

**CITY OF NORTH PORT, FLORIDA
AND
BRISTOL EDWARD RUDOLF REVOCABLE TRUST
WATER AND WASTEWATER SYSTEM
DEVELOPER'S AGREEMENT**

THIS WATER AND WASTEWATER SYSTEM DEVELOPER'S AGREEMENT ("Agreement") is made by and between the City of North Port, Florida, a municipal corporation ("City") located within the State of Florida, and Bristol Edward Rudolf Revocable Trust, a Florida Trust, ("Developer").

RECITALS

WHEREAS, Developer owns or controls lands ("Property") located in North Port, Florida, the boundary description and property identification(s) of which is set forth in Exhibit "A-1" and a map of which is attached as Exhibit "A-2", both of which are incorporated herein; and

WHEREAS, Developer has commenced or is about to commence development of the Property, by erecting thereon, residential or commercial improvements including improvements contemplated under this agreement ("Agreement"); and

WHEREAS, Developer is desirous of prompting the construction and/or maintenance of central water and wastewater facilities so occupants of each residence or commercial improvement constructed will receive adequate water and wastewater services; and

WHEREAS, the City intends to provide, in accordance with the provisions and stipulations provided in this Agreement and in accordance with all applicable laws, central water and wastewater facilities to the Property, and to extend the facilities by way of water and wastewater mains, and to thereafter operate the facilities so the occupants of each residence or commercial improvement constructed on the Property will receive adequate water and wastewater services from the City; and

WHEREAS, the City intends to provide reclaimed water service to the Property if applicable and economically feasible, and subject to City regulation.

NOW THEREFORE, for and in consideration of the mutual covenants herein and for other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the Parties agree as follows:

1. **RECITALS.** The above Recitals are true and correct and are incorporated into this Agreement by reference.
2. **DEFINITIONS.** The definitions set forth in the chapter entitled "Utilities" found in the Code of the City of North Port, Florida ("City Code") apply to this Agreement unless otherwise specified below. The following definitions and references are given for the purpose of interpreting the terms as used in this Agreement and apply unless the context indicates a different meaning:
 - A. Service: The readiness and ability on the part of the City to furnish water and wastewater services to each lot.

- B. Point of delivery or collection: The point where the pipes of utility are connected with the pipes of the customer. Unless otherwise indicated, the point of delivery shall be the point on the customer's lot line.
- C. Contribution-in-aid-of-construction: The sum of money and/or property represented by the value of the water distribution and wastewater collection systems constructed by Developer that Developer covenants and agrees to pay and/or transfer to the City to induce the City to continuously provide water and wastewater services to the Property.
3. **EFFECTIVE DATE.** This Agreement will become effective on _____, or the date the last of the Parties approves or executes it, as applicable ("Effective Date").
4. **EASEMENT AND RIGHT OF ACCESS.** Developer hereby grants at no cost to the City the exclusive right or privilege to construct, own, maintain, and operate the water and wastewater facilities in, under, over and across the present and future streets, roads, easements, reserved utility sites and public places as provided and dedicated to public use in the record plats, or as provided for in agreements, dedications or grants made otherwise and independent of said record plats.
- A. Developer acknowledges that the City will possess the right of ingress and egress to carry out these utility functions through the recording of the final plat. The foregoing grants shall be for such period of time, as the City requires such rights, privileges or easements in the ownership, maintenance, operation or expansion of the water and wastewater facilities.
- B. The City covenants that it will use due diligence in ascertaining all easement locations; however, should the City install any of its facilities outside a dedicated easement area, Developer, the successors and assigns of Developer, covenant and agree that the City will not be required to move or relocate any facilities lying outside a dedicated easement area so long as the facilities do not interfere with the then proposed use of the area in which the facilities have been installed.
- C. The City hereby agrees that all easement grants will be utilized in accordance with the established and generally accepted practices of the water and wastewater industry with respect to the installation of all its water and wastewater facilities in any of the easement areas; and Developer in granting easements herein, or pursuant to the terms of this instrument, shall have the rights to grant exclusive or non-exclusive rights, privileges and easements to other entities to provide the Property any utility services other than water and wastewater services.
- D. Developer shall obtain, at its own expense, upon direction by the City, any and all easements necessary which easements shall be in favor of the City. Developer agrees to dedicate to the City, an easement, as to be determined by the City, so as to allow the City to enter the Property and make such alterations, repairs, or other work, as the City shall deem necessary to achieve efficient service in the water and sewer systems. Any easement shall be dedicated to the City and recorded in the Public Records of Sarasota County, Florida within ten days prior to acceptance of the asset by the City.
5. **PROVISION OF SERVICE, PAYMENT OF RATES.** Upon the continued accomplishment of all the prerequisites contained in this Agreement to be performed by Developer, the City covenants and agrees that it will allow the connection of the water distribution and wastewater collection facilities installed by Developer to the central water and wastewater facilities of the City in accordance with

the terms and intent of this Agreement. Such connection shall be in accordance with rules and regulations of the Department of Health and the Florida Department of Environmental Protection.

- A. The City agrees that once it provides water and wastewater services to the Property and Developer or others have connected customer installations to its system, that thereafter, the City will continuously provide in return for payment of all applicable rates, fees, and charges and in accordance with the other provisions of this Agreement, and of applicable laws, including rules and regulations and rate schedules, water and wastewater services to the Property in a manner to conform with all requirements of all governmental agencies having jurisdiction over the water distribution and wastewater collection operations of the City. Developer, its successors and assigns agree to timely and fully pay to the City all applicable monthly rates, fees and charges including but not limited to, Utility Inspection Fees and Developer Agreement Fees as defined in the City Fee Structure and to fully comply with all City codes, rules, regulations, and ordinances applicable to the provision of water, wastewater and reclaimed water service.
- B. Developer understands that the Property is located in the US-41 Utility Corridor improvement area and is subject to the US-41 corridor surcharge recovery fees, as defined in City Code Section 78-31(a)(4), as may be amended from time to time, on all ERCs required for the Property.

6. DESIGN, REVIEW, CONSTRUCTION, INSPECTION AND CONVEYANCE OF FACILITIES.

- A. Developer hereby covenants and agrees to pay for the construction and to transfer ownership and control to the City the on-site and off-site water distribution and wastewater collection systems referred to herein as a contribution-in-aid-of-construction.
- B. Pursuant to the US-41 Utility Corridor Study, the City has designed and constructed the water and wastewater improvements in the US-41 Corridor which are required to serve the Property and provide connection to the City's water distribution and wastewater collection system. Developer shall provide the City with engineering plans and specifications of the type and in the form as prescribed by the City, showing the on-site and off-site water distribution, irrigation distribution (as applicable), and wastewater collection systems proposed to be installed to provide service to the subject Property. The City's Utility Engineer will advise Developer's engineer of any sizing requirements as mandated by the City's system policies and utility standards for the preparation of plans and specifications of facilities within the Property. The detailed plans may be limited to a phase of the Property, and subsequent phases may be furnished from time to time. However, each phase, as applicable, shall conform to a master plan for the development of the Property and the master plan must be submitted to the City concurrent with or prior to submission of plans for the first phase. All such plans and specifications must be submitted to the City and no construction shall commence until the City has approved the plans and specifications in writing. The complete plans and specifications, as approved by the City's Utilities Director or designee, for connection to the City's system shall be prepared by Developer's Professional Engineer, who must be registered in the State of Florida. All construction must be in strict conformity with the final plans and specifications as approved by the City. The City, its Utilities Director, or other representative, shall have the right to inspect any and all construction on the Property whether in public rights-of-way or on private property. Upon notification of any deviation from the approved plans and specifications, Developer shall immediately make modifications as directed by the City. No construction shall be commenced without final approval of the plans and specifications by the City's Utilities Director. After approval, Developer shall cause to be

constructed, at Developer's expense, the water distribution, irrigation, and wastewater collection systems as shown on all plans and specifications.

- C. Developer agrees to the following working hours for any work done by the City in connection with implementation of this Agreement. Normal working hours are defined as Monday through Friday, 7:00 a.m. to 3:30 p.m. Work outside of the normal working hours will constitute an "Overtime" rate, which will be reimbursed to the City. The Overtime rate will be calculated by the City on a time and a half basis plus all overhead fees. If work is conducted on scheduled holidays, Developer is responsible to reimburse on a double time and a half rate plus all overhead fees. The City will invoice Developer for all fees and Developer shall make payment to City within 30 days of the date of the invoice.
- D. To connect Developer's water transmission and distribution system to the City's existing water transmission system, Developer's wastewater collection system to the City's existing wastewater system, and Developer's reclaimed water system to the City's existing reclaimed water system, Developer must design to the City's specifications, apply for and be issued all required permits, and construct to the City's most current specifications, all infrastructure, as approved by Staff Development Review ("SDR"). Developer agrees to upgrade and pay for any and all supporting infrastructure that is required to support the flows for the project, including but not limited to a DATAFLOW SCADA system on any existing or newly constructed lift stations that will serve the project.
- E. **Developer understands the need to support the City's water conservation efforts and to the extent possible shall utilize Florida friendly yards, xeriscape landscaping, and shall permit, construct, and design all irrigation systems to meet the City's reclaimed water standards as approved by SDR and Florida Department of Environmental Protection ("FDEP") Rule 62-610.460, and to utilize reclaimed water, if available, as the primary source for irrigation purposes. The quality of the reclaimed water must meet the requirements of FDEP Rule 62-610.460. The City shall be held harmless and indemnified by Developer for the resulting water quality after mixing in Developer's storage pond, unless reclaimed waters of quality not meeting the requirements of FDEP Rule 62-610.460 is provided by the City. Developer shall connect any existing irrigation distribution system to the City's reclaimed water system and shall utilize reclaimed water as the primary source for irrigation purposes at such time as reclaimed water is made available to the development.**
- F. All costs relating to the construction of the systems by Developer, including but not limited to labor, overhead, permits, taxes, licenses, application fees, easement acquisitions, lift stations, backflows, SCADA systems, pumps, pipes, materials, and any other direct or indirect costs related to the construction, shall be borne by Developer and shall be fully paid for by Developer. All of the City's costs in connection with the construction including but not limited to charges for inspections, maintenance, administrative expenses, and any other costs incurred by the City in connection with this matter shall be paid by Developer. In addition to such costs, Developer shall pay the City all fees described in Section 4 and 20 of this Agreement.
- G. During the construction of the water distribution and wastewater collection systems by Developer, the City shall have the right to inspect such installation to determine compliance with plans and specifications, adequacy of the quality of the installation, and further, shall be entitled to perform standard tests for pressure, infiltration/vacuum, line and grade, and all other normal

engineering tests required by specifications and/or good engineering practices. Complete as-built plans shall be submitted to the City upon completion of construction. City inspections of the off-site and on-site facilities will not delay the construction schedule.

- H. Developer shall apply for and receive all required permits for construction of the facilities described herein and shall prepare all documents necessary to solicit bids from qualified contractors. The City may request the facilities be built oversized and, if directed by City, Developer shall design the facilities as oversized and to prepare either separate bid proposals or one bid proposal for the oversizing as the base proposal and Developer required line size as an alternative proposal. Before publication of distribution by Developer, Developer shall submit either separate bid proposals or a singular bid proposal to the City for review and comment, which may include but is not limited to requiring incorporating for provisions for compliance with public project bid requirements. If the City elects to have Developer construct any oversized facilities, and provided the City does not reject the bid proposal that Developer intends to accept, the City agrees to pay Developer the difference of the bid construction cost for the oversizing of the pipeline not later than thirty (30) days following approval by the City of Developer's delivery of its contractually required incremental payment to its construction contractor. Developer understands and agrees that the City's share of construction cost shall not include such items as design, insurance, contingency, construction management and administrative fees.
- I. Upon execution of this Agreement, Developer transfers to City the title to all water distribution and wastewater collection systems installed by Developer's contractor as provided herein. The conveyance shall take effect without further action upon the City's acceptance of the installation. As further evidence of said transfer to title, and upon the completion of the installation and prior to the rendering of service by the City, Developer shall convey to the City, by bill of sale or other appropriate documents, in a form satisfactory to the City, the complete on-site and off-site water distribution and wastewater collection systems as constructed by Developer and approved by the City. Developer shall further convey to the City, in a form satisfactory to the City, all easements and/or rights-of-way covering areas where water distribution and wastewater collection lines are installed by recordable document. All conveyance of easements and/or rights-of-way shall be accompanied by a title policy or other evidence of title, satisfactory to the City, establishing Developer's rights to convey such continuous enjoyment of the easements or rights-of-way for those purposes set forth in this Agreement to the exclusion of any other person in interest. The use of easements granted by Developer may include the use by other utilities so long as such uses by electric, telephone, gas utilities, or cable television do not unreasonably and materially interfere with use by the City. The City agrees that the acceptance of the water distribution and wastewater collection systems, installed by Developer, for service, or by acceptance of the bill of sale, shall constitute the assumption of responsibility by the City for the continuous operation and maintenance of such systems from that date forward.
- J. All installations by Developer or its contractor must have a minimum of a one-year warranty from the date of City's acceptance. Mortgagee(s), if any, holding prior liens on such properties shall be required to release such liens, subordinate their position, and join in the grant or dedication of the easements or rights-of-way. Any such liens shall remain subordinate to this Agreement. All water distribution and wastewater collection facilities must be covered by easements if not located within platted or dedicated rights-of-way.

- K. Whenever the development of the subject Property involves one customer or a unity of several customers, and in the City's opinion, ownership by the City of the internal water distribution and wastewater collection systems is not necessary, Developer or its successor or assigns shall retain ownership and the obligation for maintenance of such on-site facilities.
- L. Payment of the contribution-in-aid-of-construction does not and shall not result in the City waiving any of its rates, rate schedules, or rules and regulations, and their enforcement shall not be affected in any manner whatsoever by Developer making the contribution. The City shall not be obligated for any reason whatsoever, nor shall the City pay any interest or rate of interest upon the contribution. Neither Developer nor any person or other entity holding any of the Property by, through, or under Developer, or otherwise, shall have any present or future right, title, claim or interest in and to the contributions or to any of the water and wastewater facilities and properties of the City, and all prohibitions applicable to Developer with respect to no refund of contributions, no interest payment on said contributions and otherwise, are applicable to all persons or entities. No user or customer of water and wastewater service is entitled to offset any bill or bills rendered by the City for utility service or services against the contributions. Developer is not entitled to offset the contributions against any claim or claims of the City unless specified in the Special Conditions of this Agreement.
- M. If any use involving commercial kitchen facilities is located on the Property, the wastewater facilities must include all grease interceptors or grease traps (a "Grease Trap") as required by the City or by applicable law, code, rule, regulation, or standard pertaining thereto, as the same may from time to time be amended. All wastewater from any grease producing equipment, including floor drains in food preparation areas, must first enter the grease trap for pretreatment before the wastewater is delivered to the City's wastewater system. Provisions for a Grease Trap shall be included in the plans and specifications and must identify size, capacity, and other specifications as required by the City and other applicable governmental agencies. The City has the right but not the obligation to inspect and test any Grease Trap in order to ensure compliance with these terms. **Developer shall indemnify and hold harmless the City from and against any and all liability, cost, expenses and fees, including attorneys' fees and costs, arising or resulting from Developer's failure to install and adequately maintain a Grease Trap including, without limitation, any costs or expenses resulting or arising from damage to the City's wastewater system lines, lift stations and plant facilities caused by grease, oil, fats, prohibited solvents or any other materials entering into or coming in contact with such lines, lift stations and plant facilities because of Developer's failure to adhere to all required provisions.**

7. EVIDENCE OF TITLE.

Within a period of thirty (30) days after the execution of this Agreement, at the expense of Developer, Developer shall either (i) deliver to the City an Abstract of Title, brought up to date, which abstract shall be retained by the City and remain the property of the City; or (ii) furnish the City an opinion of title from a qualified attorney at law or a qualified title insurance company with respect to the Property, which opinions shall include a current report on the status of the title, setting out the name of the legal title holders, the outstanding mortgages, taxes, liens, and covenants. The provisions of this Section are for the exclusive rights of service contained in this Agreement. Any mortgage or lien holder having an interest in the Property must join in the grant of exclusive service rights set forth in this Agreement. Any and all such grants of exclusive service rights set forth in any prior agreement

shall survive through the adoption of this Agreement. Title standards shall be the same as those applicable to real estate generally adopted by the Florida Bar and in accordance with Florida law.

- 8. OWNERSHIP OF FACILITIES.** Developer agrees with the City that all water and wastewater facilities conveyed to the City for use in connection with providing water and wastewater services to the Property, will at all times remain in the complete and exclusive ownership of the City, and any entity owning any part of the Property or any residence or building constructed or located thereon, shall not have the right, title, claim or interest in and to such facilities, or any part of them, for any purpose, including the furnishing of water and wastewater services to other persons or entities located within or beyond the limits of the Property.
- 9. APPLICATION OF RULES, REGULATIONS, AND RATES.** Notwithstanding any provision in this Agreement, the City may establish, revise, modify and enforce rules, regulations, and rates covering the provision of water and wastewater services to the Property. Such rules, regulations, and rates are subject to the approval of the City. Such rules and regulations will at all times be reasonable and subject to regulations as may be provided by law or under contract. Rates charged to Developer or customers located upon the Property will be identical to rates charged for the same classification of service. All rules, regulations, and rates in effect or placed into effect in accordance with the preceding shall be binding upon Developer, upon any other entity holding by, through, or under Developer, and upon any customer of the water and wastewater services provided to the Property by the City.
- 10. PERMISSION TO CONNECT REQUIRED.** Developer or any owner of any parcel of the Property or any occupant of any residences or buildings located thereon, shall have no right to and must not connect any customer installation to the water and wastewater facilities of the City until the City has granted approval for the connection. Any illegal connection shall be subject to the illegal connection fee in effect at the time of discovery.
- 11. NOTICES.** Except as specified elsewhere in this Agreement, all notices provided for in the Agreement must be in writing and transmitted by FedEx, UPS, or by certified mail, return receipt requested to the following. A party may update its notice information by providing written notice to the other party.

As to Developer:

Bristol Edward Rudolf Revocable Trust
Brad Baker TTEE
8959 S. Tamiami Trail
Venice FL 34293
Telephone: 941-408-1984
Fax: N/A
Attn: Brad Baker
Email: Bradbaker@comcast.net

As to City:

City of North Port Utilities Department
Attention: Utilities Director
6644 W. Price Boulevard
North Port, FL 34291
Telephone: (941) 240-8000
Email: Ngallinaro@northportfl.gov

With a copy to:

City Attorney's Office
Attention: City Attorney
4970 City Hall Boulevard
North Port, FL 34286

12. BINDING AGREEMENT; ASSIGNMENTS BY DEVELOPER; DISCLOSURE; INDEMNIFICATION RELATING TO ASSIGNMENT.

- A. This Agreement shall be binding upon and shall inure to the benefit of Developer, the City, and their respective assigns and successors by merger, consolidation, or conveyance.
- B. This Agreement shall not be sold, conveyed, assigned, or otherwise disposed of by Developer without the prior written consent of the City, which consent shall not be unreasonably withheld in the event of a sale, conveyance, assignment or other disposal of this Agreement, or the assignment of ERCs under the terms of this Agreement.
- C. The Parties acknowledge that Developer may sell or lease some or all of the Property and may be the Applicant who shall subsequently pay the Water and Wastewater Capacity Fees prior to connection of the proposed units to be serviced by the City. Developer agrees to disclose to any grantee, lessee, or assignee any obligation of such grantee, lessee, or assignee to pay to the City the then adopted Water and Wastewater Capacity Fees.
- D. Developer shall disclose in writing to any grantee, lessee, or assignee, Developer's entitlement to receive a refund from the City of any Water and Wastewater Capacity Fees paid and reserved hereunder by Developer to the City upon payment of those Water and Wastewater Capacity Fees by any grantee, lessee, or assignee of Developer.
- E. **Developer, on behalf of itself and its successors and assigns, hereby further agrees to indemnify, defend, save and hold harmless the City from and against any and all suits, actions, claims, demands, liabilities, judgments and costs of any nature whatsoever arising as a result of the City's refund to Developer of the Water and Wastewater Capacity Fees previously paid by Developer and/or the City's receipt of payment from Developer's grantees, lessees, or assignees, of new Water and Wastewater Capacity Fees at the time of application for connection of the proposed units to be served by the City unless same was due to the City's negligence by act or omission. In the event the City is made a party to any litigation arising as a result thereof, the City shall have the option of providing for its own defense in said litigation and billing Developer, its successors and/or assignees for all expenses of litigation, including its direct costs, at the commercially recognized rate for attorney fees, inclusive of paralegal or legal assistant services, which expenses Developer shall pay promptly upon demand, or in the alternative, designating Developer, its successors and/or assigns, to defend the City at the expense of Developer, its successors and assignees.**

13. SURVIVAL OF COVENANTS. The rights, privileges, obligations, and covenants of Developer and the City shall survive the completion of work of Developer with respect to completing the water and wastewater facilities and services to any phase area and to the Property as a whole.

14. AUTHORITY TO EXECUTE; ENTIRE AGREEMENT; AMENDMENTS; APPLICABLE LAW; VENUE; ATTORNEY'S FEES.

- A. The signature by any person to this Agreement shall be deemed a personal warranty that the person has the full power and authority to bind any corporation, partnership, or any other business or governmental entity for which the person purports to act hereunder.

- B. This Agreement supersedes all previous agreements or representations between the Parties, either verbal or written, made with respect to the matters herein contained, and when duly executed, constitutes the agreement between Developer and the City. It may be signed in counterparts.
- C. No amendment, change, or addendum to this Agreement is enforceable unless agreed to in writing by both parties and incorporated into this Agreement. Any amendments changing City's financial obligations under this Agreement shall require approval by the City Commission. The City Commission hereby authorizes the City Manager or City Manager's authorized designee to approve and execute all Agreement amendments on behalf of City that do not change City's financial obligations under this Agreement.
- D. This Agreement shall be governed by the laws of the State of Florida, as well as all applicable local ordinances of the City and it shall be and become effective immediately upon execution by both parties hereto. Exclusive venue for any action arising out of this Agreement will be in the state courts having jurisdiction within Sarasota County, Florida and the United States District Court for the Middle District of Florida.
- E. In the event that the City or Developer is required to enforce this Agreement by court proceedings or otherwise, by instituting suit or otherwise, then the prevailing party in such suit shall be entitled to recover all costs incurred, including reasonable attorney's fees.

15. DISCLAIMERS, LIMITATIONS ON LIABILITY.

- A. No Agency. The relationship between the Parties is that of an independent contractor. Nothing contained herein will be deemed or construed as creating the relationship of employer-employee, principal-agent, partnership, or joint venture between the Parties. It is understood and agreed that no provision contained herein, or any acts of the Parties, will be deemed to create any relationship between them other than that as detailed herein.
- B. Indemnity. **Developer shall indemnify the City, its respective agents, commissioners and employees, from and against any and all claims, liability, demands, damages, expenses, fees, fines, penalties, suits, proceedings, actions and fees, including reasonable attorney's fees, for injury (including death) to persons or damage to property or property rights that may arise from or be related to acts, errors, or omissions of Developer, its agents, employees, servants, licensees, invitees, or contractors or by any person under the control or direction of Developer, or by Developer's connection to and use of the City's system, and Developer shall defend, indemnify, protect, and hold harmless the City from all liability, judgments, suits, damages, losses and costs, claims, and all other items arising or growing out of or connected with any default, breach, violation or nonperformance by Developer of any covenant, condition, agreement or provision contained in this Agreement concerning all or any part of the City's system. Should Developer fail for any reason to indemnify and hold harmless the City, the City shall have the right to enforce the terms of this Agreement by placing a lien against the Property, but excluding lots subsequently sold to third party end users, upon which this Agreement runs, and the City shall be entitled to recover interest at the highest lawful rate on the lien and shall be entitled to foreclose and enforce the lien and recover costs and fees in connection with the foreclosure of the lien or enforce this Agreement in any other manner**

allowed by law, including termination of service. Such indemnification shall include costs for physical repair of the City's system. Nothing in this agreement shall be deemed to affect the rights, privileges, and immunities of the city as set forth in Florida Statutes Section 768.28.

C. Force Majeure.

- (1) Neither party shall be liable to the other in any way whatsoever for any failure or delay in performance of any of the obligations under this Agreement (other than obligations to make payment) arising out of any event or circumstance beyond the reasonable control of such party ("force majeure event"), including without limitation, acts of God, hurricanes, earthquakes, fires, floods, washouts, power outages, explosions, interruptions in telecommunications or internet or network provider services, acts of governmental entities (provided, however, that a legislative or executive act of the City shall not constitute a force majeure event as to the City except in the case of a declared emergency), war, terrorism, civil disturbance, insurrection, riots, acts of public enemies, epidemics, strikes, lockouts or other labor disputes, inability to obtain necessary materials, supplies, labor, or permits whether due to existing or future rules, regulations, orders, laws or proclamations, either federal, state or county (but not any such rules, regulations, orders, laws or proclamations by the City, except as set forth above relating to declared emergencies), civil or military, or otherwise, and other causes beyond the reasonable control of either party, whether or not specifically enumerated herein.
- (2) Failure or delay of performance by either party due to a force majeure event shall not be deemed a breach of this Agreement, and neither party shall have the right to terminate this Agreement on account of non-performance of the other party based on a force majeure event.
- (3) Furthermore, any temporary cessation or interruption of water and/or sewer services to the Property by the City resulting from necessary maintenance work, breakdown of, or damages to, machinery, pumps or pipelines shall not constitute a breach of this Agreement by the City nor shall it impose liability upon the City by Developer, its successors or assigns.

D. Limitation Of Liability; Available Remedies.

- (1) **IN NO EVENT SHALL THE CITY HAVE ANY LIABILITY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES, HOWEVER CAUSED AND ON WHATEVER THEORY OF LIABILITY, ARISING OUT OF THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, LOSS OF ANTICIPATED PROFITS OR BUSINESS INTERRUPTION, EVEN IF THE CITY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES; and**
- (2) **DEVELOPER'S REMEDIES AGAINST THE CITY FOR THE CITY'S FAILURE TO PERFORM ITS OBLIGATIONS UNDER THIS AGREEMENT, IF NOT EXCUSED ON THE BASIS OF A FORCE MAJEURE EVENT OR AS OTHERWISE PROVIDED IN THIS AGREEMENT, SHALL BE LIMITED TO SPECIFIC PERFORMANCE, INJUNCTION OR OTHER EQUITABLE RELIEF.**

E. Disclaimer of Third Party Beneficiaries. This Agreement is solely for the benefit of and shall be binding upon the formal parties hereto and their respective authorized successors and assigns,

and no right or cause of action shall accrue upon or by reason hereof, to or for the benefit of any third party not a party to this Agreement or an authorized successor or assignee thereof.

- F. Disclaimer of Security. Notwithstanding any other provision of this Agreement, Developer expressly acknowledges (1) that it has no pledge of or lien upon any real property (including, specifically, the City’s system), any personal property, or any existing or future revenue source of the City (including, specifically, any revenue or rates, fees, or charges collected by the City in connection with the City system) as security for any amounts of money payable by the City under this Agreement; and (2) that its rights to any payments or credits under this Agreement are subordinate to the rights of all holders of any stocks, bonds, or notes of the City, whether currently outstanding or hereafter issued.
- G. Certificate of Insurance. Developer shall furnish the City with a certificate(s) of insurance prior to the date upon which FDEP permits for construction of any On-Site Facilities, Off-Site Facilities, or Treatment Facilities are signed by the Utilities Director which shall comply with the insurance requirements set forth below. All certificates of insurance shall provide that insurance coverage shall not be canceled or reduced by the insurance carrier without at least thirty (30) days prior written notice to the City. In the event that the insurance coverage expires prior to completion of the project, renewal certificates must be issued 30 days prior to the expiration date. The City reserves the right to alter or amend the insurance requirements in this Agreement from time to time based on scope of the contract and risk factors. Insurance policies must be written by companies licensed to do business in the State of Florida and reasonably acceptable to the City. The City must be named an additional insured on all policies except worker’s compensation. Approval and acceptance of insurance by the City shall not relieve or decrease the liability of Developer. Commercial general liability insurance coverage must be written on an occurrence form and shall include bodily injury and property damage liability for premises, operations, independent contractors, products and completed operations, contractual liability, broad form property damages, and property damage resulting from explosion, collapse or underground exposures, personal injury and advertising injury. Fire damage liability shall be included at \$100,000.

	City Insurance Requirements
WORKERS COMP all state and federal statutory limits apply	\$3,000,000 each accident \$1,000,000 each employee \$1,000,000 policy limit for disease
COMMERCIAL GENERAL LIABILITY occurrence form; required aggregate separate to this job	\$3,000,000 each occurrence \$6,000,000 general aggregate \$1,000,000 products and completed ops \$100,000 fire damage
COMMERCIAL AUTO LIABILITY all owned, non-owned, hired vehicles	\$3,000,000 each accident for property damage and bodily injury with contractual liability coverage

- H. RESERVATION OF RIGHTS. The City reserves the right to alter or amend these requirements, to decrease or increase the requirements as they see fit, without prior notice, depending on the scope of the contract and the risk factors involved.
- I. ADDITIONAL REQUIREMENTS. Developer shall provide City with Certificates of Insurance. The City is to specifically be listed/named as an ADDITIONAL INSURED on both the COMPREHENSIVE GENERAL LIABILITY and BUSINESS AUTO POLICIES. All Certificates of Insurance must be on file with and approved by the City before commencement of any work activities. An INDEMNIFICATION & HOLD HARMLESS AGREEMENT must be signed by an authorized representative of the firm and included with the Certificate of Insurance for all contracts for service.

16. COVENANT NOT TO ENGAGE IN UTILITY BUSINESS. Developer, as a further consideration for this Agreement, agrees that it shall not (the words “shall not” being used in a mandatory definition) engage in the business of providing water and wastewater services to the Property during the period of time the City, its successors and assigns, provide water and wastewater services to the Property, it being the intention of the Parties hereto that the foregoing provision shall be a covenant running with the land and under said provision and also under other provisions of this Agreement the City shall have sole and exclusive right and privilege to provide water and wastewater services to the Property and to the occupants of each residence, building or unit constructed thereon.

17. RECORDATION. The Parties agree that an executed copy of this Agreement and Exhibits attached hereto shall be recorded in the Public Records of Sarasota County, Florida at the expense of Developer.

18. SEVERABILITY. In the event any court shall hold any provision of this Agreement to be illegal, invalid, or unenforceable, the remaining provisions shall be valid and binding upon the parties. One or more waivers by either party of any breach of any provision, term, condition or covenant shall not be construed as a waiver of a subsequent breach by the other party.

19. NON-DISCRIMINATION. The City of North Port, Florida does not discriminate on the basis of race, color, national origin, sex, age, disability, family, or religious status in administration of its programs, activities, or services. Developer shall not administer this Agreement in an unlawfully discriminatory manner, nor deny participation in or the benefits of same to any individual based on that individual’s race, color, national origin, sex, age, disability, family or religious status, marital status, sexual orientation, gender identity or expression, or physical characteristic.

20. CAPACITY.

- A. Except as otherwise provided in this Agreement, the execution of this Agreement between Developer and the City does not constitute a specific reservation of capacity by Developer. Unless and until the required capacity fees and charges have been paid by Developer, the City does not hereby guarantee that capacity will be available for Developer’s project on any later date.
- B. Any specific reservations of capacity, and the fees and charges for such reservation of capacity, must be detailed either within the body of this Agreement or in Section 21 -- Special Conditions. Such reservation of capacity shall be so reserved for a definite period of time only as long as the payment of appropriate fees and charges are made by Developer or as negotiated between the Parties.

- C. Capacity fees that are paid for by Developer for reservation of capacity, but which are not used by Developer within the period of the reservation, are not refundable.
- D. The City reserves the right to adjust the Water and Wastewater Capacity Fees (higher or lower) in the future. Developer shall pay the adopted capacity charge that is in effect at the time of meter application for water and wastewater capacity, as well as the connection fee and security deposits as connections are required and approved by the North Port Utilities Department.

21. SPECIAL CONDITIONS. The following Special Conditions are mutually agreed upon by Developer and the City. To the extent these Special Conditions conflict with any recitals or provisions contained in this Agreement, these Special Conditions shall prevail.

- A. If Developer wishes to reserve ERCs, Developer shall pay the City the adopted Guaranteed Revenue Charge for each unconnected or unused potable water and wastewater ERC. Charges will be billed as of September 30 annually and prorated based upon the period of time during the preceding year between reservation (payment of Capacity Fees) and for as long as such ERCs were unconnected or unused. Developer will be billed for the per day charge (a prorated basis) for the number of days each ERC remained unconnected or unused during the preceding year.
- B. As of October 1, 2019, the Guaranteed Revenue Charge was set at the monthly water base facility charge multiplied by 12 months, rounded to the nearest dollar per year per water ERC and the monthly wastewater base facility charge multiplied by 12 months, rounded to the nearest dollar per year per wastewater ERC, and currently remains at that amount; however, City reserves the right to adjust the charge (higher or lower) in the future. Developer shall pay the guaranteed revenue charge in effect at the time of payment. Developer shall have thirty (30) days from the date of the guaranteed revenue invoice to make payment.
- C. Developer, or its individual lot transferees, shall pay the adopted Water Capacity Fee and Wastewater Capacity Fee for the sole purpose of reserving capacity as follows:
 - (1) Developer shall pay the adopted Water Capacity Fee and Wastewater Capacity Fee for a block of 3 ERCs on or before October 1, 2023.
 - (2) Developer shall pay the adopted Water Capacity Fee and Wastewater Capacity Fee for a block of 3 ERCs on or before October 1, 2024.
 - (3) Developer shall pay the adopted Water Capacity Fee and Wastewater Capacity Fee for a block of 5 ERCs on or before October 1, 2025.
 - (4) Developer shall pay the adopted Water Capacity Fee and Wastewater Capacity Fee for a block of 8 ERCs on or before October 1, 2026.

22. DEFAULT, NOTICE, DAMAGES AND REMEDIES.

- A. Developer shall have a five (5) day grace period before a failure to make payment as required herein shall constitute an event of default under this Agreement. Developer shall be assessed a five percent (5%) late fee to be calculated on any delinquent payment if made after the expiration of the five (5) day grace period. In the event of Developer's failure to make timely payment as set

forth herein and upon the expiration of the five (5) day grace period, the City shall, prior to declaring an event of default, provide Developer with written notice of the City's intent to declare an event of default. Upon such notice, should Developer be in default of any provision of this Agreement, and fail to cure the default upon proper notice, the City has the right to deny issuance of any building permits, certificate of occupancies or approval of any FDEP permits for utility construction associated with the project. Developer shall have an additional twenty (20) days from the date Developer receives the City's written notice within which to make the specified payment.

- B. Should Developer fail to cure a default upon its receipt of proper notices, the City may undertake the appropriate legal actions it deems necessary to enforce its right and remedies as provided under this Agreement and Florida law.
- C. The City and Developer agree that in the event of an uncured default by Developer resulting in termination of this Agreement, the City will suffer damages not only in the amount of any unpaid capacity fees, any unpaid guaranteed revenues and any associated late fees, but also in the amount of Developer's proportionate share of the capital investment the City has made in constructing the City's water and wastewater system made available to serve Developer, including but not limited to the debt service on bonds or other financing instruments issued for that purpose. For purposes of calculating damages related to the City's capital investment in the water and wastewater system, the City and Developer agree that such damages shall be valued at \$132.73 per year per reserved but unconnected water ERC and at \$111.82 per year per reserved but unconnected wastewater ERC, and that Developer shall be liable to the City, as liquidated damages, and not as a penalty, for three (3) years of such damages. This liquidated damages amount shall pertain only to the City's damages related to its capital investment in its water and wastewater system, and shall be in addition to the City's damages related to unpaid capacity fees, unpaid guaranteed revenues and associated late fees.
- D. In addition to its other remedies, should Developer be in default of any provision of this Agreement, and fail to cure the default upon proper notice, the City has the right to deny issuance of any building permits, certificate of occupancies or approval of any FDEP permits for utility construction associated with the project.

REMAINDER OF PAGE INTENTIONALLY BLANK

IN WITNESS WHEREOF, Developer and the City have executed or have caused this Agreement, with the named Exhibits attached, if any, to be duly executed in several counterparts, each of which counterpart shall be considered an original executed copy of this Agreement.

CITY OF NORTH PORT, FLORIDA

By: _____
A. Jerome Fletcher, II, ICMA-CM, MPA
City Manager

ATTEST

Heather Faust, MMC
City Clerk

APPROVED AS TO FORM AND CORRECTNESS

Amber L. Slayton, B.C.S.
City Attorney

REMAINDER OF PAGE INTENTIONALLY BLANK

SIGNATURES CONTINUED ON FOLLOWING PAGES

BRISTOL EDWARD RUDOLF REVOCABLE TRUST

By: Bradford Baker TRUSTEE
Title: BRADFORD O BAKER TRUSTEE

Witness

Hakeem Bette
Print Name

Brandon
Witness

Brandon Juno
Print Name

New York
STATE OF ~~FLORIDA~~
COUNTY OF NY

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 5 day of Sept., 2023, by Bradford Baker as Resident of BRISTOL EDWARD RUDOLF REVOCABLE TRUST.

[Signature]
Notary Public - State of ~~Florida~~
NY

AFFIX SEAL

JEFF R BALGOBIN
NOTARY PUBLIC-STATE OF NEW YORK
No 01BA6364104
Qualified in Westchester County
My Commission Expires 10-19-2025

Produced Identification
Type of Identification Produced Driver License

REMAINDER OF PAGE INTENTIONALLY BLANK

EXHIBIT A-1

BOUNDARY DESCRIPTION OF PROPERTY

PID 0787130001

BEG AT THE W QUARTER SEC COR OF SEC 34 & RUN N ON SEC LINE 405.01 FT TH E 455.50 FT TH S-0-7- W 17.73 FT TO THE NW COR OF ERICKSON TRACT TH CONT S-0-7- W 473 FT TO THE N R/W OF SAID US HWY 41 TH WLY ALG TH N R/W OF SAID US HWY 41 A DISTANCE OF 454.65 FT TO W LINE OF SAID SEC 34 TH N ON SEC LINE 94.99 FT TO THE POB LESS RD R/W IN OR 1039/ 98 TO STATE & LESS LANDS TO R/W FOR TAMIAMI TRL AS DESC IN ORI2022166436, TOGETHER WITH LANDS DESC AS FOLLOWS COM SW COR OF NW 1/4 SEC 34-39-20 TH N 405.24 FT FOR POB TH N 100 FT TH S 88-19-43 E 590.87 FT TH S 37 E 200 FT TH S 89-57-30 E 264 FT TH N 00-06 E 17.64 FT TH N 82-25 W 450.96 FT TO POB, LESS STATE RD R/W IN OR 1299/1121 & ORI 2012030152, SUBJ TO 10562 SF DRAINAGE ESMT TO SARASOTA COUNTY AS DESC IN ORI 2012030152, BEING SAME LANDS AS DESC IN OR 2499/1465 & ORI 2003132139

