

Record & Return to:  
Clay County Utility Authority  
3176 Old Jennings Road  
Middleburg, Florida 32068-3907

**TYNES ELEMENTARY SCHOOL**  
**1550 TYNES BOULEVARD**  
(Clay Utility System)  
Name of Project

## AGREEMENT

THIS AGREEMENT, made and entered into this 26th, day of February, 2007, by and between the **THE SCHOOL BOARD OF CLAY COUNTY, FLORIDA**, a political subdivision of the State of Florida, hereinafter referred to as "**School Board**", and **CLAY COUNTY UTILITY AUTHORITY**, an independent special district established under Chapter 94-491, Laws of Florida, Special Acts of 1994, hereinafter referred to as "**Utility**".

WHEREAS, School Board owns or controls lands located in Clay County, Florida, and described in Exhibit "A", attached hereto and incorporated herein by reference (hereinafter "Property"); and

WHEREAS, School Board desires that the Utility provide central water, pumping, treatment and distribution service and central wastewater collection, treatment and disposal service for the Property; and

WHEREAS, the Utility is willing to provide, in accordance with the provisions of this Agreement central water and wastewater service to the Property and thereafter operate applicable facilities so that the occupants of the improvements on the Property will receive adequate water and wastewater service from the Utility; and

WHEREAS, the parties wish to enter into this Agreement setting forth their mutual understandings and undertakings regarding the furnishing of water and wastewater service by the Utility to the School Board's Property;

NOW, THEREFORE, for and in consideration of the premises, the mutual undertakings and agreements herein contained and assumed, School Board 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) "Consumer Installation" - All facilities ordinarily on the consumer's side of the point of delivery.
  - (b) "Contribution-in-Aid-of-Construction (CIAC)" - The sum of money and/or the value of property represented by the cost of the water distribution system and wastewater collection system constructed or to be constructed which School Board or owner transfers, or agrees to transfer, to Utility, at no cost to Utility, to provide utility service to specified property.

(c) "Equivalent Residential Connection (ERC)" - A factor expressed in gallons per day (GPD) which is used to convert a given average daily flow (ADF) to the equivalent number of residential connections. For this purpose the average daily flow of one water ERC is (450) GPD and one wastewater ERC is (311) GPD.

(d) "Point of Delivery" - The point where the pipes or meter of Utility are connected with the pipes of the consumer. Point of delivery for water service shall be at the consumer's side of the meter and for wastewater service at the lot or property line, unless otherwise defined herein. Utility shall, according to the terms and conditions hereof, own all pipes and appurtenances to the point of delivery unless otherwise agreed. The pipes and appurtenances inside the point of delivery shall belong to others.

(e) "Service" - The readiness and ability on the part of Utility to furnish and maintain water and wastewater service to the point of delivery for each lot or tract pursuant to rules and regulations of applicable regulatory agencies.

3. Assurance of Title - School Board represents and warrants that it is the owner of the Property and has the legal right to grant the exclusive rights of service contained in this Agreement. Upon request, School Board agrees to deliver to Utility evidence of such ownership including any outstanding mortgages, taxes, liens and covenants.

4. Connection Charges - In addition to the contribution of any wastewater collections systems and water distribution systems, where applicable, and further to induce Utility to provide water and wastewater service, School Board hereby agrees to pay to Utility the following service availability charges, as defined in the Rate Resolution (including Service Availability Policy), upon execution of this Agreement in order to reserve capacity in the System:

(a)	Water Plant Connection Charge:		
	(\$340.00 x 22.50 ERC's	*	\$ <u>N/A</u> **
	Wastewater Plant Connection Charge:		
	(\$1,845.00 x 22.50 ERC's	*	\$ <u>N/A</u> **
	Environmental Impact Charge:		
	(\$410.00 x 22.50 ERC's	*	\$ <u>N/A</u> **
(b)	Customer Connection Charge (Tap-in)-Water		\$ <u>9,965.00</u> ***
	Customer Connection Charge (Tap-in)-Wastewater		\$ <u>N/A</u>
(c)	Main Extension Charge - Water		\$ <u>N/A</u>
	Main Extension Charge - Wastewater		\$ <u>N/A</u>
(d)	Fire Protection Charge		\$ <u>N/A</u>
(e)	Meter Installation Charge		\$ <u>1,888.00</u> *****
(f)	Plan Review Charge		\$ <u>77.00</u>
(g)	Inspection Charge		\$ <u>308.00</u>
(h)	Recording Fee		\$ <u>150.00</u>
	Total		\$ <u>12,388.00</u>

\* - Estimated 791 students.

\*\* - No connection charges to be charged to the School Board per Florida Statutes.

\*\*\* - See paragraph 33, for explanation of charges.

\*\*\*\*\* - Includes one 4" potable water meter, without meter box. This agreement does not include a provision for any separate landscape irrigation meters for the Property.

Note: Items (b), (f) and (g) are estimates and are subject to adjustment based on actual cost incurred. Item (b) is subject to increase for any material price increases incurred by Utility for this project.

Payment of the above charges does not and will not result in Utility waiving any of its rates or rules and regulations and their enforcement shall not be affected in any manner whatsoever by School Board making payment of same. Except as specifically stated, Utility shall not be obligated to refund to School Board any portion of the value of the above charges for any reason whatsoever nor shall Utility pay any interest upon the above charges paid.

Except as otherwise stated in this Agreement, neither School Board nor any person or other entity holding any of the Property by, through or under School Board, or otherwise, shall have any present or future right, title, claim or interest in and to the charges paid for any of the water and wastewater facilities and properties of Utility, and all prohibitions applicable to School Board with respect to no refund of such charges, no interest payment on said charges and otherwise, are applicable to all persons or entities.

Any user or consumer of the water or wastewater services shall not be entitled to offset any bill or bills rendered by Utility for such service or services against the connection charges paid. School Board shall not be entitled to offset the connection charges against any claim or claims of Utility as regards claims for breach of contract, damages, or charges of the like of Utility.

5. Agreement to Serve - Utility agrees that once it provides water and wastewater service to the customers within the Property that it will continuously provide such service, at its cost and expense, but in accordance with the other provisions of this Agreement, the then current Rate Resolution in effect for Utility, and the requirements of the governmental authorities having jurisdiction over the operations of Utility. Utility shall not be liable for any temporary interruptions in service as a result of equipment failure, emergencies or acts of God.

6. Application for Service - School Board, or any owner of any parcel of the Property, or any occupant of any residence, building or unit located thereon shall not have the right to and shall not connect any consumer installation to the facilities of Utility until formal written application has been made to Utility by the prospective user of service, or either of them, in accordance with the then effective rules and regulations of Utility and approval for such connection has been granted.

7. Exclusive Right to Provide Service - School Board shall not engage in the business of providing potable water and sanitary wastewater services to the Property during the period of time Utility provides potable water and wastewater services to the Property. Utility shall have the sole and exclusive right and privilege to provide potable water and wastewater services to the Property and to the occupants of such residence, building or unit constructed thereon.

8. Rates - Utility agrees that the rates to be charged to School Board and individual consumers of potable water and wastewater service shall be those set forth in the then current Rate Resolution most recently adopted by the Board Supervisors of the Clay County Utility Authority as may be amended from time to time. However, notwithstanding any provision in this Agreement, Utility, its successors and assigns, may establish, amend or revise, from time to time in the future, and enforce in a reasonable manner, rates or rate schedules so established.

Notwithstanding any provision in this Agreement, Utility may establish, amend or revise, from time to time, in the future, and enforce rules and regulations covering water and wastewater service to the Property. However, all such rules and regulations so established by Utility shall at all times be reasonable and subject to such regulations as may be provided by law or contract.

9. Effluent Disposal Obligation - As further consideration for this Agreement, Utility may require School Board to take back treated effluent for disposal, and to provide for certain wet weather storage for such effluent on the Property. In that event, a separate agreement will be entered into for such purpose. Notwithstanding the foregoing, however, due to potential health and public safety concerns, Utility agrees that it shall not require School Board to take back treated effluent in accordance with this Paragraph 9, unless Utility is then required to do so pursuant to State or Federal law.

10. Quality of Wastewater - All commercial facilities which discharge non-domestic type wastes into the Utility's collection system are required to meet the requirements of Resolution 97/98-11 (Pretreatment Resolution) with regard to waste quality. In addition, facilities with photographic development operations may be required to install and maintain a silver recovery unit in order to meet the requirements of this resolution. Discharge of floor finish stripper products and waste to the collection system requires an Industrial Pretreatment Permit issued by Utility. Developer, tenant or the Property/project owner or Lessor must inform Utility of its intent to discharge any floor finish stripper product and waste. Upon notification, a permit application will be sent to Developer, tenant or the Property/project owner or Lessor to be completed and submitted to Utility for processing. A permit fee is not required by Utility for an Industrial Pretreatment Permit. Failure to follow these procedures may result in termination of water and wastewater service.

11. Binding Effect of Agreement - This Agreement shall be binding upon and shall inure to the benefit of School Board, Utility and their respective assigns and successors by merger, consolidation, conveyance or otherwise. Any assignment or transfer by School Board shall be subject to Utility approval which shall not be unreasonably withheld provided the assignee or transferee shall acknowledge in writing that it assumes the duties and responsibilities of School Board as set forth in this Agreement.

12. Notice - Until further written notice by either party to the other, all notices provided for herein shall be in writing and transmitted by messenger, by mail or by telegram, and if to School Board, shall be mailed or delivered to School Board at:

Mr. Michael J. Elliott  
Assistant Superintendent of Support Services  
The School Board of Clay County, Florida  
925 Center Street  
Green Cove Springs, Florida 32043

and if to the Utility at:

Clay County Utility Authority  
3176 Old Jennings Road  
Middleburg, Florida 32068-3907

or such other address as specified in writing by either party to the other.

13. Laws of Florida - This Agreement shall be governed by the laws of the State of Florida and it shall be and become effective immediately upon execution by both parties hereto, subject to any approvals which must be obtained from governmental authority, if applicable.

14. Venue - In the event the Utility or School Board is required to enforce this Agreement by court proceedings, by instituting suit or otherwise, then venue shall lie in Clay County, Florida.

15. Force Majeure - In the event that the performance of this Agreement by either party is prevented or interrupted in consequence of any cause beyond the control of either party, including, but not limited to acts of God or of the public enemy, war, national emergency, allocation or of other governmental restrictions upon the use or availability of labor or materials, civil disorder, strike, embargo, natural disaster or catastrophe, unforeseeable failure or breakdown of transmission, treatment or other facilities, governmental rule, act, order, restriction, regulation, statute, ordinance, or order, decree, judgment, restraining order or injunction of any court, said party shall not be liable for such non-performance.

16. Indemnification and Hold Harmless - School Board agrees to indemnify and hold the Utility harmless from and against any and all liabilities, claims, damages, costs and expense, exclusive only of the Utility's attorney's fees, to which the Utility may become subject, by reason of or arising out of any one or more of (i) School Board's default or failure of performance under the provisions of this Agreement, (ii) School Board or School Board's agents' or employees' negligence, gross negligence or willful misconduct and/or unlawful acts or omissions as provided by law, if it is determined that said actions occurred while said agents or employees were acting within the course and scope of their employment with School Board. This indemnification and hold harmless provision shall survive the actual connection to Utility's water and wastewater system.

#### MISCELLANEOUS PROVISIONS

17. The rights, privileges, obligations and covenants of School Board and Utility shall survive the completion of the work of School Board with respect to completing the facilities and services to any development phase and to the Property as a whole.

18. This Agreement supersedes all previous agreements or representations, either verbal or written, heretofore in effect between School Board and Utility, made with respect to the matters herein contained, and when duly executed, constitutes the agreement between School Board and Utility. No additions, alterations or variations of the terms of this Agreement shall be valid, nor can provisions of this Agreement be waived by either party, unless such additions, alterations, variations or waivers are expressed in writing and duly signed.

19. Whenever the singular number is used in this Agreement and when required by the context, the same shall include the plural, and the masculine, feminine and neuter genders shall each include the others.

20. Whenever approvals of any nature are required by either party to this Agreement, it is agreed that same shall not be unreasonably withheld or delayed.

21. The submission of this Agreement for examination by School Board does not constitute an offer but becomes effective only upon execution thereof by Utility.

22. Failure to insist upon strict compliance of any of the terms, covenants, or conditions herein shall not be deemed a waiver of such terms, covenants, or conditions, nor shall any waiver or relinquishment of any right or power hereunder at any one time or times be deemed a waiver or relinquishment of such right or power at any other time or times.

23. It is because of inducements offered by School Board to Utility that Utility has agreed to provide water and wastewater service to School Board's project. School Board understands and agrees that capacity reserved hereunder cannot and shall not be assigned by School Board to Third Parties without the written consent of Utility, except in the case of a bona-fide sale or transfer to another governmental agency of the School Board's property.

24. Utility shall, as aforesaid, at all reasonable times and hours, have the right of inspection of School Board's internal lines and facilities. This right shall apply to the construction phase as well as the subsequent operational phases of the project. This provision shall be binding on the successors and assigns of the School Board.

25. The parties hereto recognize that prior to the time Utility may actually commence upon a program to carry out the terms and conditions of this Agreement, Utility may be required to obtain approval from various state and local governmental authorities having jurisdiction and regulatory power over the construction, maintenance, and operation of Utility. The Utility agrees that it will diligently and earnestly, make the necessary proper applications to all governmental authorities and will pursue the same to the end that it will use its best efforts to obtain such approval. School Board, agrees to provide necessary assistance to Utility in obtaining the approvals provided for herein. Upon execution of this Agreement, Utility may require the payment of a reasonable fee to defray Utility's legal, engineering, accounting and administrative and contingent expense.

26. It shall be School Board's responsibility to provide acceptable as-built drawings of the water and wastewater systems installed by School Board, which are to be accepted by Utility for ownership and maintenance; and it is understood and agreed that Utility's charges associated with the preparation of the CADD as-built drawings will be paid directly to Utility by School Board's licensed underground utility contractor. It shall be School Board's responsibility to properly instruct his contractor to contact Utility for an estimate of such charges and clarification of the required as-built drawing procedures.

27. It shall be School Board's responsibility to apply to Utility for service after the installation of the water and wastewater utilities, have been completed and accepted by Utility. Upon completion of application for water and wastewater service, payment of the appropriate charges set forth in Utility's then current applicable Rate Resolution, including any security deposits required, and installation and acceptance by Utility of those utilities agreed herein to be owned by Utility, service will be initiated to School Board's Property.

28. It is understood and agreed by School Board and Utility that School Board shall not place any conservation easements over any of the easement lands that contain Utility's water and/or wastewater facilities for the project covered by this agreement.

29. School Board shall grant an easement to Utility covering any portion of the potable water and wastewater facilities that Utility agrees to own and maintain, and School Board shall be responsible for providing the legal descriptions for easements to Utility.

30. It is understood and agreed that the landscaping for this project shall not include the planting of any trees within ten feet (10') of any of the potable water and/or wastewater mains to be owned and maintained by Utility.

31. School Board shall install or have installed reduced pressure zone (RPZ) type backflow prevention devices which shall be located immediately downstream of Utility's 4" potable water meter for the school building, and the 3/4" by-pass meter on the 8" double detector check valve for the fire sprinkler system, which are proposed to service School Board's facilities and such installations shall be in compliance with the requirements of the Florida Department of Health and Rehabilitative Services and Utility. Upon the completion of the installation of said devices, School Board shall provide to Utility for its permanent records the **Make, Model, Size and Serial Number** of said devices. Furthermore, these backflow devices must be tested and recertified by a certified backflow preventer technician, annually or such other period as may be required by Utility. Proof of the annual testing and recertifications must be submitted to Utility for its records. These installations and annual recertifications shall be the responsibility of the School Board. Utility shall have access to the water meters, during normal business hours, for meter reading and maintenance purposes.

32. Developer shall install an 8" double detector check valve at the point of connection to Utility's fire main stub. Such device shall be acceptable to Utility and shall include a 3/4" by-pass meter to meter any small or incidental flows. The testing and certification of this device shall be as noted in paragraph thirty-one (31) above.

33. It is understood and agreed by School Board and Utility that the Developer of the adjacent *Pine Ridge Plantation Subdivision* development will be installing an 8" water main stub to the School Board Property (Tynes Elementary School) in conjunction with development of that subdivision. The charges set forth in paragraph 4 (b) "Customer Connection Charge (Tap-in)-Water", of this agreement, covers the cost for Utility to connect to that water main stub; install the meter box, meter by-pass assembly, and set the 4" meter provided for in paragraph 4 (e) "Meter Installation Charge", of this agreement, and stub out for the School Board fire main connection. Utility will stub out for School Board's potable water connection, as well as the School Board's fire main connection, both of which shall require the installation of backflow prevention assemblies. The installation of the backflow assemblies and other extensions necessary to connect to Tynes Elementary School's existing system at the proper points agreeable to both Utility and School Board shall be School Board's responsibility and expense.

In addition, abandonment of the existing water treatment plant, well, and related piping shall be School Board's responsibility and expense. The School Board shall coordinate connection and start up of service with Utility so that Utility and School Board can cooperatively conduct a cross-connection test between the potable water system and fire main system to be sure that there are no cross-connections.

34. It is understood and agreed by School Board and Utility that School Board will work direct with the Developer of the *Pine Ridge Plantation Subdivision* development to construct a force main stub out from the gravity wastewater system to a point where School Board can connect and extend a force main to the Tynes Elementary School Property for connection. Subject to final inspection and acceptance, Utility agrees to own and maintain the portion of the wastewater force main within the proposed County road right-of-way. The portion of the wastewater force main from the proposed County road right-of-way to the School Board Property shall be owned and maintained by School Board.

It shall be School Board's responsibility to make all arrangements with the *Pine Ridge Plantation Subdivision* developer for any cost share associated with the wastewater force main connection, manhole lining, upsizing of the *Pine Ridge Plantation* development Lift Station to accommodate School Board's flow for Tynes Elementary School, and all easements necessary to accommodate the School Board's wastewater force main on the *Pine Ridge Plantation Subdivision* property.

In addition, the cost of disconnection and abandonment of the School Board's existing wastewater treatment plant shall be School Board's responsibility and expense. Although Utility does not expect any need to upgrade the performance of the School Board's wastewater pumping station to pump to the gravity connection, it shall be School Board's responsibility and expense, if any upgrades or other improvements are required.

35. It is understood and agreed by School Board and Utility that service will not be available for School Board to connect Tynes Elementary School to Utility's water and wastewater system until all of the required water and wastewater facilities within the *Pine Ridge Plantation Subdivision* development are completed and accepted for ownership and maintenance by Utility.

36. School Board shall install or have installed a grease/sand interceptor meeting the requirements of the Clay County Department of Health & Rehabilitative Services and the Florida Building Code, which shall be designed and constructed in accordance with Utility's specifications for same. The grease/sand interceptor shall be designed for the facilities connected to same, however, in no event shall the capacity be less than 1000 gallons. School Board shall also be responsible for the continued maintenance and cleaning of said grease/sand interceptor facilities, and such facilities shall be subject to periodic unannounced inspections by Utility. In addition, all floor drains shall be connected to a grease/sand interceptor or shall have individual sand screens, acceptable to Utility, installed on each floor drain in the facilities.

If it is determined that Plumbing Regulations require that floor drains be connected to a separate sand interceptor, and if an individual sand screen for each floor drain is not provided, then a separate sand interceptor shall be required for all floor drains in the facility, meeting the requirements of Plumbing Regulations and Utility.

If the existing facilities do not fully comply with these provisions, an inspection will be made to determine the exposure, and if Utility's staff agrees that the existing grease interceptor may be adequate for the project's requirements, a separate grease interceptor agreement will be executed delineating School Board's specific maintenance responsibilities. School Board shall have a trial period to demonstrate that the existing grease/sand interceptor facilities are adequate, and if they are determined to be inadequate, School Board will be required to install the minimum grease/sand interceptor as required by Utility and shall be given ninety (90) days from the date of that determination to comply.

Wastewater service under this agreement shall be contingent upon the project providing and maintaining grease interceptors at the appropriate locations, which are satisfactory to Utility.

37. It is understood and agreed by Developer and Utility that this agreement will need to be executed by Developer, and the charges paid (shown on page 2, of agreement), prior to October 1, 2007, and the construction of the utilities shall be commenced by October 1, 2007, or this agreement will be subject to any Service Availability charge increases currently approved, which may be applicable or which may be approved by Utility's Board of Supervisors for the next fiscal year beginning October 1, 2007; and this agreement is subject to any material cost increases which Utility may experience after October 1, 2007.

IN WITNESS WHEREOF, School Board 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.

WITNESSES:

\_\_\_\_\_  
Print Name \_\_\_\_\_

\_\_\_\_\_  
Print Name \_\_\_\_\_

SCHOOL BOARD:  
THE SCHOOL BOARD OF CLAY COUNTY,  
FLORIDA

By: \_\_\_\_\_  
Print Name: CAROL VALLENCOURT

Title: CHAIRMAN \_\_\_\_\_

(Corporate Seal)

WITNESSES:

\_\_\_\_\_  
Print Name \_\_\_\_\_

\_\_\_\_\_  
Print Name \_\_\_\_\_

UTILITY:  
CLAY COUNTY UTILITY AUTHORITY

By: \_\_\_\_\_  
Ray O. Avery

Title: Executive Director \_\_\_\_\_

(Corporate Seal)

STATE OF FLORIDA  
COUNTY OF CLAY

The foregoing instrument was acknowledged before me this \_\_\_\_\_, day of \_\_\_\_\_, 2007,  
by CAROL VALLENCOURT, who is personally known to me or who has produced \_\_\_\_\_  
\_\_\_\_\_, as identification and who did (did not) take an oath.

\_\_\_\_\_  
Printed Name: \_\_\_\_\_

Notary Public

State of Florida at Large

My Commission Expires:

STATE OF FLORIDA  
COUNTY OF CLAY

The foregoing instrument was acknowledged before me this \_\_\_\_\_, day of \_\_\_\_\_, 2007,  
by **RAY O. AVERY**, who is personally known to me or who has produced \_\_\_\_\_  
\_\_\_\_\_, as identification and who did (did not) take an oath.

\_\_\_\_\_  
Printed Name: \_\_\_\_\_

Notary Public

State of Florida at Large

My Commission Expires:

**Tynes Elementary School  
1550 Tynes Boulevard**

**EXHIBIT "A"**

**Parcel Identification Number: 30-04-25-008069-002-01  
The School Board of Clay County, Florida**

A parcel of land situated in the Southwest 1/4 of Section 30, Township 4 South, Range 25 East, Clay County, Florida, said parcel being more particularly described and recorded in Official Records Book 1422, pages 1792 through 1794, of the Public Records of Clay County, Florida.