

Hilltop Groves

Receipt for (quantity)266 Dundee Wastewater Treatment Facility ER	C
Certificates number1606 to1871	
Received By: Date 2/10/05 Signed	
Issued By:	
Signed Juffellan	

Please return original to Finance Department to replace certificates.

Town of Dundee ERC Schedule Wastewater Plant Expansion

Certificate Numbers	1606 -1871
Equivalent Residential Units	266
Development	Hilltop
Company	Hilltop Groves

Hilltop Groves

Receipt for (quantity)266 Dundee Wastewater Treatment Facility ERC
Certificates number1606 to1871
Received By:
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Please return original to Finance Department to replace certificates.

Town of Dundee ERC Schedule Wastewater Plant Expansion

			And other Persons and Persons
Company	Development	Equivalent Residential	Certificate
		Units	Rainbala
nop Groves	Hilltop	266	1606 -1871

DEVELOPER'S AGREEMENT REGARDING THE FUNDING OF THE DESIGN, PERMITTING AND CONSTRUCTION OF THE EXPANSION OF THE TOWN OF DUNDEE'S WASTEWATER TREATMENT PLANT

FAIDAPR 25 2006 FN FULL

THIS AGREEMENT ("Agreement") is made on this 25th day of July, 2004, by and between Hilltop Groves, LLC (the "Developer/Owner") and the TOWN OF P.O. Box 1000 DUNDEE, a municipal corporation organized and existing under the laws of the State Undee, FL 33838-Florida (the "Town").

WITNESSETH

WHEREAS, the Town operates a wastewater treatment plant that is presently serving close to or at its capacity; and

WHEREAS, the Town is presently expanding its municipal limits through annexation which will bring growth and development to the Town; and

WHEREAS, in order to accommodate the anticipated growth it will be necessary for the Town to expand the permitted capacity of its wastewater treatment plant from 90,000 gallons per day to 700,000 gallons per day or more; and

WHEREAS, several of the property owners and Developers of land within the Town limits have had discussions with the Town in order to determine the most feasible way to immediately expand the wastewater treatment plant; and

WHEREAS, the Town has retained Envisors Consulting Engineers to prepare a preliminary design report which was presented to the Town Council at a special meeting on March 23, 2004 which identified the relative costs and expenses of expanding the wastewater treatment plant to 700,000 gallons per day or more; and

WHEREAS, if the Town Council were to proceed under the usual financing methods to obtain the necessary funds for design, permitting and expanding the wastewater treatment plant it would take at least 18 to 20 months from the present time to explore such financing; and

WHEREAS, in order to address the immediate needs of growth and development and to accelerate the design, permitting and construction of an expansion of the wastewater treatment plant, the Town of Dundee has indicated that it will move forward with the design, permitting and construction of an expansion of its wastewater treatment plant if those Developers who desire the extra capacity will immediately and irrevocably fund the costs of the expansion up front based on the equivalent residential connections (ERC) each Developer/Owner proposes to connect to the Town's wastewater treatment plant. Such funding will permit the Town of Dundee to greatly accelerate the design,

permitting and construction of the expansion to its wastewater treatment plant. Further, without such funding it is not likely that the Town would be able to expand its permitted capacity for the wastewater treatment plant at any time now or in the near future;

WHEREAS, the Town is presently working with Polk County to enter into an Interlocal Agreement to allow the Town to tap into Polk County's wastewater treatment plant located in the Waverly area of Polk County, Florida, as a short term way to address the Town's need for additional wastewater treatment capacity; and

WHEREAS, such short term temporary capacity in the Town's waste water system that results from the diversion of waste water flows to Polk County's Waverly Plant will be connected only to customers who have been issued certificates of occupancy and on a first come first served basis until such additional wastewater treatment capacity is exhausted; and

WHEREAS, after the short term temporary capacity is exhausted, those wishing to connect to the sewer system will have to wait until new capacity resulting from the sewer plant expansion project becomes available; and

WHEREAS, the Town of Dundee Code of Ordinances requires the payment of certain connection fees on the basis of the number of Equivalent Residential Connections (ERC) proposed to be connected to the utility system. Further, the Town Code permits developer's agreements which set forth in detail the terms and conditions under which the Town will provide utility service to the Developer's/Owner's property; and

WHEREAS, the Town deems such an agreement necessary to facilitate the construction of expansion of the Town's wastewater treatment plant; and

WHEREAS, it is therefore deemed to be in the interest of the public health, safety and welfare for the Town and an appropriate exercise of the Town's authority to enter into the instant Developer's Agreement.

NOW, THEREFORE, in consideration of the mutual terms, covenants and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

- 1.0 <u>Recitals</u>. The foregoing recitals are incorporated herein by reference as if recited in full and serve as a factual stipulation upon which the parties agree is the basis of the instant Developer's Agreement.
- 2.0 <u>Purpose</u>. The purpose of this Developer's Agreement is to memorialize the Developer's/Owner's financial commitment to the Town relating to the expansion of the Town's wastewater treatment plant.
- 3.0 <u>Wastewater Treatment Plant Capacity</u>. In order to assure that sufficient capacity exists in the Town's wastewater treatment plant it will be

necessary to design, permit and construct an expansion of the Town's wastewater treatment plant in order to allow capacity of at least 700,000 gallons per day to accommodate anticipated and projected growth and development in the Town. In order to allow the Town to immediately begin the design, permitting and construction of an expansion to its wastewater treatment plant, the Developer/Owner will be required to pay to the Town in cash the amount of \$691,267.50 which amount is based on a total of 266 ERCs the Developer/Owner proposes to connect to the Town's wastewater treatment plant and is related to the 71,820 gpd in equivalent capacity that the Developer/Owner will need from the Town's expanded wastewater treatment plant. In addition the Developer/Owner shall be required to post an Irrevocable Letter of Credit or other security reasonably acceptable to the Town and in the form attached hereto as Exhibit "A". Pursuant to paragraph 4 below, the Developer/Owner is obligated to pay said funds to the Town in order to purchase 266 ERCs which represents 71,820 gpd in equivalent capacity.

4.0 Developer's/Owner's Obligations.

- 4.1.1. The Developer/Owner agrees to pay to the Town the sum of \$691,267.50 in cash, cashier's check or cleared funds payable to the Town of Dundee to purchase 266 ERCs that it proposes to connect to the Town's wastewater treatment plant and which represents 71,820 gpd in equivalent capacity in accordance with the following:
- 4.1.2. The sum of One Hundred Seven Thousand Eight Hundred Forty Eight Dollars and Fourteen Cents (\$107,848.14) in cash, cashier's check or cleared funds payable to the Town of Dundee upon its execution of this Agreement. The balance of Five Hundred Eighty Three Thousand Four Hundred Nineteen Dollars and Thirty Six (\$583,419.36) shall be paid in cash, cashier's check or cleared funds payable to the Town of Dundee in three (3) installments in accordance with the following schedule:

Payment for the amount of \$107,848.12 is due and payable upon completion of the design engineering and putting of the project out to public bid as certified by the Town's engineer for the sewer plant expansion project, that is expected to occur on or before March 1, 2005;

Payment for the amount of \$107,848.12 is due and payable upon 50% of completion of the actual construction of the sewer plant expansion project as certified by the Town's engineer for the sewer plant expansion project,

Payment for the amount of \$367,723.12 is due and payable upon 100% paper for the amount of \$367,723.12 is due and payable upon 100% paper for and "start-up" of the expanded sewer plant as certified by the MIDTALL AND ASSESSED AND WILLIAM 3566716

Town's engineer and sewer plant operational permits are in hand for the sewer plant expansion project that is expected to occur on or before December 31, 2005.

The Town's certifications described above shall be final and binding on Developer/Owner and will require the immediate payment to the Town of the funds requested and due.

- 4.1.3. In addition, to secure its obligations to the Town under this Agreement and upon the execution of this Agreement the Developer/Owner shall deliver to the Town an irrevocable letter of credit in the form as set forth as Exhibit "A" attached hereto. To the extent payments are not made by the Developer/Owner under paragraph 4.1.2 above within fourteen (14) days after written notice by the town requesting payment, the Town may draw upon any or all such cash or letters of credit in whole or in part to provide funds to pay for the design, permitting and construction of the wastewater treatment plan expansion as more particularly set forth herein. The Town shall not be obligated to commence the design, permitting and any phase of construction of the improvements to the wastewater treatment plant unless and until the Developer/Owner of the development has delivered to the Town the required cash and letter of credit.
- 4.1.4. Developer/Owner acknowledges and agrees that the Town's willingness to enter into this Developer's Agreement shall not be construed as a waiver by the Town of any applicable law, ordinance, rule or regulation for the construction of any future developments.
- 4.1.5. In the event the Developer/Owner assigns and/or conveys its interest in any real property that is being used to calculate the ERC to the Town's wastewater system, the new Owner of such property may upon notice to the Town join in this Agreement and pay the required contribution for the purchase of the 266 ERCs for the applicable property provided such notice is given within thirty (30) days after the closing of the contract for purchase, but in no event beyond the term of this Agreement. In any event unless and until the new Owner joins in this Agreement and becomes obligated to the same extent as the Developer/Owner hereunder, the Developer/Owner shall remain obligated to the Town for all obligations hereunder.
- 4.1.6. Subject to the provisions in paragraph 5.1.4 below any funds paid to the Town hereunder shall be non-refundable in the event that the Developer chooses not to move forward with the proposed development.
- 5.0 <u>Town's Obligations</u>.

- 5.1.1 Subject to the Developer's/Owner's compliance with its obligations under this Agreement, the Town shall commence the design and permitting of the expansion of its wastewater treatment plant immediately. Upon completion of design and permitting the Town shall commence construction of the expansion of its wastewater treatment plant with an anticipated completion date no later than 16 months from the effective date of this Agreement.
- Reservation of Capacity. In consideration for the payment by the 5.1.2 Developer/Owner as more particularly set forth in paragraph 4 above the Town hereby reserves 71,820 gpd in equivalent capacity for the Developer/Owner based on 266 ERCs purchased hereunder. In the event the Developer/Owner determines that it does not need all of the reservation of capacity/ERC's purchased hereunder then such reservation of capacity/purchased ERC's may be assignable and/or sold by the Developer but only with the Town's prior written consent and as contemplated in paragraph 4.1.5 above. It is agreed that the Town's consent will not be unreasonably withheld. Furthermore, all reservations of capacity pursuant to the terms of this Agreement shall exist for only five (5) years from the date that the expanded Wastewater Treatment Plant is fully online and operational. If within five (5) years from the date that the expanded Wastewater Treatment Plant is online and fully operational. the Developer/Owner and/or its successors and/or assigns or those persons or entities who have purchased the ERC's have not used the reserved capacity then it must sell such reserved capacity 266 ERC's representing 71,820 gpd (or portion thereof) in equivalent capacity back to the Town. In this event, payment arrangements shall be determined solely by the Town. The Developer and the Town agree that the foregoing provision is necessary to insure that the Town's ability to provide appropriate municipal services regarding the collection and treatment of wastewater and other effluent is not compromised by unused capacity.
- 5.1.3 The Town's obligations under this Agreement are conditioned on obtaining total funds and/or commitments of at least \$3.3 million. All funds collected from developers for this project shall be maintained in a separate bank account at Wachovia Bank, N.A. and titled "Dundee Sewer Plant Expansion Account" and such funds shall not be commingled with any other Town funds and shall not be appropriated to any other Town project, except that any funds remaining in the Dundee Sewer Plant Expansion Account after completion of the project and after all project expenses are paid in full, may be appropriated subject to any restrictions established for the use of sewer impact fees. Bank statements for the Dundee Sewer Plant Expansion Account, including any reports of daily account activity, shall be made available to the public upon request as such reports become available to the Town. In the event that the Town is unable to secure the required up front cash along with letters of credit

from developers prior to August 27, 2004 its obligations to expand the wastewater treatment plant and provide a reservation of capacity as described herein are null and void and all monies collected shall be refunded without interest at that time.

- 5.1.4 If the sewer plant expansion project is begun but not fully completed within 3 years from the effective date of this Agreement, then the Developers/Owners shall have the option to seek a refund of monies paid by the Developer/Owners hereunder without interest and in a manner and frequency determined solely by the Town so that such a refund will not compromise, harm, and/or impair the Town's fiscal condition and/or ability to provide necessary municipal services to its citizens. If in the event there is not sufficient waste water treatment capacity available to fulfill the Town's obligations under this agreement, the Town will have no objection to the Developer beginning development utilizing septic tank and without requiring the Developer to install dry lines.
- 6.0 <u>Authority</u>. The Developer/Owner affirmatively represents that it has the requisite authority to transact business in the State of Florida and has the requisite authority to enter into this Agreement.
- 7.0 <u>Binding Effect</u>. The Burdens of this Developer's Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the parties to this Agreement. However no assignments of this Agreement shall be allowed unless the Town consents in writing to same.
- Applicable Law, Jurisdiction and Venue. This Developer's Agreement, and the rights and obligations of the Town and the Developer/Owner hereunder, shall be governed by, construed under, and enforced in accordance with the laws of the State of Florida. Venue for any litigation pertaining to the subject matter hereof shall be exclusively in Polk County, Florida. If any provision of this Developer's Agreement, or the application thereof to any person or circumstances, shall to any extent be held invalid or unenforceable by a court of competent jurisdiction, then the remainder of this Developer's Agreement shall be valid and enforceable to the fullest extent permitted by law.
- 9.0 <u>Exhibits</u>. All exhibits attached hereto contain additional terms of this Developer's Agreement and are incorporated herein by reference.
- 10.0 <u>Captions and Paragraph Headings</u>. Captions and paragraph headings contained in this Developer's Agreement are for convenience and reference only, and in no way define, describe, extend or limit the scope or intent of this Developer's Agreement, nor the intent of any provision hereof.

- 11.0 <u>Definitions</u>. Unless specifically defined herein, the terms used in this Developer's Agreement shall be assigned the meanings, interpretations and/or definitions applied to, or provided in, the Town of Dundee Code of Ordinances and/or Florida Law.
- 12.0 <u>Counterparts.</u> This Developer's Agreement may be executed in several counterparts, each constituting a duplicate original, but all such counterparts constituting one and the same Developer's Agreement.
- 13.0 Merger. This Developer's Agreement constitutes the entire understanding of the parties. It supersedes any prior understandings, agreements, or obligations between them upon the subjects covered in this Agreement. There are no representations, promises, guarantees or warranties other than those set forth herein.
- 14.0 <u>Effective Date and Duration</u>. This Agreement shall become effective after it has been duly approved by the Town Council and executed by all parties. It shall remain in full force and effect for a period of five (5) years from that date.
- 15.0 <u>Amendment</u>. This Developer's Agreement may only be amended by mutual consent of the parties in writing.
- Further Assurances. Each of the parties hereto agrees to do, execute, acknowledge and deliver, or cause to be done, execute, acknowledge and deliver, all such further acts, and assurances as shall be reasonably requested by the other party in order to carry out the intent of this Developer's Agreement and give effect thereto. Without in any manner limiting the specific rights and obligations set forth in this Developer's Agreement, the parties hereby declare their intention to cooperate with each other in effecting the terms of this Developer's Agreement, and to coordinate the performance of their respective obligations under the terms of this Developer's Agreement. To the extent of any conflict with the development conditions or other rules and regulations, which may otherwise govern the Development, the terms and conditions of this Developer's Agreement shall prevail.
- 17.0 <u>Notices</u>. Any notices or reports required by this Developer's Agreement shall be sent to the following:

For the Town:

Town Manager Town of Dundee Post Office Box 1000 105 Center Street Dundee, FL 33838-1000 With a Copy to:

Frederick J. Murphy, Jr. Town Attorney

Town of Dundee Post Office Drawer 30 245 South Central Avenue Bartow, Florida 33830

For the Developer/Owner:

Joe Saunders

Hilltop Groves, LLC 5529 U.S. 98 North Lakeland, FL 33809

With copy to:

Attn: Rick Miller

Miller, Crosby & Miller

P.O. Box 8169 Lakeland, FL 33802

IN WITNESS WHEREOF, the parties hereto, through their duly authorized representatives, have executed this Developer's Agreement on the day(s) and year set forth below.

(SEAL)

ATTEST:

Town Clerk

TOWN COUNCIL OF THE TOWN OF DUNDEE

Approved by Town Attorney

Frederick J. Murphy, Jr.

Approved As To Form and Legal

Sufficiency.

Final Draft 07/28/2004

Algeria Strong

{ DEVELOPER }

Hilltop Groves, LLC

By: Joe I. Serenden

Its: Managing Member

STATE OF FLORIDA COUNTY OF POK

The foregoing instrument is hereby acknowledged before me this Zanday of July , 2004, by Joe L. Saunders , as Managery Member of { DEVELOPER }, on behalf of the corporation. He/She is personally known to me or has produced as identification.

NOTARY PUBDIC
My Commission Expires

Emily J Chafin

My Commission DD244879

Expires August 26 2007



Employee #: 154

Receipt #: 425095938 Date: 04/25/2006

Time: 9:59:10

Account: 302997

Free Business Checking Sub: 1

Check #: 448356671

Hilltop Groves LLC

Check Withdrawal #4483566716

New Balance

\$367,723.12-\$12,933.05

RECEIVED APR 25 2006

RECEIVED BY

DETACH AND RETAIN UPPER PORTION BEFORE DEPOSITING



CASHIER'S CHECK

07-448 3566716

VOID OVER \$367,723.12

04/25/2006

P.O. Box 8008 Lakeland, Florida 33802 941/686-7587

THREE HUNDRED SIXTY SEVEN THOUSAND SEVEN HUNDRED TWENTY THREE AND 12/100 DOLLARS

**367,723.12

THE DER OF:

Town Of Dundee From The Account Of HILLTOP GROVES LLC

Gayle O'Brien VOID AFTER 90 DAYS

ABLE THROUGH RLESTON, WV

> 1:0519003531:00448 356671641

MIDFLORIDA D367,723dols 12cts

Town of Dunaee

P.O. Box 1000 105 Center Street Dundee, Florida 33838-1000



Tel. (863) 419-3100 Fax (863) 419-3105 Suncom 515-9950

April 18, 2005

Joe Saunders Hilltop Groves, LLC 5529 U.S. 98 North Lakeland, FL 33809

Dear Joe:

The fourth and final installment payment on your sewer ERC purchase agreement is now due.

The town engineer's certification that the sewer plant expansion project is now 100% complete and started up is attached.

Please make your check in the amount of \$367,723.12 payable to the Town of Dundee and send it to my attention.

Also, the ribbon cutting ceremony is scheduled for Noon on May 2, 2006 at the plant on Welsh Road. Lunch will be served and you and your guest(s) are invited to attend. Please RSVP by April 24th.

Very truly yours,

Jim/Gallagher
Town Manager



2105 Dundee Road Post Office Box 9309 Winter Haven, FL 33883-9309 Telephone: (863) 324-1112 Fax: (863) 294-6185 Email: envisors@envisors.com

18 April 2006 Hand Delivered

Mr. James Gallagher, Town Manager TOWN OF DUNDEE Post Office Box 1000 Dundee, Florida 33838

RECEIVED APR 18 2006

Subject:

Construction Progress Certification

Project:

Phase II Wastewater Treatment Facility (WWTF) Expansion

Improvements - Town of Dundee

EVI Job No.:

71103401

Dear Mr. Gallagher:

In accordance with your request, we are pleased to certify that start-up of the Town's Phase 2 WWTF expansion is 100% complete, the WWTF is fully operational, and the required FDEP notification for project completion and start-up has been submitted. Please note for the record that start-up of the facility occurred on 13 April 2005 and it is now processing wastewater.

If you have any questions, please do not hesitate to contact me at (863) 324-1112. We sincerely appreciate the opportunity to serve the Town of Dundee on this important Project.

Yours truly,

ENVISORS, LLC

Steven L. Elias, P. E.

Vice President of Engineering

SLE/DM/lhh

Enclosure:

None

Copy to:

EVI Job and Cost File No. 71103401; S:\JOBS\EVI\711 DUNDEE\71103401\CORRES\71103401.L34

THIS DOCUMENT HAS A GRADUATED BACKGROUND, DARK TO LIGHT. THE REVERSE SIDE INCLUDES AN ARTIFICIAL WATERWARK

Hilltop Groves, LLC 5529 US Hwy 98 North Lakeland, FL 33809-3103 PH 863-858-5686 MidFlorida Federal Credit Union Lakeland, FL 33802 63-7980/2631

2014

PAY. **** ONE HUNDRED SEVEN THOUSAND EIGHT HUNDRED FORTY EIGHT & 12/100 DOLLARS

DATE

AMOUNT

11/18/05

**107848.12

AUTHORIZED SIGNATURE

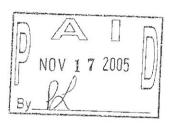
Town of Dundee

TO THE

ORDER OF

#0002014# #263179804# 100003029975#

THIRD PAYMENT ON ERC INSTALLMENT AGREENENT FOR 266 ERC'S SEWER CAPACITY.



Town of Dundee

P.O. Box 1000 105 Center Street Dundee, Florida 33838-1000



Tel. (863) 419-3100 Fax (863) 419-3105 Suncom 515-9950

November 1, 2005

Joe Saunders Hilltop Groves, LLC 5529 U.S. 98 North Lakeland, FL 33809

Dear Joe:

The third installment payment on your sewer ERC purchase agreement is now due.

The town engineer's certification that the sewer plant expansion project is now 50% complete is attached.

Please make your check in the amount of \$107,848.12 payable to the Town of Dundee and send it to my attention. Thanks.

Pd 11/17/05

Very truly yours,

Jim Gallagher " Town Manager

C. PICK MILLER



2105 Dundee Road Post Office Box 9309 Winter Haven, FL 33883-9309 Telephone: (863) 324-1112 Fax: (863) 294-6185 Email: envisors@envisors.com

28 October 2005 Hand Delivered

Mr. James Gallagher, Town Manager TOWN OF DUNDEE Post Office Box 1000 Dundee, Florida 33838

Subject:

Construction Progress Certification

Project:

Phase II Wastewater Treatment Facility (WWTF) Expansion Improvements -

Town of Dundee

EVI Job No.:

71103401

Dear Mr. Gallagher:

In accordance with your request, we are pleased to certify that construction activities of the Town's Phase II WWTF expansion is more than 50% complete as of 28 October 2005.

If you have any questions, please do not hesitate to contact me at (863) 324-1112. We sincerely appreciate the opportunity to serve the Town of Dundee on this important Project.

Yours truly,

ENVISORS, LLC

Steven L. Elias, P. E.

Vice President of Engineering

\$107,848.12 3/15/2005 1057 THIS DOCUMENT HAS A COLORED BACKGROUND AND MICROPRINTING. THE REVERSE SIDE INCLUDES AN ARTIFICIAL WATERMARK PAYTO THE ORDER OF. Town of Dundee MidFlorida Federal Credit Union For ERC Units 2nd installment 1 10 5 PII Hillop Groves LLC 5529 US 98 North Lakeland FL 33809 PH 863-858-4399 Lakeland, FI.

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	711		DATE	RECEIVE	Gen-	O FOR R	ACCOUNT	PAYMENT	BAL. DUE

Jim Gallagher

From: Jim Gallagher [townmanager@townofdundee.com]

Sent: Tuesday, March 15, 2005 12:42 PM

To: Lee Saunders (E-mail)

Subject: Hilltop Groves, LLC ERC Purchase Agreement

Lee and Joe:

You are the only party who has not paid the second payment on their ERC purchase agreement or indicated that their payment is on the way.

I realize that there is a letter of credit for the Town to draw upon, but we really would prefer not to force payment and possibly strain our friendly business relationship, therefore, if for some reason you have changed your mind about purchasing the 266 ERC's, I would be willing to recommend to the Town Council that we refund your initial payment and let you out of the purchase agreement.

However, if I don't hear from you very soon, we will have to proceed with drawing against the letter of credit.

Jim Gallagher Town Manager Town of Dundee (863) 419-3100

Town of Dundee

P.O. Box 1000 105 Center Street Dundee, Florida 33838-1000



March 1, 2005

Dear Sewer Plant Expansion Project Partner:

The second installment payment on your sewer ERC purchase agreement is due.

I have attached a copy of the Town Engineer's certification that the design engineering is completed and that the project is out to bid.

Please make your check payable to the Town of Dundee and send it to my attention. Thanks.

Very truly yours,

Jim Gallagher Town Manager



2105 Dundee Road Post Office Box 9309 Winter Haven, FL 33883-9309 Telephone: (863) 324-1112 Fax: (863) 294-8185 Email: envisors@envisors.com

Consulting Civil & Environmental Engineers, Planners, and Surveyors

1 March 2005 Hand Delivered

Mr. James Gallagher, Town Manager TOWN OF DUNDEE Post Office Box 1000 Dundee, Florida 33838

Subject:

Design Completion Certification

Project:

Phase II Wastewater Treatment Facility (WWTF) Expansion Improvements -

Town of Dundee

EVI Job No .:

71103401

Dear Mr. Gallagher:

In accordance with your request, we are pleased to certify that design of the Town's Phase II WWTF expansion has been completed and the Project has been advertised for public bid. The pre-bid meeting for the Project will be held with prospective bidders this afternoon at 2:00.

If you have any questions, please do not hesitate to contact me at (863) 324-1112. We sincerely appreciate the opportunity to serve the Town of Dundee on this important Project.

> Yours truly, **ENVISORS**

Steven L. Elias, P. E.

Vice President of Engineering

SLE/pt Enclosure: Copy to:

None

EVI Job and Cost File No. 71103401; s:\Jobs\EVI\/711 DUNDEE\/71103401\CORRES\/71103401\Los

AN EQUAL OPPORTUNITY EMPLOYER-M/F/V/H ORIGINAL PRINTED ON RECYCLED PAPER FIBERS

Town of Dundee

P.O. Box 1000 105 Center Street Dundee, Florida 33838-1000



Tel. (863) 419-3100 Fax (863) 419-3105 Suncom 515-9950

February 11, 2005

Joe Saunders Hilltop Groves, LLC 5529 U.S. 98 North Lakeland, FL 33809

Dear Joe:

This is just a reminder that the second installment payment on your sewer ERC purchase agreement is due March 1, 2005.

Please make your check in the amount of \$107,848.12 payable to the Town of Dundee and send it to my attention. Thanks.

Very truly yours,

Jym Gallagher Town Manager

LUR LTD FAMILY 5100 US HIGHWAY 98 NOR LAKELAND, FL 33809 PH. 863-858-4399	тн	Date	1/27/04	646 83-7980/2631 10
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MIDFLORIDA Federal Credit Union Lakeland, Florida Hi For Sourn Tep 1: 2631798041	11-1 Goves 880024745	34111064	C Sound	Lu M

DEVELOPER'S AGREEMENT REGARDING THE FUNDING OF THE DESIGN, PERMITTING AND CONSTRUCTION OF THE EXPANSION OF THE TOWN OF DUNDEE'S WASTEWATER TREATMENT PLANT

THIS AGREEMENT ("Agreement") is made on this ____ day of July, 2004, by and between Hilltop Groves, LLC (the "Developer/Owner") and the TOWN OF DUNDEE, a municipal corporation organized and existing under the laws of the State of Florida (the "Town").

WITNESSETH

WHEREAS, the Town operates a wastewater treatment plant that is presently serving close to or at its capacity; and

WHEREAS, the Town is presently expanding its municipal limits through annexation which will bring growth and development to the Town; and

WHEREAS, in order to accommodate the anticipated growth it will be necessary for the Town to expand the permitted capacity of its wastewater treatment plant from 90,000 gallons per day to 700,000 gallons per day or more; and

WHEREAS, several of the property owners and Developers of land within the Town limits have had discussions with the Town in order to determine the most feasible way to immediately expand the wastewater treatment plant; and

WHEREAS, the Town has retained Envisors Consulting Engineers to prepare a preliminary design report which was presented to the Town Council at a special meeting on March 23, 2004 which identified the relative costs and expenses of expanding the wastewater treatment plant to 700,000 gallons per day or more; and

WHEREAS, if the Town Council were to proceed under the usual financing methods to obtain the necessary funds for design, permitting and expanding the wastewater treatment plant it would take at least 18 to 20 months from the present time to explore such financing; and

WHEREAS, in order to address the immediate needs of growth and development and to accelerate the design, permitting and construction of an expansion of the wastewater treatment plant, the Town of Dundee has indicated that it will move forward with the design, permitting and construction of an expansion of its wastewater treatment plant if those Developers who desire the extra capacity will immediately and irrevocably fund the costs of the expansion up front based on the equivalent residential connections (ERC) each Developer/Owner proposes to connect to the Town's wastewater treatment plant. Such funding will permit the Town of Dundee to greatly accelerate the design,

permitting and construction of the expansion to its wastewater treatment plant. Further, without such funding it is not likely that the Town would be able to expand its permitted capacity for the wastewater treatment plant at any time now or in the near future;

WHEREAS, the Town is presently working with Polk County to enter into an Interlocal Agreement to allow the Town to tap into Polk County's wastewater treatment plant located in the Waverly area of Polk County, Florida, as a short term way to address the Town's need for additional wastewater treatment capacity; and

WHEREAS, such short term temporary capacity in the Town's waste water system that results from the diversion of waste water flows to Polk County's Waverly Plant will be connected only to customers who have been issued certificates of occupancy and on a first come first served basis until such additional wastewater treatment capacity is exhausted; and

WHEREAS, after the short term temporary capacity is exhausted, those wishing to connect to the sewer system will have to wait until new capacity resulting from the sewer plant expansion project becomes available; and

WHEREAS, the Town of Dundee Code of Ordinances requires the payment of certain connection fees on the basis of the number of Equivalent Residential Connections (ERC) proposed to be connected to the utility system. Further, the Town Code permits developer's agreements which set forth in detail the terms and conditions under which the Town will provide utility service to the Developer's/Owner's property; and

WHEREAS, the Town deems such an agreement necessary to facilitate the construction of expansion of the Town's wastewater treatment plant; and

WHEREAS, it is therefore deemed to be in the interest of the public health, safety and welfare for the Town and an appropriate exercise of the Town's authority to enter into the instant Developer's Agreement.

NOW, THEREFORE, in consideration of the mutual terms, covenants and conditions contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, it is mutually agreed as follows:

- 1.0 <u>Recitals</u>. The foregoing recitals are incorporated herein by reference as if recited in full and serve as a factual stipulation upon which the parties agree is the basis of the instant Developer's Agreement.
- 2.0 <u>Purpose</u>. The purpose of this Developer's Agreement is to memorialize the Developer's/Owner's financial commitment to the Town relating to the expansion of the Town's wastewater treatment plant.
- 3.0 <u>Wastewater Treatment Plant Capacity</u>. In order to assure that sufficient capacity exists in the Town's wastewater treatment plant it will be

necessary to design, permit and construct an expansion of the Town's wastewater treatment plant in order to allow capacity of at least 700,000 gallons per day to accommodate anticipated and projected growth and development in the Town. In order to allow the Town to immediately begin the design, permitting and construction of an expansion to its wastewater treatment plant, the Developer/Owner will be required to pay to the Town in cash the amount of \$691,267.50 which amount is based on a total of 266 ERCs the Developer/Owner proposes to connect to the Town's wastewater treatment plant and is related to the 71,820 gpd in equivalent capacity that the Developer/Owner will need from the Town's expanded wastewater treatment plant. In addition the Developer/Owner shall be required to post an Irrevocable Letter of Credit or other security reasonably acceptable to the Town and in the form attached hereto as Exhibit "A". Pursuant to paragraph 4 below, the Developer/Owner is obligated to pay said funds to the Town in order to purchase 266 ERCs which represents 71,820 gpd in equivalent capacity.

- 4.0 Developer's/Owner's Obligations.
- 4.1.1. The Developer/Owner agrees to pay to the Town the sum of \$691,267.50 in cash, cashier's check or cleared funds payable to the Town of Dundee to purchase 266 ERCs that it proposes to connect to the Town's wastewater treatment plant and which represents 71,820 gpd in equivalent capacity in accordance with the following:
- 4.1.2. The sum of One Hundred Seven Thousand Eight Hundred Forty Eight Dollars and Fourteen Cents (\$107,848.14) in cash, cashier's check or cleared funds payable to the Town of Dundee upon its execution of this Agreement. The balance of Five Hundred Eighty Three Thousand Four Hundred Nineteen Dollars and Thirty Six (\$583,419.36) shall be paid in cash, cashier's check or cleared funds payable to the Town of Dundee in three (3) installments in accordance with the following schedule:

Payment for the amount of \$107,848.12 is due and payable upon completion of the design engineering and putting of the project out to public bid as certified by the Town's engineer for the sewer plant expansion project, that is expected to occur on or before March 1, 2005;

Payment for the amount of \$107,848.12 is due and payable upon 50% of completion of the actual construction of the sewer plant expansion project as certified by the Town's engineer for the sewer plant expansion project, that is expected to occur on or before August 1, 2005;

Payment for the amount of \$367,723.12 is due and payable upon 100% completion and "start-up" of the expanded sewer plant as certified by the

Town's engineer and sewer plant operational permits are in hand for the sewer plant expansion project that is expected to occur on or before December 31, 2005.

The Town's certifications described above shall be final and binding on Developer/Owner and will require the immediate payment to the Town of the funds requested and due.

- 4.1.3. In addition, to secure its obligations to the Town under this Agreement and upon the execution of this Agreement the Developer/Owner shall deliver to the Town an irrevocable letter of credit in the form as set forth as Exhibit "A" attached hereto. To the extent payments are not made by the Developer/Owner under paragraph 4.1.2 above within fourteen (14) days after written notice by the town requesting payment, the Town may draw upon any or all such cash or letters of credit in whole or in part to provide funds to pay for the design, permitting and construction of the wastewater treatment plan expansion as more particularly set forth herein. The Town shall not be obligated to commence the design, permitting and any phase of construction of the improvements to the wastewater treatment plant unless and until the Developer/Owner of the development has delivered to the Town the required cash and letter of credit.
- 4.1.4. Developer/Owner acknowledges and agrees that the Town's willingness to enter into this Developer's Agreement shall not be construed as a waiver by the Town of any applicable law, ordinance, rule or regulation for the construction of any future developments.
- 4.1.5. In the event the Developer/Owner assigns and/or conveys its interest in any real property that is being used to calculate the ERC to the Town's wastewater system, the new Owner of such property may upon notice to the Town join in this Agreement and pay the required contribution for the purchase of the 266 ERCs for the applicable property provided such notice is given within thirty (30) days after the closing of the contract for purchase, but in no event beyond the term of this Agreement. In any event unless and until the new Owner joins in this Agreement and becomes obligated to the same extent as the Developer/Owner hereunder, the Developer/Owner shall remain obligated to the Town for all obligations hereunder.
- 4.1.6. Subject to the provisions in paragraph 5.1.4 below any funds paid to the Town hereunder shall be non-refundable in the event that the Developer chooses not to move forward with the proposed development.
- 5.0 Town's Obligations.

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- 5.1.1 Subject to the Developer's/Owner's compliance with its obligations under this Agreement, the Town shall commence the design and permitting of the expansion of its wastewater treatment plant immediately. Upon completion of design and permitting the Town shall commence construction of the expansion of its wastewater treatment plant with an anticipated completion date no later than 16 months from the effective date of this Agreement.
- Reservation of Capacity. In consideration for the payment by the Developer/Owner as more particularly set forth in paragraph 4 above the Town hereby reserves 71,820 gpd in equivalent capacity for the Developer/Owner based on 266 ERCs purchased hereunder. In the event the Developer/Owner determines that it does not need all of the reservation of capacity/ERC's purchased hereunder then such_reservation of capacity/purchased ERC's may be assignable and/or sold by the Developer but only with the Town's prior written consent and as contemplated in paragraph 4.1.5 above. It is agreed that the Town's consent will not be unreasonably withheld. Furthermore, all reservations of capacity pursuant to the terms of this Agreement shall exist for only five (5) years from the date that the expanded Wastewater Treatment Plant is fully online and operational. If within five (5) years from the date that the expanded Wastewater Treatment Plant is online and fully operational, the Developer/Owner and/or its successors and/or assigns or those persons or entities who have purchased the ERC's have not used the reserved capacity then it must sell such reserved capacity 266 ERC's representing 71,820 gpd (or portion thereof) in equivalent capacity back to the Town. In this event, payment arrangements shall be determined solely by the Town. The Developer and the Town agree that the foregoing provision is necessary to insure that the Town's ability to provide appropriate municipal services regarding the collection and treatment of wastewater and other effluent is not compromised by unused capacity.
- 5.1.3 The Town's obligations under this Agreement are conditioned on obtaining total funds and/or commitments of at least \$3.3 million. All funds collected from developers for this project shall be maintained in a separate bank account at Wachovia Bank, N.A. and titled "Dundee Sewer Plant Expansion Account" and such funds shall not be commingled with any other Town funds and shall not be appropriated to any other Town project, except that any funds remaining in the Dundee Sewer Plant Expansion Account after completion of the project and after all project expenses are paid in full, may be appropriated subject to any restrictions established for the use of sewer impact fees. Bank statements for the Dundee Sewer Plant Expansion Account, including any reports of daily account activity, shall be made available to the public upon request as such reports become available to the Town. In the event that the Town is unable to secure the required up front cash along with letters of credit

from developers prior to August 27, 2004 its obligations to expand the wastewater treatment plant and provide a reservation of capacity as described herein are null and void and all monies collected shall be refunded without interest at that time.

- 5.1.4 If the sewer plant expansion project is begun but not fully completed within 3 years from the effective date of this Agreement, then the Developers/Owners shall have the option to seek a refund of monies paid by the Developer/Owners hereunder without interest and in a manner and frequency determined solely by the Town so that such a refund will not compromise, harm, and/or impair the Town's fiscal condition and/or ability to provide necessary municipal services to its citizens. If in the event there is not sufficient waste water treatment capacity available to fulfill the Town's obligations under this agreement, the Town will have no objection to the Developer beginning development utilizing septic tank and without requiring the Developer to install dry lines.
- 6.0 <u>Authority</u>. The Developer/Owner affirmatively represents that it has the requisite authority to transact business in the State of Florida and has the requisite authority to enter into this Agreement.
- 7.0 <u>Binding Effect</u>. The Burdens of this Developer's Agreement shall be binding upon, and the benefits of this Agreement shall inure to, all successors in interest to the parties to this Agreement. However no assignments of this Agreement shall be allowed unless the Town consents in writing to same.
- Applicable Law, Jurisdiction and Venue. This Developer's Agreement, and the rights and obligations of the Town and the Developer/Owner hereunder, shall be governed by, construed under, and enforced in accordance with the laws of the State of Florida. Venue for any litigation pertaining to the subject matter hereof shall be exclusively in Polk County, Florida. If any provision of this Developer's Agreement, or the application thereof to any person or circumstances, shall to any extent be held invalid or unenforceable by a court of competent jurisdiction, then the remainder of this Developer's Agreement shall be valid and enforceable to the fullest extent permitted by law.
- 9.0 <u>Exhibits</u>. All exhibits attached hereto contain additional terms of this Developer's Agreement and are incorporated herein by reference.
- 10.0 <u>Captions and Paragraph Headings</u>. Captions and paragraph headings contained in this Developer's Agreement are for convenience and reference only, and in no way define, describe, extend or limit the scope or intent of this Developer's Agreement, nor the intent of any provision hereof.

- 11.0 <u>Definitions</u>. Unless specifically defined herein, the terms used in this Developer's Agreement shall be assigned the meanings, interpretations and/or definitions applied to, or provided in, the Town of Dundee Code of Ordinances and/or Florida Law.
- 12.0 <u>Counterparts.</u> This Developer's Agreement may be executed in several counterparts, each constituting a duplicate original, but all such counterparts constituting one and the same Developer's Agreement.
- 13.0 Merger. This Developer's Agreement constitutes the entire understanding of the parties. It supersedes any prior understandings, agreements, or obligations between them upon the subjects covered in this Agreement. There are no representations, promises, guarantees or warranties other than those set forth herein.
- 14.0 Effective Date and Duration. This Agreement shall become effective after it has been duly approved by the Town Council and executed by all parties. It shall remain in full force and effect for a period of five (5) years from that date.
- 15.0 <u>Amendment</u>. This Developer's Agreement may only be amended by mutual consent of the parties in writing.
- Further Assurances. Each of the parties hereto agrees to do, execute, acknowledge and deliver, or cause to be done, execute, acknowledge and deliver, all such further acts, and assurances as shall be reasonably requested by the other party in order to carry out the intent of this Developer's Agreement and give effect thereto. Without in any manner limiting the specific rights and obligations set forth in this Developer's Agreement, the parties hereby declare their intention to cooperate with each other in effecting the terms of this Developer's Agreement, and to coordinate the performance of their respective obligations under the terms of this Developer's Agreement. To the extent of any conflict with the development conditions or other rules and regulations, which may otherwise govern the Development, the terms and conditions of this Developer's Agreement shall prevail.
- 17.0 <u>Notices</u>. Any notices or reports required by this Developer's Agreement shall be sent to the following:

For the Town:

Town Manager Town of Dundee Post Office Box 1000 105 Center Street Dundee, FL 33838-1000 With a Copy to:

Frederick J. Murphy, Jr. Town Attorney

Town of Dundee Post Office Drawer 30 245 South Central Avenue Bartow, Florida 33830

For the Developer/Owner:

Joe Saunders

Hilltop Groves, LLC 5529 U.S. 98 North Lakeland, FL 33809

With copy to:

Attn: Rick Miller

Miller, Crosby & Miller

P.O. Box 8169 Lakeland, FL 33802

IN WITNESS WHEREOF, the parties hereto, through their duly authorized representatives, have executed this Developer's Agreement on the day(s) and year set forth below.

(SEAL)

ATTEST:

Town Clerk

TOWN COUNCIL OF THE TOWN OF DUNDEE

Kevin Kitto - Mayor

Approved by Town Attorney

By

Frederick J. Murphy, Jr.

Approved As To Form and Legal

Sufficiency.

Andrew Showing

{ DEVELOPER }

Hilltop Groves, LLC

By: Joe Z. Sounder

Goe L. Saunders

Its: Managing Member

STATE OF FLORIDA COUNTY OF POK

The foregoing instrument is hereby acknowledged before me this Zanday of July , 2004, by Joe L. Saunders , as Managing Member of { DEVELOPER }, on behalf of the corporation. He/She is personally known to me or has produced as identification.

NOTARY PUBDIC
My Commission Expires

Emity J Chafin
My Commission DD244879
Expires August 26 2007

Exhibit A

MIDFLORIDA Federal Credit Union Business Services Irrevocable Letter of Credit

Date Issued: August 25, 2004

Letter of Credit No. 302997

Beneficiary:

Town of Dundee P.O. Box 1000 105 Center Street Dundee, Florida 33838

Honorable Mayor and Town Council Members:

We hereby issue our irrevocable letter of credit in your favor, for the account of Hilltop Groves, LLC, 5529 U.S. 98 North, Lakeland, Florida 33809 in the aggregate amount of USD Five hundred eighty three thousand four hundred nineteen dollars and thirty six cents (\$583,419.36) available to you in three payments upon presentation of your draft(s) at sight on ourselves when accompanied by an affidavit signed jointly by the Town Mayor and Town Manager of Dundee, both authorized representatives of the Town of Dundee, certifying each stage of sewer plant expansion completion has been reached and stating that funds are due and payable by Hilltop Groves, LLC in return for the Town of Dundee reserving and assigning a total of 266 ERC's of sewer plant capacity exclusively for utilization by Hilltop Groves, LLC in accordance with the following schedule as agreed:

Payment No. 1, for the amount of \$107,848.12 is due and payable upon completion of the design engineering and putting of the project out to public bid as certified by the Town's engineer for the sewer plant expansion project, that is expected to occur on or before March 1, 2005;

Payment No. 2, for the amount of \$107,848.12 is due and payable upon 50% of completion of the actual construction of the sewer plant expansion project as certified by the Town's engineer for the sewer plant expansion project, that is expected to occur on or before August 1, 2005;

Payment No. 3, for the amount of \$367,723.12 is due and payable upon 100% completion and "start-up" of the expanded sewer plant as certified by the Town's engineer for the sewer plant expansion project, which is expected to occur on or before December 31, 2005.

The Town's certifications described herein as to payment requests shall be final and binding on Hilltop Groves, LLC and the MIDFLORIDA Federal Credit Union and once delivered to Hilltop Groves, LLC requires immediate payment to the Town of the funds requested.

This irrevocable letter of credit sets forth in full the terms of our undertaking. This undertaking shall not in any way be modified, amended, or amplified by reference to any document or contract referred to herein.

Drafts drawn under this credit must state on their face "drawn under MIDFLORIDA Federal Credit Union irrevocable letter of credit number 302997 dated August 25, 2004.

It is a condition of this letter of credit that it shall be deemed automatically extended without amendment for one year from the present or any future expiry date unless at least (number of days) prior to such expiration date, we notify you in writing by certified mail or express courier that we elect not to renew this letter of credit for any such additional one year period.

We hereby agree with you that draft(s) drawn under and in compliance with the terms and conditions of this credit shall be duly honored if presented together with documents as specified and the original of this credit, at this office on or before December 31, 2005.

Except as otherwise expressly stated herein, this letter of credit is subject to the Uniform Customs and Practices for Documentary Credits, established by the International Chamber of Commerce, as in effect on the date of issuance of this credit.

Sincerely,

Cameron Brock

Assistant Vice President

MIDFLORIDA Federal Credit Union

Business Services

