

## MEMORANDUM OF UNDERSTANDING

This Memorandum of Understanding, effective as of July \_\_\_, 2009, is entered into among and between Della Steele, Georgia Benton, Charles and Judy Roberts, Wilbert Hurst, Glenn Steele, the North Port Wentworth Citizens Council ("Plaintiffs"), and the City of Port Wentworth ("City" or "Defendant") (collectively, the "Parties"), by and through their respective undersigned attorneys.

NOW THEREFORE, the Parties have agreed, as follows:

1. The Parties have reached an agreement providing for the settlement of the claims and potential claims arising from or relating to the allegations contained in the Complaint in the matter entitled *Steele, et al. v. City of Port Wentworth*, No. CV405-135, Appeal No. 08-11958-DD, on the terms and subject to the conditions set forth below in this Memorandum of Understanding ("Memorandum of Understanding").

2. **Jeffers/Colbrook Road:** Within 90 days of the signing of this Memorandum of Understanding, the City shall file a declaratory judgment action (or other appropriate action) in Chatham County Superior Court in which that Court will be asked to determine: (1) the owner(s) of Jeffers/Colbrook Road, (2) who may use the road to access property, (3) whether the road is public or private, and (4) the nature of any obligations the City has regarding the road. The parties shall request that a Special Master be appointed to the aforementioned declaratory judgment action. The City shall name as parties to such action all owners of property adjacent to Jeffers/Colbrook Road. Each party to such action may hire the counsel of his/her choice to represent them in this action. The City is not requested to and does not warrant or guarantee the outcome of the declaratory judgment action.

3. **Maintenance of Roadside Ditches:** The City shall maintain the roadside ditches on Berrien Road, Saussy Road and Montieth Road in the same manner and with the same frequency as the roadside ditches adjacent to other public roads within the City of Port Wentworth. It is hereby agreed that this requirement shall be deemed satisfied if the City maintains said ditches by cleaning them of debris once per year or with any other frequency that may be established through current or subsequent City policy or code, and by performing additional maintenance as necessary to remove obstructions. Plaintiffs shall assist the City in identifying the need for additional maintenance by contacting the City's public works department.

4. **Water Services:** The City shall install water lines and provide access to water service to homes currently located on Berrien Road, Saussy Road, Grant Road (including Richmond Baptist Church) and the homes on the west side of Highway 21 which are located between Richmond Baptist Church and Saussy Road ("Hwy 21 homes") (collectively referred to as the "Roads") within 16 months from the date that all of the following conditions are met:

(a) The owners of seventy-five per cent (75%) of all homes on the Roads commit in writing to subscribe to City water service by executing the form attached hereto as Exhibit "A". Due to engineering issues, in order to provide the Hwy 21 homes with City water service, owners of 75% of the homes on Berrien Rd. or Saussy Rd. must commit to such service (in addition to the commitment of owners of 75 % of the Hwy 21 homes). Due to engineering issues, in order to provide the Grant Road homes with City water service, owners of 75% of the homes on Saussy Rd. must also commit to such service (in addition to the commitment of owners of 75 % of the Grant Road homes); and

(b) The City receives all needed utility easements to install water lines. Plaintiffs agree to obtain and deliver such utility easements to the City. The City agrees to draft the utility easements and provide a copy of the engineering plans showing the infrastructure to be located on the residents' property (drawings plus any explanatory narrative) for the utility installation project to Plaintiffs as necessary to enable each homeowner to anticipate the impact of the project upon his/her property; and

(c) The following conditions for water service installation are satisfied:

i. All property owners having property adjacent to the Roads and through which water and sewer lines must be constructed shall provide a limited utility easement to the City for the installation and maintenance of water and sewer lines and stormwater drainage facilities. The dimensions of the easements shall be as follows: thirty (30) feet as measured from the center line of the adjacent road (for a total width of sixty (60) feet) and a maximum total length equal to the length of the property owner's road frontage; and

ii. The residents who agree to accept water service shall pay fees as outlined by the municipal code. The City shall not charge residents aid-to-construction fees for service to existing residential structures; and

iii. When installing the water lines, the City and its engineers shall take into consideration the current placement of the residents' existing utilities and utility lines (i.e. septic systems) so as to minimize interference with the residents' usage of those utilities; and

iv. If any erected structure falls within the area of the utility easement, the City and its engineers shall work with the individual property owner(s) in an effort to prevent damage to the structure and the City shall require that its contractors or sub-contractors have

sufficient insurance to cover repairs to or replacement of an erected structure in the event of physical damage to the erected structure; and

v. The City shall install water lines and laterals to a meter box located on or near the property owner's land (within ten feet). Each property owner shall be responsible for extending and connecting its existing plumbing to the meter box and for the cost of extending and connecting their existing plumbing to the meter box; and

vi. The City's obligation to install water lines and provide access to water service to homes currently located on the Roads shall expire if the provisions of paragraph 4(a) are not satisfied within 180 days of the parties' execution of this document; and

vii. The City shall provide a legal description of the required utility easements within thirty (30) days of Plaintiffs' satisfaction of the provisions of paragraph 4(a). Plaintiffs will provide executed easements within one hundred twenty (120) days of receipt of the legal description of the utility easement from the City. Failure of Plaintiffs to provide the executed easements within this time frame will result in the expiration of the City's obligations under paragraph 4; provided, however that the City may provide Plaintiffs with one 120 day extension. The parties shall diligently attempt to resolve any unforeseen obstacle to the acquisition of utility easement (such as death, debilitating illness, or action to clear title) as to a particular property owner. Under no circumstance shall the City be compelled to condemn property required for the utility easement. If any disputes arise regarding the City's legal description of the easement that cannot be resolved during the above described timeframes, the parties shall employ the Informal Resolution Process herein described; and

viii. It is expressly agreed and understood that the City will not be required to purchase or condemn the required utility easements.

5. **Sewer Service:** The City shall install sanitary sewer lines hereinafter referred to as “the project” and provide access to City sewer service to homes currently located on Berrien Road, Saussy Road, Grant Road (including Richmond Baptist Church) and the homes on the west side of Highway 21 which are located between Richmond Baptist Church and Saussy Road (“Hwy 21 homes”) (collectively referred to as the “Roads”) within 16 months from the date that all of the following conditions are met:

a. The City receives grant money which fully funds the project (“fully funds” is defined as the cost of materials, labor, and engineering) and the owners of seventy-five per cent (75%) of all homes on the Roads commit in writing to subscribe to City water **and** sewer service by executing the form attached hereto as Exhibit “A”. Due to engineering issues, in order to provide the Hwy 21 homes with City sewer service, owners of 75% of the homes on Berrien Rd. or Saussy Rd. must commit to such service (in addition to the commitment of owners of 75 % of the Hwy 21 homes). Due to engineering issues, in order to provide the Grant Road homes with City sewer service, owners of 75% of the homes on Saussy Rd. must also commit to such service (in addition to the commitment of owners of 75 % of the Grant Road homes); and

b. If the provisions of paragraphs 4(b), 4(c)(i), 4(c)(vii) and 5(a) are satisfied, the City forthwith will seek grant funds earmarked solely for the installation of sewer lines to serve homes on the Roads, including but not limited to potential grant funding provided by GEFA and Federal stimulus grant funding. Plaintiffs and their counsel will cooperate and assist in providing required information to complete applications for grants. Plaintiffs acknowledge

that certain grants require applicants to provide personal information, including information regarding their household income. If such information is needed, Plaintiffs' counsel will obtain this information from the residents and provide it to the City. The City will provide copies of submitted funding applications and responses from funding sources to Plaintiffs' counsel; and

c. The property owners independently will assist the City in identifying applicable funding sources by providing information on potential funding sources to Plaintiffs' counsel. If Plaintiffs' counsel determines that the residents may qualify to receive such grants, Plaintiffs' counsel will forward this information to the City Attorney. The City, however, will not limit itself to pursuing funding sources recommended by the property owners; and

d. Upon notice of the project being fully funded ("fully funded" is defined as the cost of materials, labor, and engineering), the City shall proceed with plans to construct the project or provide to the Plaintiffs' counsel in writing the reason(s) why the City cannot proceed with constructing the project at that time and shall provide a written statement as to the estimated date when the project will be constructed. The City agrees to comply with the terms of the contract with the funding agency and the parties acknowledge that the terms of the contract with a funding agency may govern the timing of installation and other matters, and that the provisions of such a contract will control and take precedence over the terms of this Memorandum of Understanding; and

e. If the City submits to the Plaintiffs' counsel that it cannot proceed with construction after receiving the required funds, the residents retain the right to respond to the City's assertions using the Informal Resolution Process outlined in Section 6 of this Memorandum of Understanding; and

f. The parties acknowledge and agree that the provisions of paragraph 5 are contingent on available wastewater capacity, and the parties acknowledge that sufficient wastewater capacity is not or may not be currently available. The City shall reserve capacity for the property owners along the roads upon satisfaction of the conditions set forth in paragraph 5 (a) of this agreement; and

g. The parties acknowledge that the City's obligation is to install a sewer lateral and stub (within ten feet from the property line). If the impacts to private property as shown on engineering plans for installation of sewer service differ from those to provide water service, the City shall provide a copy of the engineering plans (drawings plus any explanatory narrative) for the utility installation project to Plaintiffs as necessary to enable each homeowner to anticipate the impact of the project upon his/her property. The property owner shall be responsible for extending and connecting its existing plumbing to the stub and the cost of extending and connecting its existing plumbing to the stub. All homeowners who commit to subscribe to City sewer service shall extend and connect existing plumbing to the stub within six (6) months of the City's completion of the installation of the sewer lateral and stubs; and

h. Once connected to the City sewer system, the homeowner shall disconnect and remove or render inoperable its septic tank in accordance with health department requirements; and

i. Plaintiffs acknowledge that pursuant to State and Federal law, any property owner whose home is located within 1000 feet of a municipality's sewer system stub can be compelled to connect to such sewer service; and

j. The City's obligation to install sewer lines and provide access to sewer service to homes currently located on the Roads shall expire if the provisions of paragraph 5(a) are not satisfied within 180 days of the parties' execution of this document.

6. **Provision of Water & Sewer Service to 7229 Highway 21:** Due to the distance between the existing residence located at 7229 Highway 21 (Parcel Identification Number 7-0976B-01-001A) and the Roads, the parties recognize that the provision of water and sewer services to 7229 Highway 21 may not be technologically feasible at this time. The City agrees to provide water and sewer service to 7229 Highway 21 as soon as access to water and sewer structures is feasible, under the same conditions outlined in Paragraphs 4(c)(i)-(v) and 5(f)-(i).

7. **Informal Resolution Process:** Before initiating an enforcement action, Plaintiffs' counsel shall provide the City of Port Wentworth and the City Attorney written notice of the dispute. After service of the notice, Plaintiffs, as applicable, their counsel, and the City shall schedule a telephone or in-person meeting to attempt to resolve any dispute. The City shall have thirty (30) days to resolve or cure any alleged breach. The Parties agree to cooperate with each other and use their best efforts to resolve any dispute that may arise. After sixty (60) days have passed without resolution or agreement to extend the time further, the Plaintiffs may petition a court of competent jurisdiction for compliance with the Memorandum of Understanding, seeking injunctive relief, including, but not limited to, the imposition of attorneys' fees and costs.

8. **Time Period:** The Parties agree that the Memorandum of Understanding shall be in force for no longer than five (5) years from the date of its execution.



9. **Parties Informed:** The Parties represent and warrant that they, with the assistance of legal advice from their attorneys, have fully informed themselves of the contents, terms and conditions of this Memorandum of Understanding, and that each of the attorneys executing this Memorandum of Understanding has been duly empowered and authorized to do so.

10. **Forum Selection and Choice of Law:** This Memorandum of Understanding is a product of negotiation and shall not be construed against any party and shall be governed by, construed, and interpreted in accordance with the laws of the State of Georgia, without regard to conflict of laws principles.

11. **Denial of Liability:** Neither the existence of this Memorandum of Understanding, nor the provisions contained herein shall be deemed a presumption, concession or admission of liability by Defendants on any claims asserted or which have been asserted by Plaintiffs, by any of the Parties, and shall not be interpreted, construed, deemed, invoked, offered or received in evidence or otherwise used by any person in any action or proceeding, other than to enforce the Memorandum of Understanding. The City of Port Wentworth denies any liability to Plaintiffs on the claims asserted in *Steele, et al. v. City of Port Wentworth*, No. CV405-135, Appeal No. 08-11958-D but has agreed to enter into this Memorandum of Understanding in the best interests of its citizens.

12. **Entirety of Agreement:** This Memorandum of Understanding constitutes the entire agreement between the parties as to the subject matter hereof, and may not be amended nor may any of its provisions be waived except in writing signed by all of the signatories hereto.

13. **Agreement Binding:** This Memorandum of Understanding shall be binding upon and inure to the benefit of the Parties and their respective agents, executors, heirs, successors, and assigns, subject to the conditions set forth herein.

14. **Complete Agreement:** This Memorandum of Understanding may be executed in one or more counterparts, all of which taken together shall constitute one agreement.


15. **Release and Indemnification:** All Plaintiffs and all persons represented by the NPWCC will execute the release and indemnification agreement attached as Exhibit B.

16. **Dismissal:** Plaintiffs agree to dismiss the case styled *Steele, et al. v. City of Port Wentworth*, No. CV405-135, Appeal No. 08-11958-DD with prejudice within fifteen (15) days of execution of the Memorandum of Understanding.

IN WITNESS WHEREOF, the Parties have executed this Memorandum of Understanding effective as of the date set forth below.

DATED: July 24, 2009

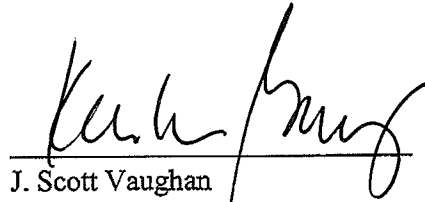
Savannah, Georgia



Patrick T. O'Connor  
Benjamin M. Perkins  
Oliver Maner & Gray LLP  
P.O. Box 10186  
Savannah, GA 31412  
(912) 236-3311

Eric R. Gotwalt  
Zipperer, Lorberbaum & Beauvais  
301 West York Street  
Savannah, GA 31401  
(912) 232-3770

*For the City of Port Wentworth*



J. Scott Vaughan  
ROYAL & VAUGHAN LLC  
340 Eisenhower Drive  
1301 Central Park  
P.O. Box 14664  
Savannah, GA 31410

Keisha A. Gary  
DICKSTEIN SHAPIRO LLP  
1825 Eye Street, N.W.  
Washington, D.C. 20036  
(202) 420-2200

Audrey Wiggins  
LAWYERS' COMMITTEE FOR  
CIVIL RIGHTS UNDER LAW  
1401 New York Avenue, N.W.  
Suite 400  
Washington, D.C. 20005  
(202) 662-8600

*For Della Steele, Georgia Benton, Charles  
and Judy Roberts, Wilbert Hurst, Glenn  
Steele, and the North Port Wentworth  
Citizens Council*

## EXHIBIT A

I, \_\_\_\_\_ (write full name) am the owner of property located at \_\_\_\_\_ (write physical address). I am aware of the litigation filed by *Steele, et al. v. City of Port Wentworth*, No. CV405-135, Appeal No. 08-11958-DD. I understand that the Federal District Court granted summary judgment in favor of the City of Port Wentworth in this litigation. Plaintiffs have entered into an Agreement with the City of Port Wentworth to settle the case. Pursuant to the terms of the Agreement, the City of Port Wentworth will provide residents of Berrien Road, Saussy Road, Grant Road and certain residents of Highway 21 with access to City water and sewer service only if certain conditions are satisfied. Among the conditions are that the owners of 75% of the homes located on Berrien, Saussy, Grant and portions of Highway 21 must commit to subscribe to City water and sewer service. Residents of Grant Road may receive water and sewer services only if the owners of 75% of the homes on Saussy Road also subscribe. The described residents of Highway 21 may receive water and sewer services only if owners of 75% of the homes on Saussy or Berrien Roads also subscribe.

I understand that the City will be unable to provide sewer service unless construction of the necessary sewer lines can be fully funded through grants.

I understand that I will be asked to provide a utility easement next to the existing street to allow for the construction and installation of water and sewer lines and that if I refuse to provide an easement the City may be unable to provide water and sewer service to any resident on my street.

I understand that if I subscribe to City water and sewer service I will be responsible for the cost of extending and connecting my plumbing to the water meter box and City sewer stub.

I understand that if sewer is installed on one of the roads, the City may compel all property owners along the road to connect to City sewer.

For City sewer, I will be charged a base rate of \$11.04 plus \$2.76 for every 748 gallons.

For City water, I will be charged a base rate of \$9.29, plus \$1.18 for every 748 gallons. I understand that if my household uses more than 748 gallons of water per month, I may be charged at a higher rate.

I understand there may be increases in the monthly sewer and water charges in the future.

I understand I will also pay a one-time \$100.00 deposit and a tap-in fee for water and sewer (\$350.00 for water and \$250.00 for sewer) in order to receive City water and sewer.

I understand that with respect to the tap-in fees that I can pay the tap-in fee for each service (water or sewer) either as a one time payment when the service is provided or will be added to the monthly bill in twelve equal payments (\$29.17 for water; \$20.83 for sewer)

I have reviewed the attached sample bill for a family of four which, on average, uses an average 6,732 gallons of water and sewer per month. I understand that the attached bill does not guarantee the amount of my bill.

I certify that I have read the foregoing. By signing my name below, I hereby commit to subscribe to City water service.

\_\_\_\_\_

By signing my name below, I hereby commit to subscribe to City sewer service. I acknowledge that I must subscribe to water service in order to receive sewer service.

\_\_\_\_\_

Sworn to and subscribed before me  
this \_\_\_\_ day of \_\_\_\_\_, 2009.

\_\_\_\_\_

Notary Public

My commission expires \_\_\_\_\_.

EXHIBIT B

**RELEASE**

STATE OF GEORGIA        )

COUNTY OF CHATHAM    )

The undersigned, Della Steele, Georgia Benton, Charles and Judy Roberts, Wilbert Hurst, Glenn Steele, the North Port Wentworth Citizens Council, (the "Undersigned") and the City of Port Wentworth ("City") have executed a Memorandum of Understanding ("MOU"), the terms of which are incorporated herein by reference. The MOU is dated \_\_\_\_\_ and provides for the settlement of the claims and potential claims arising from or relating to the allegations contained in the Complaint in the matter entitled *Steele, et al. v. City of Port Wentworth*, No. CV405-135, Appeal No. 08-11958-DD. The City's execution of the MOU and agreement to comply with the terms of the MOU is accepted in full compromise, settlement, and satisfaction of, and as sole consideration for the final release and discharge of all actions, causes of action, claims and demands of every kind and type that now exist, or may hereafter accrue, known and unknown, against THE CITY OF PORT WENTWORTH, and THE GEORGIA INTERLOCAL RISK MANAGEMENT AGENCY (GIRMA), hereinafter referred to as Releasees, and their agents, attorneys, employees, officials, servants, heirs, executors, affiliates, parent and subsidiary corporations, associations, and partnerships, on account of damages to the person and property of the Undersigned, and any consequences flowing therefrom, as a result of certain events as alleged in that civil action filed by DELLA STEELE, GEORGIA BENTON, CHARLES ROBERTS, JUDY ROBERTS, WILBERT HURST, AND GLENN STEELE, on behalf of themselves and their heirs, executors, administrators, successors, and assigns and all others similarly situated; and the NORTH PORT WENTWORTH CITIZENS COUNCIL, INC. in the United States District Court for the Southern District of Georgia, Savannah Division, and the United States Court of Appeals for the 11th Circuit, known as case number CV405-135, Appeal No. 08-11958-DD (the subject lawsuit), and for which the Undersigned claim the above named parties or entities are legally liable in damages, which liability and damages are specifically denied and disputed.

The Undersigned warrant that no promise or inducement has been offered by the parties being released, except as herein set forth; that this release is executed without reliance upon any statement or representation by the person or parties released or their representatives, concerning the nature and extent of the damages and legal liability therefor; and that the Undersigned are of legal age, are legally competent to execute this release, and accept full responsibility for it, and;

THE UNDERSIGNED, WHO ARE OVER EIGHTEEN, HAVE READ THE FOREGOING RELEASE AND FULLY UNDERSTAND ITS TERMS and agree that the promises and assurances set forth in the Memorandum of Understanding is accepted knowingly and voluntarily and for the purpose of making full compromise, settlement and satisfaction of any and all claims, known and unknown, of the Undersigned against Releasees.

Witness the hand and seal of the Undersigned, this \_\_\_\_\_ day of \_\_\_\_\_, 2009.

Witnessed and approved by:

Attorney at Law

FEIN: \_\_\_\_\_ - \_\_\_\_\_

STATE OF GEORGIA        )

COUNTY OF CHATHAM    )

Before me, a Notary Public for and in the above-named County, personally appeared Della Steele, Georgia Benton, Charles and Judy Roberts, Wilbert Hurst, Glenn Steele, the North Port Wentworth Citizens Council, to me known to be the persons named herein, and executed the foregoing General Release and acknowledged that the release was executed the same as a free act and deed by them.

Notary Public

My Commission Expires: \_\_\_\_\_