

## **NAPLES SQUARE SEWER UTILITY AGREEMENT**

THIS UTILITY AGREEMENT, made and entered into effective upon the date of the last signature below, by and between the CITY OF NAPLES, the mailing address of which is 735 Eighth Street South, Naples, Florida, 34102, (hereinafter referred to as "CITY"), and WSR Old Naples, LLC, the mailing address of which is 500 Boylston Street, 16<sup>th</sup> Floor, Boston, Massachusetts, 02116, (hereinafter referred to as "WSR") in conjunction with a development project located within the City known as "Naples Square",

### **WITNESS:**

**WHEREAS**, WSR will be developing an area of approximately 21 acres within the 'D' Downtown District, centered on the extension of 3<sup>rd</sup> Avenue South between 10<sup>th</sup> Street South and Goodlette-Frank Road in the City (hereinafter referred to as 'project area') as depicted on Exhibit A, titled CITY SEWER IMPROVEMENTS TO CITY PUMP STATION NUMBER 6, and incorporated herein by reference; and

**WHEREAS**, within the 'project area', WSR is planning a residential development located upon 11.52 acres, to be platted with the title 'Naples Square' (hereinafter referred to as the 'platted area') as depicted on Attachment 1, to Exhibit A, titled NAPLES SQUARE, and incorporated herein by reference ; and

**WHEREAS**, the City serves the 'project area', including the 'platted area', with central water service and central sewer service; and

**WHEREAS**, the proposed sewer system for the 'platted area' requires an on-site sewer pump station and force main for the collection and removal of effluent to the City sewer system; and

**WHEREAS**, Pump Station 6 will provide sewer service to part of an area within the City's sewer service district, (which part is referred to herein as Attachment 2 to Exhibit A, 'GENERAL AREA' and incorporated herein by reference);

**WHEREAS**, in lieu of WSR designing and installing the on-site sewer pump station and force main, the City has proposed a substantial upgrade to the existing City sewer collection system in the form of a capacity improvement to Sewer Pump Station Number 6 which serves the 'general area' in, around and to include the 'project area', with the cost of the sewer system improvement to Sewer Pump Station Number 6 being borne by the CITY, but with the City reserving the right to charge users within the 'general area' served by the above referenced pump station for the cost of the improvements pursuant to provisions of the City Code Sec. 30-164 and Sec. 30-174; and

**WHEREAS**, WSR is willing to enter into this agreement so as to eliminate the need for it to provide an on-site private sewer pump system and sewer force main and is willing to make payment to the City for the cost of the project's incremental use of the capacity of the sewer system improvements to Sewer Pump Station Number 6; and

**WHEREAS**, the City is planning the design, permitting and construction of sewer capacity improvements to Sewer Pump Station Number 6 in the total amount of approximately \$302,937.34 with the cost, time frame and allocated cost set forth in attached Exhibit A; and

**NOW THEREFORE**, in consideration of these premises and other good and valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged, it is agreed by and between the parties as follows:

1. The City shall be responsible for the planning, the design, the permitting and the construction of sewer capacity improvements to Sewer Pump Station Number 6 in the total amount of approximately \$302,937.34 with the cost, time frame and allocated cost set forth in attached Exhibit A. The project is scheduled for completion within 180 days after the date of execution of this Agreement by the parties.
2. WSR, in lieu of its designing and installing an on-site sewer pump station and force main, upon notice by the City that Pump Station Number 6 is complete, shall connect the "project area" to the City's Sewer Pump Station Number 6. Payment for such right to connect, in

**the amount of \$106,028.06 as provided in Exhibit "A", shall be paid to the City of Naples by no later than Monday, November 3, 2014.**

- 3. The cost of the sewer system improvement to Sewer Pump Station Number 6 shall be borne by the CITY but the City reserves the exclusive right to charge users within the 'project area' and 'general area' served by Sewer Pump Station Number 6, for the cost of the improvements and other rates, charges and fees pursuant to provisions of the City Code Sec. 30-164 and Sec. 30-174.**
- 4. All of the above RECITALS are true and correct and are hereby expressly incorporated herein by reference as if set forth fully below, and the Exhibit or Exhibits referenced herein are made a part of this Agreement.**
- 5. The City and WSR agree to do all things which may be required to give effect to this Agreement with due dispatch. This may include execution, conveyance, acceptance and recording of easements or other instruments.**
- 6. The City agrees, represents and warrants that it has full right, power and authority to execute this Agreement, to execute, deliver and perform its obligations under this Agreement, to undertake all actions and to perform all tasks required of the City hereunder and to consummate the transactions contemplated in this agreement.**
- 7. WSR agrees, represents and warrants that it has full right, power and authority to execute this Agreement, to execute, deliver and perform its obligations under this Agreement, to undertake all actions and to perform all tasks required of the City hereunder and to consummate the transactions contemplated in this agreement.**
- 8. This Agreement shall not be assigned or its duties delegated by a party without consent of the other party, which consent shall not be unduly withheld.**

9. The Parties shall cooperate to fulfill their respective obligations under this Agreement.
10. This Agreement shall only be amended or cancelled by mutual written consent of the Parties hereto or by their successors in interest.
11. Should any part of this Agreement be found to be invalid, then such invalid part shall be severed from the Agreement, and the remaining provisions of this Agreement shall remain in full force and effect and not be affected by such invalidity.
12. This Agreement shall be governed and construed in accordance with the laws of the State of Florida. Venue shall be in Collier County, Florida.
13. In any dispute or claim, the each party shall be responsible for its own legal fees.

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement on the dates set forth below.

ATTEST:

  
Patricia L. Rambosk  
Patricia L. Rambosk, City Clerk

AS TO THE CITY OF NAPLES

A. William Moss  
A. William Moss, City Manager

Date: 9/4/14

Approved As To Form And Legality:

Robert D. Pritt RDP  
Robert D. Pritt, City Attorney

WITNESSES:

Karen E. Wells

AS TO WSR NAPLES, LLC

Anthony P. Solomon  
ANTHONY P. SOLOMON

Cornie Jenkins

Date: 8.22.14

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**EXHIBIT A  
TO THE  
CITY OF NAPLES AND NAPLES SQUARE UTILITY AGREEMENT**

**CITY SEWER IMPROVEMENTS TO CITY PUMP STATION NUMBER 6**

**SUBJECT:** The City, in conjunction with pending development of Naples Square within the service area of City Pump Station Number 6 (Reference Attachment #1), are implementing capacity improvements to Pump Station Number 6 pursuant to City of Naples Bid #14-033 with a project cost identified below and with a service and capacity allocation identified below.

**PROJECT CONSTRUCTION COST:** The following is the total construction cost of the capacity improvements to Pump Station Number 6:

Construction:	\$302,937.34
Total Cost to be allocated:	\$302,937.34

**PUMP STATION IMPROVEMENT SCHEDULING AND CAPACITY ALLOCATION INFORMATION:** The contract for the sewer pump station improvements was awarded by City Council on May 21, 2014 with a completion date within 150 days of the Notice to Proceed. The Notice-to-Proceed was issued on July 21, 2014. Final completion is scheduled for December 18, 2014. Allocation of pump station improvement cost to developments within the service area of Pump Station No. 6 that require an increase in capacity shall be in accordance with required Naples Square development capacity divided by the new pump station capacity multiplied by the above construction cost. For development within the 'platted area' (Reference definition set forth in the Utility Agreement), capacity information is provided as follows along with the computed cost allocation:

Pump Station Service Area: Reference attached service area map,  
(Attachment #1)

Station Capacity:	187,165 GPD
Capacity Allocation to the 'platted area':	67,050 GPD

**Incremental Per Cent Allocation: 35% of Total Capacity/Cost**

**Incremental Project Cost: \$106,028.06**

**Computations:  $0.35 \times \$302,937.34 = \$106,028.06$**

DEDICATIONS/RESERVATIONS

1. THE CITY OF NAPLES COUNTY, FLORIDA, HAS RECEIVED FROM THE DONOR THE FOLLOWING PROPERTY...

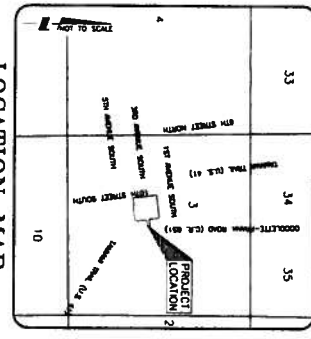
2. THE CITY OF NAPLES COUNTY, FLORIDA, HAS RECEIVED FROM THE DONOR THE FOLLOWING PROPERTY...

3. THE CITY OF NAPLES COUNTY, FLORIDA, HAS RECEIVED FROM THE DONOR THE FOLLOWING PROPERTY...

4. THE CITY OF NAPLES COUNTY, FLORIDA, HAS RECEIVED FROM THE DONOR THE FOLLOWING PROPERTY...

NAPLES SQUARE

A SUBDIVISION OF PART OF SECTION 3, TOWNSHIP 50 SOUTH, RANGE 25 EAST, CITY OF NAPLES COLLIER COUNTY, FLORIDA...



LOCATION MAP

DESCRIPTION

1. THE CITY OF NAPLES COUNTY, FLORIDA, HAS RECEIVED FROM THE DONOR THE FOLLOWING PROPERTY...

ATTACHMENT 1

CITY OF NAPLES DEVELOPING DEPARTMENT...

CERTIFICATE OF APPROVAL OF CITY COUNCIL...

SURETY'S CERTIFICATE...

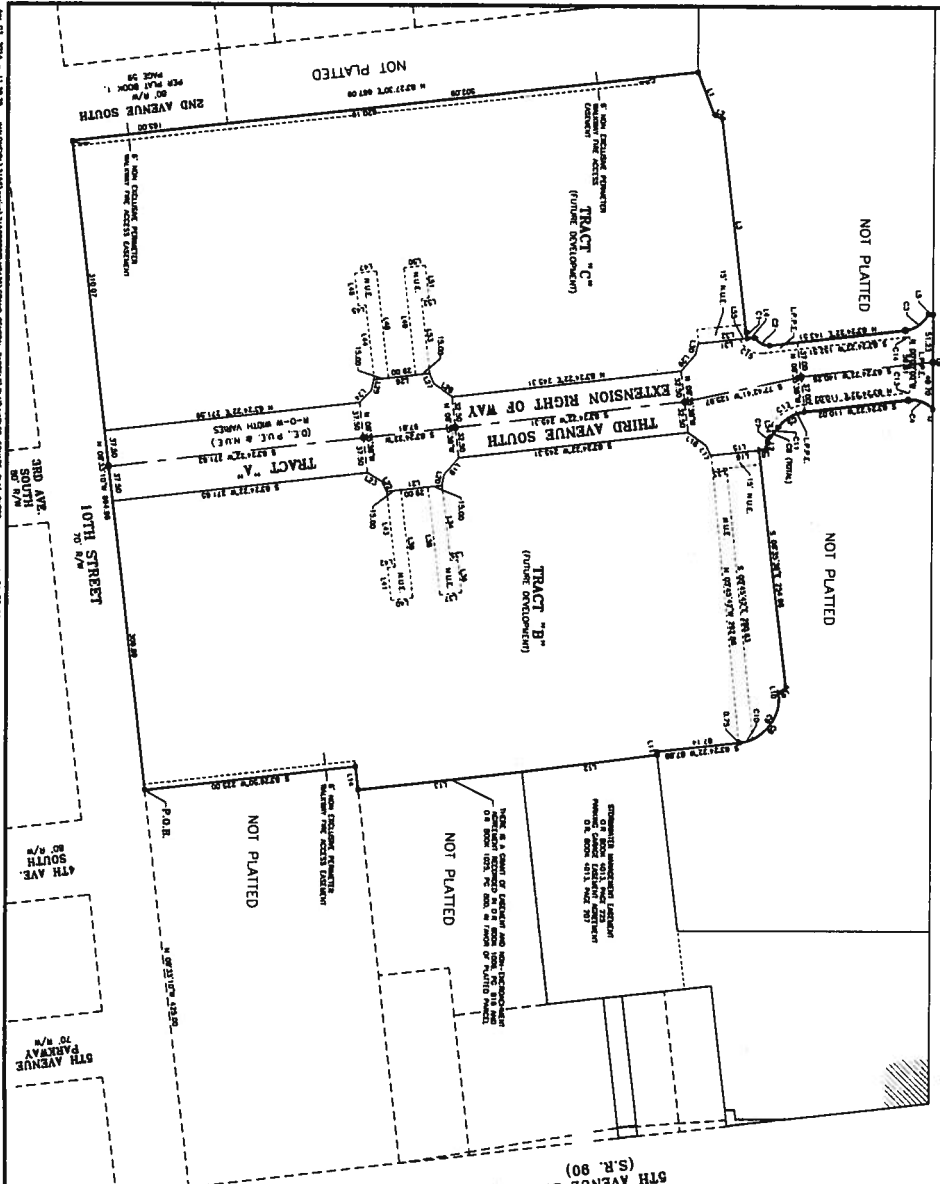
GENERAL NOTES: 1. ALL DIMENSIONS ARE IN FEET AND DECIMAL INCHES...



TRACT ACREAGE			
TRACT	ACRES	SQ. FT.	PERCENT
1	1.81	79,148	1.81
2	2.90	125,920	2.90
3	2.90	125,920	2.90
4	2.90	125,920	2.90

**NAPLES SQUARE**

A SUBDIVISION OF PART OF SECTION 3, TOWNSHIP 50 SOUTH,  
RANGE 25 EAST, CITY OF NAPLES, COLLIER COUNTY, FLORIDA,  
BEING A PART OF THE REPLAT OF PART OF TOWN OF NAPLES, RECORDED  
IN PLAT BOOK 1, PAGE 59 OF THE PUBLIC RECORDS OF COLLIER COUNTY, FLORIDA  
GOODLETTE-PRANK ROAD (C.R. 851)



U.S. 41 (TAMIAMI TRAIL)  
(S.R. 80)  
3RD AVE. SOUTH  
4TH AVE. SOUTH  
5TH AVENUE PARKWAY  
2ND AVENUE SOUTH  
3RD AVENUE SOUTH  
10TH STREET

**NOTICE:**  
THESE RECORDS ARE THE PROPERTY OF THE COLLIER COUNTY ENGINEER'S OFFICE. ANY REPRODUCTION OR DISTRIBUTION OF THESE RECORDS WITHOUT THE WRITTEN PERMISSION OF THE COLLIER COUNTY ENGINEER IS STRICTLY PROHIBITED. ANY VIOLATION OF THIS NOTICE SHALL BE CONSIDERED A VIOLATION OF THE FLORIDA PROFESSIONAL ENGINEERING ACT AND SHALL BE SUBJECT TO THE PENALTIES THEREUNDER.

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**CURVE DATA**

STATION	CHORD BEARING	CHORD DISTANCE	ARC DISTANCE	CHORD CURVATURE	ARC CURVATURE
1	N 89° 57' 00" W	100.00	100.00	0.000000	0.000000
2	N 89° 57' 00" W	100.00	100.00	0.000000	0.000000
3	N 89° 57' 00" W	100.00	100.00	0.000000	0.000000
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