

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA ITEM SUMMARY

Meeting Date: October 17, 2006

☒ Consent

☐ Regular

☐ Public Hearing

Submitted By: Water Utilities Department

Submitted For: Water Utilities Department

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve: a Potable Water and Wastewater Development Agreement with Southern Mills Business Park, LLC.

Summary: On December 2, 2004, the Village of Royal Palm Beach (Village) executed a Development Agreement and corresponding Refund Agreement with 3-ARM-Z, LLC related to construction of off-site potable water and wastewater pipelines. The Village agreed to collect third-party reimbursement costs from future property owners connecting into the pipelines constructed by 3-ARM-Z, LLC. The off-site pipelines became the property of Palm Beach County on February 28, 2006 (R-2006-0410) when the Board approved an Agreement for purchase of the Village's potable water and wastewater utility. The County agreed to assume responsibilities included in the Village's existing Development Agreements. Southern Mills Business Park, LLC has requested utility service from the pipelines originally constructed by 3-ARM-Z, LLC. The Department's Development Agreement with Southern Mills Business Park, LLC will collect \$162,922 for reimbursement to 3-ARM-Z, LLC for use of the pipelines. The Refund Agreement entitles the Department to retain a 2-percent service charge from the collected amount.

District 6

(MJ)

Background and Justification: While the Department Director has been delegated the authority to enter into Standard Development Agreements (SDA's), Board approval is being sought in this case because the Development Agreement contains non-standard language referencing the Refund Agreement between the Village and 3-ARM-Z, LLC.

Attachments:

1. Location Map
2. Two (2) Original Development Agreements - DA No. 13-01017-000
3. One (1) copy of the Refund Agreement between 3-ARM-Z, LLC and the Village of Royal Palm Beach, dated December 2, 2004

Recommended By: _____

Brenda Ben
Department Director

9/28/06

Date

Approved By: _____

[Signature]
Assistant County Administrator

10-12-06

Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	<u>2007</u>	<u>2008</u>	<u>2009</u>	<u>2010</u>	<u>2011</u>
Operating Expense	<u>\$159,664.00</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
External Revenues	<u>(\$162,922.00)</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
Program Income (County)	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
In-Kind Match County	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
NET FISCAL IMPACT	<u>(\$ 3,258.00)</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>
# ADDITIONAL FTE POSITIONS (Cumulative)	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>	<u>0</u>

Budget Account No.: Fund 4011 Dept 721 Unit W006 Object 6543

Is Item Included in Current Budget? Yes **X** No _____

Reporting Category N/A

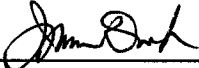
B. Recommended Sources of Funds/Summary of Fiscal Impact:


The external revenue of \$3,258 represents a 2% service charge, per the Refund Agreement, for the third-party reimbursement of \$162,922.

C. Department Fiscal Review: Delra M West

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Development and Control Comments:


 10-3-06

 OFMB
 atn 10-3-06

 Legal Sufficiency:

[Signature]
Contract Development and Control
E. Smith 10/5/06

B. Legal Sufficiency:

WAA 10/11/06
Assistant County Attorney

This Contract complies with our contract review requirements.

C. Other Department Review:

Department Director

This summary is not to be used as a basis for payment.

POTABLE WATER AND WASTEWATER

CHARGE #1023 RETURN VIA WILL CALL #133
ATTN: MARK FALLON, CONTRACT MANAGEMENT,
PBC WATER UTILITIES DEPT,
8100 FOREST HILL BLVD, WPB, FL 33413

POTABLE WATER AND WASTEWATER DEVELOPMENT AGREEMENT (DA)

THIS AGREEMENT made and entered into this _____ day of _____, 200____, by and between **PALM BEACH COUNTY**, a subdivision of the State of Florida, hereinafter referred to as "Utility", and **SOUTHERN MILLS BUSINESS PARK, LLC**, a Florida limited liability company, as Trustee under the Southern Mills Trust Agreement dated June 29, 2006, hereinafter referred to as "Property Owner."

WITNESSETH

WHEREAS, Property Owner owns property located in Palm Beach County, Florida, and as more fully described in **Exhibit "A"**, attached hereto and made a part hereof and hereinafter referred to as "Property", whereupon Property Owner has or is about to develop the Property by erecting thereon residential or non-residential improvements; and

WHEREAS, Property Owner desires to construct potable water and wastewater facilities hereinafter referred to as "facilities"; and

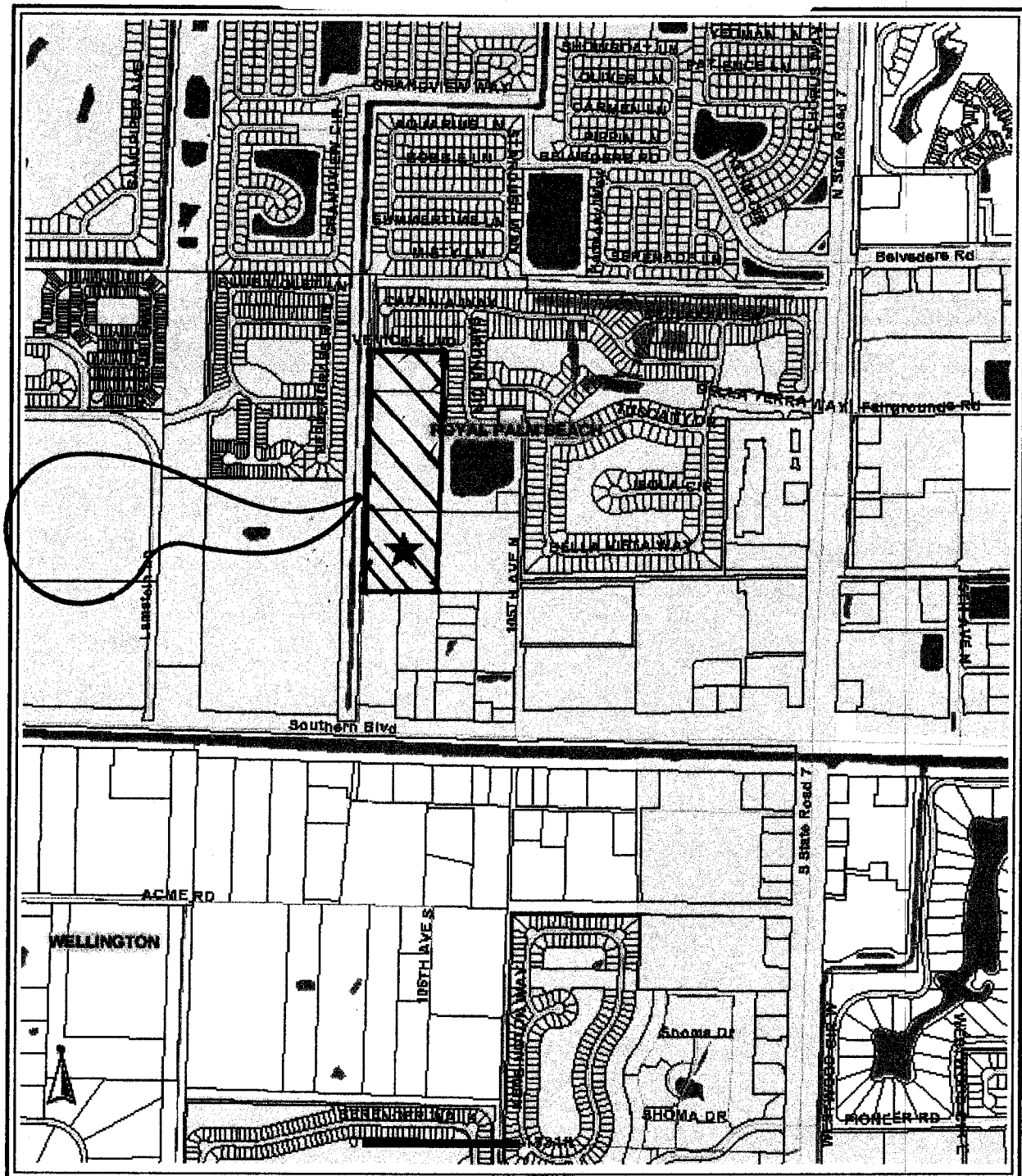
WHEREAS, upon the conditions set forth herein, Utility desires to accept ownership of the completed potable water and wastewater facilities for operation and maintenance purposes; and

WHEREAS, Property Owner understands that this contract for service in no way entitles Property Owner to densities which are greater than those allowed under the density provisions of the Comprehensive Plan of Palm Beach County, or to densities or development rights as may otherwise be limited by the Board of County Commissioners; and

WHEREAS, in the interest of public health and to encourage the use of central water and wastewater facilities, Utility desires to enter into this Agreement.

NOW THEREFORE, for and in consideration of these premises, the mutual undertakings and agreements herein contained and assumed, Property Owner and Utility hereby covenant and agree as follows:

1. The foregoing statements are true and correct.
2. 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) "UPAP" - the Uniform Policies and Procedures Manual of the Palm Beach County Water Utilities Department as may be amended from time to time, which is incorporated herein by reference;
 - (b) "Service" - the readiness and ability on the part of Utility to furnish potable water to and to collect wastewater from the property;
 - (c) "Point of Service" - generally, the point where the pipes or meters of Utility are connected with pipes of Property Owner as further defined in Chapter 1 of the UPAP;
 - (d) "Equivalent Residential Connection (ERC)" - a system capacity equivalency unit which corresponds to the peak demand of the 5/8" x 3/4" meter sub-category of the single-family residential category of Customer usage. This system capacity equivalency unit is utilized to establish the system demand for various sized connections for the purpose of assessing fees;
 - (e) "Mandatory Agreement Payment (MAP)" - twelve months of Guaranteed Revenue Fees plus applicable Franchise Fees payable to Utility upon submission of an SDA or renewal agreement for each ERC (or ERIC) represented in the Agreement;



72-41-43-36-00-000-3020, 3030, & 3050 (Southern Mills Business Park, LLC)

Map Scale 1:15973

Map produced on 8/25/2006

<http://cwgisweb.co.palm-beach.fl.us/GeoNav/presentation/mapping/printnew.asp?MAPUR...> 8/25/2006

POTABLE WATER AND WASTEWATER

- (f) "Service Initiation" - the date a potable water meter or wastewater connection is requested;
 - (g) "Guaranteed Revenue Fee" - the fee designed to recover the carrying costs of system capacity which has been or is being constructed in anticipation of future service requests. Carrying costs include fixed operating and renewal and replacement expenses necessary to maintain excess system capacity for future use. Guaranteed Revenue does not recover variable operating expenses;
 - (h) "Total Accrued Amount (TAA)" - At the time of Service Initiation for each ERC, a TAA equal to sixty months of Guaranteed Revenue Fees plus applicable Franchise Fees at the then current rate minus the MAP paid per each ERC shall be due and payable for such ERC. The TAA for each ERC will be determined at the time of Service Initiation;
 - (i) "Standard Development Renewal Agreement (SDRA)" - an agreement between Utility and Property Owner extending the capacity reservation for unused ERCs/ERICs in a Standard Development Agreement for an additional five (5) years; and
 - (j) "Franchise Fee" - A percentage surcharge applied to all of the Utility's fees for Customers within portions of the Utility's Service Area with said fees collected by Utility and distributed to another governmental entity.
3. Property Owner hereby grants and gives to Utility the exclusive right and privilege to construct, own, maintain, operate and expand the potable water and wastewater facilities in, under, upon, 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 agreement, dedications or grants made otherwise and independent of said record plats. Utility covenants that it will use due diligence in ascertaining all easement locations; however, should Utility install any of its facilities outside a dedicated easement area, Property Owner covenants and agrees that Utility will not be required to move or relocate any facilities lying outside a dedicated easement area as long as the facilities do not interfere with the then or proposed use of the area in which the facilities have been installed. Property Owner hereby further agrees that the foregoing grants include the necessary rights of ingress and egress to any part of the Property which Utility requests for the maintenance, operation or expansion of the potable water and wastewater facilities; that in the event Utility is required or desires to install any of its potable water and wastewater facilities in lands within the Property lying outside the streets and easement areas described above, then Property Owner shall grant to Utility, without cost or expense to Utility, the necessary easement or easements for such installation; provided, all such installations by Utility shall be made in such a manner as not to interfere with the then primary use of such Property. Property Owner shall obtain written approval from Utility prior to installing any structure or object, including, but not limited to, fences, gates, signs, trees or poles, within an easement area. In consideration of Utility's consent to an encroachment, Property Owner shall agree to indemnify and hold Utility harmless from and against all liabilities, damages, penalties, claims costs and expenses, including attorney's fees at all levels, which may be imposed upon or asserted against Utility as a result of or in any way connected to an encroachment approved by Utility. In the event Utility determines that it is necessary to construct, maintain, repair, remove, or replace any of its facilities located under, over or upon an easement, Property Owner shall immediately remove the encroachment from the easement upon the request of Utility at Property Owner's sole cost and expense. If Property Owner fails to remove the encroachment, Utility shall have the right to remove the encroachment from the easement. Property Owner shall pay all costs related to removing the encroachment from the easement incurred by Utility.

Property Owner, as further consideration of this Agreement, and in order to effectuate the foregoing grants to Utility, hereby places the following covenant, as a covenant running with the land, upon the Property and thereby subjecting it to a reservation, condition, limitation or restriction in favor of Utility, as follows:

Utility, or its successors, has the sole and exclusive right to provide all potable water and wastewater facilities and services to the Property described in **Exhibit "A"** and in addition to any property to which potable water and wastewater service is actually rendered by Utility. All occupants of any residence or non-residential improvement erected or located on the Property and all subsequent or future owners or purchasers of the Property, or any portion thereof, shall exclusively receive their potable water and wastewater service from the aforesaid Utility and shall pay for the

POTABLE WATER AND WASTEWATER

same and shall abide by the terms and intent of this Agreement, and the UPAP, for as long as the aforesaid Utility provides such services to the property. Further, all occupants of any residence or non-residential improvement erected or located on the Property and all subsequent or future owners or purchasers of the property, or any portion thereof, agree, by occupying any premises on the Property or by recording any deed of conveyance with respect to the Property, that they will not construct or otherwise make available or use potable water and wastewater service from any source other than that provided by Utility.

Any water well or water source used solely for the purpose of supplying irrigation for the Property is excluded from this restriction unless the Property is required to utilize reclaimed water in accordance with the Palm Beach County Reclaimed Water Ordinance.

Further, in order to give an additional and supplementary notice to all the future Property Owners of any of the Property of the rights of Utility to provide the Property with potable water and wastewater facilities and services, Property Owner hereby covenants and agrees to have the above restrictive covenant or its equivalent included in the general subdivision restrictions and to place the same of record in the Public Records of Palm Beach County, Florida.

4. Upon the continued accomplishment of all the prerequisites contained in this Agreement to be performed by Property Owner, Utility covenants and agrees that it will allow the connection of the potable water distribution and wastewater collection facilities installed by Property Owner to the potable water and wastewater facilities of Utility in accordance with the terms and intent of this Agreement. Such connection shall be in accordance with rules, and regulations of the Health Department, the UPAP, and other governmental agencies having jurisdiction over the water supply and wastewater collection and disposal operation of Utility.
5. Property Owner is required to pay Guaranteed Revenue Fees plus applicable Franchise Fees in order to support investment in plant facilities, as well as the fixed costs of maintaining such facilities and the unused capacity it represents. Therefore, Property Owner agrees to pay in accordance with the UPAP:

- (a) a MAP per each ERC for the requested capacity upon submission of this Agreement; and
- (b) a TAA per each ERC for the requested capacity upon Service Initiation.

Utility has advised Property Owner that construction of additional potable water and wastewater facilities will be completed in phases designed to coincide with the need for service to Property Owner and other Property Owners in the service area. Utility should not be expected to provide service to connections in excess of those reserved as evidenced by proper payment of Guaranteed Revenue.

The MAP required upon submission of this Potable Water and Wastewater Agreement is:

Potable Water:	\$140.76	per ERC x	60.90	ERCs =	\$8,572.28
Wastewater:	\$197.52	per ERC x	60.90	ERCs =	\$12,028.97
			Franchise Fee		\$0.00
			TOTAL		\$20,601.25

Upon receipt of the MAP, Utility agrees to reserve 60.90 ERCs of Potable Water and Wastewater system capacity for Property Owner until **OCTOBER 31, 2011**, which term may be extended in accordance with the UPAP, as may be amended from time to time, and upon payment of applicable fees. Property Owner acknowledges and agrees Utility shall not refund or reimburse the MAP upon expiration.

Property Owner acknowledges that it is the sole responsibility of Property Owner to provide payment of a new MAP at the then current fees thirty (30) days before the expiration of the original five-year term. Should multiple assignments exist for this Agreement, each assignee must submit the appropriate MAP for any unconnected ERCs related to the assignee's ERCs. Should Property Owner or assignee fail to submit a new MAP payment for their respective

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unconnected ERCs, Property Owner acknowledges and agrees that Utility may unilaterally execute a document evidencing termination and partial release of this Agreement except for the rights, duties, or obligations as set forth in Paragraphs 3, 4, 8, 9, 10, 13, and 14 of this Agreement and record the document in the public records of Palm Beach County, Florida.

At the time of Service Initiation, the applicable ERCs will be deducted from said reservation. Upon approval of Utility, the total number of ERCs may be increased up to 10% of the original reservation or by ten (10) ERCs, whichever is greater, by an amendment to this Agreement. The MAP required for the amendment shall be paid at the rate applicable to the original Agreement. Any amendments to the SDA shall be binding upon both Utility and Property Owner and subject to all applicable rules and regulations of Utility; however, any amendments will not extend the original five (5) year term of the Agreement. Any adjustment which is greater than that specified herein requires a new Agreement to be signed. Upon written notice to Utility, said ERCs may be adjusted downward however, no refund or credit will be given by Utility to Property Owner for said downward adjustment.

6. Property Owner hereby agrees to construct and to transfer ownership and control up to the Point of Service to Utility, at no cost, the on-site and off-site potable water distribution, and wastewater collection systems referred to herein. Upon acceptance of said facilities, Utility hereby agrees to accept ownership of the potable water and wastewater facilities for operation and maintenance purposes. Property Owner shall cause to be prepared engineering plans and specifications prepared by and sealed by a professional engineer registered in the State of Florida, showing the on-site and off-site potable water distribution and wastewater collection systems for the Property. Utility will advise Property Owner's engineer of any sizing requirements as mandated by the UPAP. Such detailed plans may be limited to a phase of the Property, and subsequent phases may be furnished from time to time. However, each such phase shall conform to a master plan for the development of the Property and such master plan shall be submitted to Utility concurrent with or prior to submission of plans for the first phase. All such plans and specifications, including hard copy and electronic media, submitted to Utility's engineer shall be subject to the approval of Utility and shall conform to Utility's standards as set forth in the UPAP, and no construction shall commence until Utility has approved such plans and specifications in writing. After approval, Property Owner shall cause to be constructed, at Property Owner's expense, the potable water distribution, and wastewater collection systems as shown on the plans and specifications. Fees, as set forth in the UPAP, shall be levied by Utility to cover the cost of plan review and inspection. Property Owner shall also be required to pay Guaranteed Revenue Fees, Connection Fees, Installation Fees, and other fees as set forth in the UPAP.

During the construction of the potable water distribution and wastewater collection systems by Property Owner, Utility may from time to time inspect such installation to determine compliance with the plans and specifications, adequacy of the quality of the installation, and further, shall be entitled to perform standard tests for pressure, infiltration, line and grade, and all other normal engineering tests to determine that the system has been installed in accordance with the approved plans and specifications and the UPAP. Inspection by Utility shall in no way relieve Property Owner of his responsibility to install the facilities in accordance with the approved plans and specifications and the UPAP. Complete as-built plans, including hard copy and electronic media when utilized, shall be submitted to Utility upon completion of construction.

Property Owner hereby agrees to transfer to Utility title to all potable water distribution and wastewater collection systems installed by Property Owner's contractor pursuant to the provisions of this Agreement. Such conveyance is to take effect without further action upon the acceptance by Utility of the said installation. As further evidence of said transfer of title, upon the completion of the installation and prior to the rendering of service by Utility, Property Owner shall convey to Utility by Bill of Sale in a form supplied by Utility the complete on-site and off-site potable water distribution and wastewater collection system as constructed by Property Owner and approved by Utility, along with the required Cost Documentation and Property Owner's No Lien Affidavit. Subsequent to construction of the facilities and prior to receiving a meter(s) from Utility, Property Owner shall convey to Utility all easements and/or rights-of-way covering areas in which potable water and wastewater lines are installed by a recordable document in a form supplied by Utility. All conveyance of easements or rights-of-way shall be accompanied by a paid title policy for the benefit of Utility in a minimum amount of:

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- \$50.00 per linear foot of any granted utility easement (based on the centerline of the easement); and
- \$150,000 for a Utility-owned wastewater lift station (if not constructed within an existing utility easement).

Said title policy shall confirm the Grantor's rights to convey such easements or rights-of-way, and further, evidencing Utility's right to the continuous enjoyment of such easements or rights-of-way for those purposes set forth in this Agreement. The use of easement(s) granted by Property Owner may be used by other utilities as long as such is approved by Utility. Utility's acceptance of the potable water distribution and wastewater collection system installed by Property Owner shall be in accordance with the provisions as set forth in the UPAP. All installations by Property Owner or its contractor shall be warranted for one year (or five years in the case of lift station pumps and motor assemblies) from date of Final DEP Certification. Mortgagees holding liens on such properties shall be required to release such liens, subordinate their position, or join in the granting of the easements or rights-of-way. All potable water distribution and wastewater collection facilities shall be located within an easement if not located within platted or dedicated rights-of-way.

Property Owner hereby agrees to pay to Utility Guaranteed Revenue Fees, Connection Fees, Service Installation Fees, Franchise Fees, and any other applicable fees as set forth in the UPAP at the then current rate.

The timely payment by Property Owner of all fees in accordance with the terms set forth herein shall be considered essential to the continued performance by Utility of the terms and conditions of this Agreement. The construction and transfer of ownership of the potable water distribution and wastewater collection system does not and will not result in Utility waiving or offsetting any of its fees, rules or regulations. Property Owner shall not have any present or future right, title, claim, or interest in and to the potable water and wastewater facilities transferred to or owned by Utility.

7. Upon submission of this Agreement, Property Owner, at his expense, agrees to furnish Utility with a copy of the recorded Warranty Deed for the purpose of establishing ownership of the Property. Any mortgagee or lien holder having an interest in the Property shall be required to execute a Consent and Joinder of Mortgagee/Lienholder as supplied by Utility. Property Owner must submit either a title policy or a letter from an attorney licensed to do business in Florida confirming that there is no mortgage or lien on the Property. The title policy or letter must be issued within thirty (30) days of submittal of the SDA.
8. Property Owner agrees with Utility that all potable water and wastewater facilities conveyed to Utility for use in connection with providing potable water and wastewater service to the Property, shall at all times remain in the complete and exclusive ownership of Utility, 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. In addition, Utility shall have the exclusive right and privilege to provide potable water and wastewater services to the Property and to the occupants of each residence or building constructed thereon.
9. Notwithstanding any provision in this Agreement, Utility may establish, revise, modify, and enforce rules, regulations, and fees covering the provision of potable water and wastewater service to the Property. Such rules, regulations, and fees are subject to the approval of the Palm Beach County Board of County Commissioners. Such rules, regulations, and fees shall be reasonable and subject to regulation as may be provided by law or contract. Fees charged to Property Owner or Customers located upon the Property shall be identical to fees charged for the same classification of service in the particular service area. All rules, regulations and fees as set forth in the UPAP, shall be binding upon Property Owner, upon any other entity holding by, through or under Property Owner, and upon any Customer of the potable water and wastewater service provided to the Property by Utility. Said rules and regulations include, but are not limited to, Service Initiation, oversizing of facilities, use of previously oversized facilities or extension of facilities. Any fee or rate delinquent more than 120 days will automatically void this Standard Development Agreement.

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10. Property Owner or his assignee shall not have the right to and shall not connect to the potable water and wastewater facilities of Utility until approval for such connection has been granted by Utility. The parties hereto further agree that the expense of construction, operation, and maintenance of all improvements beyond the Point of Service shall be the sole cost and expense of Property Owner or other than Utility.
11. Property Owner acknowledges and agrees that the transfer or assignment of this Agreement upon the sale, conveyance, transfer or assignment of the Property, or any portion thereof, as described in Exhibit "A" of this Agreement by Property Owner shall only be performed in accordance with the provisions of UPAP. Property Owner further acknowledges and agrees that documenting the transfer or assignment of this Agreement in a form acceptable to Utility is the sole responsibility of Property Owner. Failure to provide documentation to Utility of an assignment or transfer within thirty (30) days after the sale, conveyance, transfer, or assignment of the Property, or any portion thereof, may result in the cancellation of the capacity reserved and/or loss of the Mandatory Agreement Payment identified herein.
12. All notices provided for herein shall be in writing and transmitted by mail or by courier and, if to Property Owner shall be mailed or delivered to Property Owner at:

**210 The Bluffs, Suite D
Austell, GA 30168-7883**

and if to Utility, shall be mailed to Palm Beach County Water Utilities Department Contract Management Section, P.O. Box 16097, West Palm Beach, FL 33416-6097.

13. The rights, privileges, obligations, and covenants of Property Owner and Utility shall survive the completion of the work of Property Owner with respect to completing the potable water and wastewater facilities and services to any phased area and to the Property as a whole.
14. Unless Property Owner is requesting additional capacity for the property described in Exhibit "A", this Agreement shall supersede, null and void, all previous agreements or representations, either verbal or written, heretofore in effect between Property Owner and Utility, made with respect to the matter herein contained, and when duly executed, constitutes the entire agreement between Property Owner and Utility. No additions, alterations, or variations of terms of this Agreement shall be valid, nor can provisions of this Agreement be waived by either party, unless such additions, alterations, variations or waiver are expressed in writing and duly signed by the parties hereto. This Agreement shall be governed by the laws of the State of Florida and shall become effective upon execution by the parties hereto. The venue for actions arising out of this Agreement is in Palm Beach County, Florida.
15. Special Conditions:

Property Owner is subject to a third party reimbursement payment in the amount of **\$162,922.00** as outlined in Developer Agreement dated 3rd day of December 2004 by and between 3-ARM-Z, LLC and Village of Royal Palm Beach, recorded on December 7, 2004 in Official Record Book 17854, Page 0889 of Palm Beach County, Florida. Further, per Section 2 of this Agreement, payment is to be made prior to any approval for utility service.

(THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK)

POTABLE WATER AND WASTEWATER

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

ATTEST:

Clerk (or Deputy Clerk)

PALM BEACH COUNTY, FLORIDA, BY
ITS BOARD OF COUNTY
COMMISSIONERS

By: Tony Masilotti, Chairman

APPROVED AS TO FORM AND
LEGAL SUFFICIENCY

By: County Attorney

APPROVED AS TO TERMS AND
CONDITIONS

By: Bevin A. Beaudet,
Department Director or Designee

WITNESSES:

Aubrey Bryan
AUBREY B. BRYAN
Typed or Printed Name

Stephanie Durrell
Stephanie Durrell
Typed or Printed Name

PROPERTY OWNER:

By: C.M. Sutherland Jr
Signature
C.M. Sutherland Jr
Typed or Printed Name
Pres
Title

[Corporate
Seal]

NOTARY CERTIFICATE

STATE OF
COUNTY OF

The foregoing instrument was acknowledged before me this 28 day of Aug, 2006
by C.M. SUTHERLAND, JR, of SOUTHERN MILLS BUSINESS PARK, LLC, a
FLORIDA LLC, on behalf of the PRESIDENT. He/she is personally
known to me or has produced as identification.

W H Pratt
Signature of Notary
W H PRATT
Typed, Printed, or Stamped Name
of Notary
Notary Public
Serial Number

MY COMMISSION EXPIRES
NOVEMBER 11, 2008

POTABLE WATER AND WASTEWATER

EXHIBIT "A" LEGAL DESCRIPTION

Parcel 302

The Southwest 1/4 of the Southeast 1/4 of the Northwest 1/4 of Section 36, Township 43 South, Range 41 East, LESS and EXCEPT the West 50 feet thereof; together with the Rights-of-Way for ingress and egress over and across the South 55.00 feet of the East 55.00 feet of the Northwest 1/4 of the Southeast 1/4 of the Northwest 1/4 and the South 55.00 feet of the Northeast 1/4 of the Southeast 1/4 of the Northwest 1/4 of Section 36, Township 43 South, Range 41 East, Palm Beach County, Florida.

Parcel 303

The South 1/2 of the Southwest 1/4 of the Northeast 1/4 of the Northwest 1/4 and the Northwest 1/4 of the Southeast 1/4 of the Northwest 1/4 of Section 36, Township 43 South, Range 41 East, together with Right-of-Way for ingress and egress over and across the South 55 feet of the Northeast 1/4 of the Southeast 1/4 of the Northwest 1/4 of said Section 36; subject to a Right-of-Way over and across the South 55 feet of the East 55 feet of the Northwest 1/4 of the Southeast 1/4 of the Northwest 1/4 of Section 36, Township 43 South, Range 41 East, Palm Beach County, Florida. LESS and EXCEPT the West 50 feet thereof.

Parcel 305

The North 1/2 of the Southwest 1/4 of the Northeast 1/4 of the Northwest 1/4 of Section 36, Township 43 South, Range 41 East, Palm Beach County, Florida. LESS and EXCEPT the West 50 feet thereof.

TOGETHER WITH:

Easement over Southstar Road described as follows:

A strip of land 60.00 feet in width for road purposes, said strip being in Section 36, Township 43 South, Range 41 East, Palm Beach County, Florida, said strip also being the East 30 feet of the West one-half (W 1/2) of the West one-half (W 1/2) of the Northeast one-quarter (NE 1/4) of the Southwest one-quarter (SW 1/4) of said Section 36 and the West 30 feet of the East one-half (E 1/2) of the West one-half (W 1/2) of the Northeast one-quarter (NE 1/4) of the Southwest one-quarter (SW 1/4) of said Section 36, all lying North of the new North Right-of-Way for Southern Boulevard (State Road No. 80), according to the Florida Department of Transportation Right-of-Way Map for State Road No. 80, Section 93120-2542; said strip also being described as follows:

Commencing at the Southwest corner of said Section 36; thence North 01° 30' 19" East, along the West line of the Southwest one-quarter (SW 1/4) of said Section 36, a distance of 1540.41 feet to the existing (now old) North Right-of-Way line of said State Road No. 80; thence South 88° 27' 11" East, along said existing (now old) North Right-of-Way line, a distance of 171.45 feet; thence South 88° 28' 13" East, continuing along said existing (now old) North Right-of-Way line, a distance of 1152.57 feet to the West line of the Northeast one-quarter (NE 1/4) of the Southwest one-quarter (SW 1/4) of said Section 36; thence North 01° 29' 53" East, along said West line of the Northeast one-quarter (NE 1/4) of the Southwest one-quarter (SW 1/4), a distance of 86.50 feet to the new North Right-of-Way line of said State Road No. 80; thence South 88° 28' 13" East, along said new North Right-of-Way line of State Road No. 80, a distance of 247.59 feet; thence South 88° 27' 47" East, continuing along said new North Right-of-Way line, a distance of 53.42 feet to a line 30.00 feet West of and parallel with the East line of the West one-half (W 1/2) of the West one-half (W 1/2) of the Northeast one-quarter (NE 1/4) of the Southwest one-quarter (SW 1/4) of said Section 36, and the POINT OF BEGINNING; thence North 01° 29' 46" East, along said parallel line, a distance of 1079.28 feet to the North line of the Southwest one-quarter (SW 1/4) of said Section 36; thence South 89° 11' 36" East, along said North line of the Southwest one-quarter of said Section 36, a distance of 60.00 feet to a line 30.00 feet East of and parallel with the West line of the East one-half (E 1/2) of the West one-half (W 1/2) of the Northeast one-quarter (NE 1/4) of the Southwest one-quarter (SW 1/4) of said Section 36; thence South 01° 29' 46" West, along last said parallel line, a distance of 1080.05 feet to the aforesaid new North Right-of-Way line of State Road No. 80; thence North 88° 27' 47" West, along said new North Right-of-Way line of State Road No. 80, a distance of 60.00 feet to the POINT OF BEGINNING.

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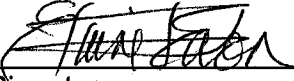
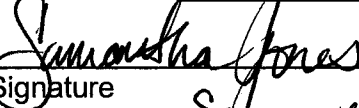
CONSENT AND JOINDER OF MORTGAGEE/LIENHOLDER

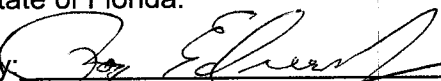
WACHOVIA BANK, NATIONAL ASSOCIATION, a national banking association and authorized to do business in the State of Florida ("Mortgagee"), hereby certifies that it is the mortgagee/lienholder under two mortgages, each dated June 29, 2006, from SOUTHERN MILLS BUSINESS PARK, LLC, a Florida limited liability company, as Trustee under the Southern Mills Trust Agreement dated June 29, 2006, and recorded in Official Record Book 20549, Page 1925, and Official Record Book 20549, Page 1938, respectively, all in the Public Records of Palm Beach County, Florida, and hereby consents to and joins in the execution of the Agreement between Palm Beach County and SOUTHERN MILLS BUSINESS PARK, LLC, a Florida limited liability company, as Trustee under the Southern Mills Trust Agreement dated June 29, 2006, for the provision of potable water, wastewater, and/or reclaimed water service to the property described in Exhibit "A" to the Agreement and further consents to and joins in the granting of utility easements to Palm Beach County as provided for in the aforesaid agreement with Palm Beach County; provided that Mortgagee shall not be liable for the payment and performance of any obligations under the aforesaid agreement unless and until title to the aforesaid property shall have been transferred to Mortgagee by foreclosure of the mortgage described above or a deed in lieu thereof.

WACHOVIA BANK, NATIONAL ASSOCIATION, as Mortgagee aforesaid, consents to the recording by SOUTHERN MILLS BUSINESS BANK, LLC, or Palm Beach County, Florida, in the Public Records of Palm Beach County, Florida of the contract.

IN WITNESS WHEREOF, the undersigned has executed this instrument on this 11th day of September, 2006.

WITNESSES:


Signature
Printed Name: Elaine T. Eaton

Signature
Printed Name: Samantha Jones

WACHOVIA BANK, NATIONAL ASSOCIATION, a national banking Association authorized to do business in the State of Florida.
By: 
Printed Name: Ron Edwards
Title: SVP / Commercial Risk Management

NOTARY CERTIFICATE

STATE OF GEORGIA
COUNTY OF FULTON

The foregoing instrument was acknowledged before me this 11th day of September, 2006, by Ron Edwards. He/she is personally known to me or has produced Driver's License as identification.

My commission expires: November 18, 2008

N/A
Serial Number

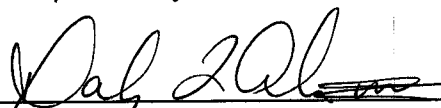

Signature of Notary
Darnley L. Corbin III
Typed, Printed, or Stamped Name



EXHIBIT A

Parcel 302

The Southwest 1/4 of the Southeast 1/4 of the Northwest 1/4 of Section 36, Township 43 South, Range 41 East, LESS and EXCEPT the West 50 feet thereof; together with the Rights-of-Way for ingress and egress over and across the South 55.00 feet of the East 55.00 feet of the Northwest 1/4 of the Southeast 1/4 of the Northwest 1/4 and the South 55.00 feet of the Northeast 1/4 of the Southeast 1/4 of the Northwest 1/4 of Section 36, Township 43 South, Range 41 East, Palm Beach County, Florida.

Parcel 303

The South 1/2 of the Southwest 1/4 of the Northeast 1/4 of the Northwest 1/4 and the Northwest 1/4 of the Southeast 1/4 of the Northwest 1/4 of Section 36, Township 43 South, Range 41 East, together with Right-of-Way for ingress and egress over and across the South 55 feet of the Northeast 1/4 of the Southeast 1/4 of the Northwest 1/4 of said Section 36; subject to a Right-of-Way over and across the South 55 feet of the East 55 feet of the Northwest 1/4 of the Southeast 1/4 of the Northwest 1/4 of Section 36, Township 43 South, Range 41 East, Palm Beach County, Florida. LESS and EXCEPT the West 50 feet thereof.

Parcel 305

The North 1/2 of the Southwest 1/4 of the Northeast 1/4 of the Northwest 1/4 of Section 36, Township 43 South, Range 41 East, Palm Beach County, Florida. LESS and EXCEPT the West 50 feet thereof.

Attachment 3

REFUND AGREEMENT

THIS REFUND AGREEMENT is made and entered into this 3rd day of December, 2004, by and between 3-ARM-Z, LLC, hereinafter referred to as "Developer", and the VILLAGE OF ROYAL PALM BEACH, hereinafter referred to as "Village".

WHEREAS, Developer and Village intend to enter into or have entered into that certain Developer Agreement ("Agreement") to which this Refund Agreement is made a part and attached as an exhibit; and

WHEREAS, the Agreement contemplates, among other things, that Developer will advance certain costs and then be entitled to partial reimbursement and refund thereof; and

WHEREAS, the parties hereto intend to establish hereby the method and procedure for the aforesaid reimbursement and refund.

NOW, THEREFORE, in consideration of the premises, the mutual undertakings and agreements herein contained and assumed, ten dollars (\$10.00) in hand paid by each party hereto to the other, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Developer and Village, intending to be legally bound, hereby covenant and agree as follows:

Section 1. Definitions:

1. All terms used in this Refund Agreement shall have the same meaning as such terms have in the Agreement, except as may be provided in this Section or elsewhere in this Refund Agreement to the contrary.
2. "Facilities" means those water and wastewater utility lines and lift station improvements, as shown on Exhibit "A" attached hereto and made a part hereof, which are to be constructed by Developer as contemplated by the Agreement.
3. "Serviced Parcel" means each parcel of real property which shall or may utilize and thereby benefit from the Facilities.
4. "Beneficiary" means the developers, owners, and/or other users, other than the Developer, of each Serviced Parcel.
5. "Total Construction Cost" means the total costs associated with construction of the applicable Facilities, including, but not limited to, all easement acquisition costs other than those located on the Serviced Parcel, engineering, surveying, legal and administrative.
6. "Hydraulic Share" means the equitable share of the Total Construction Cost of the applicable Facilities through which utility service is rendered to each Serviced Parcel apportioned according to the service to be generated to or from such Serviced Parcel as developed or proposed to be developed relative to the overall ultimate capacity of such applicable improvements.

7. "Equivalent Residential Connection (ERC)" means a connection to the utility system by a system user which is a single family facility detached residential dwelling unit or has a water consumption equivalent to that of one (1) single family detached residential dwelling unit. One (1) ERC of water consumption is defined as an average daily use of three hundred fifty (350) gallons of water per day and/or three hundred fifty (350) gallons of wastewater per day.

Section 2. General Reimbursement Policies:

In consideration of Developer advancing the Total Construction Cost of the Facilities, and for a period of ten (10) years from date, prior to permitting any new utility systems with respect to each Serviced Parcel to connect into the Village utility system, Village shall collect from the Beneficiary of such Serviced Parcel the Hydraulic Share attributable to such Serviced Parcel. Further, Village shall not give final approval to any application for a permit for utility systems which will service, in whole or in part, any Serviced Parcel until the Beneficiary proposing such new systems shall have paid for its Hydraulic Share of all or the applicable portion of the Facility. Upon receipt of each such payment, Village shall forthwith forward the applicable amount thereof ("Refund Amount") to Developer at the address provided herein, less a service charge of two percent (2%) for processing.

Section 3. Reimbursable Costs for the Facilities:

Since it is not possible at or prior to the execution hereof to accurately define future usage and applicable Serviced Parcels which shall or may utilize the Facilities, a Hydraulic Share schedule with respect to those Serviced Parcels to be serviced by such Facilities cannot be determined or even estimated at or prior to the execution hereof. Notwithstanding the immediately preceding sentence, the parties hereto contemplate that Developer shall be entitled to equitable reimbursement and refund with respect to the Facilities based on the applicable procedure herein and shown in Exhibit "A".

Section 4. Term:

The terms and provisions of this Refund Agreement shall remain in full force and effect from the date of execution hereof through and including ten (10) years from the date hereof, or the date upon which Developer receives the last refund and reimbursement in full to which it is entitled, as herein contemplated, whichever is sooner. In that regard, Village hereby waives any and all rights which it might otherwise have had absent this waiver to limit the life or term of this Refund Agreement.

Section 5. Invalid Provisions:

If any section or portion of this Refund Agreement is determined by any court of competent jurisdiction to be unlawful, unenforceable, or otherwise invalid for any reason whatsoever, the remaining portions hereof shall remain in full force and effect as if such unlawful, unenforceable,

or invalid section or portion did not appear.

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

[Signature]

Witness

[Signature]

Witness

VILLAGE OF ROYAL PALM BEACH

By:

[Signature]
David E. Farber, Village Manager

ATTEST:

[Signature]
Mary Anne Gould, Village Clerk

(Village Seal)

[Signature]

Witness

Marisol Cedeño

[Signature]

Witness

PAMELA JONES

DEVELOPER

3-Arm-Z, LLC

[Signature]
By: Donald L. Armsey, Manager

ATTEST:

(Company Seal)

By: _____

THE STATE OF FLORIDA
COUNTY OF PALM BEACH

I HEREBY CERTIFY that on this date before me, an officer duly authorized in the State and County first named above to take acknowledgments, personally appeared DONALD L. ARHSEY of _____, to me known to be the person(s) who signed the foregoing instrument, and as such officer and each of whom acknowledge the execution thereof to be their free act and deed as such officers for the uses and purposes therein mentioned, and they affixed hereto the official seal of said corporation, and that the said instrument is the act and deed of said corporation.

SWORN TO and subscribed before me this 2nd day of December, 2007.

(Seal)

NOTARY PUBLIC



Pamela M. Jones
Commission # DD 016463
Expires May 20, 2003
Bonded Through
Atlantic Bonding Co., Inc.

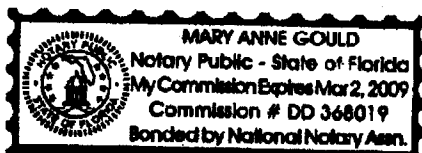
THE STATE OF FLORIDA
COUNTY OF PALM BEACH

I HEREBY CERTIFY that on this date before me, an officer duly authorized in the State and County first named above to take acknowledgments, personally appeared David B. Farber, Village Manager personally known to me or who produced personally known as identification, and he acknowledged before me that he executed the foregoing instrument as said officer and that he also affixed thereto the official seal of the Village.

SWORN TO and subscribed before me this 2nd day of December, 2007.

(Seal)

NOTARY PUBLIC



Page 4 of 7

Exhibit "A"

Refundable Facilities & Reimbursable Cost Calculation

Refundable Facilities

The following facilities are eligible for reimbursement under this Refund Agreement. The facilities are as shown on the approved plans drawn by Crossroads Engineering and Surveying, An Erdman Anthony Company, being water and wastewater plans dated July 19, 2004.

1. Lift Station w/ generator and Receiving Manhole (MH) #1,
2. 6" Force Main (FM) w/ fittings and connections,
3. 602 Linear Feet (LF) of 8" Sanitary Sewer Main (SS) from MH #1 to MH #4, including MH #2, MH #3, and MH #4,

The facilities were designed by Crossroads Engineering and Surveying, An Erdman Anthony Company, to accommodate a total of 116.5 equivalent residential connections (ERCs) as shown in the approved Lift Station Calculations dated July 16, 2004. The percent of flow to each proposed sanitary sewer main are based on the flow projections prepared by Crossroads Engineering and Surveying, An Erdman Anthony Company, as shown in the Lift Station Calculations dated July 16, 2004.

Reimbursable Cost Calculations

The basis for the refund to the Developer from a Beneficiary is the Total Construction Cost of the applicable facilities divided by the total ERC's allocated to the applicable facilities multiplied by the proposed ERC's for the beneficiary. The construction cost estimates used to establish unit hydraulic share costs for the facilities identified above were prepared by Crossroads Engineering and Surveying, An Erdman Anthony Company, dated July 16, 2004.

Exhibit "A"
(Cont.)

Unit Hydraulic Share Costs for the Lift Station and 6" Force Mains

Item	Quantity	Unit	Unit Price	Total Cost
Lift Station with Generator	1	EA	\$220,000.00	\$220,000.00
Manhole (14'-16") (MH #1)	1	EA	\$5,500.00	\$5,500.00
6" Force Main	236	LF	\$18.00	\$4,248.00
Fittings	0.2	Tons	\$5,000.00	\$1,000.00
Connect to Existing Force Main	2	EA	\$500.00	\$1,000.00
Subtotal				\$231,748.00
Survey, Design and Certification			10%	\$23,174.80
VORPB Inspection			3%	\$6,952.44
Total Construction Cost				\$261,875.24
ERC's for Lift Station			÷	116.5
Unit Hydraulic Share Cost for Lift Station and Appurtenances				\$2,247.86 per ERC

Unit Hydraulic Share Costs for the Sanitary Sewer Main from MH #1 to MH #4

Item	Quantity	Unit	Unit Price	Total Cost
8" San. Sew. (14'-16")	247	LF	\$63.00	\$15,561.00
8" San. Sew. (16'-18")	355	LF	\$78.00	\$27,690.00
Less 8" San. Sew. (0'-6")	355	LF	\$17.00	-\$6,035.00
Manhole (14'-16") (MH #2, MH #3 & MH #4)	3	EA	\$5,500.00	\$16,500.00
Less Manhole (0'-6")	3	EA	\$3,000.00	-\$9,000.00
Subtotal				\$44,716.00
Survey, Design, Certification & Inspection			13%	\$5,813.08
Total Construction Cost				\$50,529.08
ERC's for Sanitary Main			÷	50
				\$1,010.58 per ERC

Exhibit "A"
(Cont.)

Example Calculation

Hydraulic Share Cost for Beneficiary Connecting to Sanitary Sewer Main from
MH #1 to MH #4:

Hydraulic Share Cost to Beneficiary	[Unit Hydraulic Share for Lift Station	Unit Hydraulic Share of Sanitary Sewer + Main]	ERC's Proposed x by Beneficiary
Hydraulic Share Cost to Beneficiary	= \$2,247.86	+ \$1,010.58	ERC's Proposed x by Beneficiary
Hydraulic Share Cost to Beneficiary	= \$3,258.44	ERC's Proposed x by Beneficiary	