

**FIRST AMENDMENT TO
MARCH 22, 2016 INTERAGENCY AGREEMENT
BY AND BETWEEN
THE CITY OF JACKSONVILLE AND JEA**

This First Amendment (“Amendment”) to the March 22, 2016 Interagency Agreement is made and entered into this ____ day of _____, 2019, by and between the **CITY OF JACKSONVILLE**, a Florida municipal corporation (“City”), whose address is 117 West Duval Street, Jacksonville, Florida 32202 and **JEA**, a body politic and corporate organized and existing under the laws of the State of Florida, whose address is 21 West Church Street, Jacksonville, Florida 32202.

RECITALS

WHEREAS, the City and JEA entered into an Interagency Agreement dated March 22, 2016, attached hereto as **Exhibit A** (“2016 Agreement”) in accordance with Ordinance 2015-764-E; and

WHEREAS, the City and JEA desire to modify and supplement certain portions of the 2016 Agreement through this Amendment that will become a part of the 2016 Agreement by attachment; and

WHEREAS, JEA pays an annual assessment to the City in accordance with the assessment calculations contained within Section 21.07 of Article 21 of the Charter of the City, as amended and readopted by Chapter 80-515, Laws of Florida, Special Acts of 1980, as subsequently amended by Chapter 92-341, Laws of Florida, Special Acts of 1992 and as thereafter amended in accordance with the terms thereof prior to the date hereof (“City Charter”); and

WHEREAS, JEA and the City desire to extend the annual assessment formula for two years to September 30, 2023; and

WHEREAS, in addition to the extended annual assessment, JEA and the City desire to work cooperatively with one another to provide efficient services to the community; and

WHEREAS, the City and JEA desire to supplement the 2016 Agreement to set forth the collective understanding and agreement of the City and JEA regarding an additional contribution in 2018-2019 fiscal year of \$15,155,000 from JEA to the City; the transfer of additional future Basin Management Action Plan water quality credits from JEA to the City, subject to availability and approval by the appropriate regulatory agency; cooperative efforts regarding river level monitoring; continued cooperation for City water and sewer projects; and a study to be conducted by JEA concerning water and sewer infrastructure technologies.

NOW, THEREFORE, in consideration of the mutual covenants, promises and conditions contained herein, the City and JEA mutually agree to enter into this Agreement as follows:

Section 1 – Recitals

1.1 The City and JEA acknowledge that the recitals contained above are true and accurate, to best of their knowledge, and are hereby incorporated herein by reference.

Section 2 – Term

2.1 The Term is extended by two years and the 2016 Agreement is hereby amended to replace September 30, 2021 with **September 30, 2023**. (“Amended Term”).

Section 3 – Definitions

All definitions provided in the 2016 Agreement shall apply to this Amendment.

Section 4 - BMAP Water Quality Credits

4.1 The term for the initial Transfer Amount (30.34 MT/yr of TN) of Water Quality Credits (“Initial Credits”) in the 2016 Agreement shall be extended by this Amendment for an additional 10 years beginning on January 1, 2024 and ending December 31, 2033. It is the intent of JEA to continue to extend the transfer of the Initial Credits every ten years as long as the Initial Credits are authorized and approved by the appropriate regulatory agency. The obligation of the continued transfer of the Initial Credits shall survive the Amended Term of this Amendment.

4.2 With respect to the reservation and transfer of the Initial Credits, JEA shall execute, or cause to be executed, any and all documents necessary to cause the reservation and

transfer of the Water Quality Credits from JEA to the City consistent with the terms of this Amendment, subject to approval of the transfer by FDEP.

4.3. JEA agrees to transfer additional excess Water Quality Credits (“Supplemental Credits”) to the City subject to the appropriate regulatory agency approval. JEA shall diligently pursue the approval of the Supplemental Credits on behalf of the City. Supplemental Credits shall be 13.6 MT/yr of TN and subject to continued regulatory approval shall be reserved and transferred to the City for a term beginning December 30, 2023 and ending December 31, 2033. It is the intent of JEA to continue to extend the transfer of the Supplemental Credits every ten years as long as the Supplemental Credits are authorized and approved by the appropriate regulatory agency. The obligation of the continued transfer of the Supplemental Credits shall survive the Amended Term of this Amendment.

4.4 With respect to the reservation and transfer of the Supplemental Credits by JEA, the City shall utilize the Water Quality Credits in a manner that may allow the City to attain its PLRG and shall execute, or cause to be executed, any and all documents necessary to cause the reservation and transfer of the Water Quality Credits from JEA to the City consistent with the terms of this Amendment.

4.5 The City shall utilize any Supplemental Credits for its own use in meeting PLRG obligations and shall not transfer or assign the Supplemental Credits to others without the prior written consent of JEA.

4.6 Except as modified herein, all other terms and provisions in the 2016 Agreement concerning Water Quality Credits shall remain in effect.

Section 5 - Additional Contribution

5.1 In recognition of agreement to the City Charter amendments made to extend the term of annual contribution and other terms adopted and approved through Ordinance 2018-XXX, JEA has agreed to pay to the City an additional contribution in 2018-2019 fiscal year of Fifteen Million One Hundred Fifty-five Thousand Dollars (\$15,155,000) (“Additional Contribution”).

5.2 The City and JEA acknowledge that the Additional Contribution is a one-time payment to the City.

5.3 JEA shall pay the Additional Contribution to the City within three business days of execution of this Agreement.

Section 6 – River Level Monitoring Equipment

6.1 The City desires to upgrade river level monitoring gauges in order to predict high water and flood level stages to manage its stormwater collection system and inform its citizenry. River monitoring gauges are beneficial to multiple parties including the City, JPA, emergency planning, marine vessels and recreational watercraft. JEA may benefit from the data as precursor to specific monitoring at its individual facilities that may be impacted by high and flood waters. The City intends to use \$155,000 of the Additional Contribution to fund replacement of one river level monitoring gauge.

Section 7 – City Water and Sewer Projects

7.1 The City has an on-going water and sewer infrastructure program that commenced in 2016 via Ordinance 2016-490-E. The program was developed after a working committee made recommendations to the City Council on an approach to infrastructure funding and implementation. The City intends to utilize \$15,000,000 of the Additional Contribution to supplement the current Water/Wastewater System Fund for use in the current program.

7.2 JEA has committed to manage and fund further study of water and sewer infrastructure technology and deployment methods to potentially reduce the significant capital costs of future water and sewer installation in existing neighborhoods that lack central water and sewer systems. The study will be sufficiently comprehensive to understand the trade-offs between possible lower up front capital expenditures with different technologies and long term operations and maintenance to provide balanced long term solutions over the life of the infrastructure with current customer base and associated costs in mind. Within thirty days of the execution of this Amendment, JEA shall request proposals from qualified consultants to perform the study. The study is to be completed within 18 months of the engagement of the consultant. The study results will be presented to the City once complete with possible recommendations on prioritization, segmenting and associated trade-offs.

Section 8 – Qualified Sewer Projects

8.1 Terms of Section 7, Qualified Sewer Projects, in the March 22, 2016 Agreement will remain in effect and continue to apply and operate as described therein with the exception of the length of term of Sections 7.3 and 7.8 Contributions and Payments. For the specified contributions and payments sections, the carry forward clauses will be based on the revised contribution formula agreement term ending September 30, 2023.

Section 9 - Amended Agreement

9.1 This Amendment, upon execution by City and JEA, will become an Amendment to the attached 2016 Agreement which remains in effect unless modified by this Amendment. The parties are not bound by any stipulations, representations, agreements, or promises, oral or otherwise, not printed or inserted herein. If any part of this Amendment shall be determined to be invalid or unenforceable by a court of competent jurisdiction, or by any other legally constituted body having jurisdiction to make such determination, the remainder of this Amendment shall remain in full force and effect provided that the part of this Amendment thus invalidated or declared unenforceable is not material to the intended operation of this Amendment.

IN WITNESS WHEREOF, the City of Jacksonville, Florida has caused this Amendment to be executed on the day and year written below in its name by the Mayor, and JEA has caused this Amendment to be executed on the day and year written below in its have by its duly authorized representative.

CITY OF JACKSONVILLE

Lenny Curry, Mayor

Date _____

ATTEST:

James B. McCain, Corporation Secretary

JEA

Date _____

Alan Howard, Chair

Frederick Newbill, Secretary

Date _____

I do hereby certify that there is an unexpended, unencumbered, and unimpounded balance in the appropriation sufficient to cover the foregoing Amendment; and that provision has been made for the payment of monies provided therein to be paid.

Ryan Wannemacher
JEA Interim Chief Financial Officer

FORM APPROVED:

By: _____
Office of General Counsel

EXHIBIT A

INTERAGENCY AGREEMENT BY AND BETWEEN THE CITY OF JACKSONVILLE AND JEA

This Interagency Agreement ("Agreement") is made and entered into this 22 day of March, 2016, by and between the **CITY OF JACKSONVILLE**, a Florida municipal corporation ("City"), whose address is 117 West Duval Street, Jacksonville, Florida 32202 and **JEA**, a body politic and corporate organized and existing under the laws of the State of Florida, whose address is 21 West Church Street, Jacksonville, Florida 32202.

RECITALS

WHEREAS, the City and JEA maintain a unique relationship and as consideration for the unique relationship and in recognition of the shared attributes in connection with its electric, water, and sewer distribution systems, JEA pays an annual assessment to the City in accordance with the assessment calculations contained within Section 21.07 of Article 21 of the Charter of the City, as amended and readopted by Chapter 80-515, Laws of Florida, Special Acts of 1980, as subsequently amended by Chapter 92-341, Laws of Florida, Special Acts of 1992 and as thereafter amended in accordance with the terms thereof prior to the date hereof ("City Charter"); and

WHEREAS, in addition to the annual assessment, JEA and the City desire to work cooperatively with one another to provide efficient services to the community; and

WHEREAS, the City and JEA desire to enter into this Agreement to set forth the collective understanding and agreement of the City and JEA regarding additional contribution in 2015-2016 fiscal year of \$15,000,000 from JEA to the City; the conveyance of Basin Management Action Plan ("BMAP") water quality credits from JEA to the City; and cooperative efforts and responsibilities regarding City sewer projects.

NOW, THEREFORE, in consideration of the mutual covenants, promises and conditions contained herein, the City and JEA mutually agree to enter into this Agreement as follows:

Section 1 – Recitals

1.1 The City and JEA acknowledge that the recitals contained above are true and accurate, to best of their knowledge, and are hereby incorporated herein by reference.

Section 2 – Term

2.1 This Agreement shall be for a five year term beginning on October 1, 2016 through September 30, 2021 (“Term”).

Section 3 – Definitions

For purposes of this Agreement, the terms below are defined as follows:

3.1 “BMAP” shall mean the Basin Management Action Plan for the Lower St. Johns River Basin. The BMAP’s purpose is to implement load reductions to achieve the nutrient TMDLs for the Lower St. Johns River Basin. This Agreement shall concern only those portions of the BMAP that apply to the City.

3.2 “City” shall mean the City of Jacksonville.

3.3 “Director” shall mean the Director of Public Works for the City.

3.4 “EPA” shall mean the United States Environmental Protection Agency.

3.5 “FDEP” shall mean the Florida Department of Environmental Protection.

3.6 “Fiscal Year” means the Fiscal Year of both the City and JEA, which runs from October 1 to September 30.

3.7 “LSJR” shall mean the Lower St. Johns River and its tributaries.

3.8 “Marine Portion of the LSJR” shall mean the portion of the LSJR extending from Black Creek to the mouth of the LSJR.

3.9 “Nonpoint Source” shall mean any source of nitrogen or other constituents that is not a Point Source.

3.10 “PLRG” shall mean the pollution load reduction goal for the City which for this Agreement shall mean the amount of total nitrogen reduction the City must achieve to reach load allocation for the Marine Portion of the LSJR. At this time, the PLRG for the City is 324,328 lb/yr (147,422 kg/yr) of total nitrogen.

3.11 "Point Source" shall mean any source of nitrogen or other constituents that constitutes a discernible, confined, and discrete conveyance, including, but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which constituents are or may be discharged. This term does not include flows from irrigated agriculture or agricultural stormwater runoff.

3.12 "Qualified Sewer Project" means a specifically identified qualified septic tank phase out action for an environmental purpose project in which the City and JEA have agreed to work together and have drafted a Task Authorization.

3.13 "Sewer Capacity Fee(s)" means the fee established by the JEA tariff which establishes the cost for connection to the JEA sewer system.

3.14 "Task Authorization" or "TA" means a document mutually agreed upon and executed by the City and JEA which recites the duties and obligations of each party for a particular Sewer Project.

3.15 "TMDL" shall mean the total maximum daily load of nutrients for a receiving water body, such as the LSJR, which is the sum of the individual wasteload allocations for Point Sources and the load allocations for Nonpoint Sources and natural background. TMDL, when plural, shall be referred to herein as TMDLs.

3.16 "TN" shall mean total nitrogen.

3.17 "Tributary Remediation" means required surface water improvements to tributaries as proscribed by the State of Florida.

3.18 "Water Quality Credits" shall mean the point source load reduction or nonpoint source load reduction that is generated when Total Nitrogen loads are reduced below the baseline load allowable under an adopted TMDL or BMAP and may be used or traded in accordance with section 403.067(8), Florida Statutes, and Rule 62-306, Florida Administrative Code. For purposes of calculating the number of Water Quality Credits under this agreement, the base unit shall be measured in metric tons per year (MT/yr).

3.19 "Work" shall mean the actions, products, documentation, electronic programs, reports, testing, transport, administration, management, services, materials, tools, equipment, and responsibilities to be furnished or performed by the City and JEA under this Agreement, together

with all other additional requirements that are not specifically recited in this Agreement, but can be reasonably inferred as necessary to complete all obligations and fully satisfy the intent of this Agreement.

Section 4 - BMAP Water Quality Credits

4.1 The City and JEA entered into that certain Agreement Between the City of Jacksonville and JEA Regarding the Transfer of Water Quality Credits dated May 7, 2015 (Ordinance 2015-198-E) (“Water Quality Trade Agreement”). This Agreement shall replace the Water Quality Trade Agreement in its entirety and the Water Quality Trade Agreement shall become null and void upon adoption and execution of this Agreement.

4.2 Section 6.1 of the former Water Quality Trade Agreement required a payment by the City to JEA in the amount of \$2,086,767 for the transfer period of January 1, 2016 through December 31, 2016. JEA has agreed to not charge the City for the Water Quality Credits for 2016. Any payment received by JEA for the 2016 period shall be refunded to the City upon adoption and execution of this Agreement.

4.3 JEA shall provide the annual Water Quality Credits, as more fully defined below, to the City for no compensation through December 31, 2023. This obligation to provide the Water Quality Credits to the City through December 31, 2023, shall survive the Term of this Agreement.

4.4 At no cost to the City, JEA agrees to transfer Water Quality Credits to the City that equate to 30.34 MT/yr of TN (“Transfer Amount”).

4.5 If required by FDEP, the City shall amend its MS4 permit to reflect the Transfer Amount of Water Quality Credits pursuant to this Agreement.

4.6 The City agrees to cooperate and fully support the modification and renewal of JEA’s NPDES permit in accordance with this Agreement, including opposition to any effort to impede or challenge the issuance of an amended permit in response to JEA’s application in accordance with this Agreement, including through litigation, if necessary, in administrative, state, and federal court.

4.7 JEA does not, by entering into this Agreement, make any representation, warranty, or guaranty, or otherwise make or provide any assurance(s) that a transfer of the Water

Quality Credits described herein shall permit, allow, or assist the City in meeting its PLRG. JEA does not, by entering into this Agreement, make any representation, warranty, or guaranty, or otherwise make or provide any assurance(s) that a transfer of the Water Quality Credits described herein shall limit or eliminate the necessity for the City to pursue additional stormwater and/or drainage projects to meet its PLRG.

4.8 No cause of action shall be hereby created for the failure of the Water Quality Credits described herein to assist the City in meeting its PLRG.

4.9 As the regulatory reduction of TN in the LSJR is an ongoing annualized requirement both the City and JEA will be required to meet beyond December 31, 2023, the parties agree to engage in discussions and working on a plan for meeting the future needs of both parties beyond December 31, 2023.

4.10 The parties acknowledge that Water Quality Credits may be eliminated, rescinded, reduced, or otherwise affected by the Florida Legislature, FDEP, or EPA. If JEA cannot provide the Water Quality Credit pursuant to regulatory changes that are of no fault of JEA, the City and JEA shall work cooperatively to address any Water Quality Credit shortfall or the City may reconsider the annual contribution assessment calculation in Section 21.07(c) of the Charter.

4.11 With respect to the reservation and transfer of the Water Quality Credits to the City, JEA shall execute, or cause to be executed, any and all documents necessary to cause the reservation and transfer of the Water Quality Credits from JEA to the City consistent with the terms of this Agreement.

4.12 With respect to the reservation and transfer of the Water Quality Credits by JEA, the City shall utilize the Water Quality Credits in a manner that may allow the City to attain its PLRG and shall execute, or cause to be executed, any and all documents necessary to cause the reservation and transfer of the Water Quality Credits from JEA to the City consistent with the terms of this Agreement.

4.13 This Agreement and any documents referenced herein collectively embody the entire agreement and understanding between the Parties and there are no other agreements or

understandings with reference to this Agreement that are not merged into and superseded by the Agreement.

Section 5 - Additional Contribution

5.1 The City and JEA have had extensive negotiations relative to establishing the annual contribution paid by JEA to the City. In recognition of agreement to the City Charter amendments made to the annual contribution formula and other terms adopted and approved through Ordinance 2015-764, JEA has agreed to pay to the City additional contribution in 2015-2016 fiscal year of Fifteen Million Dollars (\$15,000,000) (“Additional Contribution”).

5.2 The City and JEA acknowledge that the Additional Contribution is a one-time payment to the City.

5.3 JEA shall pay the Additional Contribution to the City within three business days of execution of this Agreement.

Section 6 – City Water and Sewer Projects

6.1 The City has committed to provide \$30,000,000, of which \$15,000,000 is the JEA Additional Contribution, during the Term of this Agreement for City water and sewer infrastructure.

6.2 The City and JEA will form a working committee to develop a plan that proposes policies, procedures, and laws for water and sewer infrastructure and on or before 90 days from the effective date of this Agreement shall provide written water and sewer plan recommendations to City Council (the “Plan”).

Section 7 – Qualified Sewer Projects

7.1 The Plan described in Section 6 is intended to broadly address both water and sewer infrastructure needs in Jacksonville. Once the Plan is developed, it may include, but is not limited to, identification of areas that will provide TMDL credit for septic tank removal, identification of urban fill areas, and areas where adding water service to sewer projects would provide cost efficiencies and economies of scale. As provided in this Section 7, JEA has committed additional assistance only with respect to environmentally sensitive Qualified Sewer Projects which are undertaken as part of the Plan to be developed. The balance of the projects executed under the Plan will be funded as described in Section 6.

7.2 The City and JEA entered into that certain Interagency Agreement for Cooperation By and Between the City of Jacksonville and JEA dated June 30, 2011 (Ordinance 2011-133-E). That agreement provided for the cooperative efforts of the City and JEA in implementing City sewer projects ("Sewer Projects Agreement"). This Agreement shall replace the Sewer Projects Agreement in its entirety and the Sewer Projects Agreement shall become null and void.

Joint Program Contribution and Payments

7.3 JEA shall contribute a maximum annual amount of \$1,000,000 ("Maximum Annual Contribution"), including all costs relating to JEA internal support and external consulting as itemized in Section 7.5 below for such Qualified Sewer Projects that the City undertakes to meet its environmental obligations and that are funded with capital dollars provided directly from the City. Any of the Maximum Annual Contribution not spent during the year shall carry-over each year, but at no time during the Term of this Agreement shall the total exceed \$3,000,000. Any of the carry-over Maximum Annual Contribution not expended at the end of the Term of this Agreement shall be used within 2 years of the end of the Term or forfeited and returned to JEA. JEA's payment of Sewer Capacity Fees shall not be included in JEA's Maximum Annual Contribution.

7.4 After consultation between the City and JEA regarding the annual funding, and a concurrence of the Director and JEA regarding the Qualified Sewer Projects to be funded that year, the parties will issue a Task Authorization (TA) which will identify a specific Scope of Services to be performed to complete the Qualified Sewer Project.

7.5 For those Qualified Sewer Projects where a TA is issued to JEA to complete the project scope, JEA agrees to provide the following services, as specified in the TA:

- a. Design and engineering,
- b. Procurement,
- c. Construction Management,
- d. Community Outreach,
- e. Permitting,
- f. Surveying and Mapping,
- g. Utility Locates,

- h. Scheduling,
- i. Project Accounting, and
- j. Project Document Management

7.6 The above services shall be provided by JEA at no cost to the City for approved Qualified Sewer Projects in an amount up to the Maximum Annual Contribution. All design and engineering plans prepared by JEA and/or its contractors associated with a Qualified Sewer Project shall be reviewed and approved by the Director, in its sole discretion, prior to the commencement of any Work on a Qualified Sewer Project.

7.7 Where one or more such services are to be provided by other third parties, JEA shall have no liability to reimburse the City for such costs, unless specifically agreed to between the parties. For those projects which the City elects to manage, JEA will reimburse the City for the engineering and design related portions of the work tied directly to specific Qualified Sewer Projects. Reimbursement would not include construction project management or city staff time for project management.

7.8 JEA shall pay the Sewer Capacity Fees for those sewer systems that are funded by the City, from JEA's sewer environmental fund for such projects that the City undertakes to meet its environmental obligations (TMDL and Tributary Remediation), up to an annual cap of \$650,000 ("Sewer Capacity Fee Funds"). Any of the Sewer Capacity Fee Funds not spent during the year shall carry-over each year, but at no time during the Term of this Agreement shall the total exceed \$2,000,000. Any of the carry-over Sewer Capacity Fee Funds that are not expended at the end of the Term of this Agreement shall be used within 2 years of the end of the Term or forfeited and returned to JEA. All other customer side connection fees will be paid from the City's project funding or customer.

7.9 If a TA is issued to JEA which requires real estate acquisition in order to complete the TA, all real estate acquisition services will be performed by the City of Jacksonville's Real Estate Division in accordance with the City's Code. The City will be responsible for all associated real estate acquisition costs and fees.

7.10 If a TA is issued which requires JEA to enter into contracts for construction services, material purchases, or otherwise incurs costs not specified as being paid for by JEA in

this Agreement, JEA shall invoice the City on a timely basis and shall include with each invoice sufficient detail for proper pre-audit and post-audit review. If necessary for audit purposes, the City may require and JEA shall provide additional supporting information to document invoices, procurement processes and to support diversity reporting.

7.10.1 The City shall pay JEA one hundred percent (100%) of each approved invoice. The City may withhold payment to JEA until such time as (1) project documentation submitted by JEA is deemed acceptable to the City, and (2) invoices are properly documented as stated herein. The City shall not be liable to pay JEA for JEA project-related expenses that were not otherwise authorized through this Agreement. Amounts withheld shall not be considered due and shall not be paid until the ground(s) for withholding payment have been remedied.

7.11 Where JEA may be required to reimburse the City for payments made by the City to its suppliers, the Director shall invoice JEA on a timely basis and shall include with each invoice sufficient detail for proper pre-audit and post-audit review. If necessary for audit purposes, JEA may require and Director shall provide additional supporting information to document invoices, procurement processes and to support diversity reporting.

7.11.1 JEA shall pay the City one hundred percent (100%) of each approved invoice. JEA may withhold payment to the City until such time as (1) project documentation submitted by the Director is deemed acceptable to JEA, and (2) invoices are properly documented as stated herein. JEA shall not be liable to pay the City for City project-related expenses that were not otherwise authorized through this Agreement. Amounts withheld shall not be considered due and shall not be paid until the ground(s) for withholding payment have been remedied.

7.12 In the event that JEA provides ancillary work during authorized TA Work, including, but not limited to, stormwater drainage work for the City, JEA shall receive written approval for the additional work from the Director and shall provide the Director with a written cost estimate prior to commencement of the additional work and upon completion of the additional work shall submit invoice and seek payment in accordance with provision to the City herein.

7.13 As appropriate, each TA shall include the provisions of 7.9, 7.10 and 7.11.

Creation and Agreement on the Task Authorization (TA)

7.14 In order to provide specific project assignments, the parties agree that they will mutually agree and jointly create a Task Authorization (TA). The TA may include all activities necessary to install and connect properties to central sewer service, central water service and perform supplemental storm water improvements, including such activities as roadway improvements, utility relocations, and restoration as necessary to accomplish the Project scope. Each TA, when executed, shall be made a part of this Agreement.

7.15 Each Task Authorization shall be executed by the Director and by the Vice President of Water and Wastewater for JEA, or their approved delegates.

Ownership of Assets

7.16 JEA shall own the physical water and sewer assets located in the public or specific utility rights of way at the time that the work is accepted. Water and sewer assets located outside of the utility rights of way, such as the connections from the central system to specific properties, shall be owned at that time by the then current property owner.

Upon Termination

7.17 For any TA which is active at the time of termination of this Agreement, the parties agree that they shall take the following actions:

7.18 Any active TA shall remain in effect and the project authorized by an active TA shall be completed within two years of the termination of this Agreement unless the TA is otherwise terminated by the Director. All joint program contribution and payment responsibilities shall be in affect during this two year completion period for active TAs.

7.19 Provide an equitable adjustment to provide for payment of all services, materials, and costs actually performed, incurred or rendered up to the termination date, and also including prior written contractual commitments incurred by the non-terminating party up to the date of such notice of termination, in accordance with the joint program contribution and payment responsibilities defined in this Agreement.

General Provisions

7.20 The Director shall have control over the prioritization and scopes of Work with respect to each Sewer Project. Work shall not commence on a Sewer Project until it has been approved by the Director.

7.21 This Agreement in no way requires or in any other way obligates the City or JEA to create any Task Authorizations for Work, nor does it place a requirement for JEA to perform Work defined in the City's program plan.

7.22 This Agreement in no way obligates JEA to agree to TAs it deems to not be in its best interest. In the event that Director and JEA are unable to reach mutually beneficial terms, JEA shall notify City in writing that it will not accept the TA. Such refusal shall not prejudice the City in considering JEA for future TAs.

7.23 The Director may solely determine on any basis (e.g. project-by-project basis, funding source-by-funding source basis) how and with whom it will enter into contracts for Work and which tasks, if any, are to be performed by JEA. Further, the Director may choose to split Work among several parties including JEA. The Director has the right to obtain preliminary, informal, or formal quotes, bids and proposals for projects from third parties prior to issuing TAs. JEA may or may not be included on such solicitations.

7.24 The Director has authority and rights to approve all project designs.

Limitations of Liability and Insurance

7.25 Subject to the provisions and limitations of Section 768.28, Florida Statutes, which provisions are not expanded, altered or waived, each party to this Agreement shall indemnify the other party from and against all claims, actions, causes of action or liabilities, including reasonable attorney's fees, which are caused by the negligent acts or omissions of the other party, its agents or employees, in the performance of its obligations under this Agreement. Nothing in this Agreement shall be construed as a waiver of sovereign immunity by either party.

7.26 Each party acknowledges that the other may enter into contracts with engineers and contractors for the actual performance of the construction projects, and that the contractor shall maintain such general liability, automobile insurance, and workers' compensation insurance as required by their current rules and regulations. Each party shall be named as additional insured on the other party's subcontractor insurance policies except Workers' Compensation and

Employer's Liability. Insurance certificates to this effect shall be sent to JEA Procurement Services, 21 West Church Street, CC6, Jacksonville, Florida 32202 for JEA and to the City's Risk Management Division, Yates Building, 231 E. Forsyth St., Room 440, Jacksonville, FL 32202.

Third-Party Indemnification

7.27 Each party shall ensure that each subcontract contains a provision with substantially the same language as shown below, where "Company" refers to subcontractor:

7.27.1 The Company shall indemnify and hold harmless, the City (or JEA in the case of a City issued subcontract), its officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, arising out of injury (whether mental or corporeal) to persons including death, or damage to property including arising out of or incidental to the performance of the Work, to the extent caused by the negligence, recklessness or intentional wrongful misconduct or breach of contract by the Company and persons employed or utilized by the Company in the performance of the Work. This indemnification shall survive the term of the Contract, for events that occurred during the Contract term. Indemnification is not limited in any way by insurance amounts.

7.27.2 The Company shall indemnify and hold harmless City (or JEA in the case of a City issued subcontract), its officers, directors, agents and employees from any damage, liability, claim or judgment arising out of its breach of Contract with JEA (or City in the case of a JEA issue subcontract).

7.27.3 Company's indemnification of City (or JEA in the case of a City issued subcontract) shall include any loss or damage to persons or property consequent upon the use, misuse, or failure of any items used by the Company or any of its subcontractors, even though the same items may be furnished or lent to Company or any of its subcontractors by City, JEA or by other companies. Company's, or its subcontractor's, acceptance or use of any items shall be construed to mean that Company accepts all responsibility for any claims for damages whatsoever resulting from the use, misuse, or

failure of such items whether such injury or damage be to its own employees or property, or to the employees or property of the JEA, its subcontractors, City, or otherwise.

Right To Audit Records

7.28 Each party agrees that the other or its duly authorized representatives shall have access to examine any of its books, documents, papers, and other records involving transactions related to this Agreement. Each party shall preserve all such records relating to each TA for a period of not less than three years after completion and Acceptance of each TA. In the event an audit is initiated within three years, all required records shall be maintained until the audit has been completed and all questions arising from it are resolved. Each party shall provide proper facilities for access to and inspection of all required records.

Force Majeure

7.29 No party shall be liable for any default or delay in the performance of its obligations under this Agreement due to an act of God or other event to the extent that: (a) the non-performing party is without fault in causing such default or delay; (b) such default or delay could not have been prevented by reasonable precautions; and (c) such default or delay could not have been reasonably circumvented by the non-performing party through the use of alternate sources, work-around plans or other means. Such causes include, but are not limited to: act of civil or military authority (including but not limited to courts or administrative agencies); acts of God; war; terrorist attacks; riot; insurrection; blockades; embargoes; sabotage; epidemics; fires; hurricanes, tornados, floods; or strikes.

7.30 In the event of any delay resulting from such causes, the time for performance of each of the parties hereunder (including the payment of monies if such event actually prevents payment) shall be extended for a period of time reasonably necessary to overcome the effect of such delay, except as provided for elsewhere in this Agreement.

7.31 In the event of any delay or nonperformance resulting from such causes, the party affected shall promptly notify the other in writing within three business days of the nature, cause, date of commencement and the anticipated impact of such delay or nonperformance. Such written notice, including change orders, shall indicate the extent, if any, to which it is anticipated that any delivery or completion dates will be thereby affected.

Procurement Code

7.32 As required by Section 126.108, *Ordinance Code*, in its performance of this Agreement, JEA must comply with any and all applicable federal, state and local laws, rules, regulations and ordinances (hereinafter collectively referred to as the “*Laws*”), with respect to the Work, as such Laws exist and may be amended from time to time. Such Laws shall include, but are not limited to, Chapter 119, Florida Statutes, (the Florida Public Records Law) and Section 286.011, Florida Statutes (the Florida Sunshine Law).

Records Retention

7.33 In addition to other requirements in this Agreement, JEA and its subcontractors must establish and maintain books, records, contracts, subcontracts, papers, financial records, supporting documents, statistical records, goods, services and all other documents, in whatsoever form or format including, but not limited to electronic storage media, (for purposes of this Section 7, hereinafter referred to as the “*Records*”) sufficient to reflect all receipt and expenditures of funds provided by City under this Agreement.

7.34 JEA must retain all Project Records pertinent to this Agreement for a period of five (5) years after completion of the Project. If an audit has been initiated and audit findings have not been resolved at the end of five (5) years, the Records shall be retained until resolution of the audit findings or any litigation which may be based on the terms of this Agreement, at no additional cost to City. Records shall be retained for longer periods when the retention period exceeds the time frames required by law or ordinance.

7.35 To the extent that JEA uses subcontractors in the performance of the Work under this Agreement, or assigns this Agreement with prior City consent, JEA must include the aforementioned audit, inspections, investigations and record keeping requirements in all subcontracts and assignments.

7.36 JEA shall maintain financial and accounting records and conduct transactions in accordance with generally accepted accounting principles and Florida Statutes. These financial records shall be maintained in such a manner so as to permit positive and ready identification at all times of any funds received by JEA from City.

Conflicting Provisions

7.37 If any provision hereof is found to be in conflict with any TAs or other or attachments hereto, the order of precedence shall be as follows: this Agreement as most recently amended; the TA authorizing the Work at issue as most recently amended; other TAs with the most recent TA having more weight than earlier TAs; then other relevant attachments.

Section 8 -Miscellaneous Provisions

Assignment of Agreement

8.1 Each party agrees that it shall not, assign, delegate, or otherwise dispose of this Agreement, the duties to be performed under this Agreement, or the monies to become due under this Agreement without the other party's prior written consent.

Survival

8.2 The obligations of City and JEA under this Agreement that are not, by the express terms of this Agreement, fully to be performed during the Term, shall survive the termination of this Agreement.

Cumulative Remedies

8.3 Except as otherwise expressly provided in this Contract, all remedies provided for in this Contract shall be cumulative and in addition to and not in lieu of any other remedies available to either party at law, in equity or otherwise.

Nonwaiver

8.4 Failure by either party to insist upon strict performance of any of the provisions of the Contract will not release either party from any of its obligations under this Agreement.

Notices and Correspondence

8.5 All notices required or permitted under this Contract shall be in writing and shall be deemed received if sent by one of the following means: (a) upon receipt if delivered by hand; (b) one day after being sent by an express courier with a reliable system for tracking delivery; (c) three days after being sent by certified or registered first class mail, postage prepaid and return

receipt requested; or (d) upon confirmed facsimile transmission provided that a copy shall be sent by another of the foregoing means. All notices shall be addressed by a party to the other party as follows:

If to JEA, such notice shall be addressed to JEA at:

JEA
Attention: Nancy A. Kilgo, Director, Government Relations
21 West Church Street, T-16
Jacksonville, FL 32202
KilgNA@jea.com

JEA
Attention: Brian Roche, VP/GM Water and Wastewater
21 West Church Street, T-16
Jacksonville, FL 32202
RochBJ@jea.com

Office of General Counsel
Attention: Government Operations
117 West Duval Street, Suite 480
Jacksonville, FL 32202
JodyB@coj.net

If to the City, such notice shall be addressed to the City at:

City of Jacksonville
Office of the Mayor
Attention: Chief Administrative Officer
117 West Duval Street, Suite 400
Jacksonville, FL 32202
SMousa@coj.net

City of Jacksonville
Attention: John Pappas
214 Hogan Street North, Suite 1026
Jacksonville, FL 32202
Pappas@coj.net

with a copy to:

City of Jacksonville
Office of General Counsel

Attention: Government Operations
117 West Duval Street, Suite 480
Jacksonville, FL 32202
JodyB@coj.net

Either party may change its address from time to time upon prior written notice to the other specifying the effective date of the new address.

Headings

8.6 The headings used are for convenience only and they shall be disregarded in the construction and interpretation of this Agreement.

Governing Law

8.7 This Agreement shall be construed and interpreted according to the laws of the state of Florida.

Entire Agreement

8.8 This Agreement, upon execution by City and JEA, constitutes the entire agreement of the parties. The parties are not bound by any stipulations, representations, agreements, or promises, oral or otherwise, not printed or inserted herein. If any part of this Agreement shall be determined to be invalid or unenforceable by a court of competent jurisdiction, or by any other legally constituted body having jurisdiction to make such determination, the remainder of this Agreement shall remain in full force and effect provided that the part of this Agreement thus invalidated or declared unenforceable is not material to the intended operation of this Agreement.

[Signatures on next page.]

IN WITNESS WHEREOF, the City of Jacksonville, Florida has caused this Agreement to be executed on the day and year written below in its name by the Mayor, and JEA has caused this Agreement to be executed on the day and year written below in its have by its duly authorized representative.

CITY OF JACKSONVILLE

Lenny Curry
Lenny Curry, Mayor

Date 3/22/16

ATTEST:

John C. Sawyer
John C. Sawyer, Corporation Secretary
JR



In accordance with the *Ordinance Code*, of the City of Jacksonville, I do hereby certify that there is an unexpended, unencumbered, and unimpounded balance in the appropriation sufficient to cover the foregoing agreement; and that provision has been made for the payment of monies provided therein to be paid.

[Signature]
Director of Finance
CITY Contract Number: N/A

FORM APPROVED FOR CITY:

By: [Signature]
Office of General Counsel

JEA

[Signature]
Tom Petway, Chair

Date 3-15-2016

[Signature]
Delores Kesler, Secretary

Date 3-15-2016

FORM APPROVED FOR JEA:

By: [Signature]
Office of General Counsel