

WASTEWATER TREATMENT NON-RESIDENTIAL SERVICES CONTRACT

STATE OF GEORGIA,
JACKSON COUNTY

This Contract made and entered into by the Jackson County Water and Sewerage Authority, hereinafter referred to as the "Authority" and _____, hereinafter referred to as "Developer".

1.

Developer is the owner of a tract of land located in Jackson County, hereinafter referred to as the "Tract" as more particularly described on Exhibit "A" attached hereto and incorporated herein as a part of this Contract by reference. By its below signature, the Developer affirms that the Tract is to be developed and utilized for non-residential use, as defined, characterized, and governed by the Jackson County Unified Development Code. If, prior to the installation of wastewater lines serving the Tract, the nature of the Tract's development should change to a residential use (as defined, characterized, and governed by the Jackson County Unified Development Code), this Contract shall be void and Developer must sign a Wastewater Treatment Residential Services Contract for the Tract, with all Tap Fees (as described below), being applied to amounts due under that Residential Services Contract.

2.

The Authority intends to provide wastewater services to the Tract from the wastewater treatment facility known as the "Middle Oconee Wastewater Treatment Plant" located on State Highway 11 in the City of Jefferson, Jackson County, Georgia. All non-residential wastewater taps are sold by the Authority on a "first come, first served" basis.

3.

The non-residential wastewater taps purchased in this contract are tied specifically to the Tract described in Exhibit "A." Said non-residential wastewater taps may not be reallocated to any other property without the approval of the Authority Board. With the written approval of the Authority, the purchased non-residential wastewater taps may be allocated to subdivided portions of the Tract, but shall not be reallocated to other adjoining properties of the Developer. In the event that a third party purchases or otherwise acquires said the Tract, the wastewater taps shall be conveyed with said Tract, and shall not be separated from said land. In no case shall the Authority authorize the conveyance or brokering of the non-residential wastewater taps described herein to a third party for service on a property other than the Tract.

4.

The Developer shall prepay all non-residential wastewater Tap Fees to the Authority to aid in development of wastewater infrastructure necessary to provide wastewater services to the Tract. The Tap Fees paid by the Developer shall be utilized by the Authority to develop the wastewater treatment infrastructure and capacity required to serve the Tract and to maintain said infrastructure and capacity until such time as said capacity is utilized by the Developer on the Tract. The Tap Fees represent the sunk costs incurred by the Authority in developing the necessary sewer infrastructure and capacity and are therefore non-refundable. This Agreement shall be executed and the Tap Fees shall be paid at the time of the Authority mandated pre-construction meeting. The construction plans for the Tract shall not be approved by the Authority without full payment of the Tap Fees.

Non-Residential Wastewater capacity fees (hereinafter referred to as "Tap Fees") shall be calculated by taking the number of Equivalent Residential Units ("ERUs") of capacity purchased, multiplied by the per ERU rate ("Tap Rate") in effect at the time of payment. ERUs shall be defined as provided by applicable Authority rules, regulations, and standards.

5.

The Authority has approved the purchase of _____ Equivalent Residential Units of non-residential wastewater capacity for the Tract, the terms of said purchase being described below. Requests for non-residential wastewater taps shall be considered at the time the request is made and subject to availability and cost of service capacity. The Authority guarantees it will make available wastewater treatment capacity which will be available for Developer's use as requested by Developer or on or before _____, whichever is the latest date to occur, at the volume represented by non-residential wastewater taps paid for hereunder. The site plan, when approved by the local governing authority, will become an exhibit to this Contract and shall be made a part and incorporated herein by reference.

6.

The Authority's governing board has approved the Developer's pre-purchase of _____ Equivalent Residential Units at the Tap Rate of _____ Dollars (\$ _____) per ERU. The total Tap Fee of _____ Dollars (\$ _____) is to be paid simultaneously with the execution of this Contract, which amount is to be considered as consideration for the Authority's execution of this Contract and for the taps purchased. No wastewater capacity shall be reserved until this Contract is executed and all Tap Fees have been paid.

7.

If applicable, the cost of 1 non-residential wastewater tap for the other non-sewered parcels in the Tract shall be the ERU cost in effect at the time a request is made and paid for in full.

8.

The parties understand and agree that the Authority's obligation to furnish wastewater treatment infrastructure to the Tract should be at the closest connection of Authority's system as shown on Exhibit _____. The Developer has sole responsibility to construct all wastewater treatment infrastructures inside the boundary of its Tract in strict accordance with Authority's standards of construction. Additionally, the Developer has sole responsibility for all costs (to include, though not limited to, construction costs, land acquisition costs, inspection costs, and regulatory costs) which may be incurred in reaching the Authority's sewer system connection if said connection is not within the Developer's tract. Any such off-Tract easements, equipment, and infrastructure shall be dedicated and conveyed to the Authority in the same manner as such easements, infrastructure and equipment located on the Tract. Such wastewater treatment and transmission infrastructures must receive approval of the Environmental Protection Division of the Georgia Department of Natural Resources if required.

9.

The terms and conditions of this Contract are binding on, and shall inure to the benefit of the successors and permitted assigns of the parties.

10.

Neither party may assign its rights, duties, obligations or interests under and in this Contract without the non-assigning party's prior written consent. Any purported assignment without such consent shall be null and void.

11.

The Authority shall operate the wastewater system in a reasonable and customary manner, in accordance with applicable Authority rules, regulations, and standards, and in compliance with applicable Georgia and United States law. The parties acknowledge that interruptions of service may occur, in which event the Authority shall take all reasonable means to restore the wastewater system to operation as soon as possible in accordance with good engineering practice.

12.

For purposes of this Contract, the term force majeure means any event or circumstance which (i) is beyond the reasonable control of the Party affected (Affected Party), (ii) occurs or exists without fault or negligence on the part of the Affected Party, and (iii) prevents, wholly or in part, the Affected Party from performing its duties and obligations under this Contract (other than obligations of the Affected Party to pay or expend monies for or in connection with its performance under this Contract). Force majeure includes, but is not limited to, act of God, fires, floods, droughts, earthquakes, windstorms, hurricanes, strikes, lockouts, explosions, riots, insurrections, acts of a public enemy, wars, acts of sabotage, actions or orders of governmental authorities (civil or military), and breakage of or damage to pipelines, machinery, or equipment. Force majeure also includes any delay by the Environmental Protection Division of the Georgia Department of Natural Resources to issue required permits and to approve any plans submitted by the Authority for the expansion of the Middle Oconee Wastewater Treatment Plant and the wastewater infrastructure in order to provide wastewater treatment services to Developer's property described in Exhibit ____ to this Contract.

13.

Notwithstanding any other provision of this Contract, a delay or failure on the part of the Affected Party in performing its duties and obligations under this Contract shall be excused if, and to the extent, such delay or failure in performance is caused by force majeure but only during the continuance of such force majeure; provided, however, that written notice of such force majeure and the reason(s) therefore shall be promptly given by the Affected Party to the other Party; and provided further that the Affected Party shall act diligently in attempting to remove or eliminate such force majeure. In such event, neither Party shall be liable to the other Party for any loss or damage caused by such force majeure.

14.

If this project is outside the Authority's service district, Developer shall provide a written commitment from the local government designated to serve such district, in a form acceptable to the Authority (in its sole, reasonable discretion) which allows the Authority to provide sewer service within such district prior to Developer receiving sewer service hereunder.

15.

The Developer and its assigns agree to be bound by all rules and regulations promulgated by the Authority from time to time for use of the treatment facilities and wastewater infrastructure.

16.

The Developer and its assigns agree to be bound by all rules and regulations promulgated by the Environmental Protection Division of the Georgia Department of Natural Resources from time to time for use of the treatment facilities and wastewater infrastructure.

17.

This Contract shall be construed and performed in accordance with the laws of the State of Georgia. Any action to protect or enforce rights under the provisions of this contract shall be brought in the Superior Court of Jackson County, Georgia.

18.

This Contract supersedes all prior contracts, negotiations and representations of the parties and no term or condition not set forth herein shall be binding on the party.

19.

During the pendency of this Contract, developer shall indemnify the Authority against any claims, losses, or costs incurred by the Authority arising out of those easements, equipment, and infrastructure conveyed to the Authority. If a wastewater line is installed on property for which no easement has been obtained, the Developer shall indemnify the Authority for all costs associated with remedying said encroachment, to include any court costs, attorney's fees, etc.

20.

Upon execution of this Agreement, the Developer shall simultaneously open a billing account with the Authority. Any fees or costs associated with the Tract shall be billed to the Developer on this account. The opening of this account shall have no effect on the due date for payment of Tap Fees as provided in Paragraph 6.

21.

Developer agrees that, should the Non-Residential Wastewater Taps not be utilized within two years of the effective date, said taps will be terminated and the Authority will be free to sell the reserved capacity to someone else. Developer will not be entitled to any refund of the paid Tap Fee, as said funds will have been utilized by the Authority in anticipation of providing the wastewater treatment capacity reserved in this Agreement. Any further purchase of Non-Residential Wastewater Taps by the Developer will be made at the then-applicable Tap Fee.

SPECIAL STIPULATIONS (if required)

IN WITNESS WHEREOF, the parties have executed this Contract by its duly authorized officers under hand and seal this _____ day of _____, 20____.

Signed, sealed and delivered
in the presence of:

JACKSON COUNTY WATER AND
SEWERAGE AUTHORITY

Witness

Eric Klerk
Authority Manager

Notary Public

Signed, sealed and delivered
in the presence of:

DEVELOPER/OWNER

Witness

Notary Public
