicated below (Fee Chart attached as Exhibit):

A. Design Review Services

1. Consultation with the Developer regarding the requirements of the City for construction of the utility Infrastructure.
2. Administration of this Agreement by the City.
3. Assistance with preliminary layout of the proposed utility Infrastructure, as needed.
4. Review and approval of plans, specifications, and necessary documents.
5. Consultation with other agencies (i.e. other City departments, other governmental agencies) regarding plans and specifications, as necessary.
6. Submittal of plans and specifications to other agencies (i.e. other City departments, City Engineer, other governmental agencies) for required approvals, as necessary.
7. Final review of the required documents to assure that the City has legal title to necessary right-of-way and easements, review and approval of the Bill of Sale provided by the Developer, and acceptance of the utility Infrastructure by the City.
8. All costs or fees associated with engineering and compliance plus a 10% administrative fee.

The deposit for Design Review and Inspection, , is hereby submitted with this Agreement. Design Review services shall be charged to the project at the current hourly rate, as established by the City. The Developer agrees to pay outstanding Design Review fees prior to the City accepting the utility Infrastructure.

B. Construction Inspection Services

1. The Preconstruction Conference.
2. Regular inspection of the construction in progress, as needed to ensure that construction of the utility Infrastructure is in accordance with

this Agreement, the Plans and Specifications, the Utilities Engineering Standards and any other City requirements.

3. Inspection of required pressure tests, any retesting which may be necessary, and sampling of the completed Infrastructure after flushing for submittal to the appropriate Florida State authorities/departments, or a certified testing laboratory for bacteriological examination.
4. Inspection of required pressure tests, after flushing, and any retesting of system Infrastructure which may be necessary.
5. Final inspection of the completed Infrastructure and preparation of the inspection report, which shall set forth any deficiencies that may exist.
6. Reinspection of any deficient work.
7. Preparation any required construction drawings.
8. Reinspection at the end of the warranty period.

Construction Inspection services shall be charged to the project at the current hourly rate, as established by the City, including the overtime rate of 1.5 for time outside regular business hours. The Developer agrees to pay outstanding Construction Inspection fees prior to the City accepting the utility Infrastructure.

7. Preliminary Design Review

The Developer shall refer to the City of Williston Code of Ordinances requirements for submittal. Incomplete submittals will not be processed.

8. Omissions and Discrepancies

The Developer shall carefully study and compare all Plans and Specifications and other documents and shall, prior to ordering materials or performing work, report in writing to the Utility (City) any error, inconsistency, or omission in respect to the Plans and Specifications, mode of construction, or costs which it discovers. If the Developer, in the course of this study or in the accomplishment of the work, finds any discrepancy between the Plans and Specifications and the physical condition of the locality as represented in the Plans and Specifications, it shall be his duty to inform the Utility (City) immediately in writing, and the Developer shall promptly investigate. Any work performed after such a discovery will be done at the Developer's risk and responsibility for cost.

9. Insurance Requirements – Generally

- A. Developer shall obtain and maintain insurance as required in this Agreement.

- B. All insurance required by the Developer to be purchased and maintained by Developer (or their authorized contractor) shall be obtained from insurance companies that are duly licensed or authorized in the state or jurisdiction in which the Infrastructure is located to issue insurance policies for the required limits and coverages. Unless a different standard is indicated herein, all companies that provide insurance policies required under this Contract shall have an A.M. Best rating of A-VII or better.
- C. Alternative forms of insurance coverage, including but not limited to self-insurance and "Occupational Accident and Excess Employer's Indemnity Policies," are not sufficient to meet the insurance requirements of this Agreement, unless expressly allowed elsewhere herein.
- D. Developer shall deliver to the City, with copies to each additional insured identified in the Agreement, certificates of insurance and endorsements establishing that Developer has obtained and is maintaining the policies and coverages required by the Agreement. Upon request by the City or any other insured, Developer shall also furnish other evidence of such required insurance, including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, full disclosure of all relevant exclusions, and evidence of insurance required to be purchased and maintained by subcontractors or suppliers. In any documentation furnished under this provision, Developer, its subcontractors, and its suppliers may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those applicable to this Agreement.
- E. The City shall deliver to the Developer, with copies to each additional insured identified in the Agreement, certificates of insurance and endorsements establishing that the City has obtained and is maintaining the policies and coverages required of the City by the Agreement (if any). Upon request by Developer or any other insured, the City shall also provide other evidence of such required insurance (if any), including but not limited to copies of policies, documentation of applicable self-insured retentions (if allowed) and deductibles, and full disclosure of all relevant exclusions. In any documentation furnished under this provision, the City may block out (redact) (1) any confidential premium or pricing information and (2) any wording specific to a project or jurisdiction other than those relevant to this Agreement.
- F. Failure of the City or the Developer to demand such certificates or other evidence of the other party's full compliance with these insurance requirements, or failure of the City or the Developer to identify a deficiency in compliance from the evidence provided, will not be construed as a waiver of the other party's obligation to obtain and maintain such insurance.
- G. In addition to the liability insurance required to be provided by the Developer, the City, at the City's option, may purchase and maintain the City's own liability insurance. The City's liability policies, if any, operate separately and independently from policies required to be provided by the Developer, and the Developer cannot rely upon the City's liability policies for any of the Developer's obligations to the City, the City's Engineer, or third parties.

H. Developer shall require:

1. Contractors and subcontractors to purchase and maintain worker's compensation, commercial general liability, and other insurance that is appropriate for their participation in the construction of the utility Infrastructure (and that includes coverage for incidents which may occur during inspection or compliance checks), and to name as additional insureds the City and the City's Engineer (and any other individuals or entities identified herein as additional insureds on Developer's liability policies) on each contractor and/or subcontractor's commercial general liability insurance policy; and
 2. Suppliers to purchase and maintain insurance that is appropriate for their participation in the construction of the utility Infrastructure.
- I. If either party does not purchase or maintain the insurance required of such party by the Agreement, such party shall notify the other party in writing of such failure to purchase prior to the start of the construction of the utility Infrastructure, or of such failure to maintain prior to any change in the required coverage.
- J. If the Developer has failed to obtain and maintain required insurance, the Developer's entitlement to enter or remain at the City-owned site(s) outlined in the Plans and Specifications will end immediately, and the City may impose an appropriate set-off against reimbursement as outlined in this Agreement for any associated costs (including but not limited to the cost of purchasing necessary insurance coverage), and exercise the City's termination rights under this Agreement.
- K. Without prejudice to any other right or remedy, if a party has failed to obtain required insurance, the other party may elect (but is in no way obligated) to obtain equivalent insurance to protect such other party's interests at the expense of the party who was required to provide such coverage, and the reimbursement provisions under this Agreement will be adjusted accordingly.
- L. The City does not represent that insurance coverage and limits established in this Agreement necessarily will be adequate to protect Developer or Developer's interests. Developer is responsible for determining whether such coverage and limits are adequate to protect its interests, and for obtaining and maintaining any additional insurance that Developer deems necessary.
- M. The insurance and insurance limits required herein will not be deemed as a limitation on Developer's liability, or that of its contractors, subcontractors, or suppliers, under the indemnities granted to the City and other individuals and entities in the Agreement or otherwise.
- N. All the policies of insurance required to be purchased and maintained under this Agreement will contain a provision or endorsement that the coverage afforded will not be canceled, or renewal refused, until at least 10 days prior written notice has been given to the purchasing policyholder. Within three days of receipt of any such written notice, the purchasing policyholder shall provide a copy of the notice to each other insured and City's Engineer.

10. Developer's Insurance

- A. Required Insurance: Developer shall purchase and maintain Worker's Compensation, Commercial General Liability, and other insurance pursuant to the specific requirements of this Agreement (which shall include coverage for incidents which may occur during inspection or compliance checks).
- B. General Provisions: The policies of insurance required by this Agreement must:
1. include at least the specific coverages required;
 2. be written for not less than the limits provided, or those required by Laws or Regulations, whichever is greater;
 3. remain in effect at least until the utility Infrastructure construction is complete (as set forth in this Agreement), and longer if expressly required elsewhere in this Agreement, and at all times thereafter when the Developer may be correcting, removing, or replacing defective Infrastructure as a warranty or correction obligation, or otherwise, or returning to the site(s) identified by the Plans and Specifications to conduct other tasks arising from the Agreement;
 4. apply with respect to the performance of the construction of the Infrastructure, whether such performance is by Developer, any contractor, subcontractor, or supplier, or by anyone directly or indirectly employed by any of them to perform any of the construction of the Infrastructure, or by anyone for whose acts any of them may be liable; and
 5. include all necessary endorsements to support the stated requirements.
- C. Additional Insureds: The Developer's commercial general liability, automobile liability, employer's liability, umbrella or excess, pollution liability, and unmanned aerial vehicle liability policies, if required by this Agreement, must:
1. include and list as additional insureds the City, and any individuals or entities identified as additional insureds as listed in this Agreement;
 2. include coverage for the respective officers, directors, members, partners, employees, and consultants of all such additional insureds;
 3. afford primary coverage to these additional insureds for all claims covered thereby (including as applicable those arising from both ongoing and completed operations);
 4. not seek contribution from insurance maintained by the additional insured; and
 5. as to commercial general liability insurance, apply to additional insureds with respect to liability caused in whole or in part by Developer's acts or omissions, or the acts and omissions of those working on Developer's behalf, in the performance of Developer's operations.
- D. Workers' Compensation and Employer's Liability: Developer shall purchase and maintain workers' compensation and employer's liability insurance, including, as applicable, United States Longshoreman and Harbor Workers' Compensation Act,

Jones Act, stop-gap employer's liability coverage for monopolistic states, and foreign voluntary workers' compensation (from available sources).

Workers' Compensation and Related Policies	Policy limits of not less than:
Workers' Compensation	
State	Statutory
Applicable Federal (e.g., Longshoreman's)	Statutory
Foreign voluntary workers' compensation (employer's responsibility coverage), if applicable	Statutory
Employer's Liability	
Each accident	Statutory
Each employee	Statutory
Policy limit	Statutory

E. Commercial General Liability—Claims Covered: Contractor shall purchase and maintain commercial general liability insurance, covering all operations by or on behalf of Developer, on an occurrence basis, against claims for:

1. damages because of bodily injury, sickness or disease, or death of any person other than Developer's employees,
2. damages insured by reasonably available personal injury liability coverage, and
3. damages because of injury to or destruction of tangible property wherever located, including loss of use resulting therefrom.

F. Commercial General Liability—Form and Content: the Developer's commercial liability policy must be written on a 1996 (or later) Insurance Services Organization, Inc. (ISO) commercial general liability form (occurrence form) and include the following coverages and endorsements:

1. Products and completed operations coverage.
 - a. Such insurance must be maintained for three years after final acceptance.
 - b. Developer shall furnish the City and each other additional insured (as identified in this Agreement) evidence of continuation of such insurance at acceptance and three years thereafter.
2. Blanket contractual liability coverage, including but not limited to coverage of Developer's contractual indemnity obligations.
3. Severability of interests and no insured-versus-insured or cross-liability exclusions.
4. Underground, explosion, and collapse coverage.
5. Personal injury coverage.

6. Additional insured endorsements that include both ongoing operations and products and completed operations coverage through ISO Endorsements CG 20 10 10 01 and CG 20 37 10 01 (together). If Developer demonstrates to the City that the specified ISO endorsements are not commercially available, then Developer may satisfy this requirement by providing equivalent endorsements.

G. Commercial General Liability—Excluded Content: The commercial general liability insurance policy, including its coverages, endorsements, and incorporated provisions, must not include any of the following:

1. Any modification of the standard definition of “insured contract” (except to delete the railroad protective liability exclusion if Developer is required to indemnify a railroad or others with respect to Work within 50 feet of railroad property).
2. Any exclusion for water intrusion or water damage.
3. Any provisions resulting in the erosion of insurance limits by defense costs other than those already incorporated in ISO form CG 00 01.
4. Any exclusion of coverage relating to earth subsidence or movement.
5. Any exclusion for the insured’s vicarious liability, strict liability, or statutory liability (other than worker’s compensation).
6. Any limitation or exclusion based on the nature of Developer’s work.
7. Any professional liability exclusion broader in effect than the most recent edition of ISO form CG 22 79.

H. Commercial General Liability—Minimum Policy Limits

Commercial General Liability	Policy limits of not less than:
General Aggregate	\$2,000,000
Products—Completed Operations Aggregate	\$2,000,000
Personal and Advertising Injury Aggregate	\$2,000,000
Bodily Injury and Property Damage—Each Occurrence	\$1,000,000

I. Automobile Liability: Developer shall purchase and maintain automobile liability insurance for damages because of bodily injury or death of any person or property damage arising out of the ownership, maintenance, or use of any motor vehicle. The automobile liability policy must be written on an occurrence basis.

Automobile Liability	Policy limits of not less than:
Bodily Injury	
Per Incident	\$1,000,000
Aggregate	\$2,000,000
Property Damage	
Per Incident	\$1,000,000
Aggregate	\$2,000,000

- J. Umbrella or Excess Liability: Developer shall purchase and maintain umbrella or excess liability insurance written over the underlying employer's liability, commercial general liability, and automobile liability insurance described in the Paragraphs above. The coverage afforded must be at least as broad as that of each and every one of the underlying policies.

Excess or Umbrella Liability
General Aggregate

Policy limits of not less than:
\$5,000,000

- K. Using Umbrella or Excess Liability Insurance to Meet CGL and Other Policy Limit Requirements: Developer may meet the policy limits specified for employer's liability, commercial general liability, and automobile liability through the primary policies alone, or through combinations of the primary insurance policy's policy limits and partial attribution of the policy limits of an umbrella or excess liability policy that is at least as broad in coverage as that of the underlying policy, as specified herein. If such umbrella or excess liability policy was required under this Agreement, at a specified minimum policy limit, such umbrella or excess policy must retain a minimum limit of \$5,000,000 after accounting for partial attribution of its limits to underlying policies, as allowed above.

11. Builder's Risk and Other Property Insurance

- A. Builder's Risk: Unless otherwise provided in this Agreement, Developer shall purchase and maintain builder's risk insurance upon the utility Infrastructure on a completed value basis, in the amount of the Infrastructure's full insurable replacement cost (subject to such deductible amounts as may be provided in this Agreement or required by Laws and Regulations). The specific requirements applicable to the builder's risk insurance are set forth in this Agreement.
- B. Property Insurance for Facilities of the City Where Work Will Occur: The City is responsible for obtaining and maintaining property insurance covering each existing structure, building, or facility in which any part of the Infrastructure construction will occur, or to which any part of the Infrastructure will attach or be adjoined. Such property insurance will be written on a special perils (all-risk) form, on a replacement cost basis, providing coverage consistent with that required for the builder's risk insurance, and will be maintained until the Infrastructure is accepted, as set forth in this Agreement.
- C. Insurance of Other Property; Additional Insurance: If the express insurance provisions of the Agreement do not require or address the insurance of a property item or interest, then the entity or individual owning such property item will be responsible for insuring it. If Developer elects to obtain other special insurance to be included in or supplement the builder's risk or property insurance policies provided under this Agreement, it may do so at Developer's expense.
- D. Builder's Risk Requirements: The builder's risk insurance must:
1. Be written on a builder's risk "all risk" policy form that at a minimum includes insurance for physical loss or damage to the Infrastructure, temporary buildings,

falsework, and materials and equipment stored and in transit, and must not exclude the coverage of the following risks: fire; windstorm; hail; flood; earthquake, volcanic activity, and other earth movement; lightning; riot; civil commotion; terrorism; vehicle impact; aircraft; smoke; theft; vandalism and malicious mischief; mechanical breakdown, boiler explosion, and artificially generated electric current; collapse; explosion; debris removal; demolition occasioned by enforcement of Laws and Regulations; and water damage (other than that caused by flood).

a. Such policy will include an exception that results in coverage for ensuing losses from physical damage or loss with respect to any defective workmanship, methods, design, or materials exclusions.

b. If insurance against mechanical breakdown, boiler explosion, and artificially generated electric current; earthquake, volcanic activity, and other earth movement; or flood, are not commercially available under builder's risk policies, by endorsement or otherwise, such insurance will be provided through other insurance policies acceptable to the City and Developer.

2. cover, as insured property, at least the following: (a) the Infrastructure and all materials, supplies, machinery, apparatus, equipment, fixtures, and other property of a similar nature that are to be incorporated into or used in the preparation, fabrication, construction, erection, or completion of the Infrastructure, including City-furnished or assigned property; (b) spare parts inventory required within the scope of the Agreement; and (c) temporary works which are not intended to form part of the permanent constructed Infrastructure but which are intended to provide working access to the site(s) outlined in the Plans and Specifications, or to the Infrastructure under construction, or which are intended to provide temporary support for the Infrastructure under construction, including scaffolding, form work, fences, shoring, falsework, and temporary structures.
3. cover expenses incurred in the repair or replacement of any insured property (including but not limited to fees and charges of contractors, engineers, and architects).
4. extend to cover damage or loss to insured property while in temporary storage at the site(s) outlined in the Plans and Specifications or in a storage location outside the site(s) outlined in the Plans and Specifications (but not including property stored at the premises of a manufacturer or Supplier).
5. extend to cover damage or loss to insured property while in transit.
6. allow for the waiver of the insurer's subrogation rights, as set forth in this Agreement.
7. include performance/hot testing and start-up, if applicable.
8. be maintained in effect until the Infrastructure is accepted, as set forth in this Agreement, or until written confirmation of the City's procurement of property insurance, whichever occurs first.
9. include as named insureds the City, contractors, subcontractors (of every tier), and any other individuals or entities required by this Agreement to be insured under

such builder's risk policy. For purposes of this Agreement, the parties required to be insured will be referred to collectively as "insureds."

- F. Builder's Risk and Other Property Insurance Deductibles: The purchaser of any required builder's risk, installation floater, or other property insurance will be responsible for costs not covered because of the application of a policy deductible.

12. Property Losses; Subrogation

- A. The builder's risk insurance policy purchased and maintained in accordance with this Agreement (or an installation floater policy if authorized by this Agreement), will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against the City or its consultants, or their officers, directors, members, partners, employees, agents, consultants, or subcontractors.
1. The City and the Developer waive all rights against each other and the respective officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from any of the perils, risks, or causes of loss covered by such policies and any other property insurance applicable to the construction of the Infrastructure; and, in addition, waive all such rights against engineers, their consultants, all individuals or entities identified in this Agreement as builder's risk or installation floater insureds, and the officers, directors, members, partners, employees, agents, consultants, and subcontractors of each and any of them, under such policies for losses and damages so caused.
 2. None of the above waivers extends to the rights that any party making such waiver may have to the proceeds of insurance held by the City or the Developer as trustee or fiduciary, or otherwise payable under any policy so issued.
- B. Any property insurance policy maintained by the City covering any loss, damage, or consequential loss to the City's existing structures, buildings, or facilities in which any part of the construction of the Infrastructure will occur, or to which any part of the Infrastructure will attach or adjoin; to adjacent structures, buildings, or facilities of the City; or to part or all of the completed or substantially completed Infrastructure after final acceptance pursuant to this Agreement, will contain provisions to the effect that in the event of payment of any loss or damage the insurer will have no rights of recovery against any insureds thereunder, or against Developer, contractors, subcontractors, or engineers, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them, and that the insured is allowed to waive the insurer's rights of subrogation in a written contract executed prior to the loss, damage, or consequential loss.
1. The City waives all rights against Developer, contractors, subcontractors, or engineers, or the officers, directors, members, partners, employees, agents, consultants, or subcontractors of each and any of them, for all losses and damages caused by, arising out of, or resulting from fire or any of the perils, risks, or causes of loss covered by such policies.

- C. The waivers in the above paragraphs include the waiver of rights due to business interruption, loss of use, or other consequential loss extending beyond direct physical loss or damage to the City's property or the Infrastructure caused by, arising out of, or resulting from fire or other insured peril, risk, or cause of loss.
- D. Developer shall be responsible for assuring that each contract and subcontract contains provisions whereby the contractor and/or subcontractor waives all rights against the City, the Developer, all individuals or entities identified in the this Agreement as insureds, for all losses and damages caused by, arising out of, relating to, or resulting from fire or other peril, risk, or cause of loss covered by builder's risk insurance, installation floater, and any other property insurance applicable to the construction of the Infrastructure.

13. Receipt and Application of Property Insurance Proceeds

- A. Any insured loss under the builder's risk and other policies of property insurance required by this Agreement will be adjusted and settled with the named insured that purchased the policy. Such named insured shall act as fiduciary for the other insureds and give notice to such other insureds that adjustment and settlement of a claim is in progress. Any other insured may state its position regarding a claim for insured loss in writing within 15 days after notice of such claim.
- B. Proceeds for such insured losses may be made payable by the insurer either jointly to multiple insureds, or to the named insured that purchased the policy in its own right and as fiduciary for other insureds, subject to the requirements of any applicable mortgage clause. A named insured receiving insurance proceeds under the builder's risk and other policies of insurance required by this Agreement shall maintain such proceeds in a segregated account and distribute such proceeds in accordance with such agreement as the parties in interest may reach, or as otherwise required under the dispute resolution provisions of this Agreement or applicable Laws and Regulations.
- C. If no other special agreement is reached, the Developer shall repair or replace the damaged Infrastructure, using allocated insurance proceeds.

14. Hold Harmless

The Developer shall protect, defend, indemnify and save harmless the City, its officers, employees and agents from any and all costs, claims judgments or awards of damages arising out of or in any way resulting from the negligent acts or omissions of Developer, its officers, employees, contractors and agents in performing this Agreement.

The Developer agrees that its obligation under this subparagraph extend to any claim, demand, and/or cause of action brought by, or on behalf of, any of its employees or agents. For this purpose, the Developer, by mutual negotiation, hereby waives, as respects the City only, any immunity that would otherwise be available against such claims. In the event the City incurs any judgment, award, and/or cost arising there from including attorneys' fees to enforce the provisions of this article, all such fees, expenses, and costs shall be recoverable from the Developer.

15. Risk of Loss

The Developer shall bear the risk of loss or damage for all finished or partially finished work until the entire Infrastructure is accepted by the Utility (City).

16. Easements

Any required easement shall be obtained by the Developer at its sole cost and expense. Executed original copies of off-site easements shall be delivered to the Utility (City) prior to notification to proceed with construction of Infrastructure. On-site easement submittals may be delayed until construction of Infrastructure completion. Project acceptance will not occur until easement format and legal descriptions are verified. All easements shall conform to Utilities Engineering Standards and the City's required format. The easement shall be clearly written in a manner that it can be plotted from the description, and a drawing of the easement location shall be attached. Plans should clearly label easements "public" or "private". Developer need not obtain an easement over any property over which the City already holds an easement.

17. Surveys and Real Property

The Developer shall furnish, prior to beginning construction, a property boundary survey of the approximately 2 acres (more or less) upon which the water well (outlined in the plans and specifications and Exhibit A) and the related equipment shall be constructed. This property is hereinafter referred to as the "Water Well Property". The Developer shall furnish any other property boundary surveys as are reasonably required to accomplish the goals of this Agreement.

The Developer shall, after completion of the Infrastructure and at the time of acceptance by the Utility (City) of the Infrastructure, provide to the City a General Warranty Deed transferring the Water Well Property to the City. The Developer shall, at the same time, provide a legal Easement across the Developer's property which allows the City permanent ingress and egress across such land as is necessary for the City full access to the Water Well Property. The Developer shall be solely responsible for the cost of preparation of said General Warranty Deed and legal Easement. The General Warranty Deed and the legal Easement shall be prepared to the satisfaction of the City Attorney (approval by whom is required prior to the City executing the General Warranty Deed or legal Easement). There shall be no acceptance of the Infrastructure by the City prior to the City Attorney approving the General Warranty Deed and legal Easement and full execution of such documents by the Developer or other appropriate party to effectuate the transfer and easement of land.

18. Permits

All permits required by any governmental agency, shall be obtained by the Developer unless the Utility (City) is required by the agency to obtain the permit. Permits must be obtained prior to commencing with construction of the Infrastructure. Prior to any street excavation, clearing and grading, or other work requiring a regulatory permit, the Developer or Developer's contractor shall present a copy of the appropriate permit to the Utility (City). If the Developer observes that the Agreement or any part thereof is inconsistent and/or at

variance with such permit, he/she shall promptly notify the Utility (City) in writing and any necessary changes shall be made by the Developer and submitted to the Utility (City) for review.

19. Surety Instrument

Prior to construction, the Developer shall furnish to the Utility (City) a Surety Instrument (Performance Bond, Security Agreement, Irrevocable letter of Credit or Assignment of Savings) in a form acceptable to the City, and in an amount equal to the engineers estimate or contractor's bid price to complete all work within the public right-of-way, connection to the water, wastewater, and/or storm drainage systems and restoration of public right-of-way and easements. The minimum surety amount shall be [REDACTED] per utility regardless of ownership.

Commented [KB1]: We should combine to include all utilities in surety

Upon acceptance of the Infrastructure by the Utility (City), the Developer shall furnish to the Utility (City) a Maintenance Surety Instrument (Maintenance Bond, Security Agreement, or Assignment of Savings) in an amount of not less than twenty percent (20%) of the construction cost for the portion of the water and wastewater Infrastructure accepted and owned by the Utility (City). The minimum surety amount shall be [REDACTED] per utility, regardless of ownership. Said Maintenance Surety Instrument shall guarantee correction of defects in the extension for a period of two (3) years following acceptance of the utility Infrastructure by the Utility (City), and may be released only upon written notification by the Utility (City).

The Developer may record a final plat or short plat for property owned by Developer prior to completion of the utility Infrastructure only if said Developer has furnished a Surety Instrument (Performance Bond, Security Agreement, Irrevocable letter of Credit or Assignment of Savings) approved by the City in an amount equal to 150% of the engineer's cost estimate or 150% of the contractors bid price (minimum [REDACTED] per utility) to complete the entire utility Infrastructure, both on-site, and in public right-of-way.

20. Procedure for Acceptance

Compliance with and completion of all the terms and conditions of this Agreement, the Plans and Specifications prepared hereunder, and other City requirements, and payment of any additional fees for Design Review and Construction Inspection Services shall be conditions precedent to the Utility's (City's) obligation to accept the utility Infrastructure and to the Utility's (City's) agreement to maintain and operate the public portion of the utility Infrastructure. Building occupancy or final plat approval will be withheld until project acceptance or appropriate surety instrument is provided, as noted above, for plats only.

The Utility (City) will not allow any connection to the utilities systems by any portion of the real property owned by Developer or owner (as described in this Agreement) if there are any fees or costs unpaid to the Utility (City) under this Agreement, or if there are fees arising under other City requirements which are unpaid. The Utility (City) shall not be obligated to provide utilities service to the property owned by Developer or owner (as described in this

Agreement) if the construction by third parties of Infrastructure to be deeded to the Utility (City) has not been completed and accepted by the Utility (City), if such third party Infrastructure is necessary to provide utility service to the property owned by Developer or owner (as described in this Agreement).

Developer shall, upon completion of the construction of the Infrastructure on the Water Well Property (but before acceptance of same by the City), deed unto the City the property as outlined in the survey furnished by Developer to City prior to the beginning of construction of the Infrastructure. The Developer shall bear the cost of the preparation and recording of a General Warranty Deed of the Water Well Property to the City. This transaction shall be complete prior to acceptance of the Infrastructure and the City shall not be obligated to accept the Infrastructure until this transaction is complete.

The Utility (City) will accept the utility Infrastructure at such time that all work which may, in any way, affect the utility Infrastructure has been completed, any damage to said utility Infrastructure which may exist has been repaired, and the Utility (City) has made final inspection and given its approval to the utility Infrastructure as having been completed in accordance with this Agreement, the Plans and Specifications, and other requirements of the City. Such acceptance by the Utility (City) shall not relieve the Developer of the obligation to correct defects in the labor and/or materials as herein provided and /or the obligations set forth in applicable paragraphs hereof.

After acceptance of the utility Infrastructure and the transferring of title of said utility Infrastructure to the Utility (City) as set forth herein the Developer shall furnish a maintenance bond which shall remain in full force for a period of two (2) years. Said maintenance bond will be accepted by the Utility (City) in-lieu of the surety instrument required herein. The maintenance bond shall be in a form acceptable to the City and shall require the Developer and/or the surety company to correct any and all defects which arise in said utility Infrastructure for a period of two (2) years from the date of acceptance by the Utility (City).

Acceptance of the utility Infrastructure shall be made in writing by the Utility (City) or City's Engineer. Prior to such acceptance, executed bill of sale documents, in a form approved by the Utility (City), and the warranties required by this Agreement, shall be executed by the Developer and any additional owners and delivered to the Utility (City) for the Utility (City) owned portion of the utility Infrastructure. Acceptance by the Utility (City) shall cause the public portion of the utility Infrastructure to be subject to the control, use, and operation of the utility and all regulations and conditions of service and service charges as the Utility (City) determines to be reasonable and proper.

21. Phased Construction

The utility Infrastructure may be constructed and accepted in phases as specifically designated on the plans and specifications when all requirements have been met. There will be no conditional acceptance or acceptance for use and operation. The accepted portion of the utility Infrastructure must be capable of functioning independently.

22. Limitation Period for Acceptance

The utility Infrastructure shall be completed and accepted within twenty-four (24) months of the date of this Agreement. If the utility Infrastructure is not completed and accepted within the time period then the Developer's rights under this Agreement shall cease and no additional construction of the utility Infrastructure shall take place until the Developer makes a new application to the Utility (City) to complete the utility Infrastructure, or the Utility (City) consents in writing to the renewal of the existing Agreement. The Developer shall pay any additional administrative, legal, engineering, and inspection costs involved as determined by the Utility (City). Any such agreement entered into pursuant to a new application, or renewal of the original Agreement, shall be subject to any new or amended ordinances, regulations, Codes, Standards or fee schedules which have taken effect since execution of the Agreement.

If the Utility (City) determines that it is necessary to complete the utility Infrastructure to provide utility service to other property, then the Utility (City) may give the Developer notice that construction of the utility Infrastructure must be commenced within sixty (60) days of the notice by the Utility (City) to the Developer, provided that the Plans and Specifications have been prepared and submitted by the Developer. If construction is not commenced within the time specified, then the Utility (City) may terminate this Agreement and shall retain all payments made by the Developer to the Utility (City) and shall be free to proceed with construction of the utility Infrastructure within the area described in this Agreement.

23. Extension of the Agreement

The Developer shall work diligently to complete all work within twenty-four (24) months of the date of this Agreement. The Utility (City) may issue two extensions, up to six (6) months in duration, to this Agreement, at the sole discretion of the Utility (City), upon receipt of written notice to the Utility (City) prior to the expiration of the original 24-month period. Failure of the Developer to work diligently to complete the utility Infrastructure shall be grounds to deny an extension. Developer must apply for a new Agreement and be subject to all new fees and requirements. It is incumbent upon the Developer to complete all the work in a timely manner.

24. Materials and Equipment

Materials and equipment shall be new and shall be as specified in the Agreement, the Plans and Specifications, the Utilities Engineering Standards, or; if not specified, of a quality approved by the Utility (City). All materials and equipment furnished are warranted by the Developer as new and in accordance with the Agreement and the Plans and Specifications, and suitable for the intended purpose. In addition, the Developer shall furnish the Utility (City) with copies of the supplier's warranty and shall adopt the same as the warranty of the Developer and shall also be liable thereon to the Utility (City).

The Developer may, at any time, request that the City directly purchase certain materials for use in construction of the Infrastructure which shall ultimately turned over to the City. The

Developer retains the financial responsibility for said purchases and shall provide all funds necessary for such purchases to the City prior to the purchases being made. The City shall not unreasonably deny such request given that payment has been made by the Developer and that the materials being purchased are part of the Infrastructure which shall ultimately be turned over to the City.

25. Warranties of the Developer

The bill of sale to be provided by the Developer to the Utility (City) shall contain the following warranties with the City as the beneficiary:

A. Developer is the owner of the property that is outlined above (not to include City property on which Infrastructure will be constructed), the same is free and clear of all encumbrances and developer has good right and authority to transfer title thereto to the Utility (City) and will defend the title of the City against claims of all third parties claiming to own the same or claiming any interest therein or encumbrance thereon; and

1. The water Infrastructure is in proper working condition, order, repair, and is adequate and fit for the intended purpose of use as a water system and as an integral part of the water supply and distribution system of the Utility (City);
2. The wastewater Infrastructure is in proper working condition, order, repair, and is adequate and fit for the intended purpose of use as a wastewater system and as an integral part of the wastewater system of the Utility (City);
3. The natural gas Infrastructure is in proper working condition, order, repair, and is adequate and fit for the intended purpose of use as a natural gas system and as an integral part of the natural gas supply and distribution system of the Utility (City); and
4. The fiber Infrastructure is in proper working condition, order, repair, and is adequate and fit for the intended purpose of use as a fiber system and as an integral part of the fiber supply and distribution system of the Utility (City).

B. For a period of two (2) years from the date of final acceptance of the utility Infrastructure; the utility Infrastructure, and all parts thereof, shall remain in proper working condition, order, and repair; and the Developer shall repair or replace, at its sole expense, any work or material (including any labor required to accomplish such repair or replacement), which may prove to be defective during the period of the warranty.

In addition, the Developer shall obtain warranties and guarantees from its subcontractors and suppliers where such warranties or guarantees are specifically

required in this Agreement. When correction of defects occurring within the warranty period are made, the Developer shall further warrant corrected work for two (2) years after the acceptance of the corrected work by the Utility (City).

26. Correction of Defects During the Warranty Period

When defects in the utility Infrastructure are discovered within the warranty period, the Developer shall start work to remedy any such defects within seven (7) days of written notice by the Utility (City), and shall complete such work within a reasonable time. In emergencies where damage may result from delay and/or where loss of service may result, the corrections may be made by the Utility (City) upon discovery, in which case the cost thereof shall be borne by the Developer and offset appropriately against the reimbursements outlined in this Agreement. In the event the Developer does not commence and/or accomplish the corrections within the time specified, the work may be accomplished by the Utility (City), at its option, and the cost thereof shall be borne by the Developer, by offset against reimbursements due or attachment of the Maintenance bond.

Developer shall be responsible for any expenses incurred by the City resulting from defects in the Developer's work, including actual damages, costs of materials, and labor expended by the City in making repairs, and the cost of engineering, inspecting, and supervision by the City. The cost of same shall be offset appropriately against reimbursements due under this Agreement.

27. Rates and Charges

The Developer described in this Agreement shall be subject to all rates and charges established by the City. Interest shall be added as provided for by Florida law.

28. Royalties and Patents

The Developer shall hold the City and its officers, employees and agents harmless from all suits, claims or liabilities of any nature, including attorney's fees, costs, and expenses, based upon any alleged infringement of patent rights regarding any material, machine, appliance, or process that the Developer may use on the work or incorporate within the work; and if suit in respect to the above is filed, the Developer shall appear and defend the City and its official, employees, and volunteers at its own cost and expense; and if judgment is rendered or settlement made requiring payment of damages by the City, its officials, employees, or volunteers, the Developer shall pay the same.

29. Subletting or Subcontracting

The Developer is fully responsible to the City for the acts and omissions of subcontractors and persons employed, directly or indirectly, by subcontractors, as well as the acts and omissions of persons directly employed by the Developer.

30. Successors/Assigns; Binding Effect

Neither this Agreement nor any right, remedy, obligation or liability arising hereunder or by reason hereof nor any of the documents executed in connection herewith may be assigned by the Developer without the prior written consent of the City. Except as provided in the previous sentence, this Agreement and all of the rights and obligations hereunder shall inure to the benefit of and be binding upon the Developer and the Developer's respective successors and assigns. Any attempted assignment in violation of this Agreement shall be null and void.

31. Available Reimbursement to Developer

A. The Developer has agreed to install infrastructure above and beyond the need of the Developer's property. In turn, the City has agreed to a method for reimbursement of costs associated with the infrastructure installed which is in excess of that needed by the Developer's property.

B. The maximum potential available reimbursement to the Developer is defined as the difference between the cost of the minimum infrastructure required to service the Developer's property (as determined by the City's Engineer) and the cost of the Infrastructure Developer has contracted to construct under this Agreement (as determined by the City's Engineer). For each utility, the maximum potential available reimbursement is as follows:

1. Wastewater: \$1,700,000.00
2. Water: \$2,500,000.00

C. Developer acknowledges that the above maximum potential available reimbursement figures are potential only and are in no way guaranteed by the City or any of its employees or agents.

D. The City guarantees payment of up to 50% of the maximum potential available reimbursement to the Developer (hereinafter referred to as the City-Guaranteed Reimbursement) via the methods of reimbursement outlined below during the Reimbursement Period. No part of this Agreement shall be interpreted to prohibit the City from commencing reimbursement of these guaranteed funds prior to the beginning of the Reimbursement Period. For each utility, the City-Guaranteed Reimbursement is as follows:

1. Wastewater: \$850,000.00
2. Water: \$1,250,000.00

E. All payments made to Developer (whether by the City or a third-party) via the reimbursement methods listed below shall count first towards the City-Guaranteed Reimbursement amount until said amount is satisfied.

F. If the below-stated reimbursement methods do not result in the Developer

recouping at least the City-Guaranteed Reimbursement amount, the City shall issue payment of the balance not already reimbursed to the Developer within one hundred and eighty (180) days of the expiration of the Reimbursement Period.

G. Natural Gas Infrastructure.

1. The Developer shall be entitled to reimbursement not to exceed Developer's actual cost for Developer's portion of the Natural Gas Infrastructure. Maps indicating which portions of the Infrastructure are to be paid/completed by the City are attached to this Agreement as "Exhibit B". A breakdown of costs and cost shares between the Developer and the City are attached hereto as "Exhibit C".
2. The City shall perform, at its own expense, the work allocated to the City as outlined in Exhibit B and Exhibit C.
3. The parties agree the work on the Natural Gas Infrastructure should be completed by the same contractor between the Developer and the City. All work allocated to the Developer shall be contracted through the City's approved installer.
4. The Developer shall execute a bond for the full amount of the cost Developer's portion of the work (estimated \$1.5 million) to satisfy the City that the Developer's portion of the work will be completed when the City completes its portion of the work.
5. The City shall direct each new developer in the applicable area who will benefit from the Natural Gas Infrastructure to pay reimbursement to the Developer using the following method. The City engineer, along with City consultants, shall calculate the share owed by incoming developers related to the value of the Natural Gas Infrastructure for the new developer. After such calculation is made, the City shall direct the new developer, in writing, to issue 10% of such number to the City and 90% of such number to the Developer.

H. Fiber Infrastructure.

1. The Developer shall purchase all materials associated with installing the Fiber Infrastructure (including but not limited to conduit and line). The Developer shall not exceed a cost of _____ when purchasing such materials. The Developer, within 30 days of incurring such costs, shall send the City proof of payment for Fiber Infrastructure materials.
2. The City shall, at its own expense, perform the installation of the Fiber Infrastructure materials. After the Fiber Infrastructure is installed, the

City shall solely and exclusively manage the fiber services related to same.

3. After the Fiber Infrastructure is installed, the City shall provide fiber services – in an amount not to exceed the amount invested by Developer in the Fiber Infrastructure materials – to any Developer-owned buildings on the subject property and the costs of such services will be abated by the City. Once the value of the fiber services provided to the Developer by the City is equal to the value of the amount invested by the Developer Fiber Infrastructure, the abatement will cease, and the Developer shall be required to pay current rates for fiber services for all subsequent fiber services provided by the City. No notice is required from the City to the Developer in order to cease abatement and begin charging for services.
 4. The abatement received by the Developer shall be calculated by determining the fair market value of fiber services provided to the Developer-owned buildings at the time the services were provided. The Developer shall receive an invoice which shows the value of the services provided and shows an abatement for same. Upon Developer's request, the City shall provide a ledger showing the value of services abated as well as future abatement value still available.
 5. The Developer shall, prior to receiving any abatement, provide to the City a final plat which clearly outlines the buildings on the subject property which are owned by the Developer. Only buildings identified on such final plat as being owned by the Developer shall be entitled to an abatement. The final plat provided by the Developer shall be attached to this Agreement as "Exhibit D".
 6. The parties agree that there is no profit sharing of any kind between the Developer and the City regarding fiber services offered/provided to the residents of the Developer's development or any subsequent customer which may utilize the Fiber Infrastructure.
 7. The Developer acknowledges that the maximum potential available abatement is a potential figure only and is in no way guaranteed by the City or any of its employees, agents, or assigns.
 8. Under no circumstances – including bankruptcy, insolvency, merger, assignment, etc. – shall there be an entitlement to exchange value of abatement for cash or other forms of currency.
- I. Generally. The City shall not be responsible for the installation, improvement, relocation, upgrade, or any other kind of work related to any of the provisions of this Agreement unless explicitly stated otherwise herein.

32. Methods of Reimbursement

A. Surcharge: The Developer's property is located outside of the City limits and therefore is subject up to a 25% surcharge on utilities billed by the City. A portion of said surcharge is related to capital costs, rather than operation and maintenance of the utilities. Once the City-Guaranteed Reimbursement amount has been satisfied, the City shall discontinue this method of reimbursement, regardless of the time left on the Reimbursement Period. The process for Surcharge Reimbursement is outlined below:

1. The Developer shall be subject to, and shall pay each month, a 15% surcharge on utilities. The City may, at any time, impose the full 25% surcharge allowable by law. The City shall give ninety (90) days' written notice to the Developer of the City's intent to impose such increased surcharge. Notwithstanding such notice, the City reserves the exclusive right to impose such increased surcharge without need of approval/assent from the Developer.
2. The City shall hold in trust any capital costs related portion of the forementioned surcharge paid by the Developer to the City.
3. Each year, on or before February 1, the City shall provide to the Developer an accounting of the portion of the surcharge held in trust by the City for the previous calendar year. Said accounting shall include a running total of all reimbursement payments made via this method of reimbursement by the City to the Developer. With said accounting, the City shall issue a payment to Developer of the previous calendar years' funds which had been held in trust.
4. The Developer shall certify (in writing and signed by Developer) approval of said accounting within 10 days of receipt of same.
5. If the Developer does not certify in writing signed by Developer, the accounting by the City after 10 days from receipt of same, the accounting shall be deemed approved by the Developer and Developer waives their right to contest same.

B. New Developer's Benefit: The Developer is entitled to reimbursement in part from future developers or other third-parties whose properties are benefitted by the Infrastructure. The City's Engineer shall determine, for any third-party property which directly benefits from the Infrastructure, that third-party's pro rata share of the cost of the Infrastructure. The pro-rata share shall be calculated by the Engineer by determining the cost the third party would have incurred for water and wastewater infrastructure had Developer not installed the Infrastructure above and

beyond Developer's own need under this Agreement. The Developer shall be entitled to receive reimbursement through this method up to 100% of the maximum potential available reimbursement amounts listed previously in this Agreement.

1. The City shall, prior to connection to water or wastewater utilities, direct the City's Engineer to determine each third-party's pro-rata share of the cost of the Infrastructure. The City shall then collect said pro-rata share from the third-party prior to connection and pass said payment along to the Developer with a statement outlining the payment. Such statement shall also include a running total of all reimbursement payments made via this method of reimbursement by the City to the Developer.
2. The Developer shall certify (in writing and signed by Developer) approval of said statement within 10 days of receipt of same.
3. If the Developer does not certify in writing signed by Developer, the statement by the City after 10 days from receipt of same, the statement shall be deemed approved by the Developer and Developer waives their right to contest same.

C. Other: Developer shall credit the City for all increases in third-party service contracts associated with the added Infrastructure at a rate of fifty percent of the total increase in same. Initial payment of the third-party contract fee will be made by the City but will be assessed against the Developer and credited toward the overall City-Guaranteed Reimbursement. The City shall provide an annual accounting of these fees to the Developer. Third-party service contracts are considered any contracts which deal with operation or maintenance costs for which the City must subcontract for compliance or maintenance. The determination of what is a third-party service contract shall be made solely by the City. Cost-sharing responsibility will cease between the Developer and the City once the City-Guaranteed Reimbursement is fulfilled.

33. General Conditions

Attached hereto are the General Conditions to this Agreement, addressing basic construction requirements, which by this reference are incorporated and made a part herein.

34. Utilities Engineering Standards

The City of Williston Public Works and Developer Standards as outlined in City of Williston Code of Ordinances by this reference is hereby incorporated and made a part herein.

35. Additional Understandings

The Developer, along with any additional owners as designated on the signature page, warrant

that they understand the Infrastructure to be constructed under this Agreement (other than that Infrastructure which is up-flow of the well and lift station on Developer's property) shall ultimately be owned by the City after completion and acceptance by the City. The Developer agrees that there shall be no obligation of the City to provide reimbursement under this Agreement for Infrastructure which is not approved by the City Engineer.

36. Signatures

I certify that I am the Owner or Owner's authorized agent. If acting as an authorized agent, I further certify that I am authorized to act as the Owners agent regarding the property described herein for the purpose of filing applications for decisions, permits or review under applicable Williston City Codes and I have full power and authority to perform, on behalf of the Owner, all acts required to enable the City to process and review such applications.

I hereby certify that the information on this Agreement furnished by me is true and correct and that the application requirements of the City of Williston will be met.

Entered into and agreed to in whole this _____ day of June, 2023.

DEVELOPER/OWNER:

[NAME]

[NAME]

CITY OF WILLISTON, FLORIDA:

Attest:

Debra Jones, City Council President

Latricia Wright, City Clerk

GENERAL CONDITIONS FOR CONSTRUCTION

1. Authority of Utility (City)

The Utility (City) shall have general authority over the work to be accomplished under this Agreement, provided nothing contained in this Agreement shall be construed to require the Utility (City) to direct the method or manner of performing any work by the Developer.

The Utility (City) and City's Engineer shall decide all questions pertaining to the interpretation of the Agreement and Plans and Specifications prepared thereunder, the quality or acceptability of materials furnished and work performed under this Agreement on the part of the Developer. The decision of the Utility (City) and/or City's Engineer on such matters shall be final.

All work under this Agreement shall be performed to the satisfaction of the Utility (City), and the decision by the Utility (City) and/or City's Engineer as to whether the work has been performed in a satisfactory manner shall be final.

The Utility (City) may stop work under this Agreement whenever, in its opinion, such stoppage is necessary to ensure proper performance of this Agreement. The Utility (City) and/or City's Engineer may also reject all work and materials which, in its opinion, do not conform to the Agreement.

The Utility (City) and/or City's Engineer may direct the sequence of conducting work when it is in locations where the City is doing work either by contract or through its own forces and where such other works may be affected by the work performed under this Agreement, in order that conflict may be avoided and the work under this Agreement may be harmonized with such other work.

2. Determination of "OR Equal"

The Utility (City) and/or City's Engineer shall be the sole judge of the questions of "or equal" of any supplies, materials, or equipment proposed by the Developer. The Developer shall pay to the Utility (City) the costs of tests and evaluations needed to determine the acceptability of alternates proposed by the Developer.

3. Compliance with Laws

The Developer shall give all notices and comply with all laws, ordinances, rules, and regulations relating to the conduct of the work provided for under this Agreement.

4. Stoppage of Work

If the Developer performs any work contrary to laws, ordinances, rules, or regulations prior to obtaining any necessary permits or other required permission, the City may order the work stopped.

5. Points, Instructions and Construction Staking by the Developer

The Developer is responsible to provide all surveying work needed to accurately locate the designed Infrastructure. The Developer shall not proceed with staking until approval is received from the City. Existing underground utilities, above ground appurtenances, and other facilities must be located.

The Developer shall provide 48 hours advance notice (excluding weekends and holidays) before actual construction begins.

The Developer shall provide horizontal control in the form of either road centerline stakes, property stakes, or easement centerline stakes, as necessary, to be utilized in providing construction staking. Construction staking shall not begin until adequate horizontal control is in place in the field. Construction cut sheets shall be supplied to the Utility (City) before construction of the utility improvements begins. Cut sheets shall be presented to the City, or its designee, 24 hours in advance of construction.

Additional construction staking may be required for various reasons and shall be the responsibility of the Developer.

Additional construction staking which may be required shall include:

- A. Location of easements, property lines and road centerlines.
 1. Location of sewer mains, manholes and side sewer stubs.
 2. Location of storm drains and appurtenances, detention and water treatment facilities.
 3. Location of water mains, valves, meter boxes, hydrants and principle fittings and backs of hydrants.
 4. Locations of all Sunshine 811 Florida State Statue 556 known as the Underground Facility Damage Prevention and Safety Act.
- B. Addition of set stakes and offset stakes other than those specified in General Condition 6.
- C. Replacement of stakes for any reason.
- D. Additional work occasioned by obstruction, delay or prevention of staking by the Developer.

6. Inspections and Tests

Inspection by the Utility (City) and/or City's Engineer is required for various aspects of the utility system. Such aspects include but are not limited to:

- All main pipe laying operations
- Installation of sleeves, couplers and adapters on pipe
- Pipe bedding and backfilling
- Casings, concrete encasement or other special installations
- Crossing AC water mains or other utilities

- Repairs to wastewater facilities or other utilities
- Pavement, curb, gutter and sidewalk restoration
- All surface components (valve box, frame and grate, ring and cover, etc) after final paving
- Easement restoration
- Manhole installations and pipe connections
- Saddle manhole installations
- Manhole core drilling
- Air testing main and side stubs
- Flushing/cleaning mains and CCTV inspection
- Grease/oil water separators
- Vehicle wash and dumpster area drains
- Side sewer installations:
 - Tee locations and stub markers
 - Side sewer depth at right-of-way/easement line
 - Side sewer slope
 - Fittings and clean-outs

Inspection of the work by the Utility (City) and/or City's Engineer shall be strictly for the benefit of the Utility (City) and no other person.

The Utility (City) and/or City's Engineer shall, at all times, have access to the work for the purpose of inspecting and testing. The Developer shall provide facilities for such access, inspection and testing.

If any work is covered without the approval or consent of the Utility (City) it shall be uncovered for inspection at the Developer's expense, if required by the Utility (City) and/or City's Engineer.

The Developer shall make reasonable tests of the work at the Developer's expense upon the Utility's (City's) and/or City's Engineer request, and shall maintain a record of such tests.

Before a performance test is to be observed by the Utility (City) and/or City's Engineer, the Developer shall make whatever preliminary tests are necessary to assure that the material and/or equipment are in accordance with the Plans and Specifications provided. If, for any reason, the test observed is unsatisfactory, the Developer shall pay all costs incurred for the inspection of further testing.

Should the Developer elect to work more than eight hours per weekday, or more than five weekdays per week, all costs of inspection thus entailed may be charged to the Developer at 1.5 times the billing rate. In addition, the Developer shall obtain approvals from the City to work outside the hours allowed by the Noise Ordinance and/or hours specified in applicable permits.

The Utilities' approval is required to work nights, weekends and holidays. The Developer shall submit his proposed schedule to work nights, weekends or holidays at least five (5) days in advance (not including weekends and holidays) for review. If the Developer elects to work on

weekends, nights, or holidays, and such work schedule is approved by the Utility (City), all costs of inspection may be charged to the developer at 1.5 times the billing rate.

Where the Agreement, plans and specifications, or laws, ordinances, rules, or regulations of any governmental authority require that any work be specially tested or inspected, the Developer shall give the Utility (City) notice that such tests or completed work is ready for inspection. If the inspection is by an authority other than the City, the Developer shall notify the City of the date and place of the inspection. Required certificates of inspection by other authorities shall be secured by the Developer.

Written notice of deficiencies, adequately describing the same, shall be given to the Developer upon completion of each inspection. The Developer shall correct such deficiencies within seven (7) days of the notice and before final inspection is made by the Utility (City) and/or City's Engineer.

A representative of the contractor shall arrange a time to accompany the Utility (City) and/or City's Engineer on the final inspection and subsequent reinspection, if required. The Utility (City) and/or City's Engineer will not make the final inspection until the physical work, including final clean-up and all extra work ordered by the City, or its designee, has been completed.

Deficiencies discovered during the final inspection shall be corrected within seven (7) days of notice thereof and, in no instance, shall service be provided until the deficiencies are corrected and the utility Infrastructure pass reinspection.

7. Availability of Project Documents

The Developer shall keep at least one copy of the following project documents constantly available at the construction site.

- 1) Approved construction plans and shop drawings
- 2) Construction specifications
- 3) Developer Pioneering Agreement
- 4) City of Williston Utilities Engineering Standards (as outlined in City of Williston Code)

8. Materials and Equipment List

The Developer shall file three copies of a materials and equipment list with the Utility (City) prior to proceeding with construction. This list shall designate the quantity, manufacturer and model number of materials and equipment to be installed under the Agreement.

The list will be checked by the Utility (City) and/or City's Engineer for conformity with the Agreement and the plans and specifications provided. The Utility (City) and/or City's Engineer will determine the conformity of the list with reasonable promptness. The Developer shall make any required corrections and file two corrected copies with the Utility (City) within one week after the receipt of the required corrections. The Utility's (City's) and/or City's Engineer review of the list shall not relieve the Developer from the responsibility of providing materials and equipment suitable for their intended purpose nor for deviations from the Agreement or the Plans and Specifications without written permission from the Utility (City).

9. Shop Drawings

The Developer shall have his engineer check and verify all shop drawings and schedules required for the performance of the work and as requested by the Utility (City). The Developer's engineer shall verify all measurements or conditions to which the shop drawings are applicable,

The Developer shall furnish two corrected copies of the shop drawings to the Utility (City). Neither the Developer's engineer's approval nor the Utility's (City's) acceptance of the Shop Drawings shall relieve the Developer from responsibility for the deviation from this Agreement or the Plans and Specifications provided, nor shall it relieve the Developer from the responsibility for errors in the shop drawings.

10. Samples

The Developer shall furnish for approval all samples as directed by the Utility (City). The finished work shall be in accordance with approved samples. Approval of samples by the Utility (City) does not relieve the Developer from the obligation to perform the work in accordance with the Agreement or the plans and specifications provided.

11. Protection of Work and Property

The Developer shall continuously maintain adequate protection of the work from damage and shall protect the City's property from injury or loss arising in connection with or during the existence of this Agreement. The Developer shall be liable to the City for any injury or loss resulting from its failure to comply with this provision. The Developer shall also adequately protect adjacent property from damage or loss which might result from performance of the work under this Agreement. The Developer shall also provide and maintain all passageways, guard fences, lights, and other facilities for the protection of the public as required by law.

12. Safety Requirements

The Developer shall take all necessary precautions for the safety of employees on the work site and shall comply with all applicable provisions of federal, state, and municipal law with regard thereto. The Developer shall erect and properly maintain at all times, as required by the conditions and progress of the work, all necessary safeguards for the protection of employees and the public, and shall designate a responsible member of its organization on the construction site whose duty shall be the prevention of accidents. The name and position of such person shall be reported in writing to the Utility (City).

13. Use of Private Property

The Developer shall not enter upon or place materials on private property without express written permission of the property owner. A copy of such written permission shall be furnished to the Utility (City). The Developer shall hold the City harmless from all suits and actions of any kind or description which might arise from its use of private property.

14. Location of Underground Utilities

Underground utilities of record shall be shown upon the plans and specifications so far as possible. Such representation is for convenience only and the City assumes no responsibility for improper locations or failure to show utility locations on the plans and specifications. A locating service shall be called upon to mark utilities in the field prior to construction.

15. Replacing Improvements

Whenever it is necessary in the course of construction to remove or disturb culverts, landscaping, driveways, roadways, pipelines, monuments, property stakes or other existing improvements, whether on private or public property, they shall be replaced to a condition equal to that existing before they were so removed or disturbed.

16. Superintendents and Supervision

The Developer shall keep on the construction site during the progress of the work a competent superintendent and any necessary assistants, all satisfactory to the Utility (City). The superintendent shall represent the Developer in his absence and all directions given to the superintendent shall be as binding as if given to the Developer.

At all times, the Contractor shall keep at the work site a set of the plans, specifications, Developer Pioneering Agreement and Engineering Standards. The Contractor shall devote the attention required to make reasonable progress on the work and shall cooperate fully with the Utility (City) and/or City's Engineer.

Competent supervisors experiences in the task being performed shall continuously oversee the contract work. At the Utility's (City's) written request, the Contractor shall immediately remove and replace any incompetent, careless, or negligent employee. Noncompliance with the Utility's (City's) request to remove and replace personnel at any level shall be grounds for the issuance of a Stop Work Order.

The Contractor shall keep all machinery and equipment in good, workable condition. It shall be adequate for its purpose and used by competent operators.

17. Operation of Existing Water Valves

The operation of all existing water system valves shall be done by City Utility personnel only.

18. Domestic Water Meters

It shall be the responsibility of the Developer to make application and pay necessary fees to the Utility (City) for the installation of water meters. The Developer shall not purchase and install

water meters from a private supplier; except water meters larger than 2" may be purchased from a Utility (City) approved supplier.

19. Flushing of New Water Mains

The flushing of new water mains for the purpose of removing foreign materials and accumulated sterilants shall only be done in the presence of a Utility (City) Representative.

The water supply for filling, testing and flushing of the new water mains will be available from the existing distribution system via a fire hydrant use permit and the appropriate connection appurtenances.

20. Disposal of Flush Water

The Contractor is responsible for disposal of water flushed from water mains. Unprocessed flush water and turbid water shall not be discharged to surface waters or the storm drain system. Disposal may be made by storing and aerating until chlorine and/or turbidity cannot be detected with disposal to the storm drain system, or by percolation into the ground, or to a public sanitary sewer provided the disposal rate does not overload the sewer. The Contractor shall exercise special care during flushing to avoid damage to adjacent properties and overloading the sanitary sewer system.

21. Video Inspection

Following flushing the Developer will provide a videotape of the sewer pipe interior for all mains 8" and larger. The project will not be accepted until the Utility (City) has reviewed the video tape and any deficiencies have been repaired.

See "Privatized TV Performance Specification" for details.

22. Side Sewer Permits

It shall be the responsibility of the Developer to make application and pay necessary fees to the Utility (City) for the issuance of Side Sewer Permits. A copy of the side sewer permit shall be present on-site prior to commencing with side sewer construction and connection.

Single family sewer permits will not be issued until after acceptance of the utility Infrastructure.

23. Final Sequence for Commercial Projects

In order for the Utilities Department to "sign off" the project acceptance, the contractor must complete the following:

1. Contractor completes all utility work.

2. Contractor makes an appointment for a “punch list” inspection.
3. Developer provides detention tank, vault or pond as-builts, CAD disk and certification letter.
4. Contractor completes “punch list” work.
5. Contractor makes an appointment for a final inspection. City, or its designee, re-inspects “punch list” and signs off project as “complete”.
6. City, or its designee, prepares memos of completion for Development Reviewer.
7. Development Reviewer verifies that all requirements of the Developer Pioneering Agreement have been met (pre-acceptance). Allow 3 to 4 weeks to complete the process.
 - a) O & M Manual approved and recordable
 - b) Fees paid reasonably up to date
 - c) Easements verified and recordable
 - d) Bills of Sale
 - e) Maintenance Bonds, if greater than original Performance Bonds
 - f) Certification of Construction Cost
 - g) Latecomer Agreement, if applicable
8. Development Reviewer provides copy of Acceptance Letter to City or its designee.
9. City, or its designee, signs Certificate of Occupancy (C.O.) and allows water meter to be set or unlocked. The Developer Pioneering Agreement expires 24 months after the start date unless there are extensions as allowed in this Agreement. After expiration, a Stop Work Order will be posted for all utility work. A new Developer Pioneering Agreement needs to be executed in order to remove the Stop Work Order. The project will be subject to all new fees and conditions of the new Agreement.