BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for Original Certificate of Authorization and Initial Rates and Charges for Water and Wastewater Service in Duval, Baker and Nassau Counties, Florida by FIRST COAST REGIONAL UTILITIES, INC.	)	DOCKET NO. 20190168-WS FILED:

JEA'S RESPONSE IN OPPOSITION TO FIRST COAST REGIONAL UTILITIES' MOTION TO STRIKE AND JEA'S MOTION FOR SUMMARY FINAL ORDER

JEA, pursuant to rule 28-106.204, Florida Administrative Code, responds in opposition to First Coast Regional Utilities' Motion to Strike, and also moves for entry of a Summary Final Order denying First Coast's Application.

BACKGROUND AND UNDISPUTED FACTS

1. On August 27, 2019, First Coast Regional Utilities, Inc. ("First Coast") filed its Application for Original Certificate of Authorization and Initial Rates and Charges for Water and Wastewater Service ("Application" or "App.").

2. First Coast is a wholly-owned subsidiary of developer 301 Capital Partners, LLC. App., p. 2.

3. Developer 301 Capital Partners, LLC states that it "either owns or has exclusive purchase rights to 10,000 contiguous acres of property located in Duval, Nassau, and Baker Counties." App., p. 3. It created a subsidiary named First Coast to ostensibly be the water and wastewater utility to its own development.

4. The territory proposed to be served by First Coast is 11,800 acres in Duval, Nassau and Baker Counties. App., p. 2. The additional 1,800 acres is in Baker county and is owned by the Chemours Company FC, LLC. App., p. 3. Chemours is currently mining that

1,800 acre tract but states that mining operations will be completed in the "not too distant future" and that the property "will be ready for other uses, including potential development." App., Exh. D.

5. The developer states that it intends to develop the territory in Duval and Nassau Counties as a planned unit development ("PUD"). App., p. 3. The development "will begin in Duval County and expand based on the economy and housing demand in the area," with Baker County "currently in the planning stages for development." App., p. 3.

6. The portion of the land in Nassau County is zoned commercial and industrial and the portion of the land in Baker County is zoned agricultural (App., p. 3).

7. Neither the Nassau nor Baker County portions of the land are presently zoned or permitted for development. See Exh. A, First Coast's Answers to JEA's Requests for Admissions 6-7.

8. There is nothing in the Application indicating when the developer's land in Nassau or Baker County might be developed, if ever. The Feasibility Report attached to the Application, on the Report's page 11, says the Villages portion of the development is "located entirely in Duval County" and that "301 Capital Partners has indicated that the first phase of the Villages to be built, through 2030, will include only that portion . . . designated as the Central Villages with very limited portions of the Commercial Village."

9. The only portion of the developer's land that is presently zoned and permitted for development is in Duval County. App., p. 5. This portion of the developer's land is entirely within the municipal boundaries of the City of Jacksonville. There is no portion of the developer's land that is in Duval County but outside the municipal boundaries of the City of Jacksonville.

The City of Jacksonville's Planned Unit Development Ordinance

10. The developer's land within the City of Jacksonville is subject to City of Jacksonville Planned Unit Development Ordinance 2010-874-E ("PUD Ordinance"). App., p. 3.

11. The PUD Ordinance states that "the [developer] shall provide, at its expense, on-site treatment capacity to serve the needs of this Rural Village PUD, for potable water, wastewater, and reuse water **at levels and to standards acceptable to JEA, to be dedicated to JEA for operation and maintenance or for contract operation**." (emphasis added) See Exh. B.[1]

12. ICI Villages, LLC, was the owner of the development land located in the City of Jacksonville at the time the PUD Ordinance was enacted. App., Exh. D.

13. A report of the Planning and Development Department of the City of Jacksonville dated January 27, 2011, which recommended approval of the PUD Ordinance, states that "the owner is coordinating with JEA to provide water, sewer, and electric to the area." See Exh. C.

14. The PUD Ordinance and its history make clear that the developer, as a condition of development, is required to provide at its own expense water and wastewater treatment capacity built to JEA standards and then dedicate the treatment capacity to JEA.

15. After the City's PUD Ordinance was enacted, the development was in turn sold by ICI Villages, LLC to 301 Capital Partners, LLC. See App. Exh. D.

[1] Attached as Exhibit B to this Response/Motion is a copy of the portion of the PUD Ordinance relating to the water and wastewater capacity being constructed at the developer's expense and dedicated to JEA. A more complete version of the PUD Ordinance is attached to First Coast's Application as the Application's Exhibit B. Exhibit B to this Response/Motion should be reviewed as it pertains to the dedication language in the PUD Ordinance because the version submitted by First Coast in its Application is marked to the point of being barely legible, if legible at all.

16. Despite the plain language in the City's PUD Ordinance requiring the water and wastewater capacity to be built "at levels and to standards acceptable to JEA" and then "to be dedicated to JEA," 301 Capital Partners, LLC and its subsidiary First Coast take the position that this language "is different from dedication language" and means simply that "JEA would have the option to bid on a contract for operation of the subject facilities, should it desire to do so."[2]

17. Clearly the plain language of the City's enacted PUD Ordinance says nothing like what the developer and First Coast suggest. The PUD Ordinance says the facilities are "to be dedicated to JEA" yet the developer and its subsidiary First Coast would have the Commission believe they can just build their own facility and go into the water and wastewater utility business themselves without JEA as the provider.

18. If the developer thinks the City's PUD Ordinance is unclear or unconstitutional[3], it can challenge it or obtain a declaratory judgment through a judicial action. Neither it nor its predecessor have done so in the decade since the PUD Ordinance was enacted by the City.

19. Instead of pursuing judicial action, or complying with the City's PUD Ordinance, 301 Capital Partners, LLC created a subsidiary, named it First Coast, and now asks the Commission through its Application to not only bless its blatant disregard of the City's PUD Ordinance that requires it to provide at its expense and then "dedicate" water and wastewater facilities to JEA as a development condition, but to also take from JEA's existing franchise territory within the municipal boundaries of the City of Jacksonville and within Nassau County.

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[2] See July 31, 2020, Rebuttal Testimony of Robert Kennelly, page 3, line 12, *et seq*.

[3] In his July 31, 2020, rebuttal testimony (page 3, line 4), Mr. Kennelly refers to the City of Jacksonville's PUD Ordinance dedication language as "an impermissible exaction." As the Commission lacks authority to decide constitutional issues, the developer would have to take such a complaint to a court, which the developer has never done.

20. If the developer complied with the City's PUD Ordinance by providing the water and wastewater capacity for the development and dedicating the same to JEA, there can be no question JEA would have the ability to immediately operate and maintain the facilities as part of its water and wastewater system. In his direct testimony prefiled on June 26, 2020, JEA witness Joseph Orfano testified to the extensive resources of JEA's system, which currently serves about 370,000 customers for water and about 278,000 customers for wastewater and currently has annual revenues of about $450 million and net capital assets of approximately $2.75 billion. As further testified by Mr. Orfano:

> JEA's Water System is comprised of 20 major and 18 small water treatment plants and two re-pump facilities. It has 137 active water supply wells and 4,806 miles of water distribution mains. Total finished water storage capacity is in excess of 83 million gallons. The Water System has two major and four small distribution grids. JEA's Wastewater System is comprised of approximately 4,113 miles of gravity sewers and force mains, 1,482 pumping stations and 754 low pressure sewer units. The Wastewater System has 11 treatment plants with a rated average daily treatment capacity of approximately 123 million gallons per day ("MGD") and maximum daily flow capacity of 247 MGD.

As prefiled testimony is submitted unsworn, attached as Exhibit D is an affidavit from Mr. Orfano attesting to the truth of these facts by incorporating his prefiled testimony into the affidavit.

21. In sum, the portion of the development within Nassau and Baker Counties is neither zoned nor permitted for development, and the Application leaves as pure speculation if or when the land in those counties will ever be developed. The remaining portion of the proposed development -- the portion within the municipal boundaries of the City of Jacksonville -- is subject to a City of Jacksonville PUD Ordinance requiring First Coast's parent 301 Capital Partners, LLC, as a required condition of the planned unit development, to provide onsite water

and wastewater capacity "at levels and to standards acceptable to JEA," which is then "to be dedicated to JEA for operation and maintenance or for contract operation."

22. The portion of First Coast's proposed service territory located in the City of Jacksonville is within the exclusive franchise territory of JEA as granted by the City of Jacksonville and the portion of First Coast's service territory located in Nassau County is within the exclusive franchise territory of JEA as granted by Nassau County when it was a non-jurisdictional County. These JEA franchises are discussed in turn below.

JEA's Exclusive Franchise in the City of Jacksonville

23. Section 21.07(l) of the City of Jacksonville Charter provides in part: "This franchise fee [paid by JEA] is in consideration of the administrative costs incurred by the City to coordinate functions and services with JEA, **for the exclusive right to serve electric, water and sewer customers**, for use by JEA of the public rights-of-way used by it in connection with its electric distribution system and its water and sewer distribution and collection system, and in further consideration of the unique relationship of JEA and the City, in which JEA is a wholly owned public utility, and such other good and valuable consideration that has been agreed to between JEA and the City of Jacksonville." (emphasis added) See Exh. E.

24. Similarly, an interlocal agreement between the City of Jacksonville and JEA provides in part that: "[t]he consideration for the Franchise Fee is **the exclusive right for JEA to serve electric, water and sewer customers** . . . ." (emphasis added) See Exh. F.

25. Florida law gives municipalities the authority as part of their public works to provide water and wastewater service, as the City has done with its wholly-owned utility JEA. *See, e.g.,* § 180.02(1), Fla. Stat. ("For the accomplishment of the purposes of this chapter [chapter 180 Municipal Public Works], any municipality may exercise its corporate powers

within its corporate limits"); § 180.06, Fla. Stat. ("[a]ny municipality is authorized . . . [t]o provide water and alternative water supplies . . . [and] [t]o provide for the collection and disposal of sewage, including wastewater reuse").

JEA's Exclusive Franchise in Nassau County

26. On December 17, 2001, Nassau County, while it was a non-jurisdictional county[4], granted JEA the exclusive authority to provide water and wastewater service to the portion of the County in which the subject development is located.

27. The Nassau County/JEA Water and Wastewater Interlocal Agreement by which the franchise right was granted to JEA provides in part that: "JEA will have exclusive authority to provide water and wastewater (including reuse) services within the Service Territory and elsewhere in Nassau County" and that "The County and JEA agree that the rights of JEA to provide water and wastewater services in Nassau County are limited by this Agreement to the Service Territory and the Additional Territory."[5] See Exh. G.

28. In addition to other valuable consideration described in the agreement, JEA paid Nassau County $1.5 million for the County's "consent to all of the terms and conditions of this Agreement, including but not limited to granting JEA rights to operate and provide services in the Additional Territory." See Exh G, § 8.

[4] Nassau County was a non-jurisdictional county between September 17, 2001 and July 15, 2002. *See In Re: Rescission by Nassau County of Resolution No. 2001-128, Which Rescinded Florida Public Service Commission Jurisdiction Over Investor-Owned Water and Wastewater Systems in Nassau County*, Order No.: PSC-02-1411-FOF-WS, Docket No. 011344-WS (Fla. P.S.C. Oct. 10, 2002).

[5] The "Additional Territory" is defined in the agreement to include all areas west of the Intracoastal Waterway, except incorporated Callahan and Hilliard. As the portion of the developer's land in Nassau County is located west of the Intracoastal and not in Callahan or Hilliard, it would be in the Additional Territory granted by the County to JEA.

29. In its Motion to Strike, First Coast misstates JEA's position as being that "JEA, not the Commission, is the only entity -- by and through its 'franchise agreements' -- which will decide what utilities operate within those unilaterally established territories set forth in those agreements." Motion to Strike, ¶ 2.

30. JEA was granted an exclusive franchise by the City of Jacksonville as part of the City's public works and was granted an exclusive franchise by Nassau County when Nassau County was a non-jurisdictional county.[6] The City of Jacksonville has made JEA, which is wholly-owned by the City, the exclusive provider of water and wastewater service within the City. Nassau County has made JEA the exclusive provider of water and wastewater service for those portions of Nassau County in which the development is located.

31. JEA is not attempting to itself "decide what utilities operate" in those areas as First Coast's Motion to Strike states. The City of Jacksonville and Nassau County have already decided that JEA is to be the exclusive provider. First Coast through its Application instead asks the Commission to disregard the franchises given to JEA by those governmental entities and give them to First Coast, which is something the Commission has no authority to do given that JEA has the ability to serve the development as provided by the PUD Ordinance.

[6] First Coast's Motion to Strike says it is "notable" that JEA's franchises "do not even mention either the Commission nor it [sic] jurisdiction or authority." To the contrary, it is not "notable" at all. JEA's franchise with the City of Jacksonville derives from the City's municipal powers and JEA's franchise with Nassau County was granted when Nassau County was non-jurisdictional. There would have been no reason for those franchises to reference the Commission.

ARGUMENT

While the Commission has subject matter jurisdiction to consider First Coast's Application because the proposed system transverses county lines[7], the Commission lacks the authority to take water and wastewater franchises previously and validly granted by local governments to JEA when the franchise holder, JEA, is able to provide service to the development as required by the PUD Ordinance. That is precisely what First Coast asks the Commission to do -- not only disregard the City of Jacksonville's PUD Ordinance but also take from JEA portions of franchises previously granted to JEA by the City of Jacksonville and Nassau County.

In addition to the exclusive provision of water and wastewater service by a municipality within its boundaries under chapter 180, Florida Statutes, as referenced above, the law is that first in time is first in right and that a franchise deriving from a local government is on equal footing with one granted by the Commission. The Commission has no authority to give First Coast franchise rights already granted to JEA by the City of Jacksonville and Nassau County. Because there are no disputed facts on this issue, First Coast's Application should now be denied as a matter of law.

I. JEA HAS THE EXCLUSIVE FRANCHISE TO SERVE THE DEVELOPMENT WITHIN THE CITY OF JACKSONVILLE AND NASSAU COUNTY AND THE COMMISSION HAS NO AUTHORITY TO SUBSEQUENTLY TAKE THOSE RIGHTS AND GIVE THEM TO FIRST COAST

When it comes to water utility franchises, first in time is first in right, provided there is an ability to serve. Because the City of Jacksonville and Nassau County have already granted the franchises to JEA, the Commission has no authority to take JEA's franchise rights and give them

[7] If only in theory, given the current speculative nature of any potential future development in Nassau and Baker counties.

to First Coast. The law is that "the entity, whether governmental or private, which first acquired the legal right to provide water service to the subject area and which has the ability to do so is the entity with the exclusive legal right to do so." *Lake Utility Services, Inc. v. City of Clermont,* 727 So. 2d 984 (Fla. 5th DCA 1999); *see also City of Mount Dora v. JJ's Mobile Homes, Inc.*, 579 So. 2d 219 (Fla. 5th DCA 1991) (holding that "[w]hen each of two public service utility entities, whether governmental or private, have a legal basis for the claim of a right to provide similar services in the same territory and each has the present ability to promptly and efficiently do so, that entity with the earliest acquired (prior) legal right has the exclusive legal right to provide service in that territory without interference from the entity with the later acquired (subsequent) claim of right"). Because JEA has the existing franchise and the ability to serve, JEA's rights cannot now be taken away by the Commission and given to First Coast.

Both *JJ's Mobile Homes* and *Lake Utility Services* involved competing franchise rights between a private water utility and a municipality. In *JJ's Mobile Homes*, a private utility (JJ's Mobile Homes) had a certificate of authorization issued by the Commission to serve certain geographical territory which was, at the time the certificate was granted, outside the City of Mount Dora's municipal boundaries. 579 So. 2d 221. Thereafter, the City annexed a portion of the private utility's territory, bringing it within the City's boundaries. The City then claimed it had the right to itself provide water service within that annexed territory that was also in the private utility's Commission-certificated territory. *Id.*

The Fifth District Court of Appeal first noted that franchises given by the Commission are a "special privilege" and a "property right in the legal sense of the word" *Id.* at 223. The Court concluded the City was "not authorized to interfere with those preexisting rights by the mere subsequent annexation of a portion of the private company's territory." *Id.* at 224. The

private utility "not only had the prior legal right but, more importantly, it also had the ability to meet its duty to provide such services." *Id.* In protecting the private utility's franchise that was first in time (i.e., before the City's annexation), the Court held that "the basis for the right of both governmental and private entities to provide utility services to the public is statutory and the franchise right of each is equal and neither entity is, *per se*, superior or inferior to the other." *Id.* at 225.

Franchises, whether granted by the Commission or local government, are equal rights. When one is first in time and has the ability to provide service, another cannot displace it: "that entity with the earliest acquired (prior) legal right has the exclusive[8] legal right to provide service in that territory without interference from the entity with the later acquired (subsequent) claim of right." *Id.* Through its Application, First Coast asks the Commission for rights that already belong to JEA. Just as the City of Mount Dora had no authority to take the prior rights of the private utility by annexing part of its Commission-certificated territory, the Commission in this case has no authority to grant First Coast franchise rights that are already vested in JEA.

In *Lake Utility Services*, a private water utility ("LUS") that had a certificate issued by the Commission for territory in Lake County sued the City of Clermont ("Clermont") for a declaration that LUS had the exclusive right to serve certain areas within the certificated territory. 727 So. 985. Precipitating the lawsuit, Clermont advised a developer that the developer was required to use water service from Clermont -- and not from LUS -- in order to

[8] In its Motion to Strike, First Coast attempts to make hay of JEA's use of the word "exclusive" in describing its franchises. Franchises are by their very nature exclusive. The Fifth District in *JJ's Mobile Homes* noted: "The essence of the concept of utilities serving the public is that it is in the best interests of the public that the entities, governmental or private, providing utility services not be permitted to compete as to rates and service and that each entity be given an exclusive service area and monopolistic status." 579 So. 2d at 224-225.

obtain Clermont's development approval despite the fact that the development was within LUS's Commission-certificated territory. *Id.* Clermont responded that it had created its utilities district, that included the subject development, some eight (8) months before the Commission had granted LUS a certificate for the same area. *Id.*

The trial court applied the test from the *JJ's Mobile Homes* and concluded Clermont's utilities ordinance was first in time by preceding LUS's PSC-certificated territory by approximately eight (8) months. *Id.* at 988. After concluding Clermont also had the present ability to serve the area, the trial court entered judgment in favor of Clermont.

The Fifth District Court of Appeal reversed. The Fifth District first recognized as "the controlling principle of law" the precedent from *JJ's Mobile Homes* that first in time is first in right, regardless of whether the utility is public or private, provided "each has the present ability to promptly and efficiently" provide service. *Id.* at 988. The Fifth District agreed with the trial court that Clermont was first in time (the first prong of the test) but ultimately reversed the trial court, holding that Clermont subsequently waived its right to provide service. *Id.* at 991. Clermont initially declined to provide service to the area and LUS in turn stepped up and spent time and money constructing a utility to serve the area. *Id.* at 990. The Court concluded that Clermont should not be allowed to come back and attempt to serve the same area five years later when Clermont thought it would be profitable to do so and thus that Clermont had waived its rights. Unlike the municipality in *Lake Utility Services*, JEA is not only first in time (by decades), it has the ability to provide service in compliance with the City of Jacksonville's PUD Ordinance.

II. THE COMMISSION HAS JURISDICTION OVER UTILITY SYSTEMS TRANSVERSING COUNTY BOUNDARIES BUT THAT JURISDICTION DOES NOT AUTHORIZE THE COMMISSION TO TAKE JEA'S FRANCHISE RIGHTS DERIVING FROM LOCAL GOVERNMENT AND GIVE THEM TO FIRST COAST

The Commission has subject matter jurisdiction to consider First Coast's Application pursuant to the Commission's jurisdiction over proposed utility systems that transverse county boundaries. The Commission is the sole appropriate regulator, as opposed to both the Commission and Baker County (a non-jurisdictional county). The Commission's subject matter jurisdiction over the Application, however, confers no authority on the Commission to take JEA's franchise rights in the City of Jacksonville and Nassau County.

A. The Commission's Jurisdiction Over Utility Systems That Transverse County Lines

Chapter 367, Florida Statutes, describes the Commission's regulatory oversight of water and wastewater utility systems. Section 367.171 provides a mechanism by which Florida counties can elect to give the Commission jurisdiction over water and wastewater systems in that county, subject to exemptions and other limitations spelled out in chapter 367. The default is that a county is non-jurisdictional, meaning the county itself has jurisdiction over water and wastewater systems within its boundaries. By a resolution of the county's board of county commissioners however, a county can become a PSC-jurisdictional county. § 367.171(1), Fla. Stat. There are currently 38 jurisdictional counties (including Duval and Nassau) and 29 non-jurisdictional counties (including Baker).[9]

In order to prevent a single utility system from being subject to multiple regulators from among the Commission and the various non-jurisdictional counties when the system crosses

[9] According to the Commission's website.

county lines, the law provides for exclusive jurisdiction over all such systems by the Commission. To wit:

> Notwithstanding anything in this section to the contrary, the commission shall have exclusive jurisdiction over all utility systems whose service transverses county boundaries, whether the counties involved are jurisdictional or nonjurisdictional . . .

§ 367.171(7), Fla. Stat. The purpose of this statute is to avoid the hodgepodge of duplicative regulation that would occur if the same utility system transversed the boundaries of both jurisdictional and non-jurisdictional counties. Absent this statute, First Coast's application would potentially be subject to review by both the Commission and Baker County, a non-jurisdictional county.

The Commission extensively described the purpose behind section 367.171(7) in a 1990 Order as follows:

> We do not believe that the Legislature intended … to perpetuate a situation where a utility would be subject to several regulators. On the contrary, we believe that the Legislature intended to eliminate regulatory problems that exist when utility systems provide service across political boundaries and are subject to regulation by two or more regulatory agencies …
>
> This duplicative economic regulation is inefficient and results in potential inconsistency in the treatment of similarly situated customers. Inefficiency stems from the need for multiple rate filings and multiple rate hearings. It also stems from the need to perform jurisdictional cost studies to attempt to allocate the costs of a single system across multiple jurisdictions.
>
> These inefficiencies could result in unnecessary and wasteful efforts which would translate into higher rate case expense and higher rates to customers. Inconsistency can occur when regulators apply different ratemaking principles to the same system or make inconsistent determinations on the same issue.
>
> The Legislature chose to promote efficient, economic regulation of multi-county systems by giving the Commission exclusive jurisdiction over all utilities whose service crosses county boundaries . . . . By concentrating exclusive jurisdiction over these systems in the Commission, the Legislature has corrected the problem of redundant, wasteful, and potentially inconsistent regulation.

In re: Petition of General Development Utilities, Inc. For Declaratory Statement Concerning

Regulatory Jurisdiction Over its Water and Wastewater System in DeSoto, Charlotte, and Sarasota Counties, Order No. 22459, Docket No. 891190-WS (Fla. P.S.C. Jan. 24, 1990).

B. The Commission's Jurisdiction Over Utility Systems That Transverse County Lines Does Not Give It Authority To Take JEA's Existing Franchise Rights In The City Of Jacksonville And Nassau County

The Commission has previously noted that this statute, 367.171(7), does not impact pre-existing franchise rights in a pair of dockets relating to a then-proposed development known as Nocatee, which development transverses the line between St. Johns and Duval counties.[10] In a jurisdictional order[11] relating to both dockets, the Commission distinguished the facts at issue in that case, which did not involve disputed franchise zones, from the holding of the Fifth District in *JJ's Mobile Homes*. The following information comes from that Order.

In 1999, Nocatee Utility Corporation ("NUC"), a newly-formed entity, filed an application with the Commission for an original certificate of authorization to provide water and wastewater service to Nocatee. Intercoastal Utilities, Inc. ("Intercoastal") filed a protest to NUC's application. At the time it filed its protest, Intercoastal was regulated by St. Johns County, which was then a non-jurisdictional county. Intercoastal then subsequently filed its own application with the Commission for an amended certificate of authorization to serve Nocatee.

A dispute arose regarding whether the Commission had jurisdiction under section 367.171(7) to regulate either NUC or Intercoastal for the Nocatee development, which included land in both a jurisdictional county (Duval) and a non-jurisdictional county (St. Johns). Multiple

[10] The applicable dockets are 990696-WS, *In Re: Application for Original Certificates to Operate Water and Wastewater Utility in Duval and St. Johns Counties by Nocatee Utility Corporation*, and 992040-WS, *In Re: Application for Certificates to Operate a Water and Wastewater Utility in Duval and St. Johns Counties by Intercoastal Utilities, Inc.*

[11] Order Number PSC-00-1265-PCO-WS

non-jurisdictional counties sought to intervene. As regards 367.171(7), the Commission concluded it had subject matter authority to consider the applications of both NUC and Intercoastal:

> Based on a textual reading of the statute using the definitions provided by the Legislature, we have subject matter jurisdiction to consider Intercoastal's and NUC's applications under Section 367.171(7), Florida Statutes, because each is proposing to construct a utility system whose service would transverse county boundaries, thus causing the applications to fall within our exclusive jurisdiction.

Thus, the Commission ordered that both dockets remain open and that it would consider both applications.

The issue of exclusive franchise zones and the cases of *JJ's Mobile Homes* and *Lake Utility Services* arose through arguments made by other counties seeking to intervene into the proceedings. St. Johns County sought to extend the core holding of *JJ's Mobile Homes* and *Lake Utility Services* -- that the franchise rights awarded by the Commission are equal to, not superior to, that of local governments -- to support its argument that the Commission's jurisdiction should not trump the County's jurisdiction in non-jurisdictional counties.

Under the view expressed by St. Johns County, the fundamental principle that franchise rights awarded by the Commission and local governments are equal to each other should be extended to mean that the Commission's jurisdiction is equal to that of non-jurisdictional counties. Accordingly, the County argued 367.171(7) only gives the Commission authority to award additional service territory to intercounty utilities to serve areas located in jurisdictional counties and that the Commission cannot award additional service territory in a non-jurisdictional county. That is, the Commission can award additional territory in a jurisdictional county to add to a utility's existing territory in a non-jurisdictional county but it cannot do the opposite -- it cannot add territory from a non-jurisdictional county to the utility's territory in a

jurisdictional county.

The Commission rejected this argument and held that the plain meaning of 367.171(7) gave it subject matter jurisdiction to consider the applications of NUC and Intercoastal, even though doing so could mean that the Commission would award service territory in St. Johns, a non-jurisdictional county. The Commission, however, distinguished the facts at issue with Nocatee from the holdings of *JJ's Mobile Homes and Lake Utility Services*, concluding that those two cases "involved a dispute over franchise zones, and did not involve a question of jurisdiction under Section 367.171(7)."[12]

In this case with First Coast's Application, the Commission's decision in the Nocatee matter can easily be reconciled with the holdings of the Fifth District Court of Appeal in *JJ's Mobile Homes* and *Lake Utility Services*. The Commission has subject matter jurisdiction under 367.171(7) to consider First Coast's Application. The Commission is the sole appropriate regulator, as opposed to both the Commission and Baker County. However, under *JJ's Mobile Homes and Lake Utility Services*, the Commission has no authority to award First Coast the franchises currently held by JEA in the City of Jacksonville and Nassau County given that JEA has the immediate ability to serve. Section 367.171(7) confers no authority on the Commission to disturb those existing franchise rights.

[12] Further supporting that the Commission's subject matter jurisdiction over utility systems that transverse county lines does not impact existing franchise rights, section 367.171(2), Florida Statutes, provides that when a county moves from being a non-jurisdictional county to being a jurisdictional county "any utility engaged in the construction or operation of a system shall be entitled to receive a certificate for the area served by such utility on the day this chapter becomes applicable to it." The opposite is true as well. When a county moves from jurisdictional to non-jurisdictional, under section 367.171(4) utilities certificated by the commission "shall be entitled to receive from the county in which it is located and operating a certificate of authorization for each area for which such utility held a certificate of authorization from the commission on the day the utility became subject to regulation by the county." Regardless of the regulator, whether the Commission or a county, the franchise rights remain in place.

III. FIRST COAST'S MOTION TO STRIKE MUST BE DENIED AND JEA'S CROSS MOTION FOR SUMMARY FINAL ORDER MUST BE GRANTED

A. First Coast's Motion to Strike Must Be Denied

In its Motion to Strike, First Coast asks the Commission to strike from JEA's initial pleading in this case all references to "exclusivity" with regard to JEA's franchises with the City of Jacksonville and Nassau County, which are discussed in detail above. The Motion asserts no basis germane to the standard for striking material in pleadings. Instead it says the issue of JEA's exclusive franchises "is a clear question of law which should be dealt with now . . . ."

For challenges to the legal sufficiency of an initial pleading, rule 28-106.204(2), F.A.C., provides for a motion to dismiss to be filed within 20 days, not for a motion to strike, let alone one filed a year later. On that basis alone, First Coast's Motion is worthy of denial.

Under rule 1.140(f), Florida Rules of Civil Procedure, a party may move to strike "redundant, immaterial, impertinent, or scandalous matter from any pleading at any time." Assuming the application of this rule is appropriate in this case[13], "striking of pleadings is not favored and is a drastic action to be used sparingly by courts, and further that any doubts are to be resolved in favor of the attacked pleadings." *Bay Colony Off. Bldg. Jt. Venture v. Wachovia Mortg. Co.*, 342 So. 2d 1005, 1006 (Fla. 4th DCA 1977). A motion to strike "should only be granted if the material is wholly irrelevant, can have no bearing on the equities and no influence on the decision." *See, e.g., McWhirter, Reeves, McGothlin, Davidson, Rief & Bakas, P.A. v. Weiss*, 704 So. 2d 214, 216 (Fla. 2d DCA 1998).

[13] *See In Re: Pet. for Modification of Terr. Or. Based on Changed Leg. Circumstances Emanating from Article VIII, Sec. 2(c) of the Fla. Const., by the Town of Indian River Shores*, Order No. PSC-16-0427-PAA-EU, Docket 160049-EU (Fla. P.S.C. 2016) (noting that "[r]ule 1.140(f), Florida Rules of Civil Procedure, does not control in administrative proceedings").

First Coast does not claim that JEA's exclusive franchises are "wholly irrelevant" or can have "no influence on the decision." First Coast seems to assert the exact opposite, that the issue of the Commission's authority to award First Coast territory within JEA's exclusive franchises is so relevant that it "is a clear question of law which should be dealt with now." In detail above, JEA has discussed its franchises and how those franchises preclude the Commission from awarding First Coast territory in the City of Jacksonville or Nassau County. There is no issue more relevant. First Coast's Motion to Strike must be denied.

B. JEA's Motion for Summary Final Order Must Be Granted

Section 120.57(1)(h), Florida Statutes, provides that a summary final order shall be issued if "from the pleadings, depositions, answers to interrogatories, and admissions on file, together with affidavits, if any, that no genuine issue as to any material fact exists and that the moving party is entitled as a matter of law to the entry of a final order." The Commission has recently described the standard for entry of a summary final order as follows:

> In general, "a summary judgment should not be granted unless the facts are so crystalized that nothing remains but questions of law," and "must show conclusively the absence of any genuine issue of material fact and the court must draw every possible inference in favor of the party against whom a summary judgment is sought." If the record "raises even the slightest doubt" that an issue of material fact may exist, a summary final order is not appropriate. Even if the parties agree as to the facts, "the remedy of summary judgment is not available if different inferences can be reasonably drawn from the uncontroverted facts." This Commission has also previously found that "it is premature to decide whether a genuine issue of material fact exists when [a party] has not had the opportunity to complete discovery and file testimony."

In Re: Investigation into the Billing Practices of K W Resort Utilities Corp. in Monroe County, Order No. PSC-2019-0113-PCO-SU, Docket No. 20170086-SU (Fla. P.S.C. 2019) (internal citations omitted).

At issue in this Motion for Summary Final Order by JEA is whether the Commission has the authority to grant a certificate of authorization to First Coast for service territory within the

municipal boundaries of the City of Jacksonville and within Nassau County, given JEA's exclusive franchises in those areas and given JEA's immediate ability to serve the development in accordance with the PUD Ordinance. There are no disputed issues of material fact on this issue.

As discussed above, JEA has an exclusive franchise granted by the City of Jacksonville by a City ordinance and by a franchise agreement with the City. JEA has an exclusive franchise with Nassau County for the area in Nassau County in the development, granted by Nassau County when it was a non-jurisdictional county. Under the holdings of *JJ's Mobile Homes* and *Lake Utility Services*, the Commission has no authority to take territory from JEA's existing franchises in the City of Jacksonville and Nassau County and give it to First Coast. JEA has the ability to serve the development in accordance with the City of Jacksonville's PUD Ordinance, which clearly and unequivocally requires the developer to provide at its own expense the water and wastewater capacity for the development at levels and to standards acceptable to JEA and then to dedicate the same to JEA.

If the developer has an issue with the interpretation or constitutionality of the PUD Ordinance, its recourse is to seek a judicial determination by a court. In a decade, it and its predecessor have never done that. Instead through the Application, the developer and its subsidiary First Coast ask the Commission to sanction their disregard of the City of Jacksonville's PUD Ordinance and give First Coast a portion of JEA's exclusive franchise territory in the City of Jacksonville and Nassau County, which is something the Commission has no authority to do.

WHEREFORE, JEA requests that First Coast's Motion to Strike be DENIED and that JEA's Motion for Summary Final Order be GRANTED, with a Final Order denying First Coast's Application.

Respectfully submitted this 8th day of September, 2020.

/s/ Thomas A. Crabb

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished via electronic mail to the following this 8th day of September, 2020.

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/s/ *Thomas A. Crabb*

Exhibit A

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for Original Certificate of Authorization and Initial Rates and Charges for Water and Wastewater Service in Duval, Baker and Nassau Counties, Florida by FIRST COAST REGIONAL UTILITIES, INC.	)	DOCKET NO. 20190168-WS FILED: June 1, 2020

FIRST COAST REGIONAL UTILITIES, INC.'S RESPONSE TO JEA'S FIRST REQUESTS FOR ADMISSION TO FIRST COAST REGIONAL UTILITIES, INC.

First Coast Regional Utilities, Inc. ("Applicant"), pursuant to rule 1.370, Florida Rules of Civil Procedure, responds to JEA's First Request for Admissions to First Coast Regional Utilities, Inc., as follows:

Request 1: Applicant has no franchise agreement with the City of Jacksonville that permits it to provide water and wastewater service in Duval County.

Answer: Admit. The proposed service territory is comprised by contiguous land that lies in three separate counties. Consequently, the FPSC, not the individual Counties, has jurisdiction to grant certificates to serve the proposed service territory.

Request 2: Applicant has no franchise agreement with Nassau County that permits it to provide water and wastewater service in Nassau County.

Answer: Admit. The proposed service territory is comprised of contiguous land that lies in three separate counties. Consequently, the FPSC has exclusive jurisdiction to grant certificates to service the proposed service territory.

Request 3: Applicant has no franchise agreement with Baker County that permits it to provide water and wastewater service in Baker County.

Answer: Admit.

Request 4: JEA has an exclusive franchise agreement with the City of Jacksonville that includes the service area in Duval County proposed to be served by the Applicant.

Answer: Without adequate knowledge to either admit or deny.

Request 5: JEA has an exclusive franchise agreement with Nassau County that includes the service area in Nassau County proposed to be served by the Applicant.

Answer: Without adequate knowledge to either admit or deny.

Request 6: The Nassau County portion of the land that is the subject of the Application (proposed service area) is not presently zoned or permitted for the development, or for the water and wastewater utility, described in the Application.

Answer: Admit, the approved development described in the Application is located in Duval County. Development of the Nassau County portion is currently in the planning stage. The Comprehensive Plan requires that there be water and wastewater service available to said planned development.

Request 7: The Baker County portion of the land that is the subject of the Application (proposed service area) is not presently zoned or permitted for the development, or for the water and wastewater utility, described in the Application.

Answer: Admit. The Baker County portion is currently in the planning stage. The Comprehensive Plan requires that there be water and wastewater service available to said planned development.

Request 8: Applicant did not provide JEA with notice of the Application pursuant to rule 25-30.030, F.A.C.

Answer: Admit. Neither Rule 25-30.030, F.A.C., nor the list of those entities required to receive notice provided by FPSC staff, require that notice be provided to JEA. 301 Capital Partners, through its local counsel, provided actual written notice to Aaron Zahn, JEA's then managing director and CEO. The letter notifying Mr. Zahn of the filing was dated August 26, 2019, prior to the actual filing.

Request 9: City of Jacksonville Ordinance 2010-874-E requires the developer to provide, at the developer's expense, on-site treatment capacity for potable water, wastewater, and reuse water.

Answer: Admit.

Request 10: City of Jacksonville Ordinance 2010-874-E requires that the treatment capacity be at levels and to standards acceptable to JEA.

Answer: Admit.

Request 11: City of Jacksonville Ordinance 2010-874-E requires the developer to dedicate the treatment capacity to JEA.

Answer: Deny.

Respectfully submitted this 1st day of June, 2020 by:

SUNDSTROM & MINDLIN, LLP
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Telephone: (850) 877-6555
rbrannan@sfflaw.com

By: Robert C. Brannan /brf
Robert C. Brannan
For the Firm

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished via electronic mail to the following this 1st day of June, 2020.

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Robert C. Brannan

Exhibit B

6.0 Summary of Zoning Compliance and Minimum PUD Requirements

6.1 Rural Village Checklist

Requirement	ICI Villages
Location Restrictions: No closer than 1 mile to other Rural Villages	Nearest Rural Village is over 2 ¼ miles away
Direct Access to Arterial	Access to US 301
Include Public Infrastructure (potable water and sewer)	The Applicant shall provide, at its expense, on-site treatment capacity to serve the needs of this Rural Village PUD for potable water, wastewater, and reuse water at levels and to standards acceptable to JEA, to be dedicated to JEA for operation and maintenance or for contract operation.
Size and Density: Size (min 500 ac)	5,520 ac
Minimum 2 Residential Neighborhoods	Minimum 4
Village Center Required	Village Center provided
Gross Density	7.0 du/ac (single family); 15.0 du/ac (multi-family)
Land Use Mix:	
Minimum three land uses	– Residential – Commercial Retail – Office – Public (school, fire stations, etc.)
50-90% of land area for residential uses	Will comply, currently estimated at 60%
Requirement for Town Square	Provided in Village Center
Vehicles/Pedestrian/Bicycle Access	Will be provided throughout the community
Rural Village to PUD-SC	PUD-SC zoning requested
Maximum size of Neighborhood Centers: 10 ac	Will comply
Village Center Range from 20-150 ac	Will comply

Exhibit C

2010-0874
AAG

REPORT OF THE PLANNING AND DEVELOPMENT DEPARTMENT FOR

APPLICATION FOR REZONING 2010-874 TO PLANNED UNIT DEVELOPMENT

JANUARY 27, 2011

The Planning and Development Department hereby forwards to the Planning Commission, Land Use and Zoning Committee and City Council its comments and recommendation regarding Application for Rezoning **2010-0874** to Planned Unit Development.

Location:	West side of US 301, south of I-10 Between Interstate 10 and Gilridge Road
Real Estate Number:	000974-0000
Current Zoning District:	Planned Unit Development (PUD 2006-1203-E)
Proposed Zoning District:	Planned Unit Development - Satellite Community (PUD-SC)
Current Land Use Category:	Agricultural-I, Agricultural-II
Proposed Land Use Category:	N/A
Planning District:	Southwest, District 4
City Council District:	The Honorable Ray Holt, District 11
Applicant/Agent:	Anthony S. Robbins, AICP Prosser Hallock, Inc. 13901 Sutton Park Drive South, Suite 200
Owner:	ICI Villages, LLC 2379 Beville Road Daytona Beach, Florida 32119
Staff Recommendation:	**APPROVE WITH CONDITIONS**

GENERAL INFORMATION

Application for Planned Unit Development 2010-0874 seeks to rezone approximately 5,520 acres of land from AGR and PUD to PUD-SC. The rezoning to PUD-SC is being sought so that the property can be developed as rural village master planned community. The original PUD contemplated a 2,250 acre rural village master planned community approved in 2006. The purpose of this rezoning is to add acreage to the overall development plan. The development will contain single-and multi-family dwellings as well as offices, retail commercial and parks. A maximum of 15,000 dwelling units, 750,000 square feet of commercial and 300,000 square feet of offices is proposed. There will be at least three residential types with no single lot type comprising more than 50% of the project total.

CRITERIA FOR REVIEW

Pursuant to the provisions of Section 656.125 of the Zoning Code, the Planning and Development Department, Planning Commission and City Council (including the appropriate committee) shall evaluate and consider the following criteria of an application for rezoning to Planned Unit Development.

(1) Is the proposed zoning district consistent with the 2030 Comprehensive Plan?

Yes. The Planning and Development Department finds that the subject property is located in the Agriculture-i (AGR-i) and Agriculture-ii (AGR-ii) functional land use categories as defined by the Future Land Use Map series (FLUMs) contained within the Future Land Use Element (FLUE) adopted as part of the 2030 Comprehensive Plan. The AGR functional land use category permits housing developments in a gross density range of up to seven (7) dwelling units per acre when full urban services are available to the site. The proposed PUD proposes a gross density of less than 3 dwelling units to the acre and will have full urban services available to the site. Therefore, the proposed rezoning is consistent with the FLUMs adopted as part of the 2030 Comprehensive Plan pursuant to Chapter 650 Comprehensive planning for future development of the Ordinance Code.

(2) Does the proposed rezoning further the goals, objectives and policies of the 2030 Comprehensive Plan?

Yes. The evaluation of the goals, objectives and policies of the Comprehensive Plan can be found later in this report.

(3) Does the proposed rezoning conflict with any portion of the City's land use Regulations?

No. The written description and the site plan of the intended plan of development meet all portions of the City's land use regulations and further their intent by providing specific development standards.

Furthermore, pursuant to the provisions of Section 656.341(d) of the Zoning Code, the Planning and Development Department, Planning Commission and City Council (including the appropriate committee) shall evaluate and consider the following criteria for rezoning to Planned Unit Development district as follows:

(1) Consistency with the 2030 Comprehensive Plan

Yes. In accordance with Section 656.129 *Advisory recommendation on amendment of Zoning Code or rezoning of land of the Zoning Code*, the subject property is within the following functional land use categories as identified in the Future Land Use Map series (FLUMs): Agricultural (AGR).

This proposed rezoning to Planned Unit Development is consistent with the 2030 Comprehensive Plan including the following goals, objectives and policies:

FLUE 1.1.6 Permit development only if it does not exceed the densities and intensities established in the Future Land Use Element as defined by the Future Land Use map category description and their associated provisions.

FLUE 1.1.8 Require that all new non-residential projects be developed in nodal areas, in appropriate commercial infill locations, or as part of mixed or multi-use developments such as Planned Unit Developments (PUDs), cluster developments, Traditional Neighborhood Design (TND) developments, and Locally Designated Historic Preservation Districts, as described in this element.

FLUE 1.1.10 Promote the use of Planned Unit Developments (PUDs), cluster developments, and other innovative site planning and smart growth techniques in all commercial and residential plan categories, in order to allow for appropriate combinations of complementary land uses, and innovation in site planning and design.

FLUE 1.1.11 Ensure that mixed and multi-use projects enhance, rather than detract from, the character of established developed areas by requiring site plan controlled zoning such as Planned Unit Developments (PUDs) for all mixed and multi-use projects and conforming with the following criteria:

1. The type of land use(s), density, and intensity is consistent with the provisions of the land use category, particularly the category's predominant land use;
2. The proposed development is in conformity with the goals, objectives, policies, and operative provisions of this and other elements of the 2030 Comprehensive Plan; and
3. The proposed development is compatible with surrounding existing land uses and zoning.

FLUE 1.2.1 The City shall ensure that the location and timing of new development will be coordinated with the ability to provide public facilities through the implementation of growth management measures such as development phasing, programming and appropriate oversizing of public facilities, and zoning and subdivision regulations.

Therefore, proposed rezoning to Planned Unit Development, as conditioned, is consistent with the 2030 Comprehensive Plan, and further the following goals, objectives and policies contained therein.

(2) Consistency with the Concurrency Management System

Pursuant to the provisions of Chapter 655 *Concurrency Management System* of the Ordinance Code, the development will be required to comply with all appropriate requirements of the Concurrency Management System Office (CMSO) prior to development approvals.

(3) Allocation of residential land use

This proposed Planned Unit Development intends to utilize lands for a single-family, multi-family and commercial development. This proposed development will not exceed the projected holding capacity reflected in Table L-20, *Land Use Acreage Allocation Analysis For 2030 Comprehensive Plan's Future Land Use Element*, contained within the Future Land Use Element (FLUE) of the 2030 Comprehensive Plan.

(4) *Internal compatibility*

This proposed PUD is consistent with the internal compatibility factors with specific reference to the following:

The treatment of pedestrian ways: The residential villages and commercials village centers will be linked by pedestrian pathways. A 10 foot wide multi-purpose path is proposed connecting different areas.

The use of topography, physical environment and other natural features: The written description and site plan indicate that significant wetlands will be preserved on the site and incorporated into a passive recreation area with trails.

The use and variety of building setback lines, separations, and buffering: The written description uses separate development standards for the Village Center (VC), Neighborhood Center (NC) and the Residential Villages (RV). This division allows for a "traditional neighborhood design" of higher densities in the VC and NC while allowing for lower density in the RVs.

The variety and design of dwelling types: The written description provides for five single-family lots sizes ranging from 35 feet in width to 80 feet in width. Duplex, Row House, Town House, and Condo/Apt development standards are provided. Town Houses and Condo/Apts will be permitted in all development areas (Commercial, VC and NC).

The particular land uses proposed and the conditions and limitations thereon: The written description contains additional limitations on lighting and other items that may impact surrounding uses. These limitations allow for intensive commercial uses such as a filling station to be compatible with medium density residential without adversely impacting the residential.

Compatible relationship between land uses in a mixed use project: The written description includes uses that will serve the community without acting as a draw for residents outside the community.

(5) External Compatibility

Based on the written description of the intended plan of development and site plan, the Planning and Development Department finds that external compatibility is achieved by the following:

The type, number and location of surrounding external uses: The proposed development is currently undeveloped and is under silviculture management. Surrounding the property is pine plantation and scattered wetlands. To the southwest is PBF zoned land owned by the City of Jacksonville.

The Comprehensive Plan and existing zoning on surrounding lands: The adjacent uses, zoning and land use categories are as follows:

Adjacent Property	Land Use Category	Zoning District	Current Use(s)
North	AGR	AGR	Undeveloped
South	PBF	PBF-1	County owned/Government
East	AGR	AGR	Undeveloped
West	PBF	PBF-1	County owned/Government

(6) Intensity of Development

The proposed development is consistent with the AGR functional land use category and is a mixed use development to include single-family and multi-family which is not to exceed 5,520 dwelling units. The PUD is appropriate at this location because it will offer office and commercial and institutional uses to support the proposed residential development.

The availability and location of utility services and public facilities and services:
The owner will donate up to 75 acres to the Duval County School Board for use as a high school and will donate a 3 acre parcel to the City of Jacksonville for a public use.

The owner is coordinating with JEA to provide water, sewer and electric to the area.

The access to and suitability of transportation arteries within the proposed PUD and existing external transportation system arteries: The Traffic Engineer will require a traffic study for all proposed access points on US 301.

(7) Usable open spaces plazas, recreation areas.

The written description discusses at length the proposed recreation facilities and open space.

(8) Impact on wetlands

Surveying of a 1995 Geographical Information Systems shape file did identify wetlands on-site. However, any development impacting wetlands will be permitted pursuant to local, state and federal permitting requirements.

(9) Listed species regulations

The wildlife survey performed by Breedlove, Dennis & Associates, Inc., dated July 7, 2006 indicated the project limited habitat for listed species due to the altered site conditions and intensive use for short rotation pine plantation.

(10) Off-street parking including loading and unloading areas.

The written description provides parking ratios that are similar to Part 6 of the Zoning Code. These ratios have been used in other developments without any adverse impact.

(11) Sidewalks, trails, and bikeways

The project will contain a pedestrian system that meets the 2030 Comprehensive Plan. In addition a 10 foot wide multi-purpose trail will be constructed along one side of the major road.

SUPPLEMENTAL INFORMATION

Applicant submitted photos that the signs were posted

RECOMMENDATION

Based on the foregoing, it is the recommendation of the Planning and Development Department that Application for Rezoning **2010-0874** be **APPROVED with the following conditions:**

1. **The development shall be subject to the original legal description dated October 15, 2010.**

2. **The development shall be subject to the revised written description dated January 21, 2010.**

3. **The development shall be subject to the original site plan dated October 25, 2010.**

Exhibit D

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for Original Certificate of Authorization and Initial Rates and Charges for Water and Wastewater Service in Duval, Baker and Nassau Counties, Florida by FIRST COAST REGIONAL UTILITIES, INC.	)	DOCKET NO. 20190168-WS FILED:

AFFIDAVIT OF JOSEPH E. ORFANO

STATE OF FLORIDA
COUNTY OF DUVAL

BEFORE ME, the undersigned authority, personally appeared **Joseph E. Orfano**, who being first duly sworn, deposes and says:

1. My name is Joseph E. Orfano. I am over the age of eighteen (18) years, am competent to attest and have personal knowledge as to the matters stated herein.

2. I am employed by JEA as its Treasurer and have held that position since December, 2013. I also recently served as JEA's Interim Chief Financial Officer from December, 2019, until June, 2020.

3. I provided direct testimony in this matter that was submitted on June 26, 2020.

4. The purpose of my testimony is to describe the resources JEA would bring to bear in service of the proposed development pursuant to the planned unit development ("PUD") ordinance for the property that requires the developer to build the water and wastewater treatment facilities to JEA standards and then dedicate them to JEA for operation ("PUD Requirements").

5. By this affidavit, I incorporate by reference and attest to the truth of my June 26, 2020 prefiled direct testimony.

6. As described in my prefiled direct testimony, JEA has the substantial financial and physical resources necessary to immediately operate and maintain the water and wastewater treatment facilities to be dedicated to JEA pursuant to the PUD Requirements and is ready, willing, and able to service the customers in this development.

FURTHER AFFIANT SAYETH NAUGHT.

JOSEPH E. ORFANO

STATE OF FLORIDA
COUNTY OF DUVAL

Sworn to (or affirmed) and subscribed before me by means of ☑ physical presence or ☐ online notarization, this 8th day of September, 2020, by JOSEPH E. ORFANO, who ☑ is personally known to me or ☐ produced _____ as the type of identification.

Celeste Angela Stevens

Signature of Notary Public – State of Florida

Stamp of Commissioned Notary Public

CELESTE ANGELA STEVENS
Notary Public - State of Florida
Commission # HH 003328
My Comm. Expires Jun 6, 2024
Bonded through National Notary Assn.

Exhibit E

Section 21.07. - Fiscal and budgetary functions.

JEA shall have fiscal and budgetary functions, subject to the limitations herein expressed:

(a) The fiscal year of JEA shall commence on October 1 of each year and end on the following September 30.

(b) JEA shall prepare and submit its budget for the ensuing year to the city on or before July 1 of each year, setting forth its estimated gross revenues and other available funds, and estimated requirements for operations and maintenance expenses, capital outlay, debt service, and depreciation and reserve account. The council and the mayor shall approve or disapprove such budget in the manner provided in article 14 for budgets of independent agencies.

(c) As consideration for the unique relationship between the City of Jacksonville and JEA, as a tax-exempt entity within the consolidated government, and in recognition of the shared attributes with the consolidated City of Jacksonville in connection with its electric, water, and sewer distribution systems, there shall be assessed upon JEA in each fiscal year, for the uses and purposes of the city, from the revenues of the electric system and the water and sewer system operated by JEA available after the payment of all costs and expenses incurred by JEA in connection with the operation of such electric system and water and sewer system (including, without limitation, all costs of operation and maintenance, debt service on all obligations issued by JEA in connection with such electric system and water and sewer system and required reserves therefore and the annual deposit to the depreciation and reserve account required pursuant to section 21.07(g)), an amount as provided herein. Effective October 1, 2016, consistent with the provisions of this section 21.07(c), JEA shall pay the city combined assessment for the electric system and the water and sewer system. The combined assessment for the electric system and the water and sewer system shall equal, but not exceed the greater of (A) the sum of (i) the amount calculated by multiplying 7.468 mills by the gross kilowatt-hours delivered by JEA to retail users of electricity in JEA's service area and to wholesale customers under firm contracts having an original term of more than one year (other than sales of energy to Florida Power and Light Company from JEA's St. Johns River Power Park System, exception ending December 31, 2017) during the twelve-month period ending on April 30 of the fiscal year immediately preceding the fiscal year for which such assessment is applicable plus (ii) the amount calculated by multiplying 389.20 mills by the number of K-Gals (1=1000 gallons) potable water and sewer service, excluding reclaimed water service, provided to consumers during the twelve-month period ending on April 30 of the fiscal year immediately preceding the fiscal year for which such assessment is applicable, or (B) a minimum calculated amount which increases by 1% per year from fiscal year 2016-2017 through fiscal year 2022-2023 using the fiscal year 2015-16 combined assessment of $114,187,538 as the base year. The amounts applicable to clause (B) above are: for fiscal year 2016-2017 - $115,329,413; for fiscal year 2017-2018 - $116,482,708; for fiscal year 2018-2019 - $117,647,535; for fiscal year 2019-2020 - $118,824,010; for fiscal year 2020-2021 - $120,012,250; for fiscal year 2021-2022 - $121,212,373; and for fiscal year 2022-2023 - $122,424,496.

(d) The assessment calculations for the electric system and the water and sewer system shall be in effect until September 30, 2023. The council may reconsider the assessment calculations after October 1, 2022 and changes, if any, shall become effective October 1, 2023. The council may change the assessment calculations by ordinance within the provisions of this section 21.07. Should the council not reconsider the assessment calculations, the assessments shall be calculated using the existing formulas specified in Section 21.07(c), including a minimum calculated amount in clause (B) therein, which increases by one percent per year for each fiscal year computed as provided in Section 21.07(c). In addition to the annual assessment as calculated in Section 21.07(c), JEA pursuant to the terms of an Interagency Agreement (as amended) with the City, agreed to provide total nitrogen water quality credit to the City to assist the City in meeting its Basin Management Action Plan load reduction goal (BMAP Credit). If JEA cannot provide the BMAP Credit pursuant to the terms of the Interagency Agreement dated March 22, 2016 (as amended), council and JEA shall work cooperatively to address the BMAP Credit shortfall or council may reconsider the assessment calculations.

(e) The council shall have the power to appropriate annually a portion of the available revenues of each utility system (other than the electric, water and sewer systems) operated by JEA for the uses and purposes of the city. This appropriation shall be based on a formula to be agreed upon by JEA and the council. Any covenants or pledges to lenders associated with such proposed additional utility system which impair council's ability to appropriate revenues from that additional utility system, other than a pledge of gross revenues to bondholders, shall be included in the JEA resolution required in s. 21.04(v) or any future resolution allowing for financing of activities associated with that additional utility system.

(f) JEA shall pay over to the city (i) the amounts assessed upon JEA pursuant to section 21.07(c) and (ii) such portions of the funds actually appropriated by the council pursuant to section 21.07(e) at such time as the council may request, but not in advance of collection. Although the calculation for (i) the amounts assessed upon JEA pursuant to section 21.07(c) and (ii) the annual transfer of available revenue from JEA to the city pursuant to section 21.07(e) is based upon formulas that are applied specifically to the respective utility systems operated by JEA, JEA, in its sole discretion, may utilize any of its revenues regardless of source to satisfy its total annual obligation to the city mandated by said sections 21.07(c)and (e).

(g) JEA shall be required to set aside each year in a depreciation and reserve account established for each utility system it operates, an amount equal to not less than 10 percent of its annual net revenues for the previous year attributable to each such system. For such purpose, "annual net revenue" shall mean annual gross revenues derived by JEA from the operation of such system reduced by expenses for operation and maintenance allocable to such system and debt service allocable to such system. Funds set aside in each such depreciation and reserve account shall be used exclusively for enlargements, extensions, improvements and replacements of capital assets of the utility system for which such account was established or to pay or provide for the payment of JEA's bonds, notes or revenue certificates relating specifically to such system; provided, however, that if JEA by resolution determines that it is in the best interests of JEA to use all or any portion of the funds set aside in the depreciation and reserve account established with respect to a particular utility system for the purposes of another utility system, then such funds may be so applied.

(h) JEA shall not be required to utilize the personnel, motorpool, purchasing, communication or information systems services of the city. By mutual agreement of JEA and the city such services may be provided from one party to the other but only on a cost-accounted basis. JEA shall be required to use the legal services of the city on a cost-accounted basis except in those cases when the chief legal officer of the city determines that the city legal staff cannot or should not provide legal services in the required legal area. JEA shall appropriate the funds necessary to meet the obligations for outside legal services as determined by the chief legal officer of the city. Such chief legal officer shall consult with JEA before he or she selects outside counsel.

(i) Unless otherwise determined by JEA, all revenues and service charges receivable by JEA as payment for the sale of utilities services shall be collected and received by the tax collector. The tax collector shall deposit to the account of or otherwise turn over to JEA such funds at such times and in such manner as JEA may from time to time designate by resolution. JEA may provide for the collection of such revenues and service charges directly by JEA, provided that the council auditor shall be notified in writing of any proposed change from the current collection process utilizing the Tax Collector and that such change shall not take place until the next fiscal year after such notice is given.

(j) JEA shall employ and fix the compensation of the managing director, who shall manage the affairs of the utilities system under the supervision of JEA. The entire working time of such managing director shall be devoted to the performance of the duties of such office and the managing director shall have no outside employment or business. The managing director shall be a graduate of an accredited college or university, or have at least ten years' managerial experience in a consumer-oriented industry or comparable enterprise. JEA may appoint and fix the compensation of 48 staff assistants to the managing director, to serve at the pleasure of JEA. JEA shall employ and fix the compensation of the department heads, deputy directors of

departments, division chiefs and assistant division chiefs of the utilities system. JEA may adopt position titles different from those recited herein, consistent with utility industry practice. The managing director, department heads, deputy directors of departments, staff assistants, division chiefs and assistant division chiefs shall not be included within the civil service system of the city. JEA may employ such certified public accountants, consultants and other employees for special purposes, not within the civil service system, as it may require, and fix and pay their compensation. Whenever used in this s. 21.07(i), "compensation" shall mean both salary and benefits, exclusive of city pension benefits. All personnel appointed by JEA pursuant to this s. 21.07(i) shall participate in the City of Jacksonville pension plan in the same manner as other employees of JEA who participate in such plan. However JEA shall have the option to establish an employee deferred compensation program separate from the city's employee deferred compensation program.

(k) JEA is authorized to pay over to other local governmental units outside the city annually a portion of available revenues derived from operations in such local governmental units' territories, for the uses and purposes of such local governmental units, an amount not to exceed that which would be calculated using the procedures in Sections 21.07(c)and (e), but only to the extent that JEA is able to, and does, include in the rates imposed only upon the customers in such local governmental units' territories the total amounts in respect of such payments.

(l) In addition to all other sums paid by JEA to the City of Jacksonville, JEA shall pay to the City of Jacksonville a franchise fee in an amount equal to three percent (3%) of the revenues of the electric system and the water and sewer system as set forth in Section 21.07(c) herein. The franchise fee will commence for revenues derived effective April 1, 2008 and shall be paid monthly with the first payment payable on June 1, 2008. The franchise fee shall be limited to (1) revenues derived within Duval County not including Urban Service Districts 2-5, and (2) per customer, total water and sewer rate revenues, and (3) up to a per customer maximum of $2,400,000 per fiscal year of electric rate revenues. The franchise fee shall be calculated each month by multiplying three percent (3%) by the sum of JEA's base rate electric revenues, fuel rate revenues, water rate revenues and sewer rate revenues for that month excluding unbilled revenues and uncollectible accounts. The franchise fee shall be calculated on revenues derived from the sale of gross kilowatt-hours and number of cubic feet of potable water and cubic feet of sewer service as set forth in Section 21.07(c). Notwithstanding the foregoing, no franchise fee shall be paid on franchise fees, state utility taxes, fuel related interchange sales, sales for resale, City of Jacksonville accounts, JEA accounts, investment income and other revenues. JEA shall be authorized to pass-through the amount of the franchise fees set forth herein and associated charges resulting from the stated three percent (3%) franchise fee calculation on rate revenues notwithstanding the $2,400,000 limit set forth herein to the customers of JEA, in accordance with the customers' proportionate share of rate revenues as calculated above. This franchise fee is in consideration of the administrative costs incurred by the City to coordinate functions and services with JEA, for the exclusive right to serve electric, water and sewer customers, for use by JEA of the public rights-of-way used by it in connection with its electric distribution system and its water and sewer distribution and collection system, and in further consideration of the unique relationship of JEA and the City, in which JEA is a wholly owned public utility, and such other good and valuable consideration that has been agreed to between JEA and the City of Jacksonville. The gross franchise fee and the amount of the pass-through set forth herein may be increased by ordinance, initiated by the Mayor and approved by two-thirds supermajority of the City Council, but the franchise fee shall not exceed six percent (6%) of the gross utility revenues as calculated above. The JEA and the City shall enter into a Franchise Fee Agreement for the administration of the Franchise Fee.

(m) When JEA is in receipt of a request for information from the Council Auditor pursuant to the authority of the Council Auditor under Section 5.10, Charter of the City of Jacksonville, it shall, within two business days of receipt of the request, 1) acknowledge receipt of the request by electronic mail to the Council Auditor, and 2) submit to the Council Auditor an estimated timeframe for which the information requested will be available to the Council Auditor for review. If the information requested by the Council Auditor is not within the purview of JEA or JEA is

unsure of the request or unfamiliar with the information that is requested, it should provide such explanation in its response to the Council Auditor.

(Laws of Fla., Ch. 78-538, § 1; Laws of Fla., Ch. 80-515, § 1; Ord. 81-921-490, § 1; Ord. 84-1307-754, § 25; Ord. 89-1001-632, § 1; Laws of Fla., Ch. 92-341, § 1; Ord. 93-82-1385, § 1; Ord. 97-12-E, § 2; Ord. 98-253-E, § 1; Ord. 2003-1320-E, § 1; Ord. 2007-838-E, § 1; Ord. 2007-1132-E, § 1; Ord. 2015-764-E , § 2; Ord. 2018-747-E , § 2; Ord. No. 2020-40-E , § 1)

Exhibit F

OFFICE OF GENERAL COUNSEL
CITY OF JACKSONVILLE

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GENERAL COUNSEL

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TRACEY I. ARPEN, JR.
THOMAS M. BEVERLY
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MARGARET M. SIDMAN
WENDY L. STEINER
EDWARD C. TANNEN
JASON R. TEAL
JOEL B. TOOMEY
MICHAEL B. WEDNER

To: Jim Dickenson, Managing Director/CEO
JEA Tower-16

From: Debra A. Braga, Assistant General Counsel

Re: Transmittal of Interlocal Agreement Regarding Franchise Fee

Date: February 6, 2008

Enclosed find the *recorded* Interlocal Agreement Regarding Franchise Fee filed with the Clerk of the Court, Duval County, Florida, for completion of your files.

Do not hesitate to contact me should you have any questions and/or comments.

DAB:mll
Enclosure
cc: Sharon Chappelle (w/enc.)

Prepared by and return to:
Debra Braga, Assistant General Counsel
117 West Duval Street, Suite 480
Jacksonville, FL 32202

Doc # 2008028825, OR BK 14371 Page 98,
Number Pages: 4
Filed & Recorded 02/05/2008 at 11:08 AM,
JIM FULLER CLERK CIRCUIT COURT DUVAL COUNTY

INTERLOCAL AGREEMENT REGARDING FRANCHISE FEE

This Interlocal Agreement Regarding Franchise Fee, hereinafter "Franchise Fee Agreement" is entered into this 1st day of February, 2008, by and between the City of Jacksonville, a municipal corporation and political subdivision of the State of Florida, (hereinafter City), and JEA, a body corporate and politic, (hereinafter JEA).

WHEREAS, JEA provides electric, water and sewer utility services within the jurisdiction of the City; and

WHEREAS, JEA operates pursuant to City Charter section 21, which provides for the governance of JEA, and oversight of JEA by the City Council; and

WHEREAS, on or about November of 2007, the City and JEA agreed to the payment of a Franchise Fee, as set forth in City Charter Section 21.07, and adopted by the City Council as ordinance 2007-838; and

WHEREAS, the parties intend that this Franchise Fee Agreement provide for the administration of the Franchise Fee, as contained in the Charter.

NOW THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. Amount of the Franchise Fee. As established in the City Charter Section 21.07, the Franchise Fee shall be initially established at three percent (3%) of the revenues of the electric system and the water and sewer system. This amount may be increased up to a maximum of six percent (6%) by ordinance of the City Council as provided for in City Charter Section 21.07(l).

2. Territory for Payment of Franchise Fee. The Franchise Fee shall be limited to revenues derived within Duval County not including Urban Service Districts 2-5.

3. Calculation of Franchise Fee. The Franchise Fee shall be calculated each month by multiplying three percent (3%) by the sum of JEA's base rate electric revenues, fuel rate revenues, water rate revenues and sewer rate revenues for that month excluding unbilled revenues and uncollectible accounts. The franchise fee shall be calculated on revenues derived from the sale of gross kilowatt-hours and number of cubic feet of potable water and cubic feet of sewer service as set forth in Section 21.07(c) of the City Charter.

    a. Franchise Fee Cap. The Franchise Fee shall be limited to a per customer maximum of two million four hundred thousand dollars ($2,400,000) per fiscal year of electric rate revenues as specifically set forth in City Charter Section 21.07(l).

    b. Adjustment for Franchise Fee Cap. Until such time as determined by JEA that JEA's billing system is capable of implementing the Franchise Fee customer cap as determined by the City Council, the City and JEA agree on the following procedure to implement the Franchise Fee customer cap. At least annually, JEA shall identify the customers affected and issue a report to the City summarizing the amount of the Franchise Fee billed. On an annual basis, the City will issue a check payable to each eligible customer in an amount equivalent to reduce the Franchise Fee amount collected to the Franchise Fee cap. JEA shall be authorized to pass-through to the customers the amount of the franchise fees set forth herein and such associated charges including but not limited to public service tax, gross receipts tax, and sales tax resulting from the stated three percent (3%) franchise fee on rate revenues notwithstanding the $2,400,000 limit. The City will issue checks payable to each customer for the specific franchise fee amount collected over the cap.

4. Exclusions from Franchise Fee. No Franchise Fee shall be paid on Franchise Fees, state utility taxes, fuel related interchange sales, sales for resale, City of Jacksonville accounts, JEA accounts, investment income or other revenues not specifically set forth in paragraph 3 herein.

5. Collection, remittance and timeliness of the Franchise Fee. The Franchise Fee shall be effective for revenues derived after March 31, 2008. The Franchise Fee will be applied to all services rendered for which revenues are posted after March 31, 2008. The Franchise Fee will not be pro-rated, regardless of when services were used by the customers. The Franchise Fee shall be payable monthly, with the first payment due on June 1, 2008, and shall continue until the requirements of the Franchise Fee are modified, either by amendment to section 21 of the City Charter, or by amendment to this Agreement. The Franchise Fee shall be paid on the first business day of each month. JEA shall collect the Franchise Fee from its customers, and the Franchise Fee shall be considered a pass through from the customers, in accordance with the proportionate share of rate revenues. The Mayor is authorized to grant an extension of time for 30 additional days for the

payment of the Franchise Fee for good cause shown by JEA. JEA shall submit a written request for an extension of time for payment at least five (5) days prior to the normal due date which sets forth the circumstances which require the extension in time for payment.

6. Consideration for the Franchise Fee. The consideration for the Franchise Fee is the exclusive right for JEA to serve electric, water and sewer customers, for use by JEA of the public rights of way, both existing and new, for its electric, water and sewer system, and for any other utility systems, as that term is defined in City Charter Section 21.02(a).
7. Amendments to the Interlocal Agreement Regarding Franchise Fee. The Parties agree that this Agreement may be amended by ordinance of the City Council, following the usual procedure for passage of ordinances, subject to the requirements set forth in Ordinance 2007-838, and without compliance with the provisions regarding amendments to the JEA charter, as are set forth in City Charter Section 21.11. The Parties also agree that non-material changes to this Agreement may be made based on the mutual consent of the Parties, subject to the approval of the City Council Auditor's office, and with notice to the City Council. "Non-material" changes shall be those changes which are solely of an administrative nature, and do not involve any change in the amount of the Franchise Fee.

8. Modifications to the JEA Contribution. As further consideration for the Franchise Fee, the parties have agreed to a modification to the JEA Contribution, which is currently contained in City Charter Section 21.07. Those modifications require approval by the City Council, and are contained in Ordinance 2007-1132, filed October 23, 2007. The agreed upon modifications to City Charter Section 21.07(c) and (d) involve a reduction in the minimum required increase in the contribution, the deletion of the alternative method of calculation of the contribution based upon a percentage rate, a modification of the base year assessment total, and the agreement that the City Council may reconsider the assessment calculations in 2016.

9. Definitions. Terms used in this agreement shall be as defined in City Charter Section 21.

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

IN WITNESS WHEREOF, the parties have caused this Franchise Fee Agreement to be duly executed as of the date first written above.

Attest:

CITY OF JACKSONVILLE

By: _____

By: Kerri Stewart
John Peyton
Mayor

Kerri Stewart
Deputy Chief Administrative Officer
For: Mayor John Peyton
Under Authority of:
Executive Order No. 07-12

Attest:

JEA

By: _____

By: _____
James A. Dickenson
Managing Director/CEO

I hereby certify that the expenditure contemplated by the foregoing instrument has been duly authorized, and provision has been made for the payment of the monies provided therein to be paid.

_____
Signature
Print Name: _____
Title: _____
For JEA

Form Approved:

_____
Office of General Counsel

Exhibit G

NASSAU COUNTY/JEA WATER AND WASTEWATER INTERLOCAL AGREEMENT

This Water and Wastewater Interlocal Agreement (the "Agreement") is made and entered into this 17th day of December, 2001, by and between Nassau County, a political subdivision of the State of Florida (hereinafter referred to as the "County") and JEA, an electric, water and wastewater utilities authority established under the laws of the State of Florida.

WHEREAS, JEA is authorized to provide electric, water and wastewater (which includes reuse) services pursuant to authority granted by the State of Florida and Duval County;

WHEREAS, United Water Florida ("United Water") currently owns and operates a water and wastewater utility system (the "Utility System") part of which is located within Nassau County and the Utility System has operated pursuant to Water Franchise Certificate No. 263-W and Sewer Franchise Certificate No. 179-S (the "Certificates") issued by the Florida Public Service Commission (the "PSC");

WHEREAS, the Certificates authorize United Water to provide water and wastewater (including reuse) services within designated service areas around the State;

WHEREAS, the PSC certificated service areas for United Water include territory in Nassau County (the "Service Territory");

WHEREAS, the PSC certificated service areas of United Water will be grandfathered to the purchaser of United Water pursuant to Florida Statutes;

WHEREAS, Nassau County recently passed a resolution to assume regulatory jurisdiction over investor owned utilities operating in Nassau County;

WHEREAS, JEA is prepared to enter into a purchase and sale agreement with United Water for the acquisition of United Water's entire Utility System in Florida including the portions located in Nassau County and the right to provide service throughout the Service Territory;

WHEREAS, the County and JEA (collectively referred to as the "parties") have determined to enter into this Interlocal Agreement in an effort to assure that water and wastewater (including reuse) services within Nassau County are provided in an orderly fashion;

WHEREAS, the County and JEA believe that this Agreement will promote cooperation and coordination between the parties in providing utility services within the Service Territory and elsewhere in Nassau County;

WHEREAS, JEA and the County both acknowledge the desirability and the need to provide water and wastewater services in a manner which is both economical and consistent with the water conservation and management policies of the State of Florida, the St. Johns River Water Management District and Nassau County;

WHEREAS, the parties seek through this Interlocal Agreement to establish the terms and conditions by which JEA will have exclusive authority to provide water and wastewater (including reuse) services within the Service Territory and elsewhere in Nassau County;

WHEREAS, the parties seek through this Agreement to establish the conditions and procedures by which JEA can extend water and wastewater (including reuse) services in Nassau County outside the Service Territory;

NOW THEREFORE, in consideration of the recitals, agreements, and mutual covenants contained herein, and other good and valuable consideration, the parties agree as follows:

SECTION 1. RECITALS. The above recitals are true and correct, and form a material part of this Agreement.

SECTION 2. COUNTY'S CONSENT TO JEA SERVICES.

2.1 JEA Service Territory. Subject to the terms and conditions of this Agreement, the parties agree that JEA will provide retail and wholesale water and wastewater services[1] within the Service Territory during the term of this Agreement. The parties further agree that, subject to the terms and conditions of this Agreement, JEA may provide retail and wholesale water and wastewater services to any area in Nassau County west of the Intracoastal Waterway excluding the incorporated municipalities of Callahan and Hilliard. This area west of the Intercoastal is hereinafter referred to as the "Additional Territory". JEA will not serve or offer to serve customers located within Nassau County outside of the Service Territory or the Additional Territory unless the County and JEA agree in writing for JEA to do so. The written agreement of the County shall be obtained prior to JEA providing or offering to provide services to customers in Nassau County outside of the Service Territory and the Additional Territory. JEA agrees that it will not seek to provide or extend water or wastewater services in Nassau County outside of the Service Territory and Additional Territory without the County's prior written approval except

[1]Unless specifically noted or inappropriate in context, the term wastewater services as used in this Agreement shall include the provision of reuse of reclaimed water.

as provided by Section 2.3. Nassau County will not authorize or certificate any other utility to provide water or wastewater services in the Service Territory or Additional Territory without JEA's prior written approval. Nothing contained in this Agreement shall be construed to prevent JEA from providing water or wastewater services within Duval County or any other county in the State of Florida, nor shall anything contained herein be construed to prevent the County from providing or authorizing others to provide services outside of the Service Territory and Additional Territory in Nassau County, Florida.

2.2 Limitations on JEA Service Territory. The County and JEA agree that the rights of JEA to provide water and wastewater services in Nassau County are limited by this Agreement to the Service Territory and the Additional Territory. If JEA wishes to extend services in Nassau County outside of these areas, any such extension must be accomplished with the specific authorization of the County and as more specifically set forth in Section 3 below.

2.3 Contract Operations. Notwithstanding anything to the contrary stated in Sections 2.1 and 2.2 or elsewhere in this Agreement, JEA can provide contract operations service to any utility in or outside the County.

SECTION 3. EXTENSION OF SERVICE AREA. JEA may only extend water and wastewater services to areas in Nassau County that are not within the Service Territory or Additional Territory after application to and approval by the Board of County Commissioners of Nassau County (the "Board"). The application and decision by the Board to permit or deny such extension shall be based upon applicable county ordinances.

SECTION 4. UTILITY SYSTEM RATES; OPERATING STANDARDS; REPORTS.

The following standards and conditions shall apply to JEA's ownership and ongoing operation of the Utility System and any extensions thereto including facilities used by JEA to provide service to the Additional Territory.

4.1 No Discrimination in Rates and Level of Service. The rates and fees charged by JEA for retail water and wastewater services shall be the same in the Service Territory and Additional Territory as charged by JEA for retail water and wastewater services within the City of Jacksonville. A current schedule of those rates is attached hereto as Exhibit "A." No JEA imposed surcharge, tax or rate differential shall apply to customers in the Service Territory or other areas served by JEA within Nassau County without the consent of the County. If, during the term of the Agreement, JEA proposes any new rate schedule or amended rate schedule applicable to its retail water, wastewater or reuse service, JEA shall forward to the County a copy of such rate schedule or amended rate schedule prior to the effective date thereof. Furthermore, JEA agrees to provide the County written notice in accordance with Section 10 of this Agreement as soon as a proposed increase in rates is recommended to its governing Board. Any increase or decrease in rates shall be consistent with state law and terms and conditions of this Agreement.

The County will not attempt to impose or assert authority over the rates and fees charged by JEA to customers in the Service Territory or Additional Territory. If the County imposes franchise fees or taxes under Section 4.3, customers in the County will be charged such fees or taxes in addition to the JEA rates. The quality and level of services provided by JEA shall be equal for customers within Nassau County as that offered by JEA

to customers in the City of Jacksonville. JEA shall not discriminate between the quality and level of services offered to customers within Nassau County as compared to services by JEA in any other county. JEA agrees to provide services to the existing customers of United Water and to future customers in the Service Territory and Additional Territory according to JEA's uniform service availability policies.

4.2 Standards. JEA agrees to operate and maintain the Utility System in accordance with standards equal to or greater than those for the City of Jacksonville. If additional facilities are installed by JEA in the County, such facilities shall be constructed in accordance with standards equal to or greater than the standards applicable to JEA's system in Duval County.

4.3 Franchise Fees and Taxes. The County will not charge JEA any connection fees, tap-in fees, or other fees or charges for services by JEA to the Service Territory and Additional Territory. JEA has the right to collect on its behalf its uniform rates, fees and charges from its customers in the County. JEA further agrees to collect from its wholesale and retail water and wastewater customers within the County all applicable county fees and utility taxes pertaining to water and/or wastewater services.

4.4 Asset Reporting. JEA shall segregate all asset information for the Utility System and any future extensions in Nassau County permitted under this Agreement. This requirement does not apply to meters, meter boxes, taps and other non-segregatable items which shall be allocated on a per ERC basis. Such information shall be provided to the County on an annual basis and shall include, without limitation, the value of all such assets, any contributions in aid of construction applicable thereto, and other capital asset

information reasonably requested by the County to allow verification of compliance with the terms of this Agreement. The asset reporting requirements of this Section 4.4 are only applicable to transmission and treatment facilities owned by JEA outside of the Service Territory if those facilities provide service exclusively to the Service Territory or to the Additional Territory. JEA shall provide its annual financial statements, budget, current 5-year capital improvement plan and renewal and replacement program to the County within 15 days of approval by the JEA Board or, if Board approval is not required, approval by JEA management.

4.5 Balancing of Water Supply and Reuse. To the extent reasonably possible, JEA will conduct its operations in Nassau County in a manner which is intended to help minimize potable water use and maximize water reclamation and reuse. JEA will cooperate with the County in implementing programs to achieve these goals.

4.6 Abandonment of Portions of the Utility System. JEA will not retire or abandon any portion of the Utility System, including any water treatment plant, storage tank, pumping stations, or wastewater treatment plant unless reasonably necessary to provide reliable, safe and sufficient service and/or to comply with requirements imposed by law, including statutes, rules or orders of regulatory or judicial authorities.

4.7 Customer Service. JEA shall coordinate with the County with respect to customer services offered within the Service Territory. JEA shall provide a toll free telephone number for use by JEA customers within the Service Territory and the Additional Territory.

4.8 Approval of Developer Agreements. Proposed developer agreements for the provision of water or wastewater services within the Service Territory or Additional Territory shall be presented by JEA to the County for review and comment. Prior approval by the Board of County Commissioners of developer agreements within the Service Territory and Additional Territory shall not be required as long as the terms of such agreements are consistent with Master Plans submitted in accordance with Section 10 of this Agreement. If the County has any objections based on conflict with this Agreement, the County Comprehensive Plan or County ordinances, the County shall promptly notify JEA and the parties will address the objections. Any proposed developer agreements that are not consistent with such Master Plans will not be finalized without prior approval by the Board of County Commissioners.

4.9 Coordination. JEA agrees that it shall provide water and wastewater services only to those areas within the Service Territory and Additional Territory approved for construction by the appropriate County planning and development agencies. JEA further agrees that it shall comply with all rules and regulations enacted by the County governing water and wastewater service requests, but it reserves the right to challenge any rules or regulations it deems to be unlawful. JEA's construction activities within the County's rights-of-way will be coordinated with the County.

SECTION 5. PURCHASE OF THE UTILITY SYSTEM BY COUNTY. The County shall have the right to purchase the JEA water and wastewater facilities in Nassau County under the conditions set forth below.

5.1 Exclusive Right to Purchase. The County shall have exclusive right to purchase the JEA facilities in Nassau County under any of the circumstances listed below (the "Exclusive Purchase Events"). Upon the occurrence of any Exclusive Purchase Event, JEA shall promptly provide the County with written notice of the Exclusive Purchase Event and the details thereof. Within 90 days of receipt of such notice, the County shall provide a written response which either (a) exercises the right of the County to enter into negotiations for the purchase of the JEA facilities in Nassau County, or (b) rejects the right and discharges JEA from any further obligation to offer the facilities to the County for purchase. If no response is received within 90 days, then the County will be deemed to have rejected the right to purchase. Exclusive Purchase Events are any of the following:

5.1.1 Any change in the majority ownership interest of JEA.

5.1.2 The expiration of the initial and each successive term of this Agreement; provided, however, that if the parties mutually agree to extend the term of the Agreement for a successive 5-year period, the County's first right of refusal to purchase the facilities based on the expiration of this Agreement shall be deemed to have been waived by the County until the end of that five year extension.

5.1.3 A transfer or assignment of this Agreement by JEA without the prior written agreement of the County.

5.2 County First Right of Refusal.

JEA has the right to sell its facilities in Nassau County. Prior to any sale by JEA of the facilities in Nassau County, the County shall have a first right of refusal at the purchase

price specified in Section 5.5 or the purchase price which JEA intends to sell to a third party, whichever is lower. The County shall have 90 days from receipt of written notice from JEA of an intent to sell the facilities in Nassau County to enter into purchase discussions in accordance with this Section. Failure by the County to respond in writing within the 90-day period shall be deemed a decision not to enter into negotiations. The County's first right of refusal under this Section does not apply to financing or tax management strategies that JEA may decide to utilize. The County agrees to cooperate with JEA by not exercising this Right of First Refusal provided that such financing or strategy does not conflict with the substantive purpose of this Section 5.2 and so long as JEA maintains control over the system.

5.3 Disposition of Funds Upon Purchase by the County. In the event that the County purchases the JEA facilities in Nassau County pursuant to the terms of this Section 5, any unused, prepaid impact fees collected from the customers located within the Service Territory or the Additional Territory shall be transferred to the County.

5.4 Reservation of Capacity. In the event that the County purchases or otherwise takes over ownership and operation of the JEA facilities in Nassau County pursuant to the terms of this Section 5, the County and its successors in interest to the facilities shall be entitled to water and wastewater capacity from JEA equal to the capacity used by JEA to serve the customers at the time of transfer. Such capacity (including treatment and transmission) shall be provided by JEA at no charge. Service shall be provided in accordance with JEA's then existing tariffed rates (as may be amended from time to time) for wholesale or bulk customers. Additional capacity may be purchased by

the County or its successors if such additional capacity is deemed available by JEA. JEA shall have no obligation to construct new facilities in order to make additional capacity available to the County. If capacity is available from JEA, the County shall be entitled to purchase additional capacity at no more than JEA's then existing capacity charges for new customers in the City of Jacksonville.

5.5 Purchase Price. In the event the County is entitled to purchase the JEA facilities in Nassau County in accordance with any provision of this Section 5, JEA agrees to sell the facilities, including all additions, replacements and modifications thereto, to the County based upon the following formula applied at the time of the sale:

The Purchase Price shall be equal to One Hundred Ten percent (110%) of the Net Investment by JEA.

Where:

(a) "Investment" means that capital amount paid by JEA to purchase, improve and/or expand water and wastewater assets within the Service Territory or Additional Territory, as may be expanded, in Nassau County, excluding contributions by developers in cash, services or facilities (contributions-in-aid-of-construction (CIAC) made after the purchase of the Utility System by JEA.

(b) "Depreciation" shall be calculated at a rate of two and a half percent (2.5%) per year of the Investment for the term of the Agreement, as adjusted by the salvage or resale of decommissioned assets or land at the amount received by JEA.

(c) "Net Investment" equals Investment by JEA less Depreciation.

(d) The preceding purchase price formula and the other provisions of this Section 5 are applicable to any extensions of the Service Territory or Additional Territory whether or not such extensions are contiguous to the original Service Territory acquired by JEA from United Water.

5.6 County Resale Condition. If within five (5) years of purchasing utility assets from JEA under Section 5.5, the County contracts to resell the assets and such resale produces net proceeds, then the County shall pay to JEA within 30 days of receipt of the net proceeds a sum equal to fifty percent (50%) of the difference between the resale purchase price less one hundred and fifteen percent (115%) of the sum of the purchase price paid by the County to JEA plus capital investments made by the County. The procedure used to calculate net investment in Section 5.5 shall be used to derive net proceeds for this Section 5.6.

SECTION 6. EX-OFFICIO BOARD REPRESENTATIVE. Nassau County shall have one ex officio non-voting representative to JEA's Board of Directors who shall be selected by the Nassau County Board of County Commissioners and who shall have full rights of participation in discussions concerning all matters which may affect directly or indirectly the provision of water and sewer services within Nassau County under the terms of this Interlocal Agreement.

SECTION 7. TRANSFER OF WATER AND WASTEWATER. The parties agree that there shall be no transfer of potable water from Nassau County without the County's approval. The County and JEA agree that there shall be no flow of raw wastewater (excluding reclaimed water) to Nassau from Duval County without Nassau County's

approval. Commercial or industrial developments within the County shall have a priority claim to the reclaimed water generated by wastewater treatment facilities in Nassau County. This priority does not extend to residential retail reuse and nothing in this Interlocal Agreement should be construed to require residential reuse.

SECTION 8. LUMP SUM PAYMENT. As consideration for the County's entry into this Agreement and its consent to all of the terms and conditions of this Agreement, including but not limited to granting JEA rights to operate and provide services in the Additional Territory, JEA agrees to make a one-time lump sum payment to the County in the amount of One Million Five Hundred Thousand Dollars ($1.5 Million) within ten (10) days of the effective date of this Agreement. The payment of this Section is in full and complete settlement of any claims or rights that the County may have to provide retail or wholesale water and wastewater services to any portion of the Service Territory or Additional Territory. The parties acknowledge and agree that upon payment of the lump sum set forth in this Section, the County shall have no further claims or rights to serve in the Service Territory or Additional Territory while this Agreement remains in effect and, further, that all of United Water's obligations to the County under that certain Water and Wastewater Service Agreement No. 99302 dated March 15, 1999 between United Water and Nassau County shall be deemed fully satisfied, discharged and extinguished.

SECTION 9. CONTRIBUTION TO THE COUNTY BY JEA. Within ten (10) days of the effective date of this Agreement, JEA agrees to pay to Nassau County a lump sum amount based on the net present value (using five percent discount rate) of five percent (5%) of all projected gross revenues from the sale of water and wastewater (excluding

reclaimed water) which JEA expects to realize during the ten year period beginning the month following the effective date of this Agreement in providing services to the Service Territory and Additional Territory in Nassau County. This lump sum amount has been calculated to be Seven Hundred Twenty Thousand Dollars ($720,000) as reflected on Exhibit "B". JEA will apply this procedure for two additional ten-year periods to coincide with the term of the Agreement. At the end of each successive ten (10) year period, JEA will calculate a "true-up" based upon the actual revenues realized. If JEA pays a contribution to the City of Jacksonville on the sale of reclaimed water in the future, JEA will include the sale of reclaimed water from within the County in the true-up and subsequent contribution to Nassau County. If the revenues exceed the projected amount, JEA will pay the county within 60 days the amount that would have been due under this section based on the actual revenues. If the revenues were lower than the projected amount, the County shall have no obligation to repay any amount received by JEA. These payments shall be used by the County for governmental purposes.

SECTION 10. **PLANNING**. JEA shall provide the County a 5-year Water, Wastewater and Reuse Facilities Master Plans for the Service Territory and the Additional Territory within six (6) months of the effective date of this Interlocal Agreement. Master Plans shall provide for water and wastewater lines to be constructed simultaneously in all new developments. JEA will provide water and wastewater master planning services to assist the County in growth management and development matters in the Service Territory and the Additional Territory upon receipt from the County of reasonably necessary information from the County indicating the proposed location of future arterial and collector

roads, the zonings as to properties to be developed; and the areas and projected population growth areas.

SECTION 11. **INFRASTRUCTURE**. JEA will provide regional water, wastewater facilities associated with the construction or reconstruction of principal and minor arterial roads and major collector roads within Nassau County in accordance with the conditions set forth in this paragraph. Arterial and collector roads shall be as defined in the Nassau County Florida Local Government Comprehensive Planning Program, Existing and Future Land Use Map Series as of November 30, 2001. Those definitions are attached hereto as Exhibit C. JEA's obligation to fund regional water and wastewater facilities will be limited to those areas along the principal and minor arterial and major collector roads where development densities are either medium or high as designated on the County's Future Land Use Maps as amended from time to time, and that are expected to develop within a three year time frame as defined in the County's Five Year Master Plan prepared under Section 10 of this Agreement. Unless JEA obtains written approval under Section 3 of this Agreement to provide service to areas east of the Intercoastal Waterway, JEA shall not have any obligation to install facilities east of the Intracoastal Waterway.

JEA will consider, but shall not have an obligation to construct regional water and wastewater facilities along minor collector roads. In accordance with existing JEA practice in JEA's current service area, JEA shall not have any obligation to install at JEA expense any local water or wastewater facilities including minor transmission mains, gravity collection lines, or water distribution mains.

SECTION 12. BOND COVENANTS. If it is discovered that any provision of this Agreement is inconsistent with bond covenants, the parties agree that they will work to resolve any inconsistencies or terminate this agreement. Each party agrees to disclose this Agreement in any future bond issue if material to the issue.

SECTION 13. TERM OF AGREEMENT. This Agreement shall remain in effect for a period of thirty (30) years from the effective date set forth in Section 23 of this Agreement. The Agreement may be renewed for up to two (2) successive five-year periods by mutual agreement of the parties. If either party wishes not to renew this Agreement, such party shall provide at least twelve (12) months written notice to the other party prior to the expiration of the initial or subsequent terms as applicable.

SECTION 14. DISCLAIMER OF THIRD PARTY BENEFICIARIES: This Agreement is solely for the benefit of the parties hereto and no right or cause of action shall accrue upon or by reasons of, to or for the benefit of any third party not a party hereto.

SECTION 15. ASSIGNMENTS. Neither party shall have the right to assign or transfer this Agreement, in whole or in part, without the prior written agreement of the other party.

SECTION 16. SPECIFIC PERFORMANCE. The parties shall have the right to specific performance of this Agreement and to such other remedies as may be available in law or equity.

SECTION 17. NOTICE; PROPER FORM. Any notices or demands hereunder to the parties shall be given by certified mail, return receipt requested, at the respective

addresses shown below, or such other addresses the parties shall specify by written notice to the other delivered in accordance herewith, postage prepaid:

The County: Nassau County Clerk of Court
P.O. Box 456
Fernandina Beach, FL 32034

JEA: Chief Executive Officer
21 W Church St
Jacksonville, FL 322202-3139

SECTION 18. APPLICABLE LAW. This Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida.

SECTION 19. ATTORNEYS FEES. In the event of litigation between the parties concerning this Agreement, the prevailing party shall be entitled to the recovery of reasonable attorney's fees and taxable costs arising before or at trial and on appeal.

SECTION 20. SEVERABILITY. In case any covenant, condition, term or provision contained in this Agreement shall be held to be invalid, illegal, or unenforceable in any respect, in whole or in part, by judgment, order or decree or any court or other judicial tribunal of competent jurisdiction, the validity of the remaining covenants, conditions, terms and provisions contained in this Agreement, and the validity of the remaining part of any term or provision held to be partially invalid, illegal or unenforceable, shall in no way be affected, prejudiced, or disturbed thereby.

SECTION 21. MODIFICATIONS IN WRITING. No waiver or modification of this Agreement or of any covenant, condition or limitation herein contained shall be valid unless in writing and duly executed by the party to be charged therewith.

SECTION 22. NO WAIVER. Any failure of either party to comply with any obligation, covenant, agreement or condition herein may be expressly waived in writing by the other, but such waiver or failure to insist upon strict compliance with such obligation, covenant, agreement or condition shall not operate as a waiver of, or estoppel with respect to, any subsequent or other failure. The recitals and exhibits to this Agreement shall be considered a part of this Agreement, and are incorporated herein by this reference.

SECTION 23. CONDITION PRECEDENT. This Agreement shall be null and void if JEA does not close on the purchase of the United Water System by July 31, 2002.

SECTION 24. INTERPRETATION. In construing this Agreement, it is hereby declared by the County and JEA to be their mutual purpose and intent to prevent needless and wasteful expenditures and harm to water conservation and management efforts which might result from unrestrained competition.

SECTION 25. EFFECTIVE DATE. This Agreement shall be effective upon closing of JEA's purchase of United Water.

SECTION 26. ENTIRE AGREEMENT. This instrument constitutes the entire agreement between the parties and supersedes all previous discussion, understandings and agreements. Amendments to and waivers of the provisions herein shall be made by the parties in writing.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the

dates and year set forth below.

BOARD OF COUNTY COMMISSIONERS
NASSAU COUNTY, FLORIDA

MARIANNE MARSHALL
Its: Chairman

ATTEST:

J. M. "CHIP" OXLEY, JR.
Its: Ex-Officio Clerk

Approved as to form by the
Nassau County Attorney

MICHAEL S. MULLIN

JEA

By _____
Walter P. Bussells, Managing Director
and Chief Executive Officer

Attest _____
Staff Support Assistant

Form Approved:

Office of General Counsel