

RECORD AND RETURN TO:

Joshua Kramer
Marion County Utilities
11800 SE US Highway 441
Bellevue, FL 34420

THIS DOCUMENT PREPARED BY:

Joshua Kramer
Marion County Utilities
11800 SE US Highway 441
Bellevue, FL 34420

PROJECT: State Road 200 Septic to Sewer Conversions, Queen of Peace Catholic Church
PROPERTY APPRAISER'S PARCEL ID NUMBER(S): 35485-003-00, 35485-003-02

MARION COUNTY SEPTIC TO SEWER CONVERSION AGREEMENT

This Marion County Septic to Sewer Conversion Agreement (this "Agreement") is made and entered into by and between **JOHN G. NOONAN, AS BISHOP OF THE DIOCESE OF ORLANDO, HIS SUCCESSORS IN OFFICE AND ASSIGNS, A CORPORATION SOLE**, with a principal address of 50 East Robinson Street, Orlando, FL 32801 and a mailing address of PO Box 1800, Orlando, FL 32802 ("OWNER"), and **MARION COUNTY**, a political subdivision of the State of Florida, with a principal address is 601 SE 25th Avenue, Ocala, Florida 34471, for the benefit of Marion County Utilities, with a mailing address of 11800 SE US Highway 441, Bellevue, FL 34420 ("COUNTY") (individually "Party," collectively "Parties").

RECITALS

WHEREAS, COUNTY owns and operates a public wastewater system located in Marion County, Florida ("Public System") and is engaged in the commercial provision of wastewater services to customers; and

WHEREAS, OWNER owns the real properties described on Exhibit 1 (the "Property") consisting of Parcel 35485-003-00 (as evidenced by that certain Warranty Deed recorded in Book 1081, Page 1005 of the Official Records of Marion County) and Parcel 35485-003-02, upon which the "Queen of Peace Catholic Church" is located; and

WHEREAS, the Property is located within the "Rainbow Springs Basin Management Action Plan" ("BMAP") area as defined by the Florida Department of Environmental Protection (the "FDEP"), and the "Secondary Springs Protection Zone" as defined by the Map 13 of the Marion County Comprehensive Plan Future Land Use Map Series; and

WHEREAS, the Property contains one or more conventional on-site treatment and disposal systems ("OSTDS"), commonly referred to as "septic systems", and is able to connect to the Public System as defined herein; and

WHEREAS, decommissioning existing OSTDS and connecting to the Public System ("Septic to Sewer Conversion") reduces nutrient inputs into the environment, helping to improve local water quality and reduce impacts to various natural systems within Marion County; and

WHEREAS, for the benefit of the Property and the long-term health of Rainbow Springs and other natural systems within the area, OWNER seeks to participate in COUNTY's Septic to Sewer Conversion program; and

WHEREAS, COUNTY applied for and was awarded a grant known as "LPS0081" by the FDEP to support the COUNTY's State Road 200 Septic to Sewer Conversions program ("Grant"); and

WHEREAS, COUNTY will utilize Grant funds to provide up to \$23,333 for design (the "Design Cost") and \$257,805.19 for construction (the "Construction Cost"; together with Design Cost, the "Costs") for OWNER's Septic to Sewer Conversion project; and

WHEREAS, the Costs include all such services, activities, and charges related to and required for the Septic to Sewer Conversion contemplated by this Agreement, including those costs paid by OWNER; and

WHEREAS, OWNER shall become a customer of COUNTY and be required to abide by the rules applicable to same, pay applicable capital charges as determined according to Section 19-187 of the Marion County Land Development Code ("LDC"), be responsible for the ongoing care and maintenance of the sewer facilities and related appurtenances within the property boundaries, and be liable for the payment of sewer services provided by COUNTY; and

WHEREAS, on June 18th, 2019, OWNER granted two (2) easements to COUNTY to install a wastewater force main along SR 200 in exchange for 6.32 ERCs (as defined by Section 6.14.4 of the LDC) of credit toward wastewater capital charges as recorded by Official Records Book 7002, Pages 565-596 (the "Easement Agreement").

NOW, THEREFORE, in consideration of the mutual undertakings and agreements herein contained, and other good and valuable consideration, whose receipt and adequacy are hereby acknowledged, OWNER and COUNTY hereby covenant and agree as follows:

1. **RECITALS.**

OWNER and COUNTY confirm and agree that the above Recitals are true and correct, and incorporate their terms and provisions herein for all purposes.

2. **DEFINITIONS.**

The following definitions are used in this Agreement:

- A. OWNER, identified above, shall mean the undersigned and all successors, heirs, and assigns. OWNER represents it has full power and authority to enter into this Agreement.
- B. OWNER's Structure means any structure on the Property which has the ability to generate wastewater.
- C. OWNER's System means the piping and equipment necessary to convey wastewater away from the Property to the Public System. The OWNER's System is limited to that piping and equipment within the boundaries of the Property. OWNER's System specifically excludes the Public System piping and equipment outside the boundaries of the Property. OWNER is responsible for OWNER's System. OWNER is not responsible for the Public System.

- D. Public System means the wastewater infrastructure owned and operated by COUNTY used to provide wastewater service. The Public System is located outside the boundaries of the Property, typically in the right-of-way or within prescribed easements. COUNTY is responsible for the Public System.

3. **DESIGN AND CONSTRUCTION COSTS.**

A. **Acknowledgement.**

OWNER acknowledges that COUNTY has obtained certain Grant funding that provides for cost-sharing towards this Project. OWNER acknowledges that COUNTY intends for Grant funds to cover 100 percent (100%) of Design Cost and 50 percent (50%) of Construction Cost for this Project. OWNER hereby acknowledges that despite COUNTY's intent, Design Cost and Construction Cost for this Project are beyond COUNTY's control.

B. **Design Cost.**

Design Cost for the Project will be covered by Grant funds at a rate of 100% up to \$23,333.00. OWNER shall be responsible for any design costs that exceed this amount. Any design costs payable to COUNTY by OWNER shall be due prior to COUNTY releasing the Project to bidding.

C. **Construction Cost.**

(1) **Available Grant Funds.**

COUNTY OFFERS, AND OWNER ACCEPTS, UP TO \$257,805.19, BUT NO MORE THAN 50% OF THE TOTAL CONSTRUCTION COSTS, SHALL BE MADE AVAILABLE TO OWNER FOR THIS PROJECT.

(2) **Payment.**

OWNER shall deliver to COUNTY, within fourteen (14) days after OWNER's election to proceed with the construction of the Project, pursuant to Section 3(C)(5) hereinbelow, all funds applicable for cost-sharing and contingency as defined herein.

(3) **Cost Share.**

The Grant requires a minimum 50% match by OWNER for Construction Costs.

(4) **Construction Contingency.**

OWNER agrees that a 10% contingency will be applied to the construction cost obtained via COUNTY's bidding process for the Project. The contingency funds may be spent should unanticipated conditions be encountered during construction that require modification to the design. OWNER hereby agrees to be responsible for payment of OWNER's share of contingency funds expended during construction. OWNER accepts that OWNER's cost share for contingency funds may be up to 100%. OWNER hereby authorizes COUNTY to direct use of contingency funds as needed during construction. COUNTY agrees to notify OWNER prior to the use of any contingency funds. OWNER's portion of any remaining contingency funds shall be refunded to OWNER within thirty (30) days of connection of OWNER's System to the Public System.

(5) **Right to Reject Construction.**

OWNER shall have the right to reject commencing construction of the Project if the Construction Cost obtained by COUNTY's solicitation of competitive bids for construction exceeds OWNER's willingness to pay the

OWNER's cost-share amount. In such case, OWNER shall notify COUNTY in writing within fourteen (14) calendar days of COUNTY's presentment to OWNER of the Construction Cost following receipt of competitive bids for construction. Upon exercising this rejection right, OWNER thereby waives and relinquishes any right, claim, cause of action, or other remedy whatsoever against COUNTY arising from, or as a result of OWNER's desire to not proceed with construction, and is no longer eligible for the Grant funds that were anticipated to be allocated to this Project. However, OWNER shall not be liable for reimbursing Grant funds expended for design of OWNER's system.

D. **Termination and Responsibility for Costs.**

OWNER acknowledges that COUNTY will incur costs on OWNER's behalf prior to construction. Should OWNER choose to terminate this Agreement without good cause or otherwise breach this Agreement, OWNER shall be responsible for all damages resulting from such breach or termination, including all costs incurred by COUNTY on OWNER's behalf.

E. **Grant Limitations.**

OWNER acknowledges that Grant funds are provided by a third party over which COUNTY has no ability to exercise influence or control. Recognizing the COUNTY is acting in good faith, OWNER hereby agrees to indemnify COUNTY against any claims arising from COUNTY's inability to draw upon Grant funds in accordance with the provisions of **Section 14** of this Agreement. It is understood that grant funding in any given fiscal year are limited to State budget and appropriations. No liability shall be incurred by COUNTY beyond the monies budgeted and available for the purpose of the Agreement. If funds are not received by COUNTY on OWNER's behalf for any or all of this Agreement for a new fiscal period, COUNTY is not obligated to pay or spend any sums contemplated by this Agreement beyond the portions for which funds were received and appropriated. COUNTY shall promptly notify OWNER in writing of any subsequent non-appropriation.

4. **THE WORK.**

- A. COUNTY or its designee shall design and construct OWNER's System and connect it to the Public System in accordance with all federal, state and local statutes, ordinances, rules and regulations governing wastewater systems and with the terms of this Agreement.
- B. COUNTY or its designee is responsible to obtain any necessary permits and obtain all needed governmental approvals. OWNER shall assist COUNTY in this regard and is responsible to promptly and fully comply with any permitting or approval requirements. Such assistance includes, but is not limited to, complying with any Florida Department of Health ("FDOH") prerequisites to obtain the required septic system abandonment permit.
- C. OWNER is responsible for opening an account with the Electric Utility to provide electrical power necessary to operate OWNER's System, as applicable. OWNER acknowledges that COUNTY has no control over the Electric Utility, and OWNER is fully responsible for complying with the Electric Utility's requirements for provisioning electrical power.
- D. OWNER's System will carry wastewater only. No water service is contemplated under this Agreement.

- E. COUNTY shall require its Contractor to provide a one (1) year warranty of its design, assembly, workmanship and materials to OWNER. OWNER agrees to look solely to this warranty, and not to COUNTY, for any and all remedies to the work performed by COUNTY's Contractor under this Agreement.
- F. Upon completion of the construction and when all fees have been paid in full, COUNTY shall cause OWNER's Wastewater System to be connected to the Public Wastewater System. COUNTY will work to abandon the existing septic system, in accordance with FDOH standards, once the Properties are connected to the Public Wastewater System.

5. **WASTEWATER CAPITAL CHARGE.**

A. **Wastewater Capacity Reservation.**

OWNER seeks to reserve, and subsequently utilize following construction of the Project, Seven Thousand Four Hundred Twenty-One (7,421) gallons per day ("GPD") of wastewater capacity in the Public Wastewater System per calculations contained herein, and accordingly, is responsible for payment of Wastewater Capital Charge as authorized by the LDC. Until such payment is made, COUNTY does not warrant that such capacity is reserved or will be available to OWNER.

B. **Capacity; Classification.**

The LDC specifies the Level of Service for Wastewater Service as 200 GPD per Equivalent Residential Connection ("ERC"). The Property includes one (1) church structure with a maximum congregation of 1,620 persons; one (1) multipurpose / office building of 15,740 square feet ("ft²"); and one (1) single family residence ("SFR"). The quantity of Wastewater ERCs contained on the Property is calculated as follows:

<u>CHURCH:</u>	1,620 persons × (3 GPD / person)	= 4,860 GPD
<u>MULTIPURPOSE / OFFICE:</u>	15,740 ft ² × (15 GPD / 100 ft ²)	= 2,361 GPD
<u>SINGLE FAMILY RESIDENCE:</u>		= 200 GPD

<u>TOTAL WASTEWATER FLOW:</u>		= 7,421 GPD
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<u>WASTEWATER ERCs:</u>	7,421 GPD × (1 ERC / 200 GPD)	= 37.11 ERCs
<u>ERC CREDITS (PER "EASEMENT AGREEMENT"):</u>		= 6.32 ERCs

TOTAL WASTEWATER ERCs TO BE PURCHASED BY OWNER = 30.79

C. **Wastewater Capital Charge.**

The Marion County Code, Section 19-187, establishes the cost per Wastewater ERC at \$3,844.00. The Wastewater Capital Charge is calculated as follows:

$$\begin{aligned}\text{WASTEWATER CAPITAL CHARGE: } & 30.79 \text{ ERCs} \times (\$3,844.00 / \text{ERC}) \\ & = \mathbf{\$118,356.76 \text{ TO BE PAID BY OWNER}}\end{aligned}$$

OWNER's Wastewater Capital Charge, less credits described herein, totals One-Hundred Eighteen Thousand Three Hundred Fifty-Six Dollars and Seventy-Six cents.

D. **Grant Cost Sharing.**

Up to 50 percent (50%) of the Wastewater Capital Charge determined according to the existing structures upon and usage of the Property at the time of this Agreement shall be incorporated into the Construction Cost and paid by the Grant.

E. **Usage of Wastewater ERC Credits.**

OWNER shall utilize up to 6.32 ERCs of Wastewater Capital Charge credits ("Credits") provided for by the Easement Agreement towards OWNER's cost-share for the Wastewater Capital Charge. OWNER's Credits shall be applied to OWNER's Wastewater Capital Charge before OWNER is required to utilize monetary funds. Unused Credits shall remain property of OWNER.

F. **Payment.**

Any remaining Wastewater Capital Charge in excess of that which is paid for by the Grant or OWNER's Credits shall be payable by OWNER to COUNTY within fourteen (14) days after OWNER's election to proceed with the construction of the Project, pursuant to Section 3(C)(5) hereinabove.

G. **Future Improvements, Wastewater Capital Charges.**

Future improvements or changes to the usage of the Property may result in additional future Wastewater Capital Charges as applicable according to the LDC. Future Wastewater Capital Charges have not been accounted or paid for under this Agreement. OWNER shall be responsible for payment of any future Wastewater Capital Charges. OWNER's Credits, if available, may be used to offset future Wastewater Capital Charges.

6. **CONNECTION.**

A. COUNTY's execution of this Agreement creates no vested rights and shall not be construed as a guarantee of service capacity except as provided for herein. COUNTY may permit connections to the Public System only if it may lawfully do so or would not thereby violate any permit, license, restriction, injunctions, moratoriums, or denial of permission to connect imposed or issued by any court of competent jurisdiction or by any applicable governmental agency. COUNTY agrees to not unreasonably deny connection to the Public System. COUNTY makes no other representation or agreement as to the availability of service in connection with development of the Property described by this Agreement.

B. By entering into this Agreement, OWNER acknowledges the stated limits on the permissibility to connect and hereby waives and relinquishes any right, claim, cause of action, or other remedy whatsoever against COUNTY arising from, or as a result of OWNER reasonably being denied connection.

- C. Connection is conditioned upon and may not occur before the receipt of all necessary governmental permits, licenses, and approvals for, and completion of construction of facilities to be connected to the Public System.

7. **SERVICE.**

A. **COUNTY's Responsibilities.**

Upon connection of OWNER's System to the Public System, COUNTY agrees to be responsible to thereafter continuously provide wastewater services to OWNER at OWNER's cost and expense, in a manner to conform to this Agreement and all rules and regulations of applicable governmental authorities.

B. **OWNER's Responsibilities.**

OWNER agrees to comply with its contractual responsibilities under its account with Marion County Utilities, including but not limited to the following:

(1) **Obtain Sewer Account.**

OWNER agrees to apply for, develop, and maintain in good standing a Commercial Sewer Account through Marion County Utilities prior to the connection of OWNER's system to the Public System. OWNER is responsible for payment of all deposits, fees, and other costs associated with development of a Commercial Sewer Account, such costs being excluded from costs covered by the Grant.

(2) **Payment Responsibility.**

OWNER acknowledges and agrees that it is responsible for payment of monthly sewer bills, which shall be addressed and sent to the address provided upon establishment of the Commercial Sewer Account.

8. **RATES SUBJECT TO ADJUSTMENT.**

A. **Rates Subject to Codes.**

The rates for sewer usage are subject to applicable provisions in the Marion County Code of Ordinances, as well as the other requirements specified in related resolutions and the policies and procedures of the Marion County Utilities Department all of which OWNER has undertaken to be familiar.

B. **Rates Subject to Adjustments.**

OWNER accepts that COUNTY may adjust the sewer usage rates based on rates published from time to time.

9. **BILLING.**

A. **Obligation to Pay.**

COUNTY will provide OWNER a monthly bill for the sewer service. OWNER agrees to timely pay same.

B. **Rates.**

Marion County Utilities offers "Flat Rate" billing for sewer service at a rate of \$57.00 per ERC. Acknowledging that rates are subject to future adjustment as set forth in **Section 8** above, OWNER agrees to pay the following calculated monthly rate for sewer service:

$$37.11 \text{ Wastewater ERCs} \times (\$57.00 \text{ per ERC per month}) = \$2,115.27 \text{ per month}$$

OWNER's Monthly Sewer Service Charge Two Thousand One Hundred Fifteen Dollars and Twenty-Seven Centers per month.

- C. **Termination of Flat Rate Sewer Service Charges upon Provisioning of Water Service from COUNTY.**
Flat Rate sewer billing will be terminated and consumption-based billing utilized instead upon COUNTY providing water service to the Property. Sewer billing will be based on metered water usage as indicated by OWNER's potable water service meter in accordance with COUNTY's standard billing practices.
10. **OWNER'S CONFORMANCE; MAINTENANCE.**
Upon acceptance by OWNER of OWNER's System following completion of construction:
- A. Conforming with governmental agency's laws, rules and regulations shall be the sole responsibility of OWNER, and OWNER shall hold COUNTY harmless from and waive all future claims, if any, against COUNTY, arising out of the compliance or lack thereof with all other governmental laws, rules, and regulations.
 - B. Maintenance of OWNER's System will be the sole responsibility of OWNER and shall be performed entirely at OWNER's expense. Once construction of OWNER's System is completed, COUNTY shall not be responsible for the maintenance, operation, replacement, or repair of the on-site pipes or any other equipment needed to effectively deliver OWNER's wastewater to the Public System.
11. **PERMISSION FOR WORK ON PROPERTY.**
- A. OWNER shall grant permission to COUNTY, its agents, employees and independent contractors to enter the Property in order to construct and connect OWNER's System, abandon any existing septic tank(s).
 - B. COUNTY's Contractor shall list OWNER as a "Named Insured" on Contractor's insurance policy. Proof of same shall be furnished to OWNER prior to the start of construction.
 - C. Upon completing installation of OWNER's System, COUNTY agrees to restore all disturbed areas, plants shrubs, fences and grass to the condition they were at the time the work authorized hereunder began. In the event that COUNTY must make a cut in any sidewalk, driveway, or other paved area in order to install OWNER's System, COUNTY agrees to resurface the cut area, following COUNTY Standards. When practical, OWNER will be requested to inspect the Property at the completion of the work and sign a statement indicating OWNER's acceptance of the restoration.
12. **EASEMENTS.**
- A. **Temporary Construction Easement.**
OWNER shall grant to COUNTY and its agents, employees and Contractor a Temporary Construction Easement to allow construction and connection of OWNER's System. The Temporary Construction Easement shall be valid for one (1) year following recording by the Marion County Clerk of Court. OWNER shall renew the Temporary Construction Easement as needed if the current Temporary Construction Easement expires prior to completion of construction. A substantial form of Temporary Construction Easement is attached hereto as **Exhibit 2.**
 - B. **Delivery.**
Within thirty (30) days of receipt of COUNTY's proposed Temporary Construction Easement, OWNER shall deliver the executed original(s) to COUNTY for recording in the public records of Marion County, Florida. All recording costs and fees shall be included in the Costs.

13. **DEFAULT PROVISIONS.**

A. **Termination.**

Unless specifically provided herein, the terms of this Agreement shall not entitle any Party to cancel, rescind, or otherwise terminate this Agreement. However, such limitations shall not affect in any manner any other rights or remedies which a Party may have hereunder or under applicable law by reason of any such breach.

B. **Remedies.**

All easements, rights and covenants contained herein shall be enforceable by suit for specific performance and mandatory injunctive relief, in addition to any other remedy provided by law or equity.

C. **Opportunity to Cure.**

No Party shall be entitled to pursue any action for specific performance, injunctive relief, or any other available remedy arising out of a default under this Agreement until the non-defaulting Party has provided to the Party alleged to be in default a written Default Notice (with, if applicable, a copy to any other Party to this Agreement) specifying the specific nature of the default, and the alleged defaulting Party has failed to cure the default within thirty (30) days of the effective date of the Default Notice. In the event the cure of a default reasonably requires greater than the thirty (30) day time period specified, the grace period granted herein shall, if the defaulting Party has initiated cure of the default within the thirty (30) day time period and is continuing to pursue completion of the cure with due diligence, extend the reasonable time period required for the cure of the default.

D. **Material Default.**

Unless specifically provided herein, in the event of a material default by OWNER with respect to its obligations to COUNTY under this Agreement, and failure of OWNER to cure the default within the grace period set forth above, in addition to any other remedies available to it under the terms of this Agreement, COUNTY shall be entitled to withhold issuance of additional development permits or authorizations until the default has been cured.

E. **Requirement to Connect.**

Notwithstanding the preceding, OWNER shall be required to connect OWNER's System to the Public System upon OWNER's acceptance of the work contemplated herein. This requirement vests upon COUNTY's issuance of the Notice to Proceed to COUNTY's Contractor. In the event that OWNER seeks to terminate construction prior to completion or fails, by OWNER's direct actions or instructions, to connect following completion of construction, OWNER waives and relinquishes any right or claim to Grant funds allocated to this Project and assumes full liability for payment of work completed by COUNTY on OWNER's behalf.

F. **Unreasonable Withholding of OWNER's Acceptance of OWNER's System.**

OWNER agrees to not unreasonably withhold, condition, or delay acceptance of OWNER's System upon COUNTY's completion of construction. OWNER's inability to take possession of OWNER's system due to unreasonably withheld, conditioned, or delayed acceptance shall not be cause for OWNER to avoid default provisions herein.

14. **INDEMNIFICATION.**

To the extent permitted by law, OWNER shall indemnify, defend, and hold harmless, release, and forever discharge COUNTY and its officers, board members, employees,

agents, instrumentalities, and all governmental providers of use permits, from and against any and all fines, suits, claims, demands, penalties, liabilities, costs or expenses, losses settlements, judgments and awards and action of whatever kind or nature arising out of, relating to, or resulting from the performance of the Agreement, including a reasonable attorney's fees and costs (and a reasonable attorney's fee and costs on appeal) and damages (including, but not limited to, actual and consequential damages) arising from any negligent, willful or wrongful misconduct, knowing misrepresentation or breach of the Agreement by OWNER, its employees, agents, licensees or invitees, to the extent that any such claim, damages, loss, or expenses is caused by any acts or omissions of OWNER or anyone directly or indirectly under its control. OWNER expressly understands and agrees that any insurance protection required by the Agreement or otherwise provided by OWNER shall in no way limit the responsibility to indemnify, keep and save harmless and defend COUNTY and its officers, board members, employees, agents, and instrumentalities. This Section shall not be construed in any way to alter COUNTY's waiver of sovereign immunity or the limits established in Section 768.28, Florida Statutes.

15. **FORCE MAJEURE.**

Neither Party shall be liable or responsible to the other by reason of one Party's failure or inability to take any action it is required to take or to comply with the requirements imposed hereby for any injury to the other or by those claiming by or through the other, which failure, inability or injury is caused directly or indirectly by force majeure (as hereinafter set forth). The term "force majeure" as employed herein shall mean acts of god, strikes, lock outs, or other industrial disturbance; acts of public enemies, war, blockades, riots, acts of armed forces, militia, or public authority, epidemics, pandemics, breakdown of or damage to machinery, pumps, or pipe lines; landslides, earthquakes, fires, storms, floods, or washouts; arrests, title disputes, or other litigation; governmental restraints of any nature whether federal, state, county, municipal or otherwise, civil or military; civil disturbances; explosions, failure or inability to obtain necessary materials, supplies, labor or permits or governmental approvals whether resulting from or pursuant to existing or future rules, regulations, orders, laws or proclamations whether Federal, State, County, municipal or otherwise, civil or military; or by any other causes, whether or not of the same kind as enumerated herein, not within the sole control of the Party and which by exercise of due diligence the Party is unable to overcome.

16. **SUCCESSORS AND ASSIGNS.**

A. **Bind and Inure.**

All covenants and agreements in this Agreement made by or on behalf of any Parties hereto shall bind and inure to the benefit of the respective successors and assigns of the Parties hereto, whether so expressed or not.

B. **No Assignment.**

OWNER understands and agrees this Agreement cannot and shall not be assigned by OWNER to third parties except in the case of a bona fide sale of the Property, or other valid transfer or assignment of the Property, including, without limitation, the change in Bishop of the Diocese of Orlando, the transfer or assignment of the Property as a result of a judicial proceeding such as mortgage foreclosure or sale, and assignment for the purposes of obtaining financing. In any such case, OWNER shall provide a Notice or evidence of such assignment, or partial assignment as the case may be, to COUNTY.

C. **Full Force and Effect Upon Sale or Other Transfer.**

Upon a sale or other transfer of the Property, or any portion thereof, the terms and provisions of this Agreement, as applicable, shall remain in full force and effect as to the parcel or portion of same being sold or transferred.

17. **NO WAIVER OF SOVEREIGN IMMUNITY.**

Nothing in this Agreement is intended to serve as a waiver of sovereign immunity protections, rights, or limits to liability provided to COUNTY under Section 768.28, Florida Statutes, or other applicable law, whether sounding in contract, tort, or otherwise. This Section shall survive the termination of this Agreement.

18. **MATERIALITY AND WAIVER.**

Each requirement, duty, and obligation set forth in this Agreement was bargained for at arms-length and is agreed to by the Parties. Each requirement, duty, and obligation set forth in this Agreement is substantial and important to the formation of this Agreement, and each is, therefore, a material term of this Agreement. A Party's failure to enforce any provision of this Agreement shall not be deemed a waiver of such provision or modification of this Agreement. A waiver of any breach of a provision of this Agreement shall not be deemed a waiver of any subsequent breach and shall not be construed to be a modification of the terms of this Agreement. To be effective, any waiver must be in writing signed by an authorized signatory of the Party.

19. **NOTICES.**

A. All notices, requests, consents and other communications (each a "Communication") required or permitted under this Agreement shall be in writing (including emailed communication) and shall be (as elected by the person giving such notice) hand delivered by messenger or courier service, emailed or mailed by Registered or Certified Mail (postage pre-paid), Return Receipt Requested, addressed as follows or to such other addresses as any party may designate by Communication complying with the terms of this Section:

(1) If to County:

Tony Cunningham, P.E., Utilities Director
11800 S US Hwy. 441
Bellevue, FL 34420
Email: Tony.Cunningham@marionfl.org

With a copy to:

County Attorney
601 SE 25th Avenue
Ocala, FL 34471
Email: Matthew.Minter@marionfl.org

(2) If to Owner:

Diocese of Orlando
Attn: Scott Ferguson
50 East Robinson Street
Orlando, FL 32801
Email: sfergerson@orlandodiocese.org

- B. If to any Successor Titleholder: Unless a Successor Titleholder provides a Communication to the parties to this Agreement under this Section containing the address that such Successor Titleholder desires the parties to use, the address of such Successor Titleholder as shown on the records of the Marion County Property Appraiser concerning the tax parcel owned by such Successor Titleholder.
- C. Each such Communication shall be deemed delivered:
 - (1) On the date of delivery if by personal delivery;
 - (2) On the date of email transmission if by email (subject to Section 19.F.); and
 - (3) If the Communication is mailed, on the earlier of: (a) the date upon which the Return Receipt is signed; or (b) the date upon which delivery is refused.
 - (4) Notwithstanding the foregoing, service by personal delivery delivered, or by email sent, after 5:00 p.m. shall be deemed to have been made on the next day that is not a Saturday, Sunday or legal holiday.
- D. If a Communication is delivered by multiple means, the Communication shall be deemed delivered upon the earliest date determined in accordance with the preceding subsection.
- E. If the above provisions require Communication to be delivered to more than one person (including a copy), the Communication shall be deemed delivered to all such persons on the earliest date it is delivered to any of such persons.
- F. Concerning Communications sent by email:
 - (1) The Communication shall not be deemed to have been delivered if the sender receives a message from the sender's or the recipient's internet service provider or otherwise that the email was not delivered or received but, if the email was sent by the sender on the last day of a deadline or other time period established by this Agreement, the time for the sender to re-send the Communication by a different authorized means shall be extended one (1) business day;
 - (2) If the sender receives an automatic reply message indicating that the recipient is not present to receive the email (commonly referred to as an "out of the office message"), the email shall not be deemed delivered until the recipient returns but, if the email was sent by the sender on the last day of a deadline or other time period established by this Agreement, the time for the sender to re-send the Communication by a different authorized means shall be extended one (1) business day;
 - (3) Any email that the recipient replies to, or forwards to any person, shall be deemed delivered to the recipient.
 - (4) Any email that generates a "read receipt" sent by the recipient's email system shall be deemed delivered to the recipient.
 - (5) The sender must print the email to establish that it was sent (though it need not do so at the time the email was sent); and
 - (6) The sender shall maintain the digital copy of the email in its email system for a period of no less than one year after it was sent.

20. PUBLIC RECORDS.

- A. If, under this Agreement, OWNER is providing services and is acting on behalf of COUNTY as provided under Section 119.011(2), Florida Statutes, OWNER shall:
 - (1) Keep and maintain public records required by COUNTY to perform the service;

- (2) Upon request from COUNTY's custodian of records, provide COUNTY with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided in Chapter 119, Florida Statutes, or as otherwise provided by law;
 - (3) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law for the duration of this Agreement term and following completion of this Agreement if OWNER does not transfer the records to COUNTY; and,
 - (4) Upon completion of this Agreement, transfer, at no cost, to COUNTY, all public records in possession of OWNER or keep and maintain public records required by COUNTY to perform the service. If OWNER transfers all public records to COUNTY upon completion of this Agreement, OWNER shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If OWNER keeps and maintains public records upon completion of this Agreement, OWNER shall meet all applicable requirements for retaining public records. All records stored electronically must be provided to COUNTY upon request from COUNTY's custodian of public records in a format that is compatible with the information technology systems of COUNTY.
- B. If OWNER fails to provide the public records to COUNTY within a reasonable time or otherwise fails to comply with this Section, OWNER may be subject to penalties under Section 119.10, Florida Statutes and may be subject to unilateral cancellation of this Agreement by COUNTY.
- C. **IF OWNER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO OWNER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:**

Public Relations, 601 SE 25th Ave., Ocala, FL 34471
Phone: 352-438-2300 Fax: 352-438-2309
Email: PublicRelations@MarionFL.org

21. **RIGHTS OF THIRD PARTIES.**

Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under or because of this Agreement on any persons other than the Parties hereto and their respective legal representatives, successors and permitted assigns. Nothing in this Agreement is intended to relieve or discharge the obligation or liability of any third persons to any Party to this Agreement, nor shall any provision give any third persons any right of subrogation or action over or against any Party to this Agreement.

22. **SURVIVE THE AGREEMENT.**

The Parties' rights, privileges, obligations and covenants shall survive the completion of this Agreement.

23. **BINDING; RECORDING.**

- A. This Agreement will bind and inure to the benefit of the parties hereto and their respective heirs, personal representatives, successors and assigns.
- B. This Agreement shall be recorded in the public records of Marion County as notice to subsequent owners of the Property of the existence of OWNER's System and all related equipment, and the maintenance requirement by OWNER.

24. **NEGATION OF PARTNERSHIP.**

The Parties deem each other to be Independent Contractors, and not agents of the other. Each Party shall be considered a separate party, no Party shall have the right to act as an agent for another Party and no Party shall the right to act as an agent for another Party unless expressly authorized to do so in this Agreement.

25. **SEVERABILITY.**

If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision shall be deemed to be written, construed and enforced as so limited.

26. **APPLICABLE LAW/JURISDICTION/VENUE.**

This Agreement is being delivered in the State of Florida, and shall be construed and enforced in accordance with the laws of the State of Florida. The venue for any legal proceeding arising out of this Agreement, shall be Marion County, Florida.

27. **WAIVER OF JURY TRIAL.**

EACH PARTY HEREBY AGREES THAT IN ANY LITIGATION OR PROCEEDING, WHETHER AT LAW OR IN EQUITY, WHICH ARISES OUT OF THE AGREEMENT, WHETHER SOUNDING ON CONTRACT, TORT, STRICT LIABILITY, OR OTHERWISE, TRIAL SHALL BE HAD BY A COURT OF COMPETENT JURISDICTION AND NOT TO A JURY. EACH PARTY IRREVOCABLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY. EACH PARTY HAS READ AND UNDERSTANDS THE EFFECT OF THIS WAIVER.

28. **ATTORNEYS' FEES.**

If any civil action, arbitration or other legal proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default or misrepresentation in connection with any provision of this Agreement, the successful or prevailing Party shall be entitled to recover reasonable attorneys' fees, sales and use taxes, court costs and all expenses reasonably incurred even if not taxable as court costs (including, without limitation, all such fees, taxes, costs and expenses incident to arbitration, appellate, bankruptcy and post-judgment proceedings), incurred in that civil action, arbitration or legal proceeding, in addition to any other relief to which such Party or Parties may be entitled. Attorneys' fees shall include, without limitation, paralegal fees, investigative fees, administrative costs, sales and use taxes and all other charges reasonably billed by the attorney to the prevailing Party.

29. **HEADINGS.**

The section headings herein are included for convenience only and shall not be deemed to be a part of this Agreement.

30. **AMENDMENT.**

This Agreement may only be modified or amended by a writing signed by both Parties hereto.

31. **AUTHORITY TO EXECUTE AGREEMENT.**

The signature by any person to this Agreement shall be deemed a personal warranty by that person that she/he has the full power and authority over the Property and to enter this Agreement.

32. **ENTIRE AGREEMENT.**

This Agreement contains the entire agreement between the Parties related to the matters specified herein, and supersede any prior oral or written statements or agreements between the Parties related to such matters.

33. **EXHIBITS.**

Attached hereto and incorporated herein are the following exhibits:

Exhibit 1. Legal Descriptions for Parcels 35485-003-00 and 35485-003-02.

Exhibit 2. Substantial form of Temporary Construction Easement.

[This portion of page intentionally left blank. Signature pages follow.]

IN WITNESS WHEREOF, the said Parties have entered into this Agreement as of the date of the last signature below.

WITNESSES:

Signed before me:

Kellean A. Allen 5/23/25
Signature Date

Kellean A. Allen
Print Name

Address: 1928 Norwell Ave
Orlando, FL 32806

Sr. Maria Acosta, SCTJM 5/23/25
Signature Date

SR. MARIA ACOSTA, SCTJM
Print Name

Address: 95 Bishop Grady Ln
Winter Park, FL 32792

OWNER:

John G. Noonan, as Bishop of the Diocese of Orlando, his successors in office and assigns, a corporation sole

John G. Noonan, as Bishop of the Diocese of Orlando, his successors in office and assigns, a corporation sole

Date: 5/23/2025

STATE OF FLORIDA

COUNTY OF ORANGE

The foregoing instrument was acknowledged before me by means of ☒ physical presence or ☐ online notarization, this 23rd day of May, 2025, by John G. Noonan as Bishop of the DIOCESE OF ORLANDO, a corporation sole, the party on behalf of whom this instrument was executed.



Lizette Gonzalez
Notary Public, State of Florida
(SEAL)

Notary: Check one of the following:

☒ Personally Known OR

☐ Produced Identification (if this box is checked, fill in blank below).

Type of Identification Produced: _____

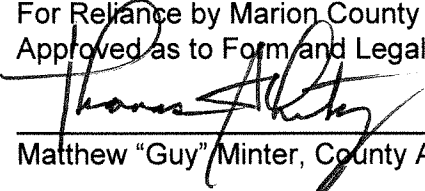
Marion County Septic to Sewer Conversion Agreement
State Road 200 Septic to Sewer Conversions
Queen of Peace Catholic Church

ATTEST:

Gregory C. Harrell, Clerk

Date: _____

For Reliance by Marion County Only,
Approved as to Form and Legal Sufficiency:

For:  _____
Matthew "Guy" Minter, County Attorney

MARION COUNTY, a political subdivision of
the State of Florida, f/b/o Marion County
Utilities

By: _____
Kathy Bryant, as Chairman of the Board
of County Commissioners

Date: _____

EXHIBIT 1

LEGAL DESCRIPTION FOR PARCEL 35485-003-00

SEC 08 TWP 16 RGE 21
COM AT SW COR N 25 FT S 89-52-17 E 1780.44 FT TO
NWLY ROW OF SR 200 N 41-34-40 E ALG ROW 1314.58 FT TO
POB TH N 48-25-20 W 479.61 FT N 89-57-28 W 936.60 FT
N 00-01-07 E 627.54 FT N 89-57-51 E 614.33 FT
S 00-03-24 E 419.35 FT S 89-57-30 E 406.13 FT
S 48-32-45 E 556.54 FT S 41-33-05 W 214.18 FT ALG NWLY
ROW SR 200 TO POB EXC ROW SR 200 DESC IN 2455-1146

LEGAL DESCRIPTION FOR PARCEL 35485-003-02

SEC 08 TWP 16 RGE 21
COM AT SW COR N 1324.63 FT S 89-47-28 E 1972.24 FT
N 00-03-24 E 210 FT TO POB TH N 00-03-24 E 419.35 FT
N 89-57-51 E 682.02 FT S 48-23-02 E 628.35 FT TO
NWLY ROW SR 200 S 41-33-05 W ALG ROW 496 FT
N 48-32-45 W 556.54 FT N 89-57-30 W 406.13 FT TO POB
EXC ROW SR 200 DESC IN 2455-1146
AND ALSO THE FOLLOWING:
TRACT 1-B DESC AS FOLLOWS;
COM AT NW COR OF SE 1/4 OF SEC 8 TH S 00-04-28 W 30 FT TO
SLY ROW LINE OF SW 73RD ST SAID POINT BEING POB TH
N 89-57-51 E 262.14 FT TH S 21-29-10 W 718.07 FT TO
AFORESAID WEST BDRY OF SE 1/4 TH N 00-04-28 E 668 FT TO POB
Parent Parcel: 35485-003-00

EXHIBIT 2
Substantial form of Temporary Construction Easement

RECORD AND RETURN TO:

Mark W. Thomas, P.E.
Marion County Utilities
11800 SE US Highway 441
Belleview, FL 34420

THIS DOCUMENT PREPARED BY:

Mark W. Thomas, P.E.
Marion County Utilities
11800 SE US Highway 441
Belleview, FL 34420

PROJECT: State Road 200 Septic to Sewer Conversions, Queen of Peace Catholic Church
PROPERTY APPRAISER'S PARCEL ID NUMBER(S): 35485-003-00, 35485-003-02

GRANT OF TEMPORARY CONSTRUCTION EASEMENT

THIS EASEMENT, made this _____ day of _____, 2024, by **JOHN G. NOONAN, AS BISHOP OF THE DIOCESE OF ORLANDO**, his successors in office and assigns, a corporation sole, with a principal address of 50 East Robinson Street, Orlando, FL 32801 and a mailing address of PO Box 1800, Orlando, FL 32802 ("**Grantor**"), to **MARION COUNTY**, a political subdivision of the state of Florida, whose principal address is 601 SE 25th Avenue, Ocala, Florida 34471 with a mailing address of 11800 SE US Highway 441, Belleview, FL 34421 ("**Grantee**") (Wherever used herein the terms "**Grantor**" and "**Grantee**" include all the heirs, legal representatives and assigns of such parties).

WITNESSETH: That the Grantor for and in consideration of the sum of Ten dollars (\$10.00) and other valuable considerations paid, the receipt and sufficiency of which is hereby acknowledged, hereby grants unto the Grantee, its successors and assigns, a non-exclusive temporary construction easement over, under, across and on portions of the following described land, known as the "Easement Area" as identified on Exhibit "A", situate, lying, and being in Marion County, Florida, to wit:

LEGAL DESCRIPTION FOR PARCEL 35485-003-00

SEC 08 TWP 16 RGE 21
COM AT SW COR N 25 FT S 89-52-17 E 1780.44 FT TO
NWLY ROW OF SR 200 N 41-34-40 E ALG ROW 1314.58 FT TO
POB TH N 48-25-20 W 479.61 FT N 89-57-28 W 936.60 FT
N 00-01-07 E 627.54 FT N 89-57-51 E 614.33 FT
S 00-03-24 E 419.35 FT S 89-57-30 E 406.13 FT
S 48-32-45 E 556.54 FT S 41-33-05 W 214.18 FT ALG NWLY
ROW SR 200 TO POB EXC ROW SR 200 DESC IN 2455-1146

LEGAL DESCRIPTION FOR PARCEL 35485-003-02

SEC 08 TWP 16 RGE 21
COM AT SW COR N 1324.63 FT S 89-47-28 E 1972.24 FT
N 00-03-24 E 210 FT TO POB TH N 00-03-24 E 419.35 FT
N 89-57-51 E 682.02 FT S 48-23-02 E 628.35 FT TO
NWLY ROW SR 200 S 41-33-05 W ALG ROW 496 FT
N 48-32-45 W 556.54 FT N 89-57-30 W 406.13 FT TO POB

Grant of Temporary Construction Easement
Project: State Road 200 Septic to Sewer Conversions, Queen of Peace Catholic Church
Property Appraiser's Parcel ID Number(s) #: 35485-003-00, 35485-003-02

EXC ROW SR 200 DESC IN 2455-1146
AND ALSO THE FOLLOWING:
TRACT 1-B DESC AS FOLLOWS;
COM AT NW COR OF SE 1/4 OF SEC 8 TH S 00-04-28 W 30 FT TO
SLY ROW LINE OF SW 73RD ST SAID POINT BEING POB TH
N 89-57-51 E 262.14 FT TH S 21-29-10 W 718.07 FT TO
AFORESAID WEST BDRY OF SE 1/4 TH N 00-04-28 E 668 FT TO POB
Parent Parcel: 35485-003-00

**See depiction of Easement Area on Exhibit "A,"
Attached hereto and by this reference made a part hereof.**

The purpose of this temporary construction easement is to allow excavation, grading, and other construction activities upon the above described lands for the duration of one (1) year beginning on the recording date of this document.

Grantee shall restore the disturbed area back to its original condition upon completion of the proposed project.

TO HAVE AND TO HOLD the same unto said Grantee, its successors and assigns forever, and the Grantor will defend the title to said lands against all persons claiming by, through or under said Grantor.

SUBJECT TO: RESTRICTIONS AND EASEMENTS OF RECORD.

To the extent permitted by applicable law and consistent with Section 768.28, Florida Statutes, and without waiving sovereign immunity, Grantee shall indemnify and hold Grantor harmless against any claim, liability, action, loss, personal injury or damage resulting from or arising out of use and/or occupancy of this Easement by Grantee, its employees, agents, invitees, representatives, except to the extent caused by intentional acts of the Grantor.

This Easement is not a public easement but is for the specific and sole use of Grantee to construct Grantor-owned utilities serving the Grantor property only, for the limited purposes set forth herein.

Grant of Temporary Construction Easement
Project: State Road 200 Septic to Sewer Conversions, Queen of Peace Catholic Church
Property Appraiser's Parcel ID Number(s) #: 35485-003-00, 35485-003-02

IN WITNESS WHEREOF, the Grantor has signed and sealed these presents the day and year first above written.

Signed and sealed in our presence as witnesses:

JOHN G. NOONAN, AS BISHOP OF THE
DIOCESE OF ORLANDO, HIS
SUCCESSORS AND ASSIGNS, A
CORPORATION SOLE

(Signature) Date

(Print or type name)

John G. Noonan, as Bishop of the Diocese of
Orlando, his successors in office and assigns,
a corporation sole

Address: _____

Date: _____

(Signature) Date

(Print or type name)

Address: _____

STATE OF FLORIDA

COUNTY OF ORANGE

The foregoing instrument was acknowledged before me by means of ☐ physical presence or ☐ online notarization, this _____ day of _____, 2024, by John G. Noonan as Bishop of the DIOCESE OF ORLANDO a corporation sole, the party on behalf of whom this instrument was executed.

(SEAL)

Notary Public, State of Florida
(SEAL)

Notary: Check one of the following:

____ Personally Known OR

____ Produced Identification (if this box is checked, fill in blank below).

Type of Identification Produced: _____

4869-8637-0255.3
4869-8637-0255.5

Grant of Temporary Construction Easement

Project: State Road 200 Septic to Sewer Conversions, Queen of Peace Catholic Church

Property Appraiser's Parcel ID Number(s) #: 35485-003-00, 35485-003-02

EXHIBIT A

Easement Area

[to be agreed upon between the parties and inserted herein following County's design]