

**POTABLE WATER SERVICE AGREEMENT
BETWEEN THE CITY OF WILDWOOD
AND SUMTER COUNTY, FLORIDA**

This agreement, effective this ____ day of _____, 2010, made and entered into by and between the City of Wildwood, Florida, a Florida municipal corporation (hereinafter called "City"), and, Sumter County, Florida (hereinafter called "County").

W I T N E S S E T H:

WHEREAS, City is a regional water provider; and,

WHEREAS, County owns in fee simple certain real property in Sumter County, Florida, as shown and described in Exhibit "A" attached hereto and made a part hereof (hereinafter referred to as "The Property"); and,

WHEREAS, County desires to procure water service from the City for the Property described in Exhibit "A"; and,

WHEREAS, County's proposed development requires access to water service; and,

WHEREAS, the City of Wildwood desires to provide water service to County's property; and,

WHEREAS, the parties desire to enter into an agreement setting forth the mutual understandings and undertakings regarding the furnishing of said services, including, but not limited to, water services for the Property described in Exhibit "A"; and,

WHEREAS, this Agreement and all stipulations and covenants made herein are acknowledged to be subject to the approval of every County, Regional, State and Federal regulatory agency having jurisdiction of the subject matter of this Agreement; and,

WHEREAS, the City has approved this Agreement and has authorized the proper City officials to execute this Agreement by motion passed at a regular Commission meeting on _____.

NOW, THEREFORE, in consideration of the mutual covenants and undertakings of City and County and other good and valuable considerations, these parties covenant and agree with each other as follows:

PART I. DEFINITIONS

- A. The term “Connection Fee” means those charges of the City for a customer’s proportionate share of the capital costs of the water utility plant capacity allocated to a new or modified customer connection and shall be construed as defined in City of Wildwood ordinances and resolutions.
- B. The term “County” shall refer to Sumter County, Florida.
- C. The term “Equivalent Residential Connection” as defined by City ordinance shall be referred to in this Agreement as “ERC” and shall be defined by section 19-343 of the City of Wildwood Code.
- D. The term “Property” or “County’s Property” refers to the real property described in Exhibit "A", attached to and incorporated into this Agreement.
- E. The term “Transmission Infrastructure Extension Fee” shall be referred to as “TIE fee” and means those charges of the City for a customer’s proportionate share of the capital costs of the water main lines and connection lines and shall be as defined by City ordinances and resolutions.
- F. The term “water management district” shall mean and refer to Southwest Florida Water Management District (SWFWMD).

PART II. COUNTY'S OBLIGATIONS

A. Connection and TIE Fees.

1. TIE Fees.

a. The Transmission Infrastructure Extension (TIE) fee purchases a hydraulic share in the water infrastructure extending from the proposed development back to the nearest well facility. As with connection fees, TIE fees are based on equivalent residential volumes, which are 300 gallons per day water consumption and the distance (in feet) between the development and the water well. The standard distance for one (1) TIE is 15,000 feet.

b. The water TIE fee shall be calculated using City ordinances and resolutions in effect at the time the County executes this agreement. The calculation for the water TIE fee is included in the attached Exhibit "B". In lieu of payment of the water TIE fee, County shall pay the entire cost to engineer, survey, permit and construct (hereafter called "Cost of Construction"), an 8" water line. The 8" line is an "oversized" line which will maximize fire flow and allow future development to tie into the water line. As future development progresses, City shall reimburse County, from water TIE fees collected by the City for the "oversized" costs from properties which connect to the oversized water line, for the Cost of Construction less the County's applicable water TIE fee. Cost of Construction, oversized costs and reimbursement to the County are as specified in the attached exhibits. Estimated Cost of Construction for the water line is \$54,000.00 and the County's Water TIE fee is \$2,733.12 therefore the estimated reimbursement would be \$51,266.88

c. County understands that TIE fees are non-refundable.

d. TIE fees are calculated by the City based on the number of connection fees approved for reservation as indicated in Exhibit "B". One (1) TIE fee is due for each connection (ERC) reserved.

e. County understands that increases in capacity reservation will result in additional TIE fees.

f. County and City agree that the total Cost of Construction for all engineering, surveys, permits and construction work to provide water services shall not exceed \$80,225.00. All the work shall be performed by or contracted by the City. Payment schedules for payment by the County for the Cost of Construction shall be as specified in the attached Exhibits.

2. Connection Fees

a. The connection fees- shall be calculated according to the rate schedule adopted by the City at the time the County executes this agreement. The calculation for the connection fees to be purchased at the time of execution of this agreement is included in the attached composite Exhibit "B." The amount of the connection fees shall be as specified in this Agreement or appropriate exhibit attached hereto.

b. County must proceed with due diligence toward the use of all connection fees purchased.

c. Connection Fees are not sold on speculation and may be repurchased by the City at the price paid by the County if significant progress is not made toward construction within twenty-four (24) months of the date the purchased connection fee becomes available to the County. The time for "significant progress" may be extended pursuant to the provisions of this Agreement concerning "Force

Majeure.”

d. The following actions must precede the reservation of water connection fee / capacity:

i. The County must complete the Concurrency Determination Application.

ii. The City must approve in writing the Concurrency Determination Application.

iii. All Costs of Construction, in lieu of payment of water TIE fees, must be paid in accordance with the attached Schedules.

iv. This Potable Water Service Agreement and attachments must be fully executed.

e. The Water Connection fee is \$3,039.00 and shall be paid as follows:

i. The first fifty (50%) percent of all water connection fees to be reserved must be paid upon execution of this agreement.

ii. The next twenty five (25%) percent of the water connection fees shall be paid upon issuance of the individual building permits for which ERC's are reserved.

iii. The final twenty five (25%) percent of the water connection fees shall be paid upon issuance of the Certificate of Occupancy.

f. The purchase of ERC's and TIE fees under this agreement does not act to set the price for future purchases, unless such fees are specifically covered by this Agreement. Any future purchases will be at the price set by the City at time of payment.

g. Capacity is reserved for a particular location and pre-supposes that the City will be prepared to serve that capacity according to the agreed upon availability schedule at that location and no other.

h. Fire flow volumes and pressures are limited by the City's potable water extension service infrastructure. The fire flow volumes and pressure flow which will be provided by the City are appropriate for single family homes. Need for enhanced fire flow volumes, pressures, over extended time periods may indicate that Developer set a storage tank with high pressure pumps or otherwise supplement existing potable water delivery at County's expense. City shall not reduce its fire flow volumes and pressures after County has commenced development of the Property.

3. Until County provides the City with full payment for all TIE water fees, connection fees and completes all other requirements of this agreement, no water service will be provided.

4. The City reserves the right to determine the number of ERC's it will allow to be purchased. The City has determined at the time of execution of this agreement that the County may purchase three (3) water ERC's. These capacities will be available at the times listed on Exhibit "C".

5. County may not transfer any water capacity reserved without written permission from the City. Any such transfer will void the capacity reservation and the ERC's will revert back to the City and the County will forfeit any right to any repayment of the connection fees paid for the capacity reservation. The City shall not withhold permission for a transfer of capacity to another property or another project if the request is reasonable.

6. The purchase of ERC's and TIE fees does not act to set the price for

future purchases, but only as to purchases specifically set forth in this Agreement. Any future purchases not contemplated by this Agreement will be at the price set by the City at time of payment.

B. County's responsibility after connection to City's water system.

After connection to City's water system:

1. The County shall be responsible for all water distribution lines from the County's side of the water meter.
2. The County shall provide the City with any easement necessary to access the water meter once the placement for the meter is identified.

C. Other.

1. The City's land development regulations require dual systems for irrigation, Florida friendly landscaping, energy efficient construction, energy efficient appliances, and underground utilities. These land development regulations will apply to this development.
2. County will be responsible for costs associated with the recording of this document.

PART III. CITY'S OBLIGATIONS

A. When, at no cost to City, (1) the potable water distribution system has been satisfactorily installed, inspected, tested, approved and certified in writing by County's engineer, with the City, or its authorized representative; (2) County has satisfied the conditions of this Agreement; and (3) the City's authorized representative has inspected the constructed facilities, permitting documents and construction "as-built" drawings, and received four (4) sets of signed and sealed "as-built" drawings and one (1) set of electronic as-built drawings in PDF format, then the City shall thereafter

connect the water distribution system. The obligation of the City to furnish water other than construction water shall not arise until County has completed the conditions contained in this paragraph. The City shall have at least thirty (30) days from completion of construction to review drawings and constructed facilities.

B. The City shall extend water transmission facilities to the Property.

C. The City shall make available to the County the ERC's purchased by County at the dates indicated in the attached Exhibit "C".

D. The City shall provide all water services to the Property.

PART IV. MUTUAL COVENANTS

It is mutually agreed by and between the parties that the preambles contained at the beginning of this Agreement are true and correct and in addition to them it is mutually covenanted and agreed as follows:

A. In addition to binding County, the provisions of this Agreement shall run with the land and be binding upon and inure to the benefit of successors to title to the property or any part thereof after this Agreement has been recorded in the Public Records of Sumter County, Florida. However, any other assignment or transfer of County's rights and obligations is prohibited unless:

1. Assignment shall be done in writing in the same formality as this Agreement.

2. City shall be a party of said assignment and shall not unreasonably withhold approval of assignment.

3. County shall remain primarily liable to City for the terms and conditions of this Agreement unless assignment is made in compliance with this section.

City agrees to execute a "Satisfaction by Assignment" for County if this Agreement is properly assigned.

B. All prior Agreements pertaining to the supply of potable water service affecting the Property are hereby cancelled and declared of no force and effect upon that Property which is the subject matter of this Agreement.

C. City shall have the exclusive right to furnish water service, wastewater service and reuse water service to consumers within the Property covered by this Agreement.

D. County, its successors and assigns, shall not install or shall not be connected to any potable water system other than the City's system, except for outdoor irrigation purposes.

E. City shall have the right to promulgate from time to time reasonable rules and regulations relating to the furnishing of water service to consumers within the Property encompassed by this Agreement. Such rules and regulations may relate to, but are not limited to, rates, deposits, and connection charges and the right to discontinue services under certain conditions. The water rates to be charged by City to said customers shall be the rates now or hereafter charged to other customers within the area of service of the County's Property. County hereby acknowledges and agrees that rates are subject to change at any time by City. County further acknowledges that it shall be subject to City ordinances related to water services.

F. City shall not be liable or responsible for maintenance or operation of any pipes, pipelines, valves, fixtures or equipment on County's Property.

G. Unless otherwise specified, this Agreement shall not be binding until fully executed, but once executed, it shall have a retroactive effect commencing from the

date of the Commission meeting at which it was approved.

H. County shall keep

(a) Water lines, connections and necessary fixtures on the consumer's side of the water meter in good order and condition. The sale of water by City to the consumer shall occur at the consumer's side of the entire meter installation, but the obligation for the maintenance of the lines shall be set forth above and in applicable City regulations.

I. No water from City's water distribution system shall be used or disbursed by County or its agents, through fire hydrants or water mains, or by any person, firm, corporation or agency, public or private, unless adequate provisions have first been made for compensating City for such water, as provided for within the City's Ordinance.

J. Any temporary cessation or interruptions of the furnishing of water service to the Property described herein at any time caused by Act of God, fires, strikes, casualties, accidents, power failures, necessary maintenance work, breakdowns, damaged equipment or mains, civil or military authority, riots or other cause beyond the control of the City shall not constitute a breach of the provisions contained herein nor impose liability upon the City by the County, their successors and assigns.

K. If any section, subsection, sentence, clause, phrase or portion of this Agreement is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions hereof.

L. This Agreement shall be recorded by the City among the Public Records of Sumter County, Florida, for the particular purpose of placing the Owner(s) or

occupants of County's Property connected to or to be connected to said water and sewer systems of City upon notice of each and every one of the provisions herein contained to the same extent and with the same force and effect as if said Owners and occupants had joined with the parties to this Agreement in the execution thereof; and the acquisition or occupancy of real Property in County's Property connected to or to be connected to the said water systems of City shall be deemed conclusive evidence of the fact that the said Owners or occupants have consented to and accepted the Agreement herein contained and have become bound thereby.

M. It is mutually agreed that the City shall be held harmless from any and all liability for damages if City's obligations under this Agreement cannot be fulfilled as a result of any ruling or order by any other governmental or regulatory agency having jurisdiction over the subject matter hereof; and in such event, this Agreement shall be null and void and unenforceable by either party regarding that portion of the County's Property for which City cannot perform its obligations.

N. Until all of County's obligations under this agreement are met, the City may refuse services or terminate all service to the Property.

O. The calculation of connection and TIE fees in this agreement are based upon County's representation of the intended development on the property. If County has provided City with inaccurate information it could result in additional connection and TIE fees.

P. Neither party shall be responsible for damages or delays caused by events beyond the control of the party and which could not have been reasonably

anticipated or prevented (hereinafter "Force Majeure"). For purposes of this Agreement, Force Majeure includes, without limitation: fire; flood; hurricane; tornado; earthquake; windstorm; sinkhole; unavailability of materials, equipment or fuel; war; declaration of hostilities; terrorist act; civil strife; strike; labor dispute; epidemic; archaeological excavation; government-declared moratorium; or act of God. If a party is delayed in any work pursuant to this Agreement for occurrence of an event of Force Majeure, the date for action required or contemplated by this Agreement shall be extended by the number of days equal to the number of days such party is delayed. The party seeking to be excused based on an event of Force Majeure shall give written notice of the delay indicating its anticipated duration. Each party shall use its best efforts to rectify any conditions causing the delay and will cooperate with the other party.

PART VI. NOTICE

Whenever either party desires to give notice to the other, it shall be given by written notice, sent by prepaid, certified, United States, mail, with the return receipt requested, addressed to the party for whom it is intended, at the place specified as the place for giving notice, which shall remain until it shall have been changed by written notice in compliance with the provisions of this paragraph. For the present, the parties designate the following as the respective places for the giving of notice:

CITY OF WILDWOOD

City Manager
City of Wildwood
100 N. Main Street
Wildwood, Florida 32786

FOR THE COUNTY

County Administrator
Sumter County
910 N. Main Street
Bushnell, FL 33513

Notice so addressed and sent by prepaid certified mail, with return receipt requested, shall be deemed given when it shall have been so deposited in the United States mail.

PART VII. ADDITIONAL PROVISIONS

A. The parties agree that in the event it becomes necessary for any party to this Agreement to litigate in order to enforce its rights under the terms of this Agreement then, and in that event, the prevailing party shall be entitled to receive reasonable attorney's fees and the cost of such litigation including appellate litigation.

B. EXHIBITS

The following exhibits are attached, as part of this Agreement and are incorporated into this Agreement:

EXHIBIT "A" - Legal description of Sumter County's property

EXHIBIT "B" - Calculations for TIE and Connection fees.

EXHIBIT "C" - Schedule of Construction Time Frames

EXHIBIT "D" - Schedule of Payments by County for Cost of Construction

EXHIBIT "E" - Calculation of Reimbursement for Cost of Construction less applicable TIE fees.

IN WITNESS WHEREOF, the parties hereto have caused these presents to be executed on the day and year indicated below:

Signed, sealed and delivered
in the presence of:

ATTEST

CITY OF WILDWOOD

Joseph Jacobs, City Clerk

BY: _____
Mayor Ed Wolf

ATTEST:

BOARD OF COUNTY COMMISSIONERS,
SUMTER COUNTY, FLORIDA

Gloria Hayward, Clerk of the Court

Doug Gilpin, Chairman

State of Florida
County of Sumter

The foregoing instrument was acknowledged before me this _____ day of _____, 2010, by Ed Wolf, Mayor of the City of Wildwood, who has produced _____ as identification or is personally known to me.

Notary Public, State of Florida

State of Florida
County of Sumter

The foregoing instrument was acknowledged before me this _____ day of _____, 2010, by Doug Gilpin as Chairman of Sumter County Board of Commissioners, who has produced _____ as identification or is personally known to me.

Notary Public, State of Florida

EXHIBIT A

Legal Description Coleman Fire Station 33

A portion of the East 1/2 of the SW1/4 of Section 30, Township 19 South, Range 23 East, Sumter County, Florida, lying North of County Highway No. 23, being more particularly described as follows:

Commence at the NW corner of the East 1/2 of the SW 1/4 of said Section 30, thence S00°07'57"E along the west line thereof, 1668.53 feet to the Point of Beginning; thence continue along said West boundary S00°07'57"E, 230.39 feet to the intersection with the Northerly right-of-way line of County Highway No. 23 (50 feet wide), said point being on a curve concave to the Northwest, having a central angle of 19°27'29" and a radius of 644.50 feet; thence departing said West line, proceed Northeasterly along the arc of said curve and said right-of-way line a distance of 219.01 feet; thence continue along said right-of-way line N44°57'33"E, 82.36 feet; thence departing said right-of-way line N45°02'27"W, 200.00 feet; thence S44°57'33", 134.53 feet to the Point of Beginning.

City of Wildwood

100 N. Main Street
Wildwood, FL 34785 - 352-330-1330

EXHIBIT B

DEVELOPER UTILITY CONCURRENCY CONNECTION FEES:

PROJECT NAME: Coleman Fire Station

WATER CONNECTION FEE:

Check One

- | | | |
|---------------------------------------|------------|--------------------------|
| a) Inside City, or, Pre-Annexation | \$1,013.00 | <input type="checkbox"/> |
| or b) Outside City, NO Pre-Annexation | \$1,225.00 | <input type="checkbox"/> |

One (1) water ERU = 300 gallons per day

Number of water connections (ERU's) requested # 3

TOTAL water connection fee charges = \$1,013.00 x #3 = **\$3,039.00**

DUE SCHEDULE:

| | |
|---|-------------|
| 50% due on execution of developer's agreement | \$ 1,519.50 |
| 25% due on issuance of each construction permit | \$ 759.75 |
| 25% due on issuance of Certificate of Occupancy | \$ 759.75 |

TOTAL \$ 3039.00

Development Authority: _____
Printed Name Signature Date

Agreement to Provide: _____
Robert Smith (City Manager) Signature Date

This commitment expires after _____ days without the execution of a Developer's Agreement

City of Wildwood

100 N. Main Street
Wildwood, FL 34785 - 352-330-1330

EXHIBIT B

DEVELOPER UTILITY CONCURRENCY TIE CHARGES DUE

PROJECT NAME: Coleman Fire Station

1) **WATER:**

- | | | |
|----|---|-------------|
| a) | One (1) water TIE due for every water connection ERU reserved | |
| b) | Number of water ERU's reserved = | # 3 |
| c) | Number of water TIE's due = | # 3 |
| d) | Charge per water TIE for this project = | \$ 911.04 |
| e) | TOTAL water TIE charges due | |
| | \$911.04 x # 3 = | \$ 2,733.12 |

2) **NOTE:**

ALL water and wastewater TIE fees are due at the execution of the Developer's Agreement

Development Authority: _____
Printed Name Signature Date

Agreement to Provide: _____
Robert Smith (City Manager) Signature Date

This commitment expires after _____ days without the execution of a Developer's Agreement

City of Wildwood

100 N. Main Street
Wildwood, FL 34785 - 352-330-1330

EXHIBIT B

DEVELOPER UTILITY CONCURRENCY TRANSMISSION INFRASTRUCTURE EXTENSION FEE - (TIE FEE)

“Worksheet”

PROJECT NAME: Coleman Fire Station

WATER TIE CALCULATION:

- | | |
|--|-------------|
| - One (1) tie (full distance) = | 15,000 feet |
| - This project to nearest wellhead = | 22,584 feet |
| - Distance schedule pro-rated value = | 1.56 TIE |
| - Fee per one (1) full distance TIE = | \$584.00 |
| - This project fee = $\$584 \times 0.35$ = | \$911.04 |

TOTAL WATER TIE = \$911.04

Development Authority: _____
Printed Name Signature Date

Agreement to Provide: _____
Robert Smith (City Manager) Signature Date

This commitment expires after _____ days without the execution of a Developer's Agreement

EXHIBIT "C"

SCHEDULE OF CONSTRUCTION TIME FRAMES

TBD – Survey and Engineering Design

TBD – FDEP Permitting

TBD – Construction

TBD – Testing, FDEP Clearance and Closeout

Note: The City of Wildwood reserves the right to adjust this schedule in the event that construction activities are delayed due to causes beyond the control of the City.

EXHIBIT "D"

SCHEDULE OF PAYMENTS BY COUNTY FOR COST OF
CONSTRUCTION

50% of the estimated total construction cost due at signing of Agreement: \$27,000.00

25% of the estimated total construction cost due at 75% of construction completion as determined by City's engineer: \$13,500.00

25% of the estimated total construction cost due at availability of ERU's purchased by County: \$13,500.00

SCHEDULE OF PAYMENTS BY COUNTY FOR COST OF
CONNECTION FEES

50% due at signing of Agreement: \$1,519.50

25% due at issuance of building permit: \$759.75

25% due upon issuance of Certificate of Occupancy: \$759.75

EXHIBIT "E"

CALCULATION OF REIMBURSEMENT FOR COST OF
CONSTRUCTION LESS APPLICABLE TIE FEES

| | |
|---|-------------------|
| Water main cost of construction (estimate): | \$54,000.00 |
| Less Water TIE fee: | <u>- 2,733.12</u> |
| Water main reimbursement (estimate): | \$51,266.88 |