



Interoffice Memorandum

August 16, 2022

TO: Mayor Jerry L. Demings
-AND-
County Commissioners

FROM: Ed Torres, M.S., P.E., LEED AP, Director
Utilities Department

A handwritten signature in black ink, appearing to read "Ed Torres", with a long, sweeping horizontal line extending to the right.

**SUBJECT: BCC AGENDA ITEM – Consent Agenda
September 13, 2022 BCC Meeting
Poitras East Parcel N-7 (19-U-106) Wastewater Capital Charge
Escrow Agreement
Contact Person: Lindy A. Wolfe, P.E., LEED AP, Manager
Utilities Engineering Division
407-254-9918**

TDCP, LLC (Owner) holds fee simple title to and is constructing a new residential subdivision on property within Orange County's (County) wastewater service territory, and the construction will incur wastewater capital charges per Section 37-5 of the Orange County Code. By entering into this Agreement, the Owner agrees to continuously maintain an escrow account to secure the Owner's obligation to pay future wastewater capital charges attributed to vertical construction on the Owner's property and adjacent property recently conveyed by the Owner to homebuilders.

The County Attorney's Office and Risk Management Division reviewed this agreement and find it acceptable as to form. Utilities Department staff recommends approval.

Action Requested: Approval and execution of Poitras East Parcel N-7 (19-U-106) Wastewater Capital Charge Escrow Agreement by and among TDCP, LLC, Orange County, and the Orange County Comptroller.

District 4

Enclosures

cc: Byron Brooks, County Administrator
Chris Testerman, AICP, Deputy County Administrator
Aleas Koos, Assistant County Attorney, Orange County Attorney's Office
Andres Salcedo, P.E., Deputy Director, Utilities
Marc Cannata, P.E., Deputy Director, Utilities
Teresa Remudo, P.E., Deputy Director, Utilities
Tim Armstrong, Assistant Director, Utilities
Laura Tatrow, P.E., Chief Engineer, Utilities
Aaron Van Smith, P.E., Senior Engineer, Utilities
Lynette Strong, Assistant to Director, Utilities
Ray Stolin, Project Manager, Utilities

BCC Mtg. Date: September 13, 2022

**POITRAS EAST PARCEL N-7 (19-U-106)
WASTEWATER CAPITAL CHARGE ESCROW AGREEMENT**

This **POITRAS EAST PARCEL N-7 (19-U-106) WASTEWATER CAPITAL CHARGE ESCROW AGREEMENT** (the “Agreement”) is made and entered into as of the date of latest execution below (the “Effective Date”) by and among **TDCP, LLC**, a Florida limited liability company, whose principal business address is 6900 Tavistock Lakes Boulevard, Suite 200, Orlando, Florida 32827 (the “Owner”); **Orange County**, a charter county and political subdivision of the State of Florida, whose address is 201 South Rosalind Avenue, Orlando, Florida 32801 (the “County”); and the **Orange County Comptroller**, in its capacity as Escrow Agent (“Escrow Agent”), whose principal place of business is 201 South Rosalind Avenue, 4th Floor, Orlando, Florida 32801. In this Agreement, the Owner and the County may be referred to individually as a “Party” or collectively as the “Parties.”

RECITALS

WHEREAS, the Owner is the fee simple owner of certain real property located in Orange County, Florida, as such property is more particularly described in **Exhibit “A”** attached hereto and incorporated by this reference (the “Property”); and

WHEREAS, the Property is located within the County’s wastewater service territory and, therefore, the County is the appropriate provider of wastewater service; and

WHEREAS, Section 37-5, Orange County Code (the “Code”), provides for the assessment of wastewater capital charges for new connections to the wastewater system; and

WHEREAS, the Owner is constructing a new residential subdivision (the “Development”) on the Property and adjacent property, which is more particularly shown on **Exhibit “B”** attached hereto and incorporated by this reference; and

WHEREAS, the Owner has sold certain lots (the “Sold Lots”) within the Development; and

WHEREAS, the Sold Lots are more particularly described on **Exhibit “C”** attached hereto and incorporated by this reference; and

WHEREAS, the Owner has submitted to the County construction plans for approval (the “Construction Plans”); and

WHEREAS, all capital charges for new construction shall be paid immediately prior to the issuance of a building permit for vertical construction, as described in subsection 37-5(b)(1)b of the Code; and

WHEREAS, the Development is located within the City of Orlando's building permitting jurisdiction and, therefore, the City of Orlando is the appropriate authority to issue vertical building permits; and

WHEREAS, because the City has the authority to issue vertical building permits for the Development, the County's approval of the Construction Plans is conditioned on the Owner entering into this Agreement to secure the Owner's obligation to pay future wastewater capital charges attributed to vertical construction within the Development; and

WHEREAS, the Owner has agreed to establish an escrow account to guarantee funds are available to pay for the future wastewater capital charges; and

WHEREAS, the County has consented to accept the Escrowed Funds (as defined below) to be held by Escrow Agent, in accordance with the terms and provisions of this Agreement; and

WHEREAS, Escrow Agent has agreed to serve as escrow agent in accordance with this Agreement; and

WHEREAS, the Parties desire that Escrow Agent hold and release the Escrowed Funds, subject to the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises contained in this Agreement and other good and valuable consideration, the receipt of which is acknowledged by the Parties and Escrow Agent, the Parties and Escrow Agent agree as follows:

SECTION 1. Recitals. The above Recitals are true, and are incorporated in and form a material part of this Agreement.

SECTION 2. Payment of Capital Charges. Immediately prior to any vertical building permit issuance within the Development by the City of Orlando, the Owner shall pay the associated wastewater capital charges to the County. If the Owner fails to pay the wastewater capital charges to the County when due, the County may provide written notice of such failure to the Owner. If the wastewater capital charges are not paid within 10 days following the Owner's receipt of notice from the County that wastewater capital charges are due, the County may submit a Draw Request (as defined below) requesting disbursement of the Escrowed Funds pursuant to Section 5 below. For the avoidance of doubt, a third party may pay the wastewater capital charges for the Sold Lots on behalf of the Owner. If the wastewater capital charges for the Sold Lots are not paid to the County by the Owner or third party within 10 days following the Owner's receipt of notice from the County that wastewater capital charges are due, the County may submit a Draw Request requesting disbursement of the Escrowed Funds pursuant to Section 5 below.

SECTION 3. Establishment of Escrow Relationship; Acceptance by Escrow Agent. By this Agreement, the Parties retain Escrow Agent, at no cost to them, to serve solely in its capacity as escrow agent (and in no other capacity) with respect to the Escrowed Funds, as defined in this Agreement, and by executing this instrument Escrow Agent accepts such retention.

SECTION 4. Escrowed Funds. No later than five days after the Effective Date of this Agreement, the Owner shall deliver funds in the amount of \$178,500 (the "Escrowed Funds") to Escrow Agent. Within five days of receipt, Escrow Agent will place the Escrowed Funds into an escrow account (the "Escrow Account") to be held, administered, distributed, and released as provided for in this Agreement. Escrow Agent shall acknowledge receipt of the Escrowed Funds by providing notice to the County within five days after receipt of the Escrowed Funds.

SECTION 5. Release of Escrowed Funds. The County shall submit written requests to Escrow Agent for disbursement of the Escrowed Funds from the Escrow Account (each, a "Draw Request") if the Owner or a third party fails to pay the wastewater capital charges to the County as required by Section 2. Each Draw Request shall specify how the funds are to be disbursed (e.g., check or wire), the amount of wastewater capital charges owed to the County, and the amount of Escrowed Funds to be disbursed from the Escrow Account. Escrow Agent agrees to disburse the Escrowed Funds to the County in accordance with the Draw Request within 10 days after receipt of the Draw Request. Escrow Agent shall provide written notice to the Owner and the County of the amount disbursed and date of disbursement.

SECTION 6. Capital Charge Payments Remain with the Property. Pursuant to Section 37-5 of the Code, wastewater capacity may only be purchased for the property specified in the application for service, and may not be transferred to another property. Therefore, any and all wastewater capacity purchased by the Owner or a third party is purchased on behalf of the property, runs with the property, and may not be transferred to any other property.

SECTION 7. Term of Agreement and Release of Escrowed Funds. The term of this Agreement commences on the Effective Date and will automatically terminate without any action by the Parties on the date that all wastewater capital charges for the Development have been paid (the "Term"). Notwithstanding anything contained herein to the contrary, the Escrowed Funds shall be held by Escrow Agent for the Term (unless disbursed to the County after receipt of a Draw Request pursuant to Section 5). The Parties shall provide written notice to Escrow Agent within 30 days after expiration of the Term. Escrow Agent shall disburse any unused balance of the Escrowed Funds to the Owner within 60 days after receipt of such notice. Notwithstanding anything contained herein to the contrary, each platted lot shall automatically be released from the terms of this Agreement upon payment of the wastewater capital charge due for such platted lot.

SECTION 8. Indemnification of Escrow Agent; Sovereign Immunity.

The Parties agree that the duties of Escrow Agent are purely ministerial in nature and are expressly limited to the matters in this Agreement for which Escrow Agent is expressly obligated. The Owner hereby agrees to indemnify Escrow Agent and agrees to hold Escrow Agent harmless from and against any and all claims, liabilities, damages, costs, penalties, losses, actions, suits, or proceedings at law or in equity, and any other expenses, fees, or charges of any character or nature, which Escrow Agent may incur or with which Escrow Agent may be threatened directly or indirectly arising from or in any way connected with this Agreement, except in the case of gross negligence, willful misconduct, or breach of trust of Escrow Agent. In connection therewith, the Owner shall, to the extent allowable by law, indemnify Escrow Agent against any and all reasonable expenses, including reasonable attorney fees (pre-litigation, litigation, and appellate) and the cost of defending or prosecuting any action, suit, or proceeding or resisting any claim, whether or not litigation is instituted. Nothing contained in this Agreement is intended as, nor shall constitute, a waiver by the County or Escrow Agent, respectively of their sovereign immunity protections pursuant to Section 768.28, Florida Statutes.

SECTION 9. No Constructive Knowledge. Escrow Agent will not be deemed to have knowledge of any matter or thing unless and until Escrow Agent has actually received written notice of such matter or thing, and then will only be required to act on that knowledge in its capacity as Escrow Agent as further described herein. Escrow Agent will not be charged with any constructive knowledge whatsoever.

SECTION 10. Capacity of Escrow Agent. The County expressly agrees that Escrow Agent will not act under this Agreement in any capacity as Clerk to the Orange County Board of County Commissioners, but rather in Escrow Agent's capacity as an independent constitutional officer.

SECTION 11. No Overdraw. Notwithstanding any provision of this Agreement seemingly to the contrary, Escrow Agent will not make payment of an amount in excess of the balance in the Escrow Account.

SECTION 12. No Obligation to Pay Interest. Notwithstanding any provision of this Agreement to the contrary, Escrow Agent will not be required to make any interest payment on any balance in the Escrow Account.

SECTION 13. Sale of Property. Except as provided in this Section 13, the Owner's right to sell or transfer the Property, or any portion of its ownership or leasehold interest in the Property, shall not be restricted by this Agreement provided, however, that the County must be provided with 60 days prior notice of such sale or transfer. Provided further that (i) the Owner must assign its rights to receive any unused balance of the Escrowed Funds to the successor party, and (ii) at the time of the closing of the sale or transfer of all or any portion of the Property, the Owner and the successor party in ownership shall execute an assignment agreement whereby the rights to receive any unused balance of the Escrowed Funds are assigned by the Owner to the successor party

and the successor party acknowledges the existence of this Agreement, assumes the rights and obligations of the Owner under this Agreement, and agrees to be bound by the terms of this Agreement (the "Assignment"). The Assignment signed by the Owner and the successor party must be delivered to the County within 30 days after the date of the sale or transfer. The Owner will not be released from any obligations and responsibilities arising under or attributable to this Agreement unless and until the County has received the Assignment signed by the successor party. If the Owner and successor party do not provide the Assignment to the County as and when required by this Section, then the Owner will be in breach of this Agreement, and the County may pursue those remedies set forth in Section 27 against the Owner and the Property. Capital charges run with the property specified in the application for service, as stated in Section 6 above. If the County receives the Assignment signed by the Owner and the successor party as and when required by this Section, the successor party will thereafter be the Owner for purposes of this Agreement and be responsible for the satisfaction of all obligations and responsibilities of the Owner arising under or attributable to this Agreement. This Section 13 does not apply to the sale of a platted lot with a completed home thereon.

SECTION 14. Limitation on Assignment. Except as set forth in Section 13, the Owner shall not assign its interests in this Agreement without the express written consent of the County.

SECTION 15. Recording. Escrow Agent and the Parties agree that an executed copy of this Agreement, including the Exhibits attached hereto, shall be recorded by the Owner at the Owner's expense in the Public Records of Orange County, Florida. The obligations imposed in this Agreement shall run with and burden title to the Property. For the avoidance of doubt, nothing in this Agreement is intended to run with or burden title to the Sold Lots.

SECTION 16. Notice. Any notice required or allowed to be delivered hereunder shall be in writing and be deemed to be delivered when (a) hand-delivered to the official hereinafter designated; (b) delivered when such notice is sent by Federal Express or other nationally recognized overnight courier service; or (c) received when such notice is sent by the United States mail, postage prepaid, certified mail, return receipt requested, all to be addressed to a party at the address set forth opposite the party's name below, or such other address as the party shall have specified by written notice to the other parties delivered in accordance therewith.

If to the County: Orange County Utilities Department
 9150 Curry Ford Road
 Orlando, Florida 32825-7600
 Attn: Manager, Utilities Customer Service

With copy to: Orange County Administrator's Office
 Orange County Administration Building
 201 South Rosalind Avenue, 5th Floor
 Orlando, Florida 32801-3527

Attn: County Administrator

If to the Owner: TDCP, LLC
6900 Tavistock Lakes Boulevard, Suite 200
Orlando, Florida, 32827-7591
Attn: Dan Young, Vice President

With copy to: TDCP, LLC
6900 Tavistock Lakes Blvd, Suite 200
Orlando, Florida, 32801
Attn.: Michelle Rencoret, General Counsel

If to Escrow Agent: Orange County Comptroller
201 South Rosalind Avenue, 4th Floor
P.O. Box 38
Orlando, FL 32802-0038
Attn: Director of Finance and Accounting

SECTION 17. Governing Law. Escrow Agent and the Parties agree that this Agreement was entered into in the State of Florida. This Agreement and the provisions contained herein shall be construed, controlled, and interpreted according to the laws of the State of Florida, without giving effect to any choice of law or rules thereof which may direct the application of laws of another jurisdiction.

SECTION 18. Jurisdiction. Any legal proceeding of any nature brought by any party against another to enforce any right or obligation under this Agreement, or arising out of any matter pertaining to this Agreement, shall be exclusively submitted for trial before the Circuit Court of the Ninth Judicial Circuit in and for Orange County, Florida; or, if the Circuit Court does not have jurisdiction, then before the United States District Court for the Middle District of Florida (Orlando Division); or if neither of such courts shall have jurisdiction, then before any other court sitting in Orange County, Florida, having subject matter jurisdiction. Escrow Agent and the Parties consent and submit to the exclusive jurisdiction of any such court and agree to accept service of process outside the State of Florida in any matter to be submitted to any such court pursuant hereto and expressly waive all rights to trial by jury for any matters arising under this Agreement.

SECTION 19. Attorneys' Fees and Costs. If either the County or the Owner files suit or brings a judicial action or proceeding against the other to recover any sum due hereunder or for default or breach of any of the covenants, terms or conditions herein contained, each Party shall be responsible for its costs, fees and expenses incurred (including the fees and expenses of attorneys and paraprofessionals) in connection with such suit, action or proceeding (whether or not such costs, fees and expenses are taxable

to the other Party as such by any law) through any and all final appeals arising out of such suit, action or proceeding.

SECTION 20. Headings. The headings or captions of sections and descriptive headings in this Agreement are inserted for convenience only, and shall not affect the construction or interpretation hereof.

SECTION 21. Severability. If any part of this Agreement is found invalid or unenforceable by any court, such invalidity or unenforceability shall not affect the other parts of this Agreement if the rights and obligations of Escrow Agent and the Parties and if the intention of Escrow Agent and the Parties can continue to be effective. To that end, this Agreement is declared severable.

SECTION 22. No Third-Party Beneficiaries. This Agreement is solely for the benefit of the formal parties hereto and no rights or cause of action shall accrue upon or by reason hereof, to or for the benefit of, any third party not a formal party hereto.

SECTION 23. Entire Agreement. This instrument constitutes the entire Agreement between Escrow Agent and the Parties and supersedes all previous discussions, understandings, and agreements between Escrow Agent and the Parties relating to the subject matter of this Agreement.

SECTION 24. Amendment. This Agreement may not be amended unless the amendment is in writing, executed by Escrow Agent and the Parties, and approved by the County. This Agreement may not be terminated unless the termination is in writing, executed by the Parties, and approved by the County.

SECTION 25. Land Use Approvals. This Agreement does not grant or assure or indicate any future grant of any land use, zoning, subdivision, density, or development approvals, permissions, or rights with respect to the Property, or any other property or land referred to in this Agreement.

SECTION 26. Non-Waiver. The failure of any party to this Agreement to insist on another party's compliance with its obligations under this Agreement in any one or more instances will not operate to release the other party from its duties to comply with its obligations in all other instances.

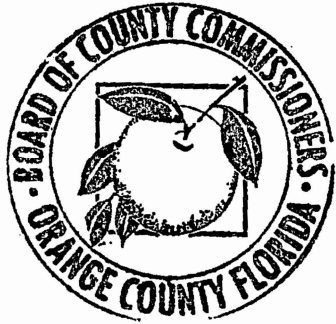
SECTION 27. Remedies. No remedy conferred upon the County in this Agreement is intended to be exclusive of any other remedy, and each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute, Orange County Code, or otherwise. No single or partial exercise by the County of any rights, power, or remedy under this Agreement shall preclude any other or further exercise thereof. For the avoidance of doubt, if the Owner breaches this Agreement, after expiration of the notice and cure period set forth in Section 2, the County may submit a Draw Request to Escrow Agent as set forth in this Agreement, and in the event that the

Escrowed Funds are not sufficient to pay the County for all outstanding wastewater capital charges, then the County may lien the portions of the Property for which wastewater capital charges remain unpaid in accordance with the Orange County Code, recover from the Owner any remaining unpaid wastewater capital charges for the Development, and/or discontinue service to the portions of the Property for which wastewater capital charges remain unpaid in accordance with the Orange County Code and all other applicable laws, rules, and regulations.

SECTION 28. Settlement of Dispute. In the event Escrow Agent is joined as a party to a lawsuit by virtue of the fact that it is holding the Escrowed Funds, Escrow Agent shall, at its option, either: (a) tender the Escrowed Funds onto the registry of the appropriate court; or (b) disburse the Escrowed Funds in accordance with the court's ultimate disposition of the case. In the event Escrow Agent tenders the Escrowed Funds into the registry of the appropriate court and files an action of interpleader naming the Parties and any affected third parties of whom Escrow Agent has received actual notice, Escrow Agent shall be released and relieved from any and all further obligation and liability hereunder or in connection herewith. The Parties agree that Escrow Agent shall not be liable to any party or person whomsoever for the misdelivery to the Owner and County or otherwise of any monies except where such misdelivery shall be due to willful misconduct, gross negligence, or breach of trust by Escrow Agent. The Parties expressly agree that each will bear the cost of its own attorney's fees for any action arising out of or in connection with this Agreement.

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, the Parties have executed this Agreement on the dates set forth below by their duly authorized representatives.



ORANGE COUNTY, FLORIDA

By: Board of County Commissioners

By: *Jerry L. Demings*
for Jerry L. Demings
Orange County Mayor

Date: September 13, 2022

ATTEST: Phil Diamond, CPA, County Comptroller
As Clerk of the Board of County Commissioners

By: *Katie Smith*
Deputy Clerk

Print Name: Katie Smith

OWNER: TDCP, LLC
a Florida limited liability company

By: [Signature]

Print Name: Robert Adams

Title: Vice President

Date: August 12, 2022

Signed, sealed, and delivered in our
presence as witnesses:

Signature: [Signature]

Printed Name: BRENT SCHAEFMAN

Signature: [Signature]

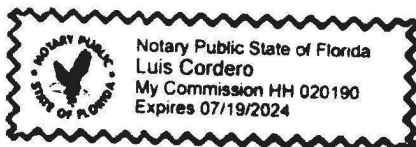
Printed Name: Luis Cordero

STATE OF Florida

COUNTY OF Orange

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 12th day of August, 2022, by Robert Adams as Vice President of TDCP, LLC, a Florida limited liability company authorized to do business in the State of Florida, on behalf of the Company, who ☒ is personally known to me or ☐ has produced _____ as identification.

(SEAL)



[Signature]
Notary Public

Name Printed or Stamped

My Commission Expires: 7/19/2024

Signed, sealed, and delivered in the presence of:

ESCROW AGENT:

Attest: Lakela Louis
Print Name: Lakela Louis
Title: Senior Minutes Coordinator

By: Phil Diamond
Phil Diamond, CPA
Orange County Comptroller
Date: 9-20-22



Exhibit "A"

The Property

POITRAS EAST N-7, according to the plat thereof, as recorded in Plat Book 106, Pages 148-175, inclusive, of the Public Records of Orange County, Florida

Less and except:

Lots 8, 10-18, 20-30, 34-51, 54-66, 68, 69, 71-73, 75-81, 84-86, 88-90, 94-96, 98-100, 102-104, 106-108, 111, 112, 115-122, 124, 126, 130, 131, 133, 135, 137, 138, 140, 141, 145-153, 155, 158, 159, 162-167, 170-173, 175, 177, 178, 181-188, and 192-206, POITRAS EAST N-7, according to the plat thereof, as recorded in Plat Book 106, Pages 148-175, inclusive, of the Public Records of Orange County, Florida.

Exhibit "C"

Sold Lots

Lots 8, 10-18, 20-30, 34-51, 54-66, 68, 69, 71-73, 75-81, 84-86, 88-90, 94-96, 98-100, 102-104, 106-108, 111, 112, 115-122, 124, 126, 130, 131, 133, 135, 137, 138, 140, 141, 145-153, 155, 158, 159, 162-167, 170-173, 175, 177, 178, 181-188, and 192-206, POITRAS EAST N-7, according to the plat thereof, as recorded in Plat Book 106, Pages 148-175, inclusive, of the Public Records of Orange County, Florida.