

RESOLUTION NO. 5-07

A RESOLUTION REGARDING THE ANNUAL REVIEW OF DEVELOPER CONTRIBUTIONS TO UTILITY INFRASTRUCTURE FOR AND IN ACCORDANCE WITH THE ADDENDUM TO DEVELOPER'S AGREEMENTS WHICH ESTABLISHED DEVELOPER CONTRIBUTIONS TO INFRASTRUCTURE COSTS OF THE UTILITIES COMMISSION, CITY OF NEW SMYRNA BEACH, FLORIDA, RESCINDING ALL RESOLUTIONS, OR PORTIONS THEREOF, IN CONFLICT HEREWITH AND PROVIDING FOR AN EFFECTIVE DATE.

WHEREAS, the Utilities Commission, City of New Smyrna Beach, Florida, has the full and exclusive authority over the management, operation and control of all the City's electric, water and pollution control (sanitary sewer), and reuse (reclaimed) water utilities and has the duty to prescribe rules, rates and regulations governing the use of such facilities, wherever such are provided by the Utilities Commission, and to make such changes from time to time in the rules, rates and regulations as it deems necessary; and

WHEREAS, a change in apportioning the utility infrastructure needs and costs was necessary in order to support growth and to avoid the disproportionate distribution of costs upon existing customers and establishment of the Addendum to the Developer's Agreement was authorized; and

WHEREAS, the Utilities Commission presented said proposed change in policy and Addendum to the Developer's Agreements to the customers of the Utilities Commission, and to other parties of interest, at two public hearings, which were duly noticed and advertised on this matter; preliminary public hearing held on June 22 , 2006 and final public hearing held on July 17, 2006; and

WHEREAS, the Addendum to the Developer's Agreement provides for an annual review of the costs for the developer contributions and upon determination of any necessary revisions, the cost revisions will be presented during a public meeting of the Utilities Commission; and

WHEREAS, the Utilities Commission held two public hearings regarding the annual review of the developer contributions to utility infrastructure for the Addendum to the Developer's Agreements to the customers of the Utilities Commission, and to other parties of interest, at two public hearings, which were duly noticed and advertised (newspaper publication date June 23, 2007) on this matter; preliminary public hearing held on July 16, 2007 and final public hearing held on August 20, 2007; and

NOW, THEREFORE, BE IT RESOLVED BY THE UTILITIES COMMISSION, CITY OF NEW SMYRNA BEACH, FLORIDA, AS FOLLOWS:

SECTION 1: For the annual review process of the developer contributions to utility infrastructure, Utilities Commission staff will utilize project lists, costs estimates, cost allocation, and costs distributions. In addition during this review period, a Conceptual Cost Estimate For Utility Improvements (dated May 31, 2007) was prepared by U.S. Cost for the Utilities Commission and said report has been incorporated by reference only.

SECTION 2: As a part of the annual review of developer contributions to utility infrastructure, it was additionally determined additional clarification language should be incorporated and the following Addendum to the Developer's Agreements is as shown on Exhibit A and is attached to and made a part of this resolution.

SECTION 3: If any section, subsection, sentence, clause, phrase, or portion of this Resolution is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct and independent provision and such holding shall not affect the validity of the remaining portions thereof.

SECTION 4: All Resolutions, or portions thereof, in conflict herewith are hereby rescinded and superseded.

SECTION 5: After adoption by the Utilities Commission, this Resolution shall take effect on September 28, 2007.

THE ABOVE AND FOREGOING RESOLUTION was introduced at a regular meeting of the Utilities Commission, City of New Smyrna Beach, Florida, held on August 20, 2007, by Commissioner Allen, who moved its adoption, which motion was seconded by Commissioner Hall, and upon roll call vote of the Commission was as follows:

CHAIRMAN	<u>[Signature]</u>	<u>ye</u>
VICE CHAIRMAN	<u>[Signature]</u>	<u>ye</u>
SECY.-TREAS.	<u>[Signature]</u>	<u>yes</u>
COMMISSIONER.	<u>[Signature]</u>	<u>yes</u>
COMMISSIONER	<u>[Signature]</u>	<u>ye</u>

APPROVED:

[Signature]
CHAIRMAN

ATTEST:

[Signature]
SECRETARY-TREASURER

S E A L

APPROVED AS TO FORM AND CORRECTNESS:

[Signature]
Utilities Commission Attorney

EXHIBIT "A"

ADDENDUM TO THE DEVELOPER AGREEMENT

This **ADDENDUM TO THE DEVELOPER AGREEMENT** is made this _____ day of _____, 2007, by and between the **UTILITIES COMMISSION**, City of New Smyrna Beach, Florida, hereinafter referred to as the **COMMISSION**, and _____, (OWNER), (GENERAL PARTNER), (AUTHORIZED AGENT), (CORPORATION), LICENSED IN THE STATE OF FLORIDA and authorized to do business in the State of Florida and hereinafter referred to as the **DEVELOPER**.

WHEREAS, the **COMMISSION** and **DEVELOPER** entered into a **DEVELOPER'S AGREEMENT FOR WATER, WASTEWATER, RECLAIMED WATER, AND ELECTRIC ENERGY SERVICES** on _____, 2007 which provides for services to the Developer by the Commission;

WHEREAS, the utility infrastructure (involving electric, water, wastewater, and reclaimed water supply facilities herein referred to as utility infrastructure) of the **COMMISSION** to support growth as planned is impacted by the aggregate of all surrounding development;

WHEREAS, to apportion the costs for the utility infrastructure needs to support a given area, the **COMMISSION** desires to fairly apportion costs to the **DEVELOPER** for the future or existing infrastructure to meet needs to serve multiple developments of differing size, use, and scope; and,

WHEREAS, in recognition of the benefits of conceptual long-range planning for the build out of an area pursuant to the comprehensive plan, and detailed planning for specific areas, consistent with the comprehensive plan; to further the intent of Florida Statutes s. 163.3177(11) which supports innovative and flexible planning and development strategies, and the purposes of Chapter 163, Florida Statutes, and to avoid the disproportionate distribution of costs upon existing customers for necessary services for new customers;

ACCORDINGLY, in consideration of the RECITALS hereof, for and in consideration of the mutual understanding and agreement herein contained and assumed, and other good and valuable considerations received by each party from the other, the receipt and sufficiency of which are hereby acknowledged, the parties do hereby **AGREE** as follows:

ARTICLE I DEFINITIONS

The parties agree that in construing this **ADDENDUM**, the words, phrases, and terms herein shall have the same meanings as defined in the **DEVELOPER'S AGREEMENT FOR WATER, WASTEWATER, RECLAIMED WATER, AND ELECTRIC ENERGY SERVICES** except as provided below:

- 1.1. ERU means the equivalent residential unit and is defined as used in UCNSB "Rates Charges and Fees Summary" as follows; SECTION II for water, SECTION III for waste water, and Section IV for reclaimed water. For electric energy an ERU is defined as a single phase service with a Main Breaker rating of up to 200 amps, each additional 100 amps of rated capacity or fraction thereof is an additional ERU. Three phase service is calculated the same multiplied by a factor of 3.0. EXAMPLE: a 300 amp service is 2.0 ERU if single phase, 6.0 ERU if 3 phase.
- 1.2. FINAL PERMIT – This is the time when the applicant and the UC have both approved and formally executed this agreement

ARTICLE II
INFRASTRUCTURE PAYMENTS

DEVELOPER shall pay into an interest bearing escrow account the amount as set forth below in the DEVELOPER CONTRIBUTIONS TO INFRASTRUCTURE to pay for such infrastructure improvements necessary to support the planned growth. The UTILITIES COMMISSION shall use all or a portion of such escrowed monies at any time for said utility infrastructure improvements as deemed necessary by said UTILITIES COMMISSION.

ARTICLE III
ADJUSTMENTS TO INFRASTRUCTURE PAYMENTS

If the DEVELOPER alters the Plans and Specifications to the DEVELOPER's facilities and is re-permitted for such alterations, and the number of ERUs is affected, the amount paid hereby shall be adjusted upward or downward accordingly.

ARTICLE IV
TIME FOR PAYMENT

Payment shall be made, in full, at or before the time of the issuance of the Final Permit for construction. Upon payment, the Utilities Commission will issue paid receipts and execute permit applications for U.C. services (electric, water, wastewater, and reclaimed water).

ARTICLE V
USE OF INFRASTRUCTURE PAYMENTS

The amounts collected shall be used for the design and improvement of the utility infrastructure and supporting systems.

ARTICLE VI
REVISION OF CALCULATION OF INFRASTRUCTURE PAYMENTS

If the calculation for each ERU shall be revised downward prior to Final Permit being issued to DEVELOPER, DEVELOPER shall be reimbursed any difference from the calculation thereof and the amount paid. If plans are changed resulting in a higher recalculated ERU count, the payment shall be revised upward accordingly at the rate in effect at the time of revision, and paid prior to revised construction proceeding.

ARTICLE VII
COMMUNITY DEVELOPMENT DISTRICT

Should the Utilities Commission participate in the future in a Community Development District or other appropriate funding mechanism to finance such utility infrastructure, such remaining monies deposited in an escrow account herein referred will be returned after such contributing developer participates in such other funding mechanism whereby the Utilities Commission will be equally compensated for such utility infrastructure.

ARTICLE VIII
ASSIGNMENT

Developer may assign all of the right, title and interest in and to and under this Addendum, subject, however, to the express condition precedent that the written consent is first obtained from the Utilities Commission. Assignee agrees to perform all of the duties and obligations of Developer under the agreement. If Developer has provided a Guarantee of Payment for the monies subject to this Addendum or its related Agreement in any form; (i.e. Irrevocable Letter of Credit), said Guarantee of Payment shall remain in effect until the obligations hereto have been paid in full or Assignee institutes a subsequent Guarantee of Payment to the satisfaction of the Utilities Commission.

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DEVELOPER CONTRIBUTIONS TO UTILITY INFRASTRUCTURE*

TOTAL NUMBER ERU'S:

WASTEWATER Supply	\$ _____ per ERU	= \$ _____
WATER Supply	\$ _____ per ERU	= \$ _____
RECLAIMED WATER Supply	\$ _____ per ERU	= \$ _____
ELECTRICAL Supply	\$ _____ per ERU	= \$ _____

* Distances, water-related line size, and costs will be determined from published studies or existing infrastructure maps applied to meet code, standards, and UC requirements and use most recent costs for supply. Electrical distances, load ratings, and costs will be determined from published studies or existing infrastructure maps applied to meet code, standards, and UC requirements and use most recent costs for transmission and subtransmission supply circuits. The UC's utility cost infrastructure plan will be used to calculate the costs per ERU and exclusively reserves the right to change such plan for future applications. Rates may be adjusted by the UC after one year initially and as often as yearly thereafter.

TOTAL DEVELOPER CONTRIBUTIONS TO UTILITY INFRASTRUCTURE*

= \$ _____

IN WITNESS WHEREOF, the parties hereto have caused these presents to be signed in their respective name, by their proper officers and their seals to be affixed this _____ day of _____, 2007.

Signed, Sealed and
Delivered in the presence of:

FOR THE DEVELOPER:

Company Name:

(CORPORATE SEAL)

Name:

Title:

STATE OF FLORIDA
COUNTY OF VOLUSIA

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

WITNESS my hand and official seal in the County and State last aforesaid, this _____ day of
_____, 2007.

Notary Public, State of Florida

My commission expires:

UTILITIES COMMISSION, CITY OF NEW SMYRNA
BEACH, FLORIDA

GENERAL MANAGER/CEO

Approved as to form and correctness:

UTILITIES COMMISSION ATTORNEY