

**RELEASE AND INDEMNITY  
AGREEMENT**

THIS RELEASE AND INDEMNITY AGREEMENT (this "**Agreement**") is entered into and effective as of this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by and between the Utilities Commission, City of New Smyrna Beach, Florida (the "Utilities Commission") and \_\_\_\_\_ (the "Developer"). The Utilities Commission and Developer may collectively be referred to as the "Parties" and individually as a "Party".

**RECITALS**

**WHEREAS**, Developer and Utilities Commission entered into a Developer's Agreement for Water, Wastewater, Reclaimed Water, and Electric Energy Services ("Developer's Agreement"), wherein the Developer paid utility infrastructure fees to the Utilities Commission in exchange for the Utilities Commission providing utility infrastructure services to the Developer's certain property;

**WHEREAS**, in 2007, an Addendum to the Developer's Agreement was adopted in order to adequately, fairly, and equitably fund water, wastewater, reclaimed water, and electric infrastructure to support full buildout of the Utilities Commission's exclusive service area by requiring those landowners and developers seeking to develop to pay for certain "unfunded" offsite facilities ("2007 Addendum and Infrastructure Policy");

**WHEREAS**, the Developer's Agreement and the 2007 Addendum and Infrastructure Policy provide that a reconciliation might be require to "true up" for the deviation of actual costs from estimates (the "Refund");

**WHEREAS**, the Developer's Agreement and the 2007 Addendum and Infrastructure Policy provide that the right to the Refund within the agreements to may be assigned to another party;

**WHEREAS**, as part of the close out of the 2007 Addendum and Infrastructure Policy, the UCNSB has completed a program reconciliation, results of which are contained in the Reconciliation Report dated February 22, 2021, prepared by Utilities Commission staff to determine refunds (the "Reconciliation Report");

**WHEREAS**, the Reconciliation Report determines that certain refunds should be made by the Utilities Commission;

**WHEREAS**, pursuant to the terms of the Developer's Agreement and the 2007 Addendum and Infrastructure Policy, the Developer \_\_\_\_\_[assigned/did not assign] the right to the Refund to a third party;

**WHEREAS**, the parties wish to enter into this Agreement whereby the Developer shall release and indemnify the Utilities Commission from claims by any third party for such Refund;

**ACCORDINGLY**, in consideration of the above stated Recitals, and other good and valuable consideration the receipt and sufficiency of which are acknowledged by the parties to this Agreement, the parties agree as follows:

**SECTION 1. RECITALS.** The recitals sets forth above are true and correct and incorporated in the terms of this Agreement by reference.

**SECTION 2. DEVELOPER REPRESENTATIONS.** Developer represents and warrants that all assignments (if any) of the right to Refund to a third party has been presented to the Utilities Commission, and the Developer has not assigned the right to the Refund to a third party without the approval of such assignment by the Utilities Commission.

**SECTION 3. RELEASE.** In consideration of the Refund, the Developer completely releases, acquits and forever discharges the Utilities Commission and its employees, agents, license holders, representatives, predecessors, successors, subsidiaries, administrators, assigns, insurers, trustees, officers, officials, directors, attorneys, related or affiliated companies, and all other persons acting on its behalf, from and against any and all past, present, and future losses, liabilities, responsibilities, demands, obligations, actions, causes of action, rights, judgments, damages, compensation of any kind, liens, and expenses (including attorneys' fees and costs), and claims, whether in law or in equity, whether based in contract, in tort or otherwise, whether fixed or contingent, specifically including those claims which were raised or could have been raised regarding the Developer and the imposition of the infrastructure fees, capacity fees, or other charges, and amount of the refunds and credits, the 2007 Addendum and Infrastructure Policy, and the Developer's Agreements, and any issues arising therefrom occurring prior to and on the date of this Agreement.

**SECTION 4. INDEMNITY.** Developer hereby agrees to defend, indemnify and hold harmless the Utilities Commission from, and against, any and all liabilities, damages, and claims by any third party or itself, including, without limitation, fees of counsel ("Liabilities") arising from, in connection with, or incident to the imposition of the infrastructure fees, capacity fees, or other charges, and amount of the refunds and credits to be issued pursuant to this Agreement, the 2007 Addendum and Infrastructure Policy, and the Developer's Agreement,.

**SECTION 5. ATTORNEYS' FEES.** Each Party shall bear their own costs and attorneys' fees incurred in connection with this Agreement.

**SECTION 6. GOVERNING LAW.** This Agreement shall be governed by the law of the State of Florida. Any suit or proceeding brought hereunder shall have its venue in the Seventh Judicial Circuit Court in and for Volusia County, Florida.

**SECTION 7. SOVEREIGN IMMUNITY.** Nothing contained herein shall constitute, or be in any way construed to be, a waiver of Utilities Commission sovereign immunity or the protections and provisions of Section 768.28, Florida Statutes.

**SECTION 8. INFORMED EXECUTION.** Each Party to this Agreement hereby declares that it has read this Agreement in its entirety and has received advice of its counsel with respect thereto. Each Party fully understands all terms of this Agreement and voluntarily accepts such terms. It is the intent of the Parties that the terms of this Agreement, and the obligations undertaken hereunder, shall survive the execution hereof.

**SECTION 9. NEGOTIATED AGREEMENT.** Each Party to this Agreement hereby stipulates, covenants and agrees that each and every term of this Agreement was fully negotiated and agreed to by the Parties hereto, and consequently neither this Agreement nor any provision hereof shall be construed in favor of or against either Party.

**SECTION 10. AUTHORITY TO EXECUTE AND BIND.** Each Party to this Agreement stipulates, covenants, represents and agrees that the person(s) executing this Agreement on behalf of such Party are fully vested with all required authority to execute this Agreement and make it fully binding on the Party on whose behalf they are executing this Agreement, and that all requisite actions have been duly taken to bestow such authority.

**SECTION 11. ENTIRE AGREEMENT.** In making this Agreement, no Party is relying upon any representations made by any other Party, except such representations contained in this Agreement and only to the extent that such representations are explicitly and affirmatively stated herein. All Parties acknowledge that all of their agreements, and every part of every agreement reached by them, is set forth and included within this Agreement. This Agreement terminates and supersedes all prior written or oral understandings or agreements between the Parties. The Parties may only alter or amend this Agreement in a writing that is signed by all Parties.

**SECTION 12. EXECUTION IN COUNTERPARTS.** This Agreement may be separately executed in one or more counterparts (including facsimile, email, and PDF copies), each of which shall be deemed an original, but all of which shall collectively constitute one and the same instrument.

**SECTION 13. SEVERABILITY.** If any provision or portion of this Agreement is held by a court to be invalid, void, or unenforceable under applicable law, such provision or portion shall be modified or interpreted, if possible and reasonable, to be enforceable to the fullest extent allowed by law as was intended by the Parties, and the remaining provisions or portions of this Agreement shall remain valid and enforceable.

**IN WITNESS WHEREOF**, Developer and the Utilities Commission have executed and delivered this Agreement as of the date first written above.

**FOR THE DEVELOPER:**

Company Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Printed Name: \_\_\_\_\_

(CORPORATE SEAL)

Title: \_\_\_\_\_

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

Before me, personally appeared \_\_\_\_\_, Agent of \_\_\_\_\_ Corporation, well known and known to be the person acknowledged to and before me that he executed said instrument for the purposes therein expressed.

WITNESS my hand and official seal in the County and State last aforesaid, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

My commission expires:

**UTILITIES COMMISSION, CITY OF NEW SMYRNA BEACH, FLORIDA,**  
a political subdivision and independent authority of the State of Florida,

BY: \_\_\_\_\_  
Joseph G. Bunch, General Manager-CEO

DATE: \_\_\_\_\_

ATTEST: \_\_\_\_\_  
Debbie Simmons, Records Manager

STATE OF FLORIDA  
COUNTY OF VOLUSIA

Before me, personally appeared Joseph G. Bunch, General Manager-CEO of the Utilities Commission, City of New Smyrna Beach, well known and known to be the person acknowledged to and before me that he executed said instrument for the purposes therein expressed.

WITNESS my hand and official seal in the County and State last aforesaid, this \_\_\_\_\_ day of \_\_\_\_\_, 2021.

My commission expires:

\_\_\_\_\_  
Notary Public, State of Florida

Approved as to form and correctness:

\_\_\_\_\_  
Thomas A. Cloud, General Counsel