

January 11, 2017

Office of Commission Clerk
Florida Public Service Commission
2540 Shumard Oak Boulevard
Tallahassee, FL 32399-0850

RE: Docket No. _____; Application of MSKP Town and Country Utility, LLC for Transfer of Water and Wastewater Facilities to Babcock Ranch Community Independent Special District in Charlotte and Lee County, Florida

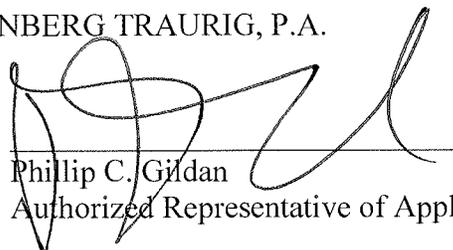
Attached for filing is MSKP Town and Country Utility, LLC Application for Transfer of Water and Wastewater Facilities to Babcock Ranch Community Independent Special District in Charlotte and Lee County, Florida, pursuant to §367.071(4)(a), Fla. Stat.

Should you or the Staff have any questions regarding this filing, please do not hesitate to give me a call.

Very truly yours,

GREENBERG TRAUIG, P.A.

By:



Phillip C. Gildan
Authorized Representative of Applicant

cc: Jonathan Johnson, Esquire
Hopping Green & Sams, P.A.
Authorized Representative of
Babcock Ranch Community Independent Special District

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

IN RE: Application of:
MSKP Town and Country Utility, LLC for the
Transfer of Water and Wastewater facilities to
Babcock Ranch Community Independent
Special District in Charlotte and Lee County,
Florida

DOCKET NO.: _____

**APPLICATION FOR TRANSFER OF WATER AND WASTEWATER
FACILITIES TO A GOVERNMENTAL AUTHORITY**

Applicant, MSKP TOWN AND COUNTRY UTILITY, LLC or (“Applicant”), by and through its undersigned attorneys, and pursuant to § 367.071, Fla. Stat., files this Application for Transfer of Facilities to a Governmental Authority and in support thereof states as follows:

1. Applicant operates under Water Certificate No. 618-W and Sewer Certificate No. 532-S in Charlotte and Lee County, Florida.
2. The name and address of Applicant and its authorized representatives, for purposes of this application, are:

MSKP Town and Country Utility, LLC
4500 PGA Boulevard
Suite 400
Palm Beach Gardens, FL 33418
Attn: Erica S. Woods, Esq.
(941) 235-6900

Authorized Representatives:
Phillip C. Gildan, Esquire
Greenberg Traurig, P.A.
777 So. Flagler Drive, Suite 300 East
West Palm Beach, FL 33401
561-650-7967 (telephone)
561-838-8867 (facsimile)
gildanp@gtlaw.com

3. The name and address of the governmental authority is the Babcock Ranch Community Independent Special District (the “District”) and its authorized representatives, for purposes of this application, are:

Babcock Ranch Community Independent Special District
c/o Fishkind & Associates
12051 Corporate Blvd
Orlando, FL 32817

Authorized Representative:
Jonathan Johnson, Esquire
Hopping Green & Sams, P.A.
119 South Monroe Street, Suite 300
Tallahassee, FL 32301
(850) 222-7500
jonathanj@hgslaw.com

4. The District is a unit of special-purpose government, created pursuant to Chapter 2007-306, Laws of Florida, as amended by Chapter 2016-257 Laws of Florida.

5. The District assumed operation, management and control of the utility on December 15, 2016. A copy of the document transferring operation, management and control of the utility to the District is attached as Exhibit “A” (the “Agreement”).

6. This Application must be approved as a matter of right as a sale to a governmental authority pursuant to §367.071(4)(a), Fla. Stat.

7. Subsequent to December 15, 2016, Applicant will retain control of no assets that would constitute a system providing or proposing to provide water or wastewater service to the public for compensation.

8. Prior to the transfer, the District obtained from Applicant its most recent available income and expense statement, balance sheet, statement of rate base for regulatory purposes, and contributions-in-aid-of-construction.

9. As of the transfer, the Applicant retained all closing accounts receivables and unbilled revenues for all service rendered prior to transfer. The Applicant does not hold any customer deposits.

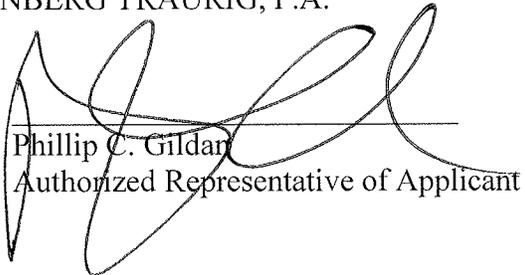
10. There are no fines owed relative to the Applicant's water and wastewater facilities at the date of transfer. Applicant will file a final Regulatory Assessment Fee Return with the Division of Administration of this Commission for the period through the date of transfer, December 15, 2016 prior to the Commission's approval of this Application.

WHEREFORE, the Applicant respectfully requests that this Commission approve the transfer of its water and wastewater facilities to the District as a matter of right and cancel the water and sewer certificate of this Applicant.

Respectfully submitted on this ____ day of January, 2017, by:

GREENBERG TRAURIG, P.A.

By:



Phillip C. Gildan
Authorized Representative of Applicant

WPB 383919292v2/107872.010200

EXHIBIT “A”

**WATER AND SEWER SYSTEM AND IRRIGATION QUALITY WATER SYSTEM
LEASE/OPTION TO PURCHASE AGREEMENT**

THIS WATER AND SEWER SYSTEM AND IRRIGATION QUALITY WATER SYSTEM LEASE/ OPTION TO PURCHASE AGREEMENT (“Lease”) is made and entered into as of the 15th day of December, 2016, by and between MSKP TOWN & COUNTRY UTILITY, LLC, a Delaware limited liability company authorized to do business in Florida (“T&C”) and BABCOCK RANCH IRRIGATION, LLC, a Delaware limited liability company authorized to do business in Florida (“BRI”), and BABCOCK RANCH COMMUNITY INDEPENDENT SPECIAL DISTRICT, a unit of special-purpose government, created pursuant to Chapter 2007-306, Laws of Florida, as amended by Chapter 2016-257 Laws of Florida (collectively, the “ISD Act”), as amended from time to time (the “District” or “Lessee”) to provide certain public services, including but not limited to water, wastewater and irrigation quality water service, within its boundaries. T&C, BRI and the District are collectively referred to herein as the “Parties.”

RECITALS

A. T&C is the owner of the System, except the Irrigation Quality Water System; BRI is the owner of the Irrigation Quality Water System; BRI is an affiliate of T&C.

B. The Legislature, in the ISD Act, provided “[t]he creation and establishment of the district will encourage local government financial self-sufficiency in providing public facilities and in identifying and implementing fiscally sound, innovative, and cost-effective techniques to provide and finance public facilities while encouraging development, use, and coordination of capital improvement plans by all levels of government, pursuant to chapter 187, Florida Statutes”; and

C. After a public hearing by the District, pursuant to Section 6, Subpart 7(b)(1) of the ISD Act, the District determined this Lease to be in the public interest, as an innovative and cost-effective technique to provide water, wastewater and irrigation quality water utility services within the District. T&C and BRI are willing to lease the System to the District with a purchase option/put option; and the District has agreed to enter into this Lease with T&C and BRI upon the terms and conditions set forth in this Lease. For purposes of this Lease, T&C and BRI shall collectively be referred to as “Lessors”, unless the context indicates reference to only T&C or BRI.

In consideration of the above Recitals and of the benefits to be derived from the mutual observation of the covenants and agreements contained in this Lease, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by all of the Parties to this Lease, the Parties agree to the following terms and provisions.

1. **RECITALS.** The foregoing Recitals are true and correct, and are incorporated in this Lease.

2. **LEASE OF SYSTEM; PURCHASE OPTION/PUT OPTION; OPERATION OF SYSTEM.** Lessors hereby lease to the District, and the District hereby leases from them, the

System, as defined below. Lessors further grant to the District a continuing purchase option (the “**Purchase Option**”) to require Lessors to sell all or parts of the System to the District at the price, and on the other terms, described in this Lease, including, but not limited to, **Exhibit B**; and the District further grants to Lessors a continuing sale option (the “**Put Option**”) to require the District to purchase all or part of the System from Lessors at the price and on the other terms described in the Lease, including, but not limited to, **Exhibit B** and the following:

2.1 Exercise. The District may exercise its Purchase Option from time to time by written notice to Lessors at any time after the Purchase Option Trigger Date, as defined on **Exhibit B**, and before the end of the Lease Term, as defined on **Exhibit C**. Lessors may exercise their Put Option from time to time by written notice to the District at any time during the Lease Term. The District shall continue to pay Rent, as defined on **Exhibit C** between the date of exercise of either the Purchase Option or the Put Option and Closing. In the event of a Partial Acquisition, the District shall continue to pay Rent on the remainder of the System after Closing on the Partial Acquisition.

2.2 Interest Conveyed. At such time as either the Purchase Option or the Put Option is exercised, Lessors will convey their Real Property interests to the District in fee. The easement rights of Lessors as to the System will be assigned to Lessee. A bill of sale or assignment, as applicable, for the remainder of the System will be delivered by Lessors to Lessee.

2.3 Partial Acquisition. At such time as either the Purchase Option or the Put Option is exercised, the exercising Party will designate whether it intends to purchase or sell the entire System, or only a portion thereof (a “**Partial Acquisition**”). In the event of a Partial Acquisition, the exercising Party must include with its Exercise Notice an engineering report confirming that both the portion of the System to be acquired, and the portion of the System which is not to be acquired are capable of separate, independent operation with applicable retained cross or reciprocal rights identified. Following a Partial Acquisition, the Purchase Option and the Put Option shall continue and remain in full force and effect with respect to any portion of the System which has not been acquired pursuant to the Partial Acquisition

3. LEASED ASSETS. Lessors lease to the District all of their right, title and interest in and to the following property and assets (which are sometimes collectively referred to as the “**System**” or the “**Leased Property**”).

3.1 Real Property. The interests of Lessors in the real property on which are located all water production, storage, treatment, transmission and distribution lines and facilities; wastewater treatment plants, wells, pumping stations, lines, and effluent disposal areas; irrigation quality water treatment, storage and distribution facilities; and all other water and wastewater service facilities of every kind and description whatsoever (whether fee title, easement interest or license interest), including without limitation all trade fixtures, improvements, pumps, generators, controls, pipes, mains, valves, meters, and all other water, wastewater and irrigation quality water physical facilities and property installations in use in connection with the utility business of Lessors, or later added to the System during the term of this Lease, which are affixed on the real property (collectively the “**Real Property**”). The Real Property is generally comprised of (a) water treatment plant sites, wastewater treatment plant sites, storage tank sites;

storage, retention and disposal ponds, irrigation quality water storage and pumping facilities sites (collectively, the “**Plant Sites**”), and (b) well sites, lift and pump station sites (the “**Well and Pump Station Sites**”). The current legal description of the Plant Sites is set forth on **Exhibit A-1** to this Lease. The current locations of the Well and Pump Station Sites are set forth on **Exhibit A-2** to this Lease. The descriptions of “Real Property” on **Exhibit A-1** and **Exhibit A-2** shall be adjusted by Lessors automatically during the term of this Lease for any additions or subtractions to the Real Property with Notice to District. The District acknowledges that title to the Plant Sites to be conveyed upon the exercise of either the Purchase Option or the Put Option by special warranty deed subject to those matters identified on **Exhibit A-3** attached hereto (the “**Existing Exceptions**”) and other title exceptions arising in the ordinary course of business. The District acknowledges that title to the Well and Pump Station Sites to be conveyed upon exercise of either the Purchase Option or the Put Option shall be conveyed “as is” by quit claim deed, subject to the Existing Excepts and other title exceptions arising in the ordinary course of business.

3.2 Equipment. All equipment, vehicles, tools, parts, laboratory equipment, office equipment, inventory and other personal property owned by Lessors and utilized exclusively in connection with the Real Property, or later added during the term of this Lease (collectively, the “**Equipment**”).

3.3 Lines. All water, sewer, and irrigation quality water transmission mains, force mains, distribution lines, collection lines, meters, meter boxes, connections and other related personal property owned by Lessors and utilized exclusively in connection with the Real Property, or later added during the term of this Lease (collectively, the “**Lines**”).

3.4 Easements. All rights, privileges, easements, licenses, permits, prescriptive rights, dedications, rights-of-ways, and rights to use public and private roads, highways, alleys, streets, and other areas acquired or held by Lessors in connection with the ownership, construction, reconstruction, installation, maintenance and operation of the System utilized in connection with their utility business, or later added during the term of this Lease (collectively, the “**Easements**”). The District acknowledges that the Easements to be conveyed upon the exercise of either the Purchase Option or the Put Option shall be conveyed “as is” by quit claim deed subject to the Existing Exceptions and other title exceptions arising in the ordinary course of business.

3.5 Records. All current customer and supplier lists and records, as-built surveys and sewer and water plans, plats, engineering and other drawings, designs, blueprints, plans and specifications, computer software, accounting and customer records and all other information and business records in the possession of Lessors that relate to the construction, operation and maintenance of the System or later added during the term of this Lease (collectively, the “**Records**”). Lessors may make copies of the Records, at their expense, before transferring the originals and copies of the Records to the District.

3.6 Permits and Approvals. Subject to all necessary regulatory approvals, if any, and to all conditions, limitations or restrictions contained therein, all existing permits or other governmental authorizations and approvals of any kind in the possession of Lessors or later

added during the term of this Lease required or necessary to construct, operate and maintain the System in accordance with all governmental requirements (collectively, the “**Permits**”).

3.7 Computer Software. Subject to all applicable licensing agreements and to all applicable copyright laws, computer software which is or was used in the course of the day to day operations of System by Lessors for the System, including but not limited to non-proprietary billing and accounting computer programs or later added during the term of this Lease (collectively, the “**Software**”).

3.8 Improvements. All improvements, additions and expansions to the System during the term of this Lease and any extended lease term, including, but not limited to, Real Property, Equipment, Lines, Easements, Permits, Records and Software shall be considered part of the System, shall immediately become subject to the terms of this Lease, and shall be surrendered to Lessors upon the expiration or termination of this Lease. To implement the terms of this provision, all Real Property, Lines, Equipment and Easements (except related to the irrigation quality water system) received by the District during the term of this Lease and any extended Lease Term as Contributions-In-Aid-Of-Construction (“**CIAC**”) or otherwise acquired by the District for use in connection with the System shall be received by the District for the benefit of T&C and shall be titled in the name of T&C and be deemed part of the System leased to the District; and all Real Property, Equipment, Lines, Easements, Permits, Records and Software related to the irrigation quality water system shall be received by the District for the benefit of BRI and shall be titled in the name of BRI.

4. FURTHER PURCHASE OPTION/PUT OPTION TERMS. The Purchase Option/Put Option between Lessors and the District is further governed by the provisions of the Purchase Option/Put Option Terms attached to and incorporated in this Lease as **Exhibit B**.

5. FURTHER LEASE PROVISIONS. The lease of the System to the District is further governed by the terms and conditions of the Lease Agreement Terms attached to and incorporated in this Lease as **Exhibit C** (the “**Lease Terms**”).

6. CONTROL, MANAGEMENT AND OPERATION OF SYSTEM. For the term of the Lease, the District shall control, manage and operate the System and provide water, sewer and irrigation quality water service to the Community, as defined in **Exhibit C**, pursuant to the terms of the Lease. The District shall be responsible for and have complete discretion over, without the approval or consent of Lessors, establishing and revising from time to time the rates, fees and charges for water, sewer and irrigation quality water service provided to the District’s utility customers, the level of services provided, and the customer service and extension policies for providing and extending service to the District’s utility customers.

7. REPRESENTATIONS AND WARRANTIES OF LESSORS. T&C and BRI each represents and warrants to the District that as of the date of this instrument the following are true and correct:

7.1 Organization, Standing and Power. T&C is a Delaware limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware, and is qualified to do business in Florida. T&C has all requisite power and authority

to own, lease and convey its properties and interests in the System, and to conduct its business as it is currently being conducted. BRI is a Delaware limited liability company duly organized, validly existing and in good standing under the laws of the State of Delaware, and is qualified to do business in Florida. BRI has all requisite power and authority to own, lease and convey its properties and interests in the System, and to conduct its business as it is currently being conducted

7.2 Authority for Lease. T&C and BRI have the power and authority to execute and deliver this Lease and to carry out each of its obligations hereunder. This Lease has been duly authorized by all action required to be taken by T&C and BRI, has been duly executed and delivered by them, and constitutes a valid and legally binding obligation of T&C and BRI, enforceable in accordance with its terms, except as enforceability may be limited by bankruptcy and similar statutory matters.

7.3 Litigation. There are no actions, suits, or proceedings at law or in equity, pending against it before any federal, state, municipal or other court, administrative or governmental agency or instrumentality, domestic or foreign, which affect all or any part of the System or that Lessors's right and ability to make and perform this Lease; nor are Lessors aware of any facts which to its knowledge are likely to result in any such action, suit or proceeding. To the best knowledge of each of the officers of T&C and BRI, Lessors are not in default with respect to any order or decree of any court or of any administrative or governmental agency or instrumentality affecting the System.

7.4 FIRPTA. Each of T&C and BRI is a United States tax payer. Neither of T&C nor BRI is a "foreign person" within the meaning of the United States tax laws and to which reference is made in Section 1445(b)(2) of the Internal Revenue Code.

7.5 No Governmental Violations. Neither T&C nor BRI is aware and nor has been notified of the existence of any violations of any governmental rules, regulations, permitting conditions or other governmental requirements applicable to the ownership, maintenance or operation of the System.

7.6 Disclosure. To the best of T&C's and BRI's knowledge, no representation or warranty made by it in this Lease contains or will contain any untrue statement of material facts or omits or will omit to state any material fact required to make the statements, on T&C's or BRI's behalf, herein contained not misleading.

7.7 Survival of Covenants. T&C and BRI each acknowledges that its representations and warranties set forth in this Lease are true and correct as of the date of the execution hereof, but undertakes no obligation to update the representations and warranties during the term of the Lease. The District acknowledges and agrees that, except for the specific representations made by T&C and BRI in this Lease, T&C and BRI have made no representations, are not willing to make any representations, nor hold out any inducements to the District other than those (if any) set forth expressly in this Lease; neither T&C nor BRI is and shall be liable or bound in any manner by any express or implied warranties, guaranties, statements, representations or information pertaining to the System, except as may be

specifically set forth in this Lease. The provisions of **Exhibit B**, and other matters related to the Purchase Option/Put Option shall, however, continue according to their terms.

8. **REPRESENTATIONS AND WARRANTIES OF THE DISTRICT.** The District represents and warrants to Lessors:

8.1 **Organization, Standing and Power.** The District is a local unit of special-purpose government duly chartered and validly existing under the laws of the State of Florida and has all requisite power and authority to enter into this Lease, to own and lease real and personal property, and to carry out and perform the terms and provisions of this Lease.

8.2 **Authority for Lease.** The District has the authority and power to execute and deliver this Lease and to carry out its obligations under this Lease. The District has or will hold all of the necessary public hearings to authorize the purchase and sale of all or part of the System in the event from time to time either the Purchase Option or the Put Option is exercised. This Lease has been duly authorized by action required to be taken by the District, has been duly executed and delivered by the District, and constitutes a valid and legally binding obligation of the District, enforceable in accordance with its terms except as enforceability may be limited by bankruptcy and similar statutory matters.

8.3 **No Governmental Violations.** To the best of its knowledge, the District is not aware and has not been notified of the existence of any violations of any governmental rules, regulations, permitting conditions or other governmental requirements applicable to the ownership, maintenance or operation of the System.

8.4 **Disclosure.** To the best of the District's knowledge, no representation or warranty made by the District in this Lease contains or will contain any untrue statement of material facts or omits or will omit to state any material fact required to make the statements herein contained not misleading.

8.5 **Litigation.** To the best of the District's knowledge, there are no actions, suits, or proceedings at law or in equity, pending or threatened against the District before any federal, state, municipal or other court, administrative or governmental agency or instrumentality, domestic or foreign, which affect the District's right and ability to make and perform this Lease; nor is the District aware of any facts which to its knowledge are likely to result in any such action, suit or proceeding. To the best of the District's knowledge, the District is not in default with respect to its obligations under any indenture, resolution, or any order or decree of any court or of any administrative or governmental agency, which may affect the District's ability to perform its obligations under the terms of this Lease.

8.6 **Inspection of the System.** By the time of a Closing pursuant to **Exhibit B**, the District shall have reviewed and considered the nature of the transaction and thoroughly investigated that part(s) of the System to be acquired by the District, including, without limitation, the physical, environmental, zoning, and land use conditions of the System and the use and operation thereof, and all aspects of this transaction; the District shall have determined that the part(s) of the System to be acquired by the District is/are satisfactory to the District in all respects; the District shall rely solely on the District's own independent investigations and

inspections, and the District shall not rely on any representation of Lessors other than as expressly set forth in this Lease.

9. **COMMISSIONS.** Lessors and the District warrant to the other that the transaction contemplated by this Lease is a direct, private transaction between Lessors and the District without the use of a broker or commissioned agent.

10. **FURTHER ASSURANCES.** Each of the Parties hereto agrees that, from time to time, upon the reasonable request of any other Party and at the expense of the requesting Party, without further consideration, it shall execute and deliver to the requesting Party any and all further instruments, affidavits, conveyances, transfers or consents as may be reasonably required to carry out the provisions of this Lease.

11. **NOTICES; PROPER FORM.** Any notices required or allowed to be delivered under this Lease shall be in writing and may either be (1) hand delivered, (2) sent by nationally recognized overnight delivery service (such as Federal Express) which gives a return receipt, (3) mailed by certified or registered mail, return receipt requested, in a postage prepaid envelope; (4) sent via facsimile transmission with a written delivery confirmation; or (5) sent electronically with a receipt record and addressed to a Party at the email address to be provided by each Party, or at such other address of which the other Party shall have been duly notified.

District:
Babcock Ranch Community Independent Special District
12051 Corporate Blvd
Orlando, FL 32817
Attn: District Manager

with a copy to:
Hopping Green & Sams, P.A.
119 S. Monroe Street, Suite 300
Tallahassee, FL 32301
Attn: Jonathan Johnson

Lessors:
MSKP Town and Country Utility, LLC
11390 Palm Beach Boulevard, Suite 204
Fort Myers, FL 33905
Attention: President

with a copy to:
Greenberg Traurig, P.A.
777 So. Flagler Drive, Suite 300 East
West Palm Beach, FL 33401
Attn: Phillip C. Gildan, Esq.

Notices shall be deemed given on receipt or refusal of delivery.

12. **DISCLAIMER OF THIRD PARTY BENEFICIARIES.** This Lease is solely for the benefit of the Parties to it, and no right or cause of action shall accrue upon or by reason of this Lease, to or for the benefit of any third party not an actual party to this Lease.

13. **WAIVER TRIAL BY JURY.** IT IS MUTUALLY AGREED BY AND BETWEEN ALL PARTIES TO THIS AGREEMENT THAT FOR THOSE MATTERS SUBJECT TO LITIGATION UNDER SECTION 14, THEY SHALL AND THEY HEREBY DO WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING, OR COUNTERCLAIM BROUGHT BY EITHER ANY OF THEM AGAINST THE OTHER ON ANY MATTERS ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT, INCLUDING, BUT NOT LIMITED TO, THE LEASE AGREEMENT, THE PUT OPTION/PURCHASE OPTION, THE RELATIONSHIP OF THE PARTIES, AND/OR THE DISTRICT'S USE OF OR OCCUPANCY OF THE SYSTEM. THE DISTRICT FURTHER AGREES THAT IT SHALL NOT INTERPOSE ANY COUNTERCLAIM OR COUNTERCLAIMS (EXCEPT COMPULSORY COUNTERCLAIMS) IN ANY SUMMARY PROCEEDING OR IN ANY ACTION BASED UPON NONPAYMENT OF RENT OR ANY OTHER PAYMENT REQUIRED BY THE DISTRICT UNDER THIS LEASE, INCLUDING THE LEASE TERMS.

14. **MANDATORY DISPUTE RESOLUTION.**

14.1 **Parties to Avoid Litigation; Exceptions.**

(a) Subject to the provisions of subsections 15.2 and 15.3 below, any claim, counter-claim, action, dispute or controversy (a "Dispute") between the Parties on any matters arising out of or in any way connected with this Lease, including, but not limited to, the Lease Terms, the Put Option/Purchase Option, the relationship of the Parties, and/or the District's use of or occupancy of the System shall be resolved by binding arbitration pursuant to the Revised Florida Arbitration Code, Chapter 682, Florida Statutes, as amended from time to time, and as otherwise set forth herein. As to all such Disputes, the Parties specifically waive their right to seek remedies in court. Except for matters relating to the arbitrability or to the scope or enforceability of the arbitration provision, all issues are for the arbitrator to decide.

(b) The mandatory mediation and arbitration procedures set forth in this Section shall not be applicable to the following (i.e., arbitration shall not be required and the parties shall not be deemed to have waived the right to seek remedies in court or the right to a jury trial):

(i) any proceedings initiated by Lessors to collect unpaid amounts;

(ii) any suit by a Party to obtain a temporary restraining order or injunction (or equivalent emergency equitable relief) and such other ancillary relief as the court may deem necessary in order to maintain the status;

(iii) any suit that otherwise would be barred by any applicable statute of limitations; or

- (iv) any Disputes related to or concerning personal injuries.

14.2 Notice and Opportunity to Remedy.

(a) At least ninety (90) days before bringing or initiating an arbitration action, or action in court, relating to a Dispute between the Parties required to be mediated and arbitrated under this Section, the Party bringing the Dispute (the "Claimant") must give written notice to the other Party (a "Notified Party"), specifying in reasonable detail the nature of the Dispute and the basis of the action unless the parties agree otherwise. "Reasonable Detail" includes a detailed and itemized list that describes each alleged Claim or defect. For construction defect Disputes, the Claimant shall describe the location that each alleged defect has been observed.

(b) After receipt of the notice described above, the Notified Party may inspect the any portion of the System, where applicable, to determine the nature of the Dispute and the nature and extent of any actions necessary to remedy the alleged Dispute. The Claimant shall ensure that the portion of the properties is made available for inspection no later than ten (10) days after the Claimant receives the Notified Party's request for an inspection.

(c) Within sixty (60) days after receipt of the notice described above, the Notified Party shall send to the Claimant a good faith written response to the Claimant's notice by certified mail, return receipt requested. The response may include an offer to remedy the Dispute or to provide monetary compensation to the Claimant ("Initial Offer"). The Initial Offer shall describe in reasonable detail all remedies that the Notified Party is offering to make or provide.

(d) If a Notified Party does not provide a written response to the Claimant's notice within sixty (60) days, the Claimant may initiate mediation without waiting for the expiration of ninety (90) days as required above in (a) of this subsection.

(e) Within twenty (20) days after receipt of the Notified Party's Initial Offer, the Claimant shall provide a good faith written response. A Claimant who accepts a Notified Party's Initial Offer shall do so in writing by certified mail, return receipt requested. A Claimant who rejects a Notified Party's Initial Offer shall respond to the Notified Party in writing by certified mail, return receipt requested. The response shall include the specific factual basis for the Claimant's rejection of a Notified Party's offer and the Claimant's counteroffer, if any. Within ten (10) days after receipt of the Claimant's response, the Notified Party may make a best and final offer to the Claimant in writing by certified mail, return receipt requested.

(f) If Claimant rejects a Notified Party's best and final offer, it must do so in writing by certified mail, return receipt requested. Upon rejection of the best and final offer, Claimant may initiate arbitration.

(g) Claimant's strict compliance with the foregoing tolls applicable statutes of limitation and repose until the earliest of (i) ninety (90) days after a Notified Party receives Claimant's notice, (ii) a Notified Party fails to make an Initial Offer within sixty (60) days of Claimant's notice, or (iii) when a Notified Party makes its best and final offer.

14.3 Mediation. In an attempt to conserve costs and as a condition precedent to arbitration, or any other action in court, a Dispute required to be mediated and arbitrated under this Section shall first be mediated in private mediation, unless the Dispute Parties mutually agree otherwise. The Claimant and each Notified Party shall equally share the costs of mediator and mediation process. The mediation proceedings shall be held at a mutually agreed upon location.

14.4 Arbitration.

(a) If any Dispute required to be mediated cannot be resolved by mediation, or if the Claimant and Notified Party mutually agree that mediation is not necessary, arbitration may be initiated by the Claimant or Notified Party sending a written demand for arbitration to the other Party within a reasonable time period, subject to applicable statutory requirements for construction disputes, where applicable. In no event shall the demand for arbitration/mediation be made after the date when institution of legal or equitable proceedings based on such Dispute would be barred by the applicable statute of limitation or repose, except where such applicable statute provides for tolling of the statute of limitations. The demand for arbitration must sufficiently outline the nature of the Dispute and the remedy sought. Unless the Claimant and Notified Party agree otherwise, the following procedures shall apply to the selection of arbitrators: within fifteen (15) days following receipt of a written demand for arbitration, the parties shall exchange a list of up to five (5) potential arbitrators, each of whom shall be a current member in good standing of the State Bar of Florida. Within fifteen (15) days following such exchange, the parties shall mutually select one (1) arbitrator from the list of potential arbitrators, which sole arbitrator shall be deemed approved by both parties unless a conflict is found to exist. If the parties are unable to agree on an arbitrator after engaging in a good faith attempt to do so, the parties shall submit the matter to the American Arbitration Association, who will then appoint an arbitrator to conduct the arbitration. The arbitration proceedings shall be held at a location mutually agreeable to the Parties.

(b) The arbitrator shall apply the substantive laws of the State of Florida and shall include findings of fact and conclusions of law in his or her ruling. The parties agree the results of an arbitration proceeding shall not have any preclusive effect on any other arbitration, unless the identity of the parties remains the same.

14.5 Expenses. Each Party shall bear the expense of its respective attorneys' fees and costs incurred related to any mediation, arbitration or court action regardless of which party prevails in such mediation, arbitration or court action.

14.6 Requirements of Arbitrator. The arbitrator shall (i) not have the authority to modify, alter, amend, or reform this Section; (ii) not have the authority to disregard or refuse to apply applicable law; (iii) not exceed or increase the scope of their authority outlined herein; (iv) conduct the arbitration in compliance with the Revised Florida Arbitration Code; or (v) not award attorneys' fees and costs to a prevailing party.

15. TIME OF THE ESSENCE. Time is hereby declared of the essence in the performance of this Lease.

16. **NO PARTNERSHIP.** Lessors shall not be deemed, in any way or for any purpose, to have become, by the execution of this Lease or any of the provisions of this Lease, or any action taken under this Lease, partner(s) with the District, in the District's business or otherwise, or a member of any joint enterprise or venture with the District.

17. **ASSIGNMENT.** The District may assign its rights hereunder to any other governmental entity with written notice to Lessors, but shall not otherwise be entitled to assign its rights hereunder without the prior written consent of Lessors, which consent may be withheld by Lessors in their sole, absolute and unfettered discretion, and whether or not the withholding of such consent is arbitrary. Each of T&C and BRI may assign its rights hereunder with written notice to the District.

18. **RADON GAS.** Pursuant to Section 404.056(5), Florida Statutes, Lessors make, and the District acknowledges, the following notification:

RADON IS A NATURALLY OCCURRING RADIOACTIVE GAS THAT, WHEN IT HAS ACCUMULATED IN A BUILDING IN SUFFICIENT QUANTITIES, MAY PRESENT HEALTH RISKS TO PERSONS WHO ARE EXPOSED TO IT OVER TIME. LEVELS OF RADON THAT EXCEED FEDERAL AND STATE GUIDELINES HAVE BEEN FOUND IN BUILDINGS IN FLORIDA. ADDITIONAL INFORMATION REGARDING RADON AND RADON TESTING MAY BE OBTAINED FROM YOUR COUNTY PUBLIC HEALTH UNIT.

19. **MISCELLANEOUS.**

19.1 **Florida Law.** This Lease has been negotiated and executed in Florida; it shall be construed and governed in accordance with the laws of the State of Florida, without application of conflicts of laws principles. Venue for any action arising hereunder, whether legal or equitable, by litigation, mediation or arbitration, shall lie only in Charlotte County, Florida.

19.2 **Attorneys' Fees.** In the event of any litigation, mediation or arbitration between the Parties under this Lease, each Party shall bear its own attorneys' fees and costs. Wherever provision is made in this Lease for "attorneys' fees," such term shall be deemed to include accountants', experts', attorneys' fees, paralegals and similar persons, and court costs, whether or not litigation is commenced, including those for appellate proceedings and for collection.

19.3 **Participation.** Each Party has participated fully in the negotiation and preparation of this Lease with full benefit of counsel. Accordingly, this Lease shall not be more strictly construed against either Party.

19.4 **Gender and Number.** Whenever used in this Lease, the singular shall include the plural, the plural shall include the singular, any gender shall include every other and all genders.

19.5 **Captions.** The captions in this Lease are for convenience and reference only and shall not be deemed to alter any provision of this Lease.

19.6 Time. Any reference in this Lease to time periods less than six (6) days shall, in the computation thereof, exclude Saturdays, Sundays, and legal holidays; any time period provided for in this Lease which shall end on a Saturday, Sunday or legal holiday shall extend to 5:00 p.m. on the next full business day.

19.7 Exhibits. All references in this Lease to exhibits, riders, schedules, paragraphs, subparagraphs and sections refer to the respective subdivisions of this Lease, unless the reference expressly identifies another document. All exhibits, schedules and riders to this Lease, and their exhibits, schedules and riders, are incorporated in this Lease.

19.8 Successors. All of the terms of this Lease shall be binding upon and shall inure to the benefit of the Parties to this Lease and their respective successors and assigns and legal representatives.

19.9 Handwritten Provisions. Typewritten or handwritten provisions which are signed by all Parties and dated as of the date they are inserted in or attached to this Lease as addenda or riders shall control all printed or pre-typed provisions of this Lease with which they may be in conflict.

19.10 Cumulative Remedies. All the rights and remedies of the Parties under this Lease or pursuant to present or future law shall be deemed to be separate, distinct, and cumulative. No one or more of them, whether exercised or not, nor any mention of or reference to any one or more of them in this Lease, shall be deemed to be in exclusion of, or a waiver of, any of the others, or of any of the rights or remedies which a Party may have under this Lease, at law, and/or in equity. A Party shall have, to the fullest extent permitted by law, the right to enforce any rights or remedies separately and to pursue any lawful action or proceedings to exercise or enforce any right or remedy without thereby waiving or being barred or estopped from exercising and enforcing any other rights and remedies by appropriate action or proceedings.

19.11 Waiver. No waiver by a Party of any breach by the District of any term or condition of this Lease, and no failure by the Party to exercise any right or remedy in respect of any such breach, shall constitute a waiver or relinquishment for the future, or bar any right or remedy of a Party in respect of, any other breach of such term or condition or any breach of any other term or condition of this Lease. No payment by the District or receipt of payment by Lessors of an amount less than the full amount then due Lessors under this Lease shall be construed as anything other than a partial payment of such sum then due and owing. No endorsement or statement on any check or letter or any form of payment or accompanying document shall be deemed to be an accord and satisfaction or other form of settlement; and Lessors may accept any such payment without prejudice to its rights to recover the balance of sums due and owing under this Lease or to pursue any other remedy permitted under this Lease.

19.12 Counterparts. This Lease may be executed and delivered in two or more counterparts, each of which shall be deemed to be an original and all of which, taken together, shall be deemed to be one agreement.

IN WITNESS WHEREOF the Parties, intending to be bound hereby, have executed this Lease on the dates indicated below.

Signed, sealed and delivered in the presence of:

(x) Ka Vitagliano
Name: Karen Vitagliano

(x) ES Woods
Name: Erica S Woods

Signed, sealed and delivered in the presence of:

(x) Ka Vitagliano
Name: Karen Vitagliano

(x) ES Woods
Name: Erica S Woods

ATTEST:

[Signature]
DISTRICT SECRETARY

T&C:

MSKP TOWN & COUNTRY UTILITY, LLC, a Delaware limited liability company

By: [Signature]
Its: President

BRI:

BABCOCK RANCH IRRIGATION, LLC, a Delaware limited liability company

By: [Signature]
Its: President

DISTRICT:

BABCOCK RANCH COMMUNITY INDEPENDENT SPECIAL DISTRICT

By: [Signature]
Its: Chairman

[

STATE OF FLORIDA

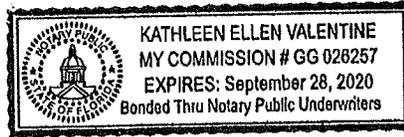
COUNTY OF Lee

The foregoing instrument was acknowledged before me this 3rd day of January, ²⁰¹⁷ 2016, by Richard P. Severance, as President of MSKP TOWN & COUNTRY UTILITY, LLC, a Delaware limited liability company, on behalf of said company. He is personally known to me or.

NOTARY PUBLIC

Kathleen Ellen Valentine
Name: Kathleen Ellen Valentine
State of Florida
My Commission Expires: 9/28/2020

(Seal)



[STATE OF FLORIDA

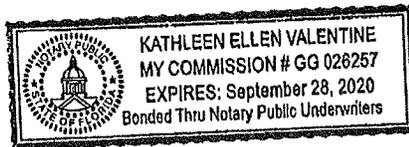
COUNTY OF Lee

The foregoing instrument was acknowledged before me this 3rd day of January, ²⁰¹⁷ 2016; by Richard P. Severance, as President of BABCOCK RANCH IRRIGATION, LLC, a Delaware limited liability company, on behalf of said company. He is personally known to me or.

NOTARY PUBLIC

Kathleen Ellen Valentine
Name: Kathleen Ellen Valentine
State of Florida
My Commission Expires: 9/28/2020

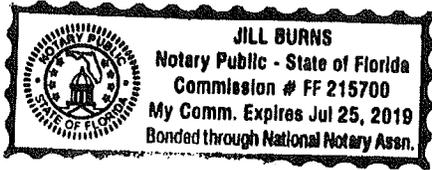
(Seal)]



STATE OF FLORIDA

COUNTY OF Charlotte

The foregoing instrument was acknowledged before me this 15th day of December, 2016, by Gary Nelson, as Chairman, and Hank Fishkind, as District Secretary of BABCOCK RANCH COMMUNITY INDEPENDENT SPECIAL DISTRICT, on behalf of said District. He is personally known to me or.



(Seal)

NOTARY PUBLIC

Jill Burns
Name: Jill Burns

State of Florida

My Commission Expires: 7-25-19

EXHIBIT A-1

LEGAL DESCRIPTION OF PLANT SITES

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LINE TABLE		
LINE	BEARING	DISTANCE
L1	S52°57'24"E	283.40
L2	S07°52'40"W	318.21
L3	S25°50'11"E	248.60
L4	S27°20'08"W	312.11
L5	S82°41'51"W	154.49
L6	S01°07'45"W	153.96
L7	S66°54'25"E	52.05
L8	N34°05'18"W	223.24
L9	N20°46'44"E	319.44
L10	N53°30'38"E	153.23
L11	S81°30'58"E	161.13
L12	N48°59'05"E	46.63
L13	N20°31'36"W	147.11
L14	N12°45'41"W	163.03
L15	N25°47'33"E	77.49
L16	N36°39'09"E	195.43
L17	N79°39'00"E	170.64
L18	N54°00'05"E	304.80
L19	N80°36'47"E	296.88
L20	N31°14'24"E	377.88
L21	N57°57'53"W	274.56
L22	N41°53'57"W	363.15
L23	N13°43'59"E	344.87
L24	N63°08'52"E	421.41
L25	N22°50'45"W	127.48
L26	S79°58'23"W	320.11
L27	N59°03'37"W	307.79
L28	N06°02'21"W	236.53
L29	N48°14'14"W	369.12
L30	S48°25'41"W	256.05
L31	S16°51'51"E	426.66
L32	S22°51'05"W	266.06
L33	S77°18'43"W	268.29
L34	N60°24'50"W	357.71
L35	S00°26'26"W	1370.27

This survey is incomplete and not valid without sheet 2 and 3 of 3.

CURVE TABLE					
CURVE	RADIUS	DELTA	CHORD BEARING	CHORD	LENGTH
C1	902.50	25°20'59"	S79°34'55"E	396.05	399.30

DESCRIPTION: Utility Site

A parcel of land lying in Section 19, Township 42 South, Range 26 East, Charlotte County, Florida, being more particularly described as follows:

Commencing at the Southwest corner of Section 31, Township 42 South, Range 26 East, Charlotte County, Florida; thence N00°36'46"E, along the West line of said section, a distance of 5337.20 feet to the Southwest corner of Section 30, Township 42 South, Range 26 East, Charlotte County, Florida; thence N00°26'10"E, along the West line of said section, a distance of 5282.29 feet to the Southwest corner of Section 19, Township 42 South, Range 26 East, Charlotte County, Florida; thence N00°31'45"E, along the West line of said section, a distance of 1391.85 feet; thence S89°28'15"E a distance of 604.34 feet to the Point of Beginning of the parcel of land herein described; thence S52°57'24"E a distance of 283.40 feet; thence S07°52'40"W a distance of 318.21 feet; thence S25°50'11"E a distance of 248.60 feet; thence S27°20'08"W a distance of 312.11 feet; thence S82°41'51"W a distance of 154.49 feet; thence S01°07'45"W a distance of 153.96 feet to the point of curve of a non tangent curve to the right; thence along the curve (said curve being curved concave to the south, having a central angle of 25°20'59" and a radius of 902.50 feet, with a chord bearing of S79°34'55"E and a chord length of 396.05 feet) a distance of 399.30 feet to the end of this curve; thence S66°54'25"E a distance of 52.05 feet; thence N34°05'18"W a distance of 223.24 feet; thence N20°46'44"E a distance of 319.44 feet; thence N53°30'38"E a distance of 153.23 feet; thence S81°30'58"E a distance of 161.13 feet; thence N48°59'05"E a distance of 46.63 feet; thence N20°31'36"W a distance of 147.11 feet; thence N12°45'41"W a distance of 163.03 feet; thence N25°47'33"E a distance of 77.49 feet; thence N36°39'09"E a distance of 195.43 feet; thence N79°39'00"E a distance of 170.64 feet; thence N54°00'05"E a distance of 304.80 feet; thence N80°36'47"E a distance of 296.88 feet; thence N31°14'24"E a distance of 377.88 feet; thence N57°57'53"W a distance of 274.56 feet; thence N41°53'57"W a distance of 363.15 feet; thence N13°43'59"E a distance of 344.87 feet; thence N63°08'52"E a distance of 421.41 feet; thence N22°50'45"W a distance of 127.48 feet; thence S79°58'23"W a distance of 320.11 feet; thence N59°03'37"W a distance of 307.79 feet; thence N06°02'21"W a distance of 236.53 feet; thence N48°14'14"W a distance of 369.12 feet; thence S48°25'41"W a distance of 256.05 feet; thence S16°51'51"E a distance of 426.66 feet; thence S22°51'05"W a distance of 266.06 feet; thence S77°18'43"W a distance of 268.29 feet; thence N60°24'50"W a distance of 357.71 feet; thence S00°26'26"W a distance of 1370.27 feet to the Point of Beginning.

Containing 62.29 acres, more or less.

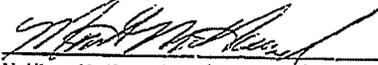
NOTES:

- Date of last field work: August 10, 2011.
- Survey performed as requested by MSKP Town and Country Utility, LLC.
- Survey for boundary only. Improvements, if any, are not located or shown on this survey.
- Bearing Reference: State Plane Coordinate, Florida West Zone, NAD 83(99), Bearing of N00°31'45"E on the West line of Section 19, Township 42 South, Range 26 East, as shown in the deed description referenced in note 7 below.
- Dimensions and acreage shown on survey map are grid values.
- This survey is subject to easements, restrictions, reservations and rights-of-way of record.
- This survey is not a determination of the limits of ownership.
- Survey based on deed description recorded in Official Records Book 3285, Pages 465-469, Public Records of Charlotte County, Florida.

This survey is only for the benefit of:

MSKP Town and Country Utility, LLC.

I hereby certify that this survey was prepared under my direction and is correct to the best of my knowledge and belief and meets the minimum technical standards for surveys as required by law. Florida Statutes Chapter 472: Chapter 5J-17 F.A.C.


 Matthew M. Howard (For The Firm - LB 642)
 Professional Surveyor and Mapper
 Florida Certificate No. 4912

Date signed: 8/16/11

This survey is not valid without the signature and original raised seal of a Florida licensed surveyor and mapper.

MSKP Town and Country
Utility, LLC

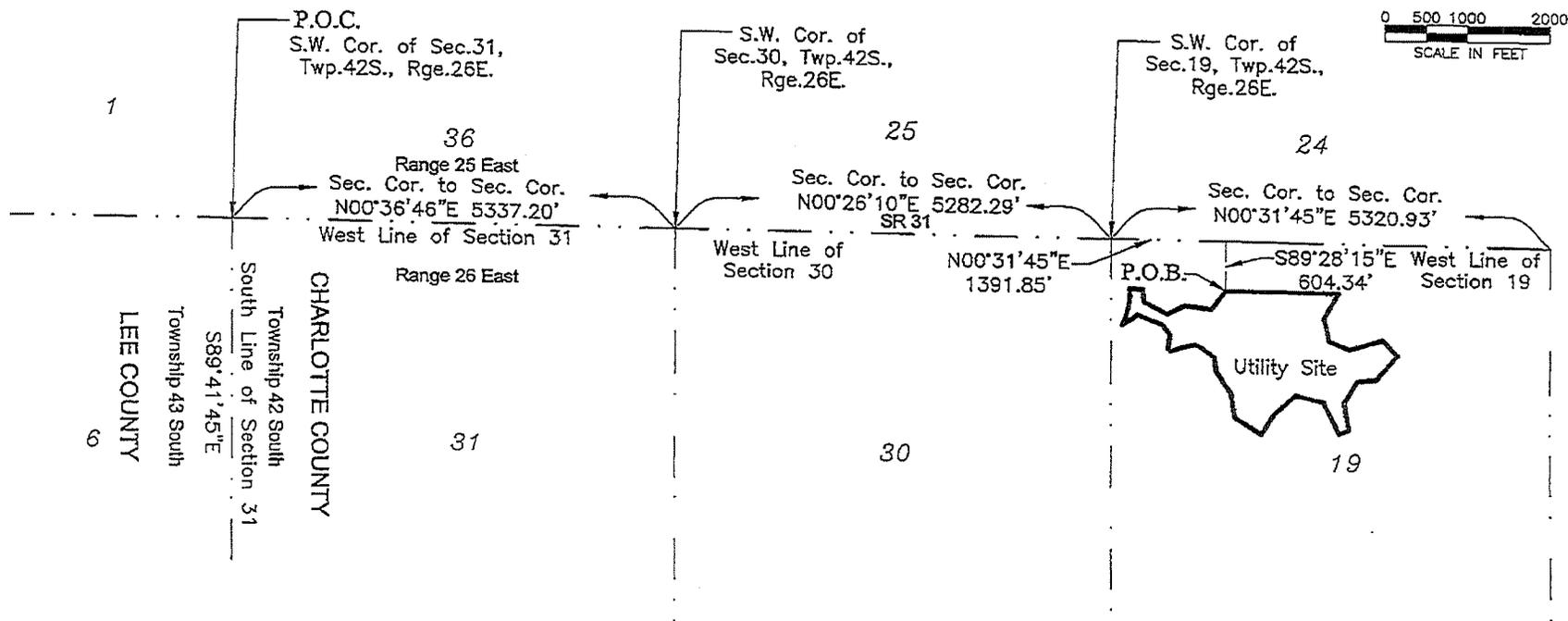
JOHNSON
ENGINEERING

251 WEST HICKPOCHEE AVENUE
LABELLE, FLORIDA 33935
PHONE (863) 612-0594
FAX (863) 612-0341
E.B. #642 & L.B. #642

Utility Site
Boundary Survey

DATE	PROJECT NO.	FILE NO.	SCALE	SHEET
08-15-2011	20118841	19-42-26	As Shown	1 OF 3

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LEDGEND:

- P.O.B. = Point of Beginning
- P.O.C. = Point of Commencement
- Rge. = Range
- Sec. = Section
- Twp. = Township
- Cor. = Corner

Set 1/2" Iron Rod and Cap (LB642) at all corners.

This survey is incomplete and not valid without sheet 1 and 3 of 3.

MSKP Town and Country
Utility, LLC

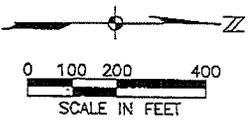
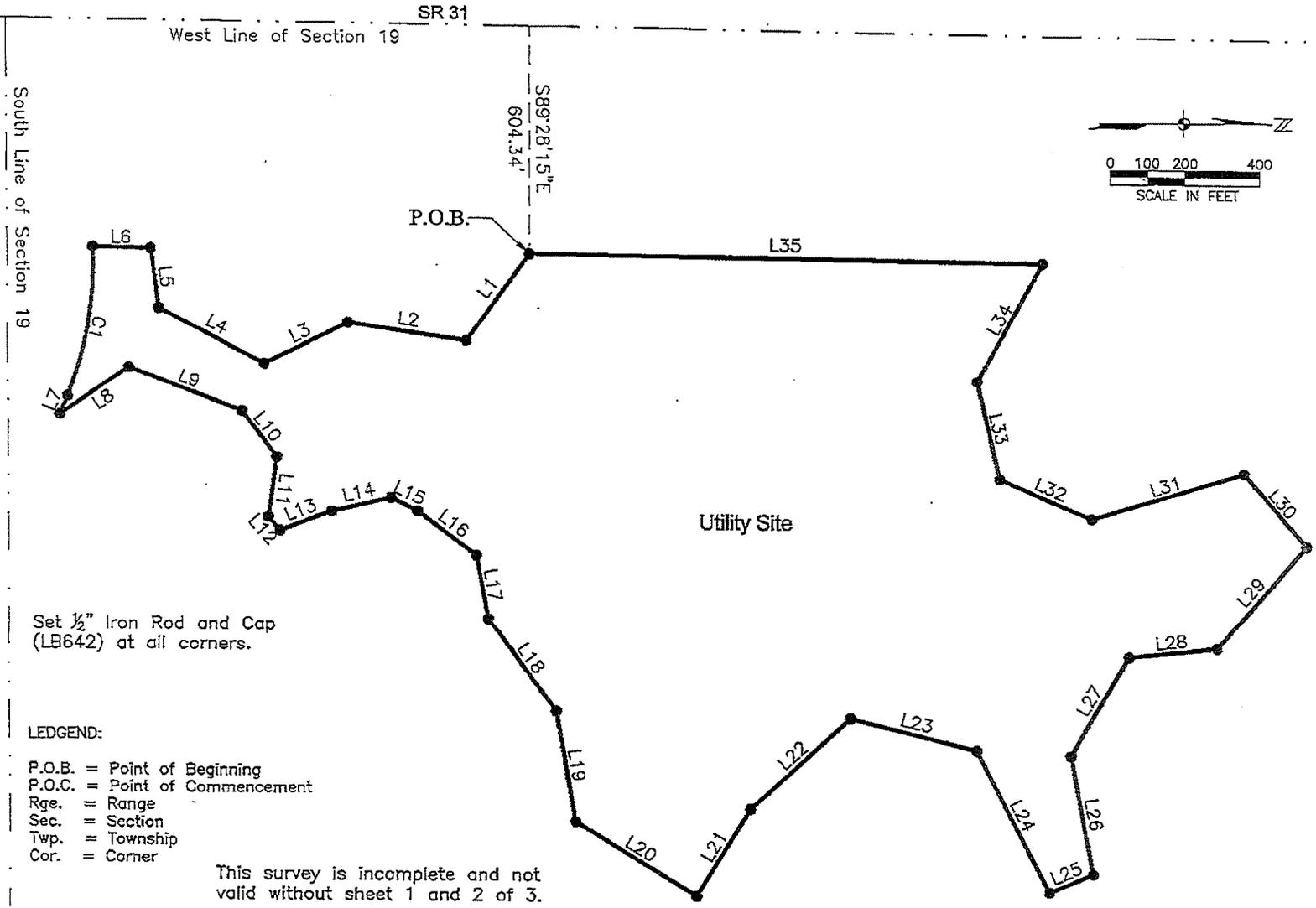
JOHNSON
ENGINEERING

251 WEST HICKPOCHEE AVENUE
LABELLE, FLORIDA 33935
PHONE (863) 612-0594
FAX (863) 612-0341
E.B. #642 & L.B. #642

Utility Site
Boundary Survey

DATE	PROJECT NO.	FILE NO.	SCALE	SHEET
08-15-2011	20118841	19-42-26	As Shown	2 OF 3

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Set 1/2" Iron Rod and Cap (LB642) at all corners.

- LEDGEND:
- P.O.B. = Point of Beginning
 - P.O.C. = Point of Commencement
 - Rge. = Range
 - Sec. = Section
 - Twp. = Township
 - Cor. = Corner

This survey is incomplete and not valid without sheet 1 and 2 of 3.

MSKP Town and Country
Utility, LLC

JOHNSON
ENGINEERING

251 WEST HICKPOCHEE AVENUE
LABELLE, FLORIDA 33935
PHONE (863) 612-0594
FAX (863) 612-0341
E.B. #642 & L.B. #642

Utility Site
Boundary Survey

DATE	PROJECT NO.	FILE NO.	SCALE	SHEET
08-15-2011	20118841	19-42-26	As Shown	3 OF 3

EXHIBIT A-2

ADDRESSES/PROPERTY CONTROL NUMBERS OF LIFT STATION SITES

None at current time

EXHIBIT A-3

EXISTING EXCEPTIONS

1. Defects, liens, encumbrances, adverse claims or other matters, if any created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed Insured acquires for value of record the estate or interest or mortgage thereon covered by this Commitment.
2. Any encroachment, encumbrance, violation, variation, or adverse circumstance affecting the title that would be disclosed by an accurate and comprehensive survey of the lands herein described.
3. Rights or claims of parties in possession.
4. Construction, Mechanic's, Contractors' or Materialmen's lien claims, if any, where no notice thereof appears of record.
5. Easements or claims of easements not shown by the public records.
6. Real estate taxes, and general or special taxes and assessments imposed by government authority and required to be paid in the year 20__ and subsequent years.
7. Any adverse ownership claim by the State of Florida by right of sovereignty to any portion of the lands insured hereunder, including submerged, filled and artificially exposed lands and lands accreted to such lands.
8. Any Lien arising under Chapter 159, Chapter 189 or Chapter 190, Florida Statutes, in favor of any city, town, village, district or port authority for unpaid service charges for service by any water system, sewer system or gas system servicing the lands described herein.
9. Riparian and littoral rights, if any, are neither guaranteed nor insured.
10. Lands lie within various county special assessment districts and municipal taxing districts and are subject to liens for any unpaid special assessments by virtue of the ordinances and resolutions creating these districts. The special assessments are payable with the ad valorem taxes. (all parcels)
11. Mortgage and Security Lease between T&C and Charlotte County Industrial Development Authority, recorded in Official Records Book 4037, Page 1404, Public Records of Charlotte County, Florida ("IDA/T&C Mortgage").
12. Mortgage and Security Lease between Babcock Ranch Irrigation, LLC, and Charlotte County Industrial Development Authority, recorded in Official Records Book 4037, Page 1452, Public Records of Charlotte County, Florida ("IDA/BRI Mortgage").
13. Reservation and Grant of Access Easement recorded in Official Records Book 3011, Page 1939, Public Records of Charlotte County, Florida.
14. Babcock Ranch Master DRI Agreement recorded in Official Records Book, 3131, Page 1801, as re-recorded in Official Records Book 3135, Page 1700, Public Records of Charlotte County, Florida.

**Lease/Option
Exhibit A**

15. All documents, agreements or instruments recorded against the property in favor of District or to which District is a party.
16. Partial Assignment and Assumption Lease for Utility Site recorded in Official Records Book 3285, Page 470, Public Records of Charlotte County, Florida.
17. Impact Fee Credit and Reimbursement Lease for Babcock Ranch Community recorded in Official Records Book 3337, Page 1813, Public Records of Charlotte County, Florida.
18. South Florida Water Management District Notice of Environmental Resource or Surface Water Management Permit recorded in Official Records Book 3540, Page 973, Public Records of Charlotte County Florida.
19. Notice of Department of the Army Permit recorded in Official Records Book 3598, Page 1994, Public Records of Charlotte County, Florida.
20. Passive Deed of Conservation Easement with Third Party Beneficiary Rights to USACE recorded in Public Records Book 4020, Page 214, Public Records of Charlotte County, Florida.
21. Any claim that any portion of the land is sovereign lands of the State of Florida, including submerged, filled or artificially exposed lands accreted to such lands.
22. Florida Power & Light Company power line easement recorded in Official Records Book 3446, Page 1515, Public Records of Charlotte County, Florida, as affected by Consent of Charlotte County recorded in Official Records Book 3441, Page 1524, Public Records of Charlotte County, Florida.
23. Unrecorded Settlement Lease between MSKP III, Inc. and Sierra Club, Inc. dated July 19, 2006.
24. Notice of Prescribed Burn under FLU Policy 6.4.11; regarding Prescribed Burns as set forth in the Charlotte County Comprehensive Plan Babcock Ranch Overlay District, as recorded in Official Records Book 4032, page 2113, Public Records of Charlotte County, Florida.
25. Easement from MSKP Town and Country Utility, LLC to Babcock Ranch Irrigation, LLC, recorded in Official Records Book 4034, Page 1020, Public Records of Charlotte County Florida.
26. Temporary Access Easement recorded in Official Records Book 3454, Page 1004, Public Records of Charlotte County, Florida.
27. Any plats and related documents recorded in the ordinary course of platting and land use approvals.

EXHIBIT B

PURCHASE OPTION/PUT OPTION TERMS

RECITALS

Unless otherwise defined in this **Exhibit B**, all capitalized terms used in this **Exhibit B** have the same meaning as in the Lease. The provisions of the Lease are incorporated in this **Exhibit B**, and the provisions of this **Exhibit B** are incorporated in the Lease. The Purchase Option and the Put Option shall be subject to and governed by the following provisions of this **Exhibit B**.

1. **EXERCISE.**

a. **By District.** The District may exercise its Purchase Option from time to time as described in Section 2 of the Lease at any time after October 1, 2040 (the "**Purchase Option Trigger Date**") and before the termination or expiration of the Lease by giving written notice thereof to Lessors at any time, and from time to time during the Lease Term, setting forth the parts of the System to be acquired by the District.

b. **By Lessors.** Lessors may exercise their Put Option from time to time as described in Section 2 of the Lease by giving written notice to the District at any time before the termination or expiration of the Lease, and from time to time during the Lease Term, setting forth the parts of the System to be transferred to the District.

2. **ASSETS.** That part of the System identified in the exercise of a Purchase Option or Put Option, as they exist as of a date of Closing on an exercise of the Purchase Option or Put Option ("**Assets**").

3. **CLOSING DATE.** Subject to other provisions of this **Exhibit B** for extension, a closing on an exercise of the Purchase Option or Put Option transaction described in this **Exhibit B** (the "**Closing**") shall be held at the offices of Lessors, or such other location in Florida that may be designated by Lessors. The date of a Closing shall be specified by Lessors, but shall be no later than one hundred twenty (120) days after the date of an exercise of either a Purchase Option or a Put Option, unless extended by agreement of the District and Lessors (the "**Closing Date**").

4. **PURCHASE PRICE.** The purchase price (the "**Purchase Price**") to be paid by the District to Lessors for the acquisition of the Assets shall be the same under either the Purchase Option or the Put Option, and shall be calculated as described in **Rider B-1** to this **Exhibit B**. The Purchase Price shall be paid to Lessors, as applicable, in cash at Closing or in such other manner as may be agreed by the Parties, subject to prorations and adjustments as provided in this Lease, to be delivered by wire transfer of federal funds. Lessors shall allocate the Purchase Price between themselves in their discretion.

5. **TITLE EVIDENCE.**

5.1 **Delivery.** Within six (6) business days after exercise of either the Purchase Option or the Put Option, Lessors shall order an updated American Land Title Association (“ALTA”) marketability leasehold or fee, as applicable, title insurance commitment on the Plant Sites (except those located on easements or maintained under licensed use rights) (the “**Commitment**”), and shall deliver the Commitment to the District within five (5) days of receipt of the Commitment. The leasehold or fee owner’s title policy premium and search costs are to be paid by the District at Closing. The Commitment is to be issued by a title insurer selected by District reasonably acceptable to Lessors. Copies of all exceptions shall be provided to the District. The District and Lessors waive any legal conflicts and agree that District’s counsel may act as an agent for the title insurer in conjunction with the issuance of the title insurance policy. Lessors shall not be required to provide a Commitment for the Well and Pump Station Sites.

5.2 **Permitted Exceptions.** The Commitment shall show Lessors to be vested with good and marketable and insurable fee simple or leasehold title to the Plant Sites (except those Plant Sites located on easements or property under licensed use rights), insurable in an amount equal to the Purchase Price (or such lesser amount as may be designated by the Parties and acceptable to the title underwriter) in accordance with the standards adopted from time to time by The Florida Bar, free and clear of all liens, encumbrances, covenants, conditions, restrictions, and other matters affecting title, except the following (the “**Permitted Exceptions**”):

5.2.1 Ad valorem real estate taxes for the year prior to Closing and subsequent years (at Closing taxes are to be paid through the last full calendar year prior to Closing but payment of all taxes are the responsibility of the District, on and after Closing, and the District covenants to timely pay taxes each year, as applicable);

5.2.2 All applicable zoning ordinances and regulations;

5.2.3 Matters which are common to all or part of the Babcock Ranch Community and/or the area serviced by the District;

5.2.4 Matters which do not unreasonably interfere with the “Use” as described in the Lease provisions of the Lease, or arise in the ordinary course of business;

5.2.5 Matters created by, or with the approval of, the District; and

5.2.6 The Existing Exceptions, as listed on **Exhibit A-3**.

6. **SURVEY.** Within the time period after exercise of either the Purchase Option or the Put Option and the delivery of the Commitment, the District may, but is not required to, obtain, at the District’s expense, a survey (the “**Survey**”) of the Real Property. If the District elects not to obtain a survey, then those exceptions set forth on the Commitment related to survey matters shall be deemed to be Permitted Exceptions.

7. **TITLE DEFECTS.**

7.1 Examination. The District shall have thirty (30) days from receipt of the Commitment within which to examine the Commitment and the Survey (if obtained). If the District finds title to be inconsistent with Section 5 of this Lease, the District shall, no later than the end of such thirty (30) day examination period, notify Lessors in writing specifying the title defect(s). If the District fails to give Lessors written notice of any title defect(s) before the expiration of such thirty (30) day period, the matters shown in the Commitment or Survey shall be deemed to be waived as title objections to closing this transaction and shall be deemed to be Permitted Exceptions.

7.2 Cure. If the District has given Lessors timely written notice of defect(s) and the defect(s) render the title other than as represented in this Lease, Lessors, as applicable, shall use good faith efforts (which need not include the bringing of lawsuits or the payment of money for other than payments of debts duly incurred by Lessors) to cause such defects to be cured by the Closing Date. At any Party's option, the Closing Date may be extended for a period not to exceed sixty (60) days for purposes of eliminating any title defects. In such event, the Lease Term shall be extended accordingly. If Lessors determine a quiet title lawsuit may be useful to cause a defect to be cured, Lessors and the District may agree on an additional extension of the Closing Date for purposes of completing the lawsuit.

7.3 Remedy. If Lessors do not eliminate such defects as of the Closing Date as the same may be extended under the preceding section, or if any new title defects appear from the date of the Commitment through the Closing Date, which Lessors do not eliminate as of the later of the Closing Date or sixty (60) days after due notice of the defect from the District, unless otherwise extended, the District shall have the option to:

7.3.1 Close and accept the title "as is", without reduction in the Purchase Price and without claim against any Lessors for such title defects (except for any lien that can be removed by the payment of money or bonding, for which credit shall be given the District at the Closing); in such event the Closing shall take place ten (10) days after notice of such election, or on the Closing Date, whichever is later;

7.3.2 Extend the Closing Date for up to one hundred eighty (180) days, in which event the Lease Term shall be extended accordingly and, if Lessors do not so cure such defects by the end of such 180 day period, the District shall close without reduction in the purchase price; or

7.3.3 Decline to Close, in which case the Put Option and the Purchase Option shall remain in full force and effect. Additionally, if the defect cannot be cured as to a parcel integral to the operations of the System, District may terminate the Lease.

8. **DEFAULT.**

8.1 Default by Lessors. If Lessors fail to perform any of the terms and conditions of this Lease (other than failure or inability to cure title as described in Section 7.3) then the District's sole remedies, at the District's option, are to either:

- Lease, or
- 8.1.1 Waive the default or failure;
 - 8.1.2 Seek specific performance of Lessors' obligations under this
 - 8.1.3 Exercise all other remedies available at law or in equity.

8.2 Default by the District. In the event of the failure or refusal of the District to close this transaction, without fault on Lessors' part and without failure of title, Lessors may elect to

- Lease; or
- 8.2.1 Waive the default or failure;
 - 8.2.2 Seek specific performance of the District's obligations under this
 - 8.2.3 Exercise all other remedies available at law or in equity.

8.3 Default. In the event of the default of any Party, each Party shall pay its own attorneys' fees and costs, including expert fees and court costs, through appellate proceedings.

9. **PRORATIONS.** The District shall have been in possession and control of the Assets prior to Closing and therefore real estate and personal property taxes, certified, confirmed, ratified and pending liens for governmental improvements or special assessments, insurance, rents, interest, cost and revenues and all other proratable items shall not be prorated but shall continue to be the responsibility of the District, pursuant to the terms of the Lease. Rent payments due from the District to Lessors under the terms of the Lease shall be prorated to the date of Closing.

10. **CLOSING COSTS.** Lessors shall pay the recording costs and documentary stamps and surtax, if any, due on the special warranty deed and any recorded assignment or other instruments of conveyance. The District shall pay the title insurance premium, survey costs and search costs. Except as stated in this **Exhibit B**, each Party shall bear its own costs of closing, including, but not limited to, attorneys' fees, engineering fees, accountants' fees, financing costs, underwriting costs, bond discount and underwriters fees, validation costs, fees and costs of bond counsel and validation counsel, credit enhancers' fees and escrow agent fees.

11. **CLOSING.**

11.1 Lessors' Documents. At each Closing, Lessors shall convey fee, leasehold or sub-leasehold (as designated by Lessors) title to the Plant Sites and Lift Station Sites (except those located on easements or maintained under licensed use rights) by good and sufficient Special Warranty Deed or by Long Term Lease or by Assignment of Lease, subject to the Permitted Exceptions; and Lessors shall convey their interest in the Plant Sites and Lift Station Sites located on easements or maintained under licensed use rights by quit-claim assignment "as is." Lessors shall deliver a Bill of Sale without warranties, except warranty of title, as to the Assets. Lessors shall also deliver to the District at the Closing:

**Lease/Option
Exhibit B**

11.1.1 With respect to the Plant Sites and Lift Stations transferred by Special Warranty Deed only, a mechanic's lien affidavit as to matters caused by Lessors (but not caused by the District), to the title insurer, in form acceptable to the title insurer to delete the standard exception relating to such liens in the District's title insurance policy;

11.1.2 With respect to the Plant Sites and Lift Stations transferred by Special Warranty Deed only, a gap affidavit sufficient for the title insurer to insure the gap as to matters caused by Lessors (but not matters caused by the District);

11.1.3 With respect to the Plant Sites and Lift Stations transferred by Special Warranty Deed only, instruments necessary to resolve agreed upon title defects per Section 7 of this **Exhibit B**, if any;

11.1.4 Appropriate assignments of all Assets included in the transaction;

11.2 District Documents. The District shall provide Lessors at each Closing:

11.2.1. With respect to Plant Sites and Lift Stations transferred by Special Warranty Deed only, a mechanic's lien affidavit as to matters caused by the District, to the title insurer in form acceptable to the title insurer to delete the standard exception relating to such liens in the District's title insurance policy;

11.2.2. With respect to the Plant Sites and Lift Stations transferred by Special Warranty Deed only, a gap affidavit sufficient for the title insurer to insure the gap as to matters caused by the District;

11.2.3 Appropriate assumptions of all Assets included in the transaction;

11.2.4 The Purchase Price, by wire transfer of federal funds.

11.3 Other Documents. Lessors and the District shall each execute a closing statement and such other documents as are reasonably necessary to consummate each applicable transaction.

12. **NOTICES**. Any notices required or permitted to be given under this **Exhibit B** shall be made as described in the Lease.

13. **RISK OF LOSS**. The System shall have been in the control of the District and, therefore, the District shall bear all risk of loss to it whether by casualty, condemnation or otherwise. To the extent allowed by applicable law from time to time, the District holds harmless and indemnifies Lessors for all loss, costs, liabilities, including attorneys' and paralegals' and similar persons' fees and costs, whether litigation be brought or not, and for appellate and collection matters, arising from, growing out of or related to the District's use or possession or operation of the System.

14. **ISSUANCE OF BONDS**. In order to pay the purchase price in the event of an exercise of either the Purchase Option or the Put Option, and all the costs and related items incident to the purchase, the District shall undertake the following:

14.1 Acquisition Hearing. The District will comply with the requirements of the ISD Act, with respect to each acquisition of Assets by the District in accordance with the terms of the Purchase Option or the Put Option.

14.2 Bond Validation Proceedings. The District will immediately commence, at its cost, validation proceedings to validate a sufficient number of revenue bonds (“**Revenue Bonds**”) to purchase all of the Leased Property at the anticipated build-out of the Community among other matters, estimated by the parties to equal Two Hundred Eighty Seven Million Four Hundred Twenty Thousand Dollars (\$287,420,000.00), and shall prosecute that validation proceeding in good faith and with all deliberate speed to the issuance of a certificate of no appeal or to the conclusion of a final appellate proceeding favorable to the District. In the event sufficient Revenue Bonds have not already been validated by the District, the District shall immediately commence validation proceedings to validate the Revenue Bonds authorized by the District, and shall prosecute that validation proceeding in good faith and with all deliberate speed to the issuance of a certificate of no appeal or to the conclusion of a final appellate proceeding favorable to the District. The District agrees that Lessors’ counsel shall be entitled to intervene in the validation proceedings on behalf of Lessors, and that Lessors are an interested party in the validation proceedings.

14.3 Revenue Bond Issuance to Pay Purchase Price. Upon an exercise of the Purchase Option or the Put Option and within the time frame required for the purchase of the Assets by the District, in the event that the District elects to issue Revenue Bonds to finance all or part of an acquisition of Assets, the District shall sell a sufficient number of Revenue Bonds, validated pursuant to Section 15.2, above, to enable the District to pay the entire Purchase Price for the Assets and all costs and related incidents to the purchase of the Assets and issuance of the Revenue Bonds by the District as set forth in this **Exhibit B**. This obligation by the District is absolute and unconditional, and the sale of the Revenue Bonds shall be made regardless of prevailing market conditions, prevailing interest rates, required discounts or other circumstances.

14.4 Rate Covenant. Upon an exercise of the Purchase Option or the Put Option, the District shall fix, establish, maintain, collect and revise from time to time whenever necessary, such fees, rates, rentals and other charges for the use of the products, services and facilities of the System, as necessary to meet all covenants of the District relating to or arising out of the issuance of the Revenue Bonds or any District bond resolutions, including, but not limited to, bond coverage requirements and funding requirements for any debt service, reserve account and renewal and replacement account (the “**Rate Covenant**”).

14.5 Shortfall. In the event that the number of Revenue Bonds that have been authorized and validated pursuant to section 15.3, above, is insufficient, together with other funds of the District, to pay to Lessors the entire purchase price for an acquisition of Assets, and all costs and related incidents to the purchase of the Assets by the District, the balance of the purchase price due to Lessors (the “**Shortfall**”) shall be payable in the form of a promissory note or notes from the District to Lessors, in such denominations and maturities as reasonably requested by Lessors, freely tradable by Lessors, on a pari passu basis with the same bondholder pledges, security, rights and privileges as provided for the Revenue Bonds, and with such covenant protections as provided in any District bond resolutions, including, but not limited to, the Rate Covenant provided for in Section 15.4 above.

RIDER B-1: PURCHASE PRICE FORMULA

Pursuant to the terms of **Exhibit B** of the Lease, upon an exercise of a Purchase Option or a Put Option, the following formulas shall be applied in the following manner in order to calculate the purchase price of the Assets being acquired by the District pursuant to the option exercise. The Parties' intent is for the purchase price calculation to equal, as closely as is practical, a determination of fair value of the Assets as if the Assets had been condemned by the District under Chapter 73, Florida Statutes.

Both the District and Lessors shall have the right, but not the obligation, each at its own cost and expense, to appoint a professional of its own choosing with experience in the valuation of water, sewer and irrigation quality water assets in the State of Florida on one or more of the formulas set forth below (a "Valuer"). The Parties and the Valuers, within ten (10) days of appointment, shall meet and attempt to agree on the parameters for establishing the purchase price of the Assets utilizing one or more the following valuation formulas, recognizing that for any particular acquisition of Assets, one or more of the valuation formulas may be more or less appropriate:

1. Reproduction cost, new, of the Assets, including CIAC, less depreciation, plus "going concern" value;
2. Capitalization of the current and future earnings or income realized or to be realized under District ownership and operation of the Assets (which shall take into account CIAC and any and all utility facilities or properties of whatever nature, whether used and useful or not); or
3. A comparative sales study of utilities of like or comparable size, facilities and customers located in the State of Florida and through an "arms-length" transaction, within five (5) years of the date of the exercise of the option set forth in the Lease herein, including, but not limited to, sales to governmental and quasi-governmental entities; or
4. Calculation of the current leverage capacity of the Assets (i.e., the amount of debt, including coverage and other requirements customarily associated with the issuance of debt, tax exempt or otherwise, which the pro forma revenues of the Assets under ownership and operation by the District after closing would support) plus the future leverage capacity on a per capita basis for customers if, as and when added to the System (customarily referred to as "futures payments").

The Parties shall provide such information as is necessary to the Valuers in order for them to reach their valuation. In the event that the Valuers and the Parties are unable to agree on the purchase price of the Assets, as noted above, then the Valuers shall agree on an independent third Valuer, and a decision by the majority of all Valuers appointed shall be binding on all of the Parties. In the event that the Valuers cannot agree on such independent Valuer, then the Parties may seek the appointment of such Valuer through the Dispute Resolution process under the Lease.

EXHIBIT C

LEASE AGREEMENT TERMS

This Lease Agreement Terms (sometimes referred to herein as the “**Lease Terms**”) sets forth additional terms and conditions pursuant to the terms of the Lease to which this **Exhibit C** is attached.

Recitals

A. This Lease Terms is **Exhibit C** to the Lease. The provisions of the Lease are made a part of this **Exhibit C**, and the provisions of this **Exhibit C** are made a part of the Lease. Capitalized terms not otherwise defined in this Lease Terms shall have the same meaning as in the Lease.

B. Lessors desire to lease the Leased Property to the District, and the District desires to lease the Leased Property from Lessors, in accordance with the terms and conditions of this Lease Terms.

Terms

The Parties agree to the following provisions:

1. RECITALS, DEFINITIONS.

1.1 Recitals. The foregoing recitals are true and are made a part of this Lease and the Lease Terms.

1.2 Definitions. Unless the context requires otherwise, the following capitalized terms used in this Lease Terms shall have the respective meanings set forth below, or as set forth in the Lease.

1.2.1 “Additional Rent”: Such sums, charges, and expenses as are due under the Lease from the District to Lessors in addition to the Base Rent, as described in Section 4.

1.2.2 “Base Rent”: The basic monthly rent which is due under the Lease from the District to Lessors, as described in Section 4.

1.2.3 “Commencement Date”: December 15, 2016.

1.2.4 “Community”: The District geographic boundaries described in the ISD Act, as revised from time to time.

1.2.5 “District”: As defined in the Lease.

1.2.6 “Easement Property”: The real property on which the Easements are located, as described in the Lease, or on which they may be located in the future.

1.2.7 “**Event of Default by The District**”: Any event constituting an Event of Default by the District under Section 16.1.

1.2.8 “**Expiration Date**”: Thirty (30) years from the Commencement Date, unless sooner terminated or unless extended pursuant to Section 3.2 or extended by written agreement of Lessors and the District.

1.2.9 “**Hazardous Materials**”: Any flammable explosives, radioactive materials, hazardous materials, hazardous wastes, hazardous or toxic substances, or related materials as defined under any Legal Requirements, including, without limitation, the following statutes and the regulations promulgated under their authority: (a) the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (42 U.S.C. §§ 9601 et seq.); (b) the Hazardous Materials Transportation Act, as amended (49 U.S.C. §§ 1801 et seq.); and (c) the Resource Conservation and Recovery Act of 1976, as amended (42 U.S.C. §§ 6901 et seq.).

1.2.10 “**Insurance**”: Such insurance policy or policies as are required to be obtained and maintained by the District under this Lease.

1.2.11 “**Legal Authority**”: Any federal, state, county, municipal, or other government or governmental or quasi-governmental department, commission, board, bureau, court, agency, or instrumentality having jurisdiction or authority over Lessors, the District, and/or all or any part of the Property.

1.2.12 “**Legal Requirement**”: Any law, statute, code, rule, regulation, ordinance, order, judgment, decree, writ, injunction, franchise, permit, certificate, license, authorization, registration, or other direction or requirement of any Legal Authority, which is now or in the future applicable to the Property, including those not within the present contemplation of the Parties.

1.2.13 “**Mortgage**”: Any mortgage, deed of trust, or similar instrument which at any time encumbers Lessors’ interest in the Lease and/or the Leased Property, or which encumbers the underlying fee interest in the Real Property, including any modification(s) or renewal(s) thereof.

1.2.14 “**Notice**”: A notice delivered in compliance with Section 24.6.

1.2.15 “**O&M Terms**”: The terms for the operation, maintenance, repair, administration, billing and customer service for the System as set forth in Exhibit C, Rider C-2.

1.2.16 “**Place of Payment**”: The address to which all payments of Rent and any other payments due from the District to Lessors under the Lease shall be delivered, which address shall be the address for giving Notices to Lessors, or such other address as Lessors may designate from time to time by giving Notice to the District.

1.2.17 “**Real Property**”: The Real Property as described in the Lease, which Real Property is leased to the District pursuant to the Lease and these Lease Terms.

1.2.18 “Rent”: The Base Rent and the Additional Rent, payable in legal currency of the United States of America by the District to Lessors in accordance with the terms and conditions of the Lease.

1.2.19 “Restoration Work”: Any work of demolition, restoration, repair, replacement, or rebuilding of the Leased Property required to be performed as a result of condemnation by any Legal Authority or fire or other casualty during the Term.

1.2.20 “Leased Property”: The System.

1.2.21 “Lease Terms”: This Exhibit C, “Lease Terms”, including all riders to it.

1.2.22 “Lease Year(s)”: The period from the Commencement Date through twelve months from the Commencement Date, and each successive period of twelve months during the Term.

1.2.23 “Term” or “Lease Term”: The term of the Lease, as such term may be extended or shortened pursuant to the terms and conditions of the Lease.

1.2.24 “Unavoidable Delay”: With respect to any Party, any unavoidable delay which is caused by any of the following events, provided that the occurrence of such event is entirely beyond such Party’s control (financial inability to make a payment is not an event beyond a Party’s control): (a) an act of war or other military act initiated by a sovereign government, military power, invasion or sabotage; (b) a shortage of supplies or materials resulting from an embargo, rationing order, or similar action or order by a sovereign government, governmental regulations or controls; (c) a strike, lockout, or other substantial labor dispute; (d) a riot or other substantial civil disturbance; or (e) a fire, explosion, hurricane, flood, windstorm, or blockage of functional access to and operation of the Leased Property not due to a Party’s actions, or similar casualty or event.

1.2.25 “Use”: The lawful use of the Leased Property solely for the operation of the System.

2. GRANT.

2.1 Lease of Leased Property. Lessors lease the Leased Property to the District, and the District leases the Leased Property from Lessors, subject to the terms and conditions of the Lease and the Leased Terms.

2.2 “As Is”, “Where Is” Condition. The District has inspected the Leased Property and accepts the Leased Property in “as is”, “where is” condition. The District acknowledges that Lessors make no representation or warranty, express or implied in fact or by law, as to the condition of the Leased Property.

3. **TERM, USE, QUIET ENJOYMENT.**

3.1 **Term.** The Term shall begin on the Commencement Date and end on the Expiration Date, unless sooner terminated pursuant to the terms and conditions of this Lease. Either party may terminate the Lease by providing five (5) years' notice to the other party, with the Lease to terminate at the end of the Lease year in which the five (5) years' notice ends. The Lease may be terminated at any time with the written agreement of the parties.

3.2 **Extension of Term.** The Term may be extended for an additional thirty (30) years by notice given by either Party to the other prior to expiration of the then current Term, provided that no extension notice may be given at any time when the Party desiring to give notice is in default of any provision hereof.

3.3 **Use.** At all times during the Term, the District shall use the Leased Property for the Use and for no other use or purpose, subject to the provisions of this Lease.

3.4 **Covenant of Quiet Enjoyment.** Except as otherwise provided in the Lease Terms, Lessors covenant that, except as otherwise provided in this Lease, the District's quiet enjoyment of the Leased Property at all times during the Term shall not be disturbed by any act of Lessors, or of anyone acting by, through, or under Lessors, so long as (a) no Event of Default by the District shall have occurred, and (b) the District shall have fully performed all of the terms and conditions of this Lease.

3.5 **Business Conduct.** Except as otherwise consented to in writing by Lessors, throughout the Term, the District shall:

3.5.1 control, manage and operate the System in, and only in, the usual, regular and ordinary course of the utility business and shall comply with all applicable governmental requirements and law;

3.5.2 maintain all of the Leased Property in good repair, order and condition, except for depletion, depreciation, ordinary wear and tear and damage by unavoidable casualty;

3.5.3 renew, replace and expand the System in the usual, regular and ordinary course of the utility business in order to meet the continual need for utility service within the Community, subject to the provisions of Section 7.2 below;

3.5.4 keep in full force and effect insurance comparable in amount and scope of coverage to insurance now carried by it for the System, subject to the provisions of Section 10 below;

3.5.5 perform in all material respects all of its obligations under agreements, contracts and instruments relating to or affecting the System and its operation, maintenance, repair, replacement, renewal and expansion;

3.5.6 subject to available administrative remedies pursuant to Chapter 120, Florida Statutes, if applicable as a matter of law, or any administrative judicial procedures, proceedings or orders applicable to particular permits, comply in all material respect with all statutes, laws, ordinances, rules, permits and regulations applicable to it and to the operation of the System;

3.5.7 promptly advise Lessors, in writing, of any material change which adversely affects the System or its operation, maintenance, repair, replacement, renewal and expansion ;

3.5.8 subject to available administrative remedies pursuant to Chapter 120, Florida Statutes, if applicable as a matter of law, or any administrative or judicial procedures, proceedings or orders applicable to particular Permits, comply with all Permit requirements and obtain all necessary Permit extensions, renewals, amendments or transfers such that said Permits are valid throughout the Term;

3.5.9 subject to available administrative remedies pursuant to Chapter 120, Florida Statutes, if applicable as a matter of law, or any administrative or judicial procedures, proceedings or orders applicable to it and to operation of the System, establish and amend from time to time utility rates, fees and charges at such levels as are necessary to prudently comply with all operation, maintenance, renewal, replacement, expansion, management and financial requirements of the System, and to comply with the requirements of the Lease and this Lease;

3.5.10 subject to the requirements of the ISD Act, annually budget and appropriate sufficient funds to meet the District's financial obligations under the Lease Terms, and amend such budget and appropriations from time to time as necessary.

3.6 **No Encumbrances.** Throughout the Term, the District shall not, without the prior written consent of Lessors, which consent shall not be unreasonably withheld, delayed or conditioned, encumber all or any part of the System (other than ordinary course of operations with substitution of personal property, which do not require consent).

3.7 **No Competing Systems.** During the Term, the District shall not own, operate, lease, manage, or acquire any water, wastewater and irrigation quality water utility system or utility assets other than the System nor shall the District permit any other competing utility system within the Community without the prior written consent of Lessors, which consent shall not be unreasonably withheld, provided the intent of this provision to maintain the integrity of service to the Community and prevent a competing utility system from operating within the Community and the boundaries of the District.

3.8 **No Disposition of Assets.** After the Commencement Date, the District shall not dispose of any of the System's assets or properties of material value (in excess of \$5,000) except in the ordinary course of business and except with Lessors' consent, which shall not be unreasonably withheld, delayed or conditioned.

4. **RENT.**

4.1 **Rent Payments.** The District shall pay the Rent to Lessors, when due, without notice or demand, at the Place of Payment, as follows:

4.1.1 the Base Rent shall be calculated as described in **Rider C-1**; and

4.1.2 any Additional Rent, as calculated as described in **Rider C-1** and **Rider C-2** or as otherwise provided in the Lease, shall be due at the time provided for by this Lease for payment of such Additional Rent, but in no event later than the first day of the month after the month in which such Additional Rent shall accrue.

4.1.3 Lessors shall allocate the Rent between themselves in their sole discretion.

4.2 **Sales Tax.** Together with each payment of Rent or other sum on which such tax may be due, the District shall pay to Lessors at the Place of Payment a sum equal to any applicable sales tax, use tax, tax on rents, and any other charges, taxes, and/or impositions now in existence or subsequently imposed based upon the privilege of renting the Leased Property or upon the amount of rent collected, if any. The District's liability for such taxes and/or impositions shall be payable whether assessed at the time the Rent payment is made or retroactively, and shall survive the termination or expiration of this Lease. Lessors acknowledge that the District may qualify for an exemption from such tax pursuant to Section 212.07(6), Florida Statutes; Lessors agree not to collect such tax, in accord with the statute, if the District provides an appropriate Consumer's Certificate of Exemption and any other documentation that may be required pursuant to the statutes or applicable regulations.

4.3 **Late Charge.** Lease payments will be made in accordance with the Florida Prompt Payment Act Sections 218.70-218.80, Florida Statutes, as amended, which provides prompt payment, interest payments, a payment dispute resolution process by local governmental entities.

4.4 **Security Deposit.** Lessors temporarily waive a security deposit under the Lease. However, if the District should default under the Lease or the Lease, then Lessors may require that the District deposit with Lessors a security deposit in an amount equal to the Base Rent for the next ensuing two (2) months (the "**Security Deposit**"). Such Security Deposit would be subject to the following provisions:

4.4.1 In the event that the District defaults in the performance and observance of any of the terms and conditions of this Lease, including the payment of any Rent, Lessors may use, apply, or retain all or any part of the security deposit to the extent required for the payment of any rent or any other sum as to which the District is in default or for any sum which Lessors may expend or may be required to expend by reason of the District's default, including any damages or deficiency in the re-letting of the Leased Property, whether such damages or deficiency accrued before or after summary proceedings or other re-entry by Lessors. In the case of every such use, application, or retention of any such sum, the District shall, on

demand, pay to Lessors the sum so used, applied, or retained. Such sum shall be added to the Security Deposit so that the Security Deposit shall be restored to its original amount.

4.4.2 In the event that the District shall fully and faithfully comply with all of the terms and conditions of this Lease, the Security Deposit shall be returned to the District no later than thirty (30) days after the expiration of the Term and delivery of exclusive possession of the Leased Property to Lessors. If Lessors determine that all or part of the Security Deposit should not be returned, it shall so notify the District, with description of reasons therefor.

4.4.3 Lessors shall not be obligated to pay the District any interest on the Security Deposit.

4.4.4 In the event that Lessors transfer or assign Lessors' interest under this Lease, Lessors shall have the right to transfer the Security Deposit to the transferee or assignee. Upon such transfer, Lessors shall be released by the District from all liability for the return of the Security Deposit, and the District shall look solely to the new landlord for the return of the Security Deposit. This provision shall apply to every transfer or assignment of the Security Deposit to a new landlord.

4.4.5 The District shall not transfer, assign, or encumber, or attempt to transfer, assign, or encumber the moneys deposited as security. Lessors shall not be bound by any such actual or attempted transfer, assignment, or encumbrance.

4.5 **No Offset.** The District acknowledges that the Rent payments shall be made by the District to Lessors without any claim on the part of the District for diminution, setoff, or abatement. Nothing shall suspend, abate, or reduce any Rent, unless otherwise specifically provided for in this Lease.

5. **SERVICES.**

5.1 **District Obligations.** The District is aware of all services, such as electricity, available to the Leased Property, and shall be solely responsible for provision of and payment for cost of such services to the Leased Property.

5.2 **Security.** The District acknowledges that Lessors shall not and do not have any responsibility for the security of the District's officers, personnel, agents, employees, servants, licensees, invitees, guests, patrons, customers, and all others who come on or about the Leased Property related to the District or the District's Use or otherwise.

6. **LEGAL REQUIREMENTS; OPERATIONS.**

6.1 **Legal Requirements.** At all times during the Term, the District shall, at the District's own cost and expense, fully perform and comply with all Legal Requirements, whether or not they shall necessitate ordinary or extraordinary structural changes, improvements, replacements, or repairs to the Leased Property, or cause any interference with the Use.

6.2 **Danger or Nuisance.** At all times during the Term, the District shall not do, permit, or suffer to be done any act, or cause, permit, or suffer to exist any condition, upon the Leased Property, which may (a) be dangerous, unless safeguarded as provided for by Legal Requirements; (b) constitute a public or private nuisance, or (c) make any Insurance void or voidable or cause any increase in Insurance premiums.

6.3 **Hazardous Materials.** The District shall:

6.3.1 neither cause nor permit the Leased Property to be used to generate, manufacture, refine, transport, treat, store, handle, dispose, transfer, produce, or process Hazardous Materials, except for as used in the course of operation of the System, to the extent they are stored and used in compliance with all Legal Requirements;

6.3.2 neither cause nor permit a release or threatened release of Hazardous Materials onto the Leased Property or any other property as a result of any intentional or unintentional act or omission on the part of the District;

6.3.3 comply with all applicable Legal Requirements related to Hazardous Materials;

6.3.4 conduct and complete all investigations, studies, sampling, and testing, and all remedial, removal, and other actions on, from, or affecting the Leased Property in accordance with such applicable Legal Requirements;

6.3.5 upon the expiration or termination of this Lease, deliver the Leased Property to Lessors free of all Hazardous Materials that have been brought on the Leased Property after the Commencement Date; and

6.3.6 to the extent allowed by applicable law from time to time, defend, indemnify, and hold harmless Lessors and Lessors' employees, officers, legal representatives and other agents from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs, or expenses of any kind or nature, known or unknown, contingent or otherwise (including, without limitation, accountants' and attorneys' fees (including fees for the services of paralegals and similar persons), consultant fees, investigation and laboratory fees, court costs, and litigation expenses at the trial and all appellate levels), arising out of, or in any way related to (a) the presence, disposal, release, or threatened release, by or caused by the District or its agents, or by their use of the Leased Property, of any Hazardous Materials which are on, from, or affecting the soil, water, vegetation, buildings, personal property, persons, animals, or otherwise; (b) any personal injury, including wrongful death, or damage to property, real or personal, arising out of or related to such Hazardous Materials; (c) any lawsuit brought, threatened, or settled by Legal Authorities or other parties, or order by Legal Authorities, related to such Hazardous Materials; and/or (d) any violation of Legal Requirements related in any way to such Hazardous Materials. The provisions of this Section 6 shall survive the expiration or termination of this Lease.

7. MAINTENANCE; ALTERATIONS; SIGNAGE.

7.1 Operation and Maintenance.

7.1.1 Lessors, or their affiliates, shall, under the control, management and direction of the District, operate, maintain, repair, administer, and provide billing and customer services for the System to the District pursuant to the O&M Terms set forth on **Rider C-2** attached to and made a part of the Lease. The District shall make payments under the O&M Terms as Additional Rent.

7.1.2 The District shall, at the District's own expense, keep the Leased Property in first class repair and continuous, uninterrupted operating condition during the Term. The District shall not allow any unpleasant odors (other than those which are necessary to the ordinary, first class operation of the System) on or about the Leased Property. The District shall not interrupt the operations of the System at any time. The District acknowledges that it is solely responsible for all operation and maintenance of the Leased Property and shall use it in accordance with the Lease, including any operating agreements with any of the Lessors, in a manner which will keep it in first class condition for its intended Use.

7.1.3 The District shall give Lessors prompt Notice of any and all damage to or defects in the Leased Property, which the District shall immediately and fully repair.

7.1.4 If the District fails to immediately begin to eliminate unpleasant odors or any deficiency in operation of the Leased Property, and to diligently continue to correct such situation within five (5) days from first notice (or such sooner period of time as may be necessary in the event of an emergency) to proceed with due diligence to make repairs required to be made by the District, the same may be made by Lessors, at the expense of the District, and the expenses thereof incurred by Lessors shall be collectible by Lessors as Additional Rent after rendition of a bill or statement therefor. Lessors are not and shall not be required to make any improvements to or repairs of any kind or character on or to the Leased Property during the Term.

7.2 Alterations. The District shall not, without Lessors' prior written consent, which may be granted or withheld in Lessors' sole discretion, add to, remove, demolish, or alter all or any portion of the Leased Property at any time during the Term. If Lessors do consent to such alterations, they shall be performed in accordance with the Leased Property Alteration Protocol set forth in **Rider C-3** to this Lease Terms. Upon written notice to the District, Lessors may, but are not obligated to, add to, renew, replace, modify, or expand the Leased Property at any time without the consent of the District. Such addition, modification or expansions shall be included with the definition of Leased Property and System.

7.3 Placement of Signs. The District shall not, at any time during the Term, place and/or install, or cause to be placed and/or installed, any sign upon any part of the Leased Property unless (a) the District shall have obtained Lessors' prior written consent, which may be granted or withheld in Lessors' sole discretion, (b) the sign and its placement and/or installation

are in full compliance at all times with all Legal Requirements, and (c) the District shall bear all costs and expenses related to the sign and its permitting, placement and/or installation.

7.4 **Removal of Signs.** Any sign upon the Leased Property which the District has placed and/or installed, or caused to be placed and/or installed, shall be immediately removed at the District's expense if such sign (a) has not been placed and/or installed upon the Leased Property in the manner required by this Lease Terms, or (b) fails at any time during the Term to be in compliance with any Legal Requirements. Unless Lessors otherwise direct the District, the District shall, in any event, remove any such sign at the District's expense upon the expiration of the Term. If the District shall fail to remove any sign in the manner required by this Section, Lessors may give Notice to the District of such failure. If such failure shall continue for five days after such Notice, then Lessors, in addition to any other rights and remedies which are available to Lessors, shall have the right, but not the obligation, to remove such sign at the District's expense and to give Notice to the District setting forth the costs of such removal. Upon receiving such Notice, the District shall immediately pay to Lessors, as Additional Rent, full reimbursement for all such costs. The provisions of this Section shall survive the expiration or termination of this Lease.

8. **CONTROL OF EASEMENT PROPERTY.**

8.1 **Lessors' Control.** The Easements are non-exclusive and Lessors have and may grant to other persons or entities rights to use the Easement Property. The District shall utilize the Easements and use the Easement Property in a manner which will not interfere with the use by Lessors or other parties, and shall follow Lessors' directives in regard to the use of the Easement Property.

8.2 **Lease; Operating Leases.** To the extent the Leased Property is subject to certain Lessors obligations (e.g., Mortgage or insurance requirements), Lessors shall comply with and fulfill such requirements.

9. **IMPOSITIONS, UTILITIES.**

9.1 **Impositions on Leased Property and District Personalty.** At the District's own cost and expense, the District shall bear, pay, and discharge, when and as due, all taxes and assessments validly assessed against the Leased Property and personal property in or on the Leased Property (if applicable, as shown in the District's personal property tax bill), all sales, payroll and similar taxes; the District shall pay all such taxes and assessments in time to avoid interest or penalty for late payment. Furthermore, if discounts for early payment of any taxes and assessments are available, the District shall pay such taxes and assessments in time to obtain the maximum discounts available. The District shall pay all interest and penalties imposed upon the late payment of any taxes and assessments which the District is obligated to pay under this Lease. If the District shall fail to pay any such taxes and assessments before a penalty would accrue, then Lessors may pay such taxes and assessments with all interest and penalties lawfully imposed upon late payment. The amounts so paid by Lessors shall be immediately due and payable by the District to Lessors as Additional Rent.

9.2 **Utilities.** The District shall be responsible for obtaining and shall pay all charges relating to utilities for the Leased Property, including those for drainage, water, sewer, electricity, power, gas, heating, lighting, telephones, and other electronic communications (if any).

9.3 **Assignment upon Default.** From and after the occurrence and during the continuation of an Event of Default by the District under this Lease, or the occurrence of any other event which would give Lessors the right to terminate this Lease, all right, title, and interest of the District in and to all refunds or rebates of impositions and/or utility fees and charges, whether paid or to be paid, are assigned to Lessors. This provision shall be self-operating, and no further documentation shall be necessary now or in the future to evidence or to confirm such assignment.

10. **INSURANCE.**

10.1 **Required Insurance.** The District shall, at the District's own cost and expense, obtain and maintain at all times during the Term the following types of Insurance:

10.1.1 The District shall maintain commercial general liability insurance, including, without limitation, builder's risk, protecting against loss of life, bodily injury and property damages, any and all liability occasioned by negligence, occurrence, accident, or disaster with respect to the Leased Property and the District's operations thereon, with such insurable limits as Lessors may from time to time require, but in no event less than One Million and No/100 Dollars (\$1,000,000.00) combined single limit bodily injury and property damage liability on an occurrence basis with a Ten Million and No/100 Dollars (\$10,000,000.00) aggregate.

10.1.2 The District shall maintain hazard insurance, protecting with extended coverage and broad form coverage against loss or damage to the Leased Property by fire, lightning, windstorm, hail, flood, explosion, hurricane, riot, civil commotion, vehicles, aircraft, smoke, war damage (when available), falling objects, collapse, sudden tearing asunder, breakage of glass, freezing, electricity, sprinkler damage, water damage, earthquake, vandalism, malicious mischief, and such other insurable risks, casualties, and hazards as Lessors may from time to time specify, in an amount not less than the full replacement value of the Leased Property, without deduction for depreciation. Such full replacement value shall be determined, at the District's expense, at annual intervals, by one or more of the insurers, or by an architect, contractor, appraiser, or appraisal company selected by the District and acceptable to Lessors in Lessors' sole discretion. All proceeds from hazard insurance shall be applied to the cost of any Restoration Work with respect to the damage which occasioned the payment of such proceeds.

10.1.3 If obtainable, the District shall maintain business interruption insurance covering against loss of income by reason of any damage to or destruction of all or any part of the Leased Property. Such insurance shall be in amounts satisfactory to Lessors, but in no event less than the amount of the Rent. Any business interruption insurance proceeds received by Lessors shall be applied by Lessors to Rent payments. Such application shall not relieve the District of the District's obligation to make Rent payments when due if rent insurance proceeds

held by Lessors are insufficient to pay the Rent payments, or for any reason such rent insurance proceeds are not actually applied by Lessors to the payment of such amounts but are rather applied to other amounts due from the District to Lessors. If and when the District shall complete all Restoration Work occasioned by such damage or destruction, and shall not be then in default under this Lease, then any balance of business interruption insurance proceeds then held by Lessors shall be paid over to the District.

10.1.4 The District shall maintain such workers' compensation insurance, employer's liability insurance, and other insurance as may be required from time to time by Legal Requirements.

10.1.5 The District shall keep equipment furnished and installed by the District or Lessors in the Leased Property, including, but not limited to, all items on which Lessors have a lien under the terms of this Lease, by statute, in law or in equity, insured against loss or damage by fire or other casualty, with fire and extended coverage insurance in an amount equal to not less than one hundred percent (100%) of the full replacement value of such items, written by one or more responsible insurance companies acceptable to Lessors and licensed to do business in the State of Florida, naming the District as the insured, and Lessors as additional insured and certificate holder. Each such policy shall contain a replacement cost endorsement (if Lessors determine that the policy does not otherwise adequately insure for full replacement cost). If the District's premium for such insurance increases by one-third (1/3) or more in any year, Lessors shall work with the District to determine if any property may be exempted from such insurance coverage.

10.1.6 The District shall maintain such other insurance coverage required by any Legal Authority to permit the District to operate its business from the Leased Property consistent with the Use in accordance with Legal Requirements.

10.2 Delivery. Certificates (and, if Lessors request, policies) of all Insurance, together with receipts showing payment of the premiums, shall be delivered to, and left in the possession of, Lessors. All such initial Insurance certificates (and policies) shall be delivered to Lessors on or before the Commencement Date. All renewals of Insurance shall be delivered to Lessors not less than thirty (30) days before the expiration date of the Insurance then in effect.

10.3 Form and Substance. All Insurance shall (a) be in such form and substance, in such amounts, and with such company or companies licensed to do business in the State of Florida as are reasonable and satisfactory to Lessors; (b) name as insureds Lessors, the District, and any holders of Mortgages; (c) include a mortgagee clause in standard form if there are any such holders of Mortgages; (d) require notice of any cancellation or change to be sent to Lessors at least thirty (30) days before such cancellation or change; and (e) provide that the loss, if any, shall be payable to Lessors.

10.4 Insurance Obtained by Lessors. If, at any time or times during the Term, the District shall neglect or fail to obtain, deliver to Lessors, and maintain in full force and effect any Insurance, Lessors:

10.4.1 may effect such Insurance as the agent of the District by taking out a policy or policies issued by a company or companies satisfactory to Lessors; the amount of the premium or premiums paid for such Insurance by Lessors shall be immediately due from the District to Lessors as Additional Rent upon demand; and

10.4.2 shall not be limited, in the proof of any damages which Lessors may claim against the District arising out of or by reason of such neglect or failure, to the amount of the premium or premiums not paid or incurred by the District which would have been payable upon such Insurance, but shall also be entitled to recover as damages for such breach, the uninsured amount of any loss, liability, damage, claim, cost, and expense of suit, judgment, and interest suffered or incurred by Lessors.

10.5 Assignment upon Default. From and after the occurrence of an Event of Default by the District, or the occurrence of any other event which would give Lessors the right to terminate this Lease, all right, title, and interest of the District in and to any Insurance, including any premium for and dividends upon such Insurance, are assigned to Lessors. This provision shall be self-operating, and no further documentation shall be necessary now or in the future to evidence or to confirm such assignment.

10.6 Waiver of Subrogation. Lessors and the District waive any and all rights of recovery against each other for or arising out of damage to or destruction of any of their property from causes then included under standard fire and extended coverage insurance policies or endorsements under their respective insurance policies. Each will obtain a waiver from its carrier on the Leased Property releasing such carrier's subrogation rights as against the other. Each Party waives any and all rights of recovery against the other for or arising out of damage to or destruction of any of its property from causes then included under standard fire and extended coverage insurance policies or endorsements under their respective insurance policies, and each will obtain a waiver from its insurance carrier releasing such carrier's subrogation rights as against the other.

11. INDEMNIFICATION.

11.1 Indemnification. To the extent allowed by applicable law from time to time, the District shall indemnify and save harmless Lessors and Lessors' officers, employees, other agents, and contractors ("**Lessors Parties**") from and against any liability, loss, damages, expenses, costs of action, suits, interest, fines, penalties, claims, and judgments arising out of (a) any injury or claim of injury during the Term to person or property of any nature, and any matter or thing, related to or connected with the Use and any other use, occupation, possession, management, operation, control, improvement, repair, maintenance, demolition, restoration, replacement, or rebuilding of all of any part of the Leased Property; (b) the District's failure to comply fully and promptly with all Legal Requirements; and/or (c) the District's failure to perform fully and promptly all of the terms and conditions of this Lease. The District, at the District's own cost and expense, shall (a) defend by counsel satisfactory to Lessors, any suits or actions that may be brought, and claims which may be made, against Lessors, or in which Lessors may be impleaded or named a third-party defendant, whether or not Lessors shall be liable upon any such liability, loss, damages, expenses, costs of action, suits, interest, fines,

penalties, claims, and judgments, and (d) satisfy, pay, and discharge any judgments which may be recovered against Lessors in any such suits or actions, or any suits or actions which may be filed against all or any part of the Leased Property or any interest in the Leased Property; provided the indemnity shall not apply to the extent of any Lessors Party's negligence or intentional acts.

11.2 Payment by Lessors. In the event of the District's failure to pay the sum or sums for which the District shall become liable under this Section, Lessors may pay such sum or sums, with all interest and charges which may have accrued on such sum or sums. The amounts so paid by Lessors shall be immediately due from the District to Lessors as Additional Rent upon demand.

12. CONSTRUCTION LIENS.

12.1 No Liens against Lessors' Interest. Lessors' interest in the Leased Property shall not be subject to construction, mechanic's or other liens for improvements made by the District. No act or omission of the District shall give any person or entity the right to file a construction, mechanics' or other lien against such interest without Lessors' prior written consent. Lessors shall not be liable for any work performed or to be performed on, or for any materials furnished or to be furnished at, the Leased Property for the District or any sub-District, and no construction, mechanic's or other lien for such work or materials shall attach to the reversionary or other interest of Lessors in the Leased Property.

12.2 Discharge. If, in connection with any work being performed for the District or any subDistrict, or in connection with any materials being furnished to the District, any construction, mechanic's or other lien or charge shall be filed or made against all or any part of the Leased Property, or if any such lien or charge shall be filed or made against Lessors' interest in the Leased Property, then the District, at the District's cost and expense, shall (a) within ten (10) days after such lien or charge shall have been filed or made, cause such lien or charge to be cancelled and discharged of record by payment, filing of a bond, or otherwise; (b) defend any action, suit, or proceeding which may be brought for the enforcement of such lien or charge; (c) pay any damages, costs, and expenses, including attorneys' fees, suffered or incurred by Lessors in connection with such action, suit, or proceeding; and (d) satisfy and discharge any judgment entered in action, suit, or proceeding within ten days from the entering of such judgment by payment, filing of a bond, or otherwise. The District will execute a recordable instrument, prepared by the District, reflecting the provisions of this Section.

12.3 Payment by Lessors. In the event of the District's failure to discharge any lien, charge, or judgment as required by this Section, Lessors may pay such items or discharge such liability by payment and/or bond. Such amounts as are so paid by Lessors, together with any incidental expenses, including attorneys' fees, shall be immediately due from the District to Lessors as Additional Rent upon demand.

12.4 Notification to Contractors. The District shall notify any contractor making any improvements upon the Leased Property of the provisions of this Section before

such contractor commences to make such improvements, and shall otherwise comply in all respects with Section 713.10, Florida Statutes, as amended or substituted from time to time.

13. **CONDEMNATION.**

13.1 Entire Condemnation. If at any time during the Term any part of the Leased Property shall be taken in the exercise of the power of eminent domain by any Legal Authority (including purchase in lieu of condemnation), then this Lease shall terminate as to that portion of the Leased Property only (or the entire Leased Property if the remaining Leased Property cannot be operated independently of the portion of the Leased Property taken).

13.2 Awards. Lessors shall be paid the awards, including interest, for any taking (including any Improvements made by the District and required to be transferred to Lessors) described in this Section; however, the actual cost of any Improvements constructed by the District which are the subject of a condemnation action shall be equitably apportioned between the District and the Lessors as their interests may appear. The District shall have the right to pursue the District's own separate awards for loss of business and for loss of the District's leasehold interest, and other matters, so long as Lessors' awards are not reduced in any way as a result of such actions by the District.

13.3 Temporary Taking. If the use of all or any part of the Leased Property shall be temporarily taken at any time during the Term in the exercise of the power of eminent domain by any Legal Authority, the Term shall not be reduced or affected in any way, and the District shall continue to pay in full and when due the Rent and other sums and charges required to be paid by the District to Lessors under this Lease. In such event, Lessors shall be paid the award for any such taking, and shall pay to the District that portion of such award paid for the use and occupancy of the Leased Property by District prior to the expiration or other termination of the Term, less such amount as Lessors may elect to retain as a setoff for any unpaid Rent or other sum, fee, charge, cost, or expense payable by the District to Lessors under this Lease. Lessors may retain any portion of such award paid for the use and occupancy of the Leased Property following the expiration or other termination of this Lease. Lessors shall cooperate with the District, at no cost to Lessors, in the making of claims for the District's losses related to such taking.

14. **RESTORATION AFTER CONDEMNATION OR DAMAGE.**

14.1 Restoration Work. The District shall complete all Restoration Work which becomes necessary at any time during the Term to restore the Leased Property to its original condition at the beginning of the Term, normal wear and tear excepted. Whenever the District shall be required under this Lease to carry out any Restoration Work, Lessors shall be entitled to receive any applicable Insurance proceeds and condemnation award in trust. Lessors may apply all or any portion of such proceeds to cure an Event of Default by the District, and shall otherwise disburse such proceeds or awards to the District for reimbursement for the costs and expenses of such Restoration Work.

14.2 Prior Approval. With respect to any Restoration Work, the District shall (a) obtain Lessors' prior written approval of the District's construction plans, budget, and schedule; (b) provide Lessors with true and complete certified copies of all permits and authorizations from Legal Authorities necessary to complete such Restoration Work; (c) provide Lessors with evidence, satisfactory to Lessors, that the District has sufficient insurance coverages and funds earmarked to complete such Restoration Work; (d) provide Lessors with evidence, satisfactory to Lessors, of payment and performance bonds; and (e) proceed in accordance with all other reasonable requirements of Lessors.

14.3 District Completion of Restoration Work. The District shall carry out any Restoration Work in accordance with the plans approved by Lessors and in compliance with all Legal Requirements and all of the terms and conditions of this Lease. Accordingly, the District shall (a) diligently obtain all permits and authorizations from Legal Authorities necessary for the Restoration Work at the earliest possible date; (b) commence the Restoration Work at the earliest possible date; and (c) thereafter, in a diligent and continuous manner, and in accordance with the construction schedule which has been approved by Lessors, prosecute the Restoration Work to completion at the earliest possible date.

14.4 Lessors Completion of Restoration Work. If the District shall fail or neglect at any time to supply sufficient workers or sufficient materials of proper quality, or fail in any other respect to prosecute any Restoration Work in a diligent and continuous manner, then Lessors may give Notice to the District of such failure or neglect. If such failure or neglect continues for five (5) days after such Notice, then Lessors, in addition to all other rights which Lessors may have, shall have the right, but not the obligation, to do any or all of the following as Lessors deem necessary to complete such Restoration Work: (a) declare a default by the District under this Lease; (b) enter upon the Leased Property; (c) provide, or cause to be provided, labor and/or materials upon the Leased Property; (d) perform, or cause to be performed, any contract; and (e) do, or cause to be done, such other acts and things as Lessors may deem advisable.

14.5 Reimbursement for Lessors Work. Lessors shall be entitled to reimbursement, out of any Insurance proceeds, condemnation awards, and any other monies held by Lessors for application to the cost of Restoration Work, for all costs and expenses incurred by Lessors in completing any Restoration Work pursuant to this Section. All such costs and expenses for which Lessors are not so reimbursed shall be borne by the District, in addition to any or all damages to which Lessors shall be entitled under this Lease. Upon Lessors' demand, which may be made from time to time as such costs and expenses are incurred, the District shall pay for such costs and expenses as Additional Rent.

15. ASSIGNMENT, SUBLETTING.

15.1 Assignments and Subletting by The District. Except as provided in Section 18 of the Lease, without Lessors' prior written consent, which may be withheld by Lessors in their sole, absolute and unfettered discretion, whether or not the withholding of such consent is arbitrary, the District shall not, except in the ordinary course of business, in any manner make, or permit or suffer to occur, any assignment, lease or occupancy arrangement, conveyance, transfer, conditional or collateral assignment, pledge, hypothecation, or other

encumbrance, whether by operation of law or otherwise, of this Lease or any interest in this Lease. Any change in ownership interests or structure of the District shall be deemed an assignment. Any of the foregoing done without Lessors' prior written consent shall be void.

15.2 No Other Business. Without Lessors' prior written consent, which may be granted or withheld in Lessors' reasonable discretion, the District shall not in any manner permit or suffer to occur at any time during the Term the operation of any business or service at or upon the Leased Property by any person or entity other than the District.

15.3 No Discharge of the District's Liability. No acceptance by Lessors of any performance by any permitted or unpermitted sub-District, assignee, or transferee of the District, or any other person or entity other than the District of any of the District's obligations under this Lease, including the payment of Rent, shall discharge the District, or any other person or entity liable for the performance of the District's obligations under this Lease, from liability for the performance of such obligations, except to the extent of the performance so accepted by Lessors.

15.4 No Waiver of Further Consent. Consent by Lessors to any assignment or Lease or occupancy shall not be deemed or construed to relieve any permitted assignee, sub-District, or transferee of the District from obtaining the prior written consent of Lessors to any further assignment or Lease.

15.5 Expiration of Consent. If Lessors elect to consent to a proposed assignment or Lease or occupancy, the District shall deliver to Lessors the fully executed assignment or Lease to which Lessors have consented within sixty (60) days after the giving of such consent. If the District fails to do so, then at Lessors' sole option, such consent shall expire without the need for further documentation, and the District shall thereafter be obligated to comply again with all of the procedures set forth in this Section before making any assignment or Lease.

15.6 Refusal to Consent. If Lessors refuse to consent to a proposed assignment or Lease, this Lease shall continue in full force and effect for the remainder of the Term, unless sooner terminated pursuant to the terms and conditions of this Lease.

15.7 Assignment by Lessors. Lessors and any assignee of Lessors may freely assign this Lease or any interest in this Lease. In the event of such assignment, the District shall attorn to the assignee and, from the effective date of such assignment, Lessors or any subsequent assignor of this Lease shall have no further liability or obligation under this Lease.

15.8 Conveyance of Title. Except as otherwise expressly provided for by this Lease, in the event of any good faith conveyance, other good faith divestiture, or transfer by foreclosure or in lieu of foreclosure, of Lessors' title in and to the Leased Property, (a) the entity which is otherwise divested of such title, shall be entirely freed and relieved of all of the terms and conditions of this Lease; (b) the grantee, or the person or entity which otherwise succeeds to such title, shall be deemed to have assumed the obligations of Lessors under this Lease from and after the date of conveyance; (c) until the next conveyance or divestiture of such title, the District shall look solely to such grantee or successor for the observance and performance of the

obligations so assumed by such grantee or successor; and (d) the District shall attorn to such grantee or successor.

15.9 Attornment by Subtenants. In the event of a termination of this Lease, any subtenant of the Leased Property shall attorn to the owner of the reversion, unless such owner shall, at such owner's option, elect to dispossess such subtenant or otherwise terminate the Lease held by such sub-tenant. Each subtenant which in the future Leases the Leased Property shall be deemed to have agreed to the provisions of this Section. To confirm such agreement by the subtenant, the District covenants that each Lease of the Leased Property executed in the future shall contain a clause expressly providing that the subtenant under such Lease shall attorn to the owner of the reversion, upon request, in the event of a termination of this Lease, but the absence of such a clause from any Lease shall not relieve the subtenant from the provisions of this Section.

15.10 Assignment of Rents. The District assigns to Lessors the right, following and during the continuance of an Event of Default by the District, to collect from all subtenant or other occupants all rents and other sums payable by them, and to apply the same to the Rent and all other sums payable by the District under this Lease. Any balance shall be paid over to the District. No exercise by Lessors of rights under this Section shall be deemed (a) a waiver by Lessors of any other rights under this Lease; (b) an acceptance by Lessors of such subtenant; (c) an acquiescence by Lessors to the occupancy of any part of the Leased Property by such subtenant; or (d) a release of the District from the performance of any of the obligations of the District under this Lease.

16. DEFAULT, REMEDIES.

16.1 Default. The occurrence of any of the following during the Term shall constitute an Event of Default by the District:

16.1.1 the District shall fail to pay within five (5) days of when they become due all or any portion of any Rent, including Additional Rent;

16.1.2 the District shall, other than in the manner permitted under this Lease, make or permit or suffer to occur any assignment (including any transfer of interest in the District which is deemed to be an assignment under this Lease), Lease or occupancy arrangement, conveyance, transfer, conditional or collateral assignment, pledge, hypothecation, or other encumbrance, whether by operation of law or otherwise, of this Lease or any interest in this Lease;

16.1.3 the District shall not have immediately begun to cure any default in its operation of the Property which affects service to the Community for the Use, and shall not have cured such default to Lessors' satisfaction, within five (5) days of notice from Lessors or such sooner time as may be necessary in the event of emergency;

16.1.4 the District shall not have immediately relieved any unpleasant odors emanating on or from the System, upon receipt of information regarding them from

Lessors, and shall not have cured such default to Lessors' satisfaction, within five (5) days of notice from Lessors;

16.1.5 the District shall fail in any other way in the performance or observance of any of the other terms and conditions of this Lease and shall not have cured such default within five (5) days after notice or, if impossible of cure within such five (5) day period, begun and diligently pursued such cure to completion within twenty (20) days;

16.1.6 there shall be filed by or against the District in any court or other tribunal pursuant to any Legal Requirement, a petition in bankruptcy or insolvency proceedings or for reorganization or for the appointment of a receiver or trustee of all or substantially all of the District's property, unless such petition shall be filed against the District and the District shall in good faith promptly thereafter commence and diligently prosecute any and all proceedings appropriate to secure the dismissal of such petition and shall secure such dismissal within sixty (60) days of its filing;

16.1.7 the District shall be adjudicated a bankrupt or an insolvent or take the benefit of any federal reorganization or composition proceeding, make an assignment for the benefit of creditors, or take the benefit of an insolvency law;

16.1.8 A trustee in bankruptcy or a receiver shall be appointed or elected or had for the District, whether under federal or state laws;

16.1.9 the District's interest under this Lease shall be sold under any execution or process of law;

16.1.10 the Leased Property shall not be operated or used by the District for any period of time whatsoever or the District shall fail to make continuous and uninterrupted use of the Leased Property for the Use;

16.1.11 the District shall fail to maintain current, duly issued occupational licenses, or any other permit or license required by an applicable Legal Authority for its operations at the Leased Property, and shall not have cured such default to Lessors' satisfaction, within five (5) days of notice from Lessors; or

16.1.12 District shall be in default under the Lease of which this Lease Terms is **Exhibit C**.

16.2 Remedies. In the event of the occurrence of an Event of Default by the District, Lessors, at Lessors' option, may elect to do one or more of the following:

16.2.1 accelerate all of the remaining Rent for the Term, in which event all Rent shall become immediately due and payable; and/or

16.2.2 terminate this Lease as provided by this Section and re-enter the Leased Property and remove all persons and property from the Leased Property, either by summary proceedings or by any other suitable action or proceeding at law, or otherwise; and/or

16.2.3 without terminating this Lease, re-enter the Leased Property and remove all persons and property from the Leased Property, either by summary proceedings or by any other suitable action or proceeding at law, or otherwise, and re-let all or any part of the Leased Property; and/or

16.2.4 terminate and/or exercise any other rights or remedies under any part of the Lease of which this Lease Terms is **Exhibit C**.

16.3 Termination. If Lessors elect to terminate this Lease pursuant to this Section:

16.3.1 Lessors shall give Notice of such termination, which shall take effect five (5) days after such Notice is given, or such greater number of days as is set forth in such Notice, or such earlier time as may be required in event of emergency, fully and completely as if the effective date of such termination were the date originally set forth in the Lease for the expiration of the Term;

16.3.2 the District shall quit and peacefully surrender the Leased Property to Lessors, without any payment by Lessors for doing so, on or before the effective date of termination; and

16.3.3 all Rent, including Additional Rent, shall become due and shall be paid up to the effective date of termination, together with such expenses, including attorneys' fees, as Lessors shall incur in connection with such termination.

16.4 No Reinstatement after Termination. No receipts of monies by Lessors from the District after termination of this Lease shall reinstate, continue, or extend the Term, affect any Notice previously given by Lessors to the District, or operate as a waiver of the right of Lessors to enforce the payment of Rent.

16.5 Retention of Sums after Termination. If Lessors terminate this Lease, Lessors shall retain, free of trust, all sums then held by Lessors pursuant to any of the provisions of this Lease. In the interim following such termination until the retention of such sums by Lessors free of trust, such sums shall be available to Lessors, but not to the District, pursuant to and for the purposes provided by the terms and conditions of this Lease.

16.6 Re-Entry. In the event of any re-entry and/or dispossession by summary proceedings or otherwise pursuant to this Section without termination of this Lease:

16.6.1 all Rent shall become due and shall be paid up to the time of such re-entry and/or dispossession, together with such expenses, including attorneys' fees, as Lessors shall incur in connection with such re-entry and/or dispossession by summary proceedings or otherwise; and

16.6.2 all Rent for the remainder of the Term may be accelerated and due in full, the collection of such sums being subject to the provisions of Section 16.7; and

16.6.3 Lessors may re-let all or any part of the Leased Property, either in the name of Lessors or otherwise, for a term or terms which may, at Lessors' option, be equal to, less than, or greater than the period which would otherwise have constituted the balance of the Term. In connection with such re-letting:

a. the District or the District's representative shall pay to Lessors, as they are incurred by Lessors, such reasonable expenses as Lessors may incur in connection with re-letting, including, without limitation, legal expenses, attorneys' fees, brokerage commissions, and expenses incurred in altering, repairing, and putting the Leased Property in good order and condition and in preparing the Leased Property for re-letting;

b. the District or the District's representative shall pay to Lessors, in monthly installments on the due dates for Rent payments for each month of the balance of the Term, the amount by which any Rent payment exceeds the net amount, if any, of the rents for such period collected on account of the re-letting of the Leased Property; any suit brought to collect such amount for any month or months shall not prejudice in any way the rights of Lessors to collect the deficiency for any subsequent month or months by a similar action or proceeding;

c. at Lessors' option exercised at any time, Lessors shall be entitled to recover immediately from the District, in addition to any other proper claims, but in lieu of and not in addition to any amount which would thereafter become payable under the preceding subsection, a sum equal to the amount by which the sum of the Rent for the balance of the Term, compound discounted at a reasonable rate selected by Lessors to its then-present worth, exceeds the net rental value of the Leased Property, compound discounted at the same annual rate to its then-present worth, for the balance of the Term. In determining such net rental value of the Leased Property, the rent realized by any re-letting of the Leased Property, if such re-letting is upon terms (other than rental amounts) generally comparable to the terms of this Lease, shall be deemed to be such net rental value; and

d. at Lessors' option, Lessors may make such alterations and/or changes in or upon the Leased Property as Lessors, in Lessors' sole judgment, considers advisable and necessary for the purpose of re-letting the Leased Property; the making of such alterations and/or changes shall not operate or be construed to release the District from liability under this Section; the cost of all such alterations and/or changes shall be paid by the District to Lessors as Additional Rent.

16.7 Sums Collected upon Re-letting. Lessors shall have, receive, and enjoy as Lessors' sole and absolute property, any and all sums collected by Lessors as rent or otherwise upon re-letting the Leased Property after Lessors shall resume possession of the Leased Property as provided by this Lease, including, without limitation, any amounts by which the sum or sums so collected shall exceed the continuing liability of the District under this Lease. If Lessors shall have accelerated Rent payments and collected same from the District, and subsequently shall have re-let the Leased Property, then Lessors, after deducting all costs related to re-letting, shall pay to the District the amount remaining which is collected as Rent for each month, to the extent Lessors shall have previously received the Rent for such month from the District.

16.8 No Effect on Suit. Lessors and the District agree that after the commencement of suit for possession of the Leased Property or after final order or judgment for the possession of the Leased Property, Lessors may demand, receive, and collect any monies due or coming due without in any manner affecting such suit, order, or judgment. All such monies collected shall be deemed to be payments on account of the use and occupation of the Leased Property, or, at the election of Lessors, on account of the District's liability under this Lease.

16.9 Waiver of Rights of Redemption. The District waives all rights of redemption which may otherwise be provided by any Legal Requirement in the event that Lessors shall, because of the occurrence of an Event of Default by the District, obtain possession of the Leased Property under legal proceedings, or pursuant to present or future law or to the terms and conditions of this Lease.

16.10 Use of Word "Re-Entry". The words "re-enter" and "re-entry", as used in this Section, are not and shall not be restricted to their technical legal meaning, but are used in the broadest sense.

16.11 Lessors' Operation of Property. The Parties acknowledge that upon an Event of Default, Lessors may, in exercising any of their rights or remedies, elect to operate the Leased Property for their Use or otherwise, directly or through affiliated entities; the District agrees that Lessors may do so, without any payment of Rent to Lessors and therefore without credit to the District for any Rent payments received or to be received during the remainder of the Term, without in any way reducing Lessors' right to collect Rent or other damages from the District and without in any way lessening any other rights or remedies of Lessors.

17. **LESSORS' RIGHT TO CURE DISTRICT'S DEFAULTS.** Whenever and as often as the District shall fail or neglect to comply with the terms and conditions of this Lease, Lessors, at Lessors' option may, in addition to all other remedies available to Lessors, perform, or cause to be performed, such work, labor, services, acts, or things, and take such other steps, including, but not limited to, entry onto the Leased Property and/or operate all or part of the System, as Lessors may deem advisable, to comply with and perform any such term or condition. The District shall reimburse Lessors upon demand, and from time to time, for all costs and expenses suffered or incurred by Lessors in so complying with or performing such term or condition.

18. **LESSORS' EXPENSES.**

18.1 Reimbursement. The District shall reimburse Lessors upon demand for all reasonable expenses, including attorneys' fees and costs for negotiation, trial, or appellate work (including fees for the services of paralegals and similar persons) incurred by Lessors in connection with (a) the collection of any Rent or other sums due under this Lease; (b) the termination of this Lease by reason of the occurrence of an Event of Default by the District; (c) the enforcement of any other obligation of the District which is in default under this Lease; (d) any other protection of Lessors' rights under this Lease; (e) any litigation or dispute in which Lessors becomes a party or otherwise becomes involved related to the Leased Property or Lessors' rights or obligations under this Lease and (f) all costs of re-letting the Leased Property

in the event of the District's default, including brokers' charges, and the proportionate share of the original broker's fees, if any, for which the District has not paid all Rent. If the District and Lessors are in a Dispute, each party shall pay its own attorneys' fees and costs from the non-prevailing Party.

18.2 Other Parties. If the interest of the District under this Lease shall in the future be held by more than one person or entity, and if litigation shall arise by reason of a dispute among such persons or entities, and if Lessors are made a party to such litigation without Lessors' consent, then the District shall reimburse Lessors upon demand for all reasonable expenses, including attorneys' fees and costs for negotiation, trial, or appellate work (including fees for the services of paralegals and similar persons), incurred by Lessors in connection with any such litigation.

19. **PAYMENTS, INTEREST.**

19.1 Amounts Due Deemed Rent. All sums which the District shall be obligated to pay to Lessors from time to time pursuant to this Lease shall be deemed part of the Rent. In the event of the nonpayment by the District of such sums, Lessors shall have the same rights and remedies by reason of such nonpayment as if the District had failed to pay any Rent.

19.2 Interest. In each instance when the District shall be obligated to make any payment of any sum under this Lease, interest shall accrue on such payment and shall be payable under this Lease at the highest rate permitted by applicable law, rule, or regulation then in effect, computed from the date such payment first became due under this Lease to the date of Lessors' receipt of such payment.

20. **DEFAULT BY LESSORS, REMEDIES.**

20.1 Default. If Lessors shall be in default under this Lease in any respect, such default shall not give rise to any rights or remedies in the District unless and until the District gives Notice to Lessors of such default, pursuant to Section 24.6, and

20.1.1 if such default is susceptible of being cured within a period of forty-five (45) days after such Notice is given, Lessors shall have failed to cure such default within such period (and the holder(s) of any Mortgage shall not have cured such default as described in Section 22.3); or

20.1.2 if such default is not susceptible of being cured within the time described in Section 20.1.1, Lessors or the holder(s) of any Mortgage shall have failed to commence to cure such default within such period and thereafter diligently to prosecute the cure to completion.

20.2 No Personal Liability. The District acknowledges that Lessors shall have no personal liability under this Lease. In the event of a default by Lessors in the performance of any obligations under this Lease, the District shall look solely to Lessors' equity in the Leased Property for satisfaction of the District's remedies. The District further acknowledges that any holder(s) of any Mortgage have no obligations whatsoever under this Lease; if any such holder

undertakes a cure as anticipated in Section 22.3, such undertaking shall be voluntary only and shall not cause any liability whatsoever to such holder.

21. ENTRY, SURRENDER.

21.1 Entry. Lessors and Lessors' employees and other agents shall have the right, but not the obligation, upon reasonable notice to the District, and at reasonable times, to enter upon and pass through the Leased Property from time to time in order to make an examination of the Leased Property. In the event of an emergency, Lessors and Lessors' employees and other agents shall have the right, but not the obligation, without any notice to the District, to (a) enter upon and pass through the Leased Property as Lessors shall deem appropriate to respond to the emergency, and (b) take such other or further actions, whether on or off the Leased Property, as Lessors shall deem appropriate to respond to the emergency. Except for such emergencies and for repairs normally conducted during business hours, Lessors shall exercise their right of entry during non-business hours or, if such is impractical, shall use their good faith efforts not to disturb the District and the District's business more than is reasonably necessary.

21.2 Surrender of Leased Property. The District shall, on the last day of the Term or upon any termination of this Lease, surrender and deliver up the Leased Property, including all Improvements, into the possession and use of Lessors (a) without fraud or delay, (b) in good order, condition, and repair, subject to ordinary wear and tear, (c) free and clear of all letting and occupancies, and (d) without any payment or allowance by Lessors on account of or for the Leased Property. All personal property and other belongings which are left upon the Leased Property at the time of such surrender shall be deemed to have been abandoned. Cost to Lessors of removal, sale and/or storage of such property shall be paid to Lessors by the District.

21.3 Holding Over. If the District does not immediately surrender the Leased Property to Lessors at the end of the Term, then the District shall pay to Lessors double the amount of the Rent (including Additional Rent) paid by the District for the last month of the Term for each month or portion thereof that the District holds over plus all damages that Lessors may suffer on account of the District's failure so to surrender to Lessors possession of the Leased Property, and shall indemnify and save Lessors harmless from and against all claims made by any succeeding lessee of the Leased Property or broker procuring such lessee, against Lessors arising from, growing out of, or related to delay of Lessors in delivering possession of the Leased Property to such succeeding lessee, so far as such delay is occasioned by failure of the District so to surrender the Leased Property in accordance with this Lease or otherwise. No receipt of money by Lessors from the District after termination of this Lease or the service of any notice of commencement of any suit or final judgment for possession shall reinstate, continue or extend the Term or affect any such notice, demand, suit or judgment. No act or thing done by Lessors or their agents, including acceptance of keys to the Leased Property, during the Term shall be deemed an acceptance of a surrender of the Leased Property, and no agreement to accept a surrender of the Leased Property shall be valid unless it be made in writing and subscribed by a duly authorized officer or agent of Lessors.

22. MORTGAGES/FINANCING.

22.1 General. The District acknowledges that Lessors have and intend to enter into financing and refinancing transactions with one or more lender, security holder, credit agency, multilateral institution, equity provider, bond holder, underwriter and others providing financing or refinancing to or on behalf of Lessors or any affiliate thereof, or any trustee or agent acting on behalf of any of the foregoing, and their successors and assigns (the "Financing Parties") to fund the acquisition, construction, addition to, renewal, and replacement of the Leased Property, in which financing(s) Lessors intend to assign this Lease as security to the Financing Parties, and may provide the Financing Parties other security interests, including mortgages on the Leased Property. In connection therewith, the District agrees to consent to the assignment of this Lease as security to the Financing Parties, and to furnish to the Financing Parties, such written information, certificates, copies of invoices and receipts, affidavits, consents to assignment of the Lease and other like documents as the Financing Parties may reasonably request. Anything in this Lease to the contrary notwithstanding, in the event of a foreclosure under any Financing Documents, the District shall attorn to the Financing Party or purchaser at a foreclosure sale that accedes to the interest of Lessors under this Lease, and this Lease shall continue in full force and effect and binding on the Financing Party or purchaser at a foreclosure sale and the District, and so long as the District is not in default beyond all applicable notice and cure periods, the District's rights under the Lease shall not be terminated or interfered with.

22.2 Subordination of Lease to Fee Mortgage. This Lease is and shall at all times be subordinate to any Mortgage or underlying or ground lease now or in the future encumbering all or any part of the Leased Property. If the holder of any Mortgage or underlying lease shall succeed to Lessors' interest in this Lease, the District shall, upon the request of such holder, attorn to such holder. In confirmation of the foregoing, the District, upon Lessors' request, shall promptly, without charge, execute such reasonable truthful certifications and/or other documents as Lessors or such holder may require. A failure by the District to execute any such certifications and/or other documents, however, shall not affect the subordination of this Lease to any such Mortgage or underlying lease pursuant to this Section. Lessors shall in good faith attempt to obtain from the holder of any Mortgage or underlying lease a non-disturbance agreement executed by such holder, providing that the District's occupancy of the Leased Property shall not be disturbed by such holder so long as the District is not then in default under this Lease.

22.3 Subordination of Mortgage Upon Holder's Request. If the holder of any Mortgage or grantor of any superior lease requires that this Lease be prior rather than subordinate to such Mortgage, the District, promptly upon request by Lessors or such holder, shall, without charge, execute a document affecting and/or acknowledging such priority provided District's occupancy shall not be disturbed by such party so long as the District is not then in default under this Lease.

22.4 Notice and Cure. Upon request of the holder of any Mortgage or grantor of any superior lease:

22.4.1 the District shall give prompt notice of any default by Lessors under this Lease to such holder or grantor. Such notice shall be given in the manner provided in this Lease for a Notice, except that such notice shall be addressed to such person and address as such holder shall request; and

22.4.2 the District shall allow such holder a reasonable period, not less than sixty (60) days from the date of such notice, in which to cure any such default which is susceptible of being cured within such period, or to commence to cure any such default which is not susceptible of being cured within such period provided that such holder or grantor shall thereafter diligently prosecute such cure to completion. The District shall accept any such cure.

22.5 Future Financing Requirements. If, in connection with obtaining temporary or permanent financing for the Leased Property or any part of it or of any ground or underlying lease, any such lender shall request reasonable modifications of this Lease as a condition to such financing, the District agrees that the District shall not unreasonably withhold, delay or defer the execution of an agreement of modification of this Lease provided such modifications do not increase the obligations of the District under this Lease or adversely affect the District's interest or the District's reasonable use and enjoyment of the Leased Property.

22.6 Attornment. If the grantor of a superior lease or the holder of a superior Mortgage (or any nominee thereof) shall be the transferee of the rights of Lessors under this Lease, or if the interests of Lessors under this Lease shall be transferred to any person or entity in any way either voluntarily or by reason of foreclosure or other proceedings for enforcement of any Mortgage or lease encumbering all or part of the Leased Property, the District shall be bound to such transferee for the balance of the Term, and any extensions or renewals of this Lease which may be effected in accordance with the terms and provisions of this Lease, with the same force and effect as if the transferee were the landlord under this Lease; the District agrees to attorn to such transferee, including the holder of any Mortgage and the Lessors under any such lease, as its landlord. Such attornment shall be effective and self-operative without the execution of any further instruments, upon the transferee's succeeding to the interest of Lessors under this Lease. Notwithstanding the provisions of the foregoing sentence, the District shall, within ten (10) days of request of Lessors or the holder of any such lease or Mortgage, execute and deliver any reasonable instrument that such successor landlord may request to evidence such attornment.

22.7 Transfer. In the event of such transfer of Lessors' interests, Lessors shall be released and relieved from all liability and responsibility thereafter accruing to the District under this Lease or otherwise and Lessors' successor shall be liable and responsible to the District with respect to all obligations of Lessors under this Lease accruing from and after the date of such transfer.

22.8 Successor Rights. The rights given to the successor landlord include any successor landlords who derive title through an underlying lease or a superior Mortgage holder's foreclosure sale or deed in lieu of foreclosure. Upon attornment by the District to such successor landlord, this Lease shall continue in full force and effect as if it were a direct lease, for the balance of the Term (including option or extension terms, if any), between the successor landlord and the District upon all of the terms, conditions and covenants as are set forth in this Lease

except that the successor landlord, directly or indirectly through foreclosure of a superior mortgage or a deed in lieu thereof, shall not:

22.8.1 be liable for any previous act or omission of Lessors under this Lease; or

22.8.2 be bound by any previous modification of this Lease, not expressly provided for in this Lease, or by any previous prepayment of more than one month's Rent, unless such modification or prepayment shall have been expressly approved in writing by the grantor of the superior lease or the holder of the superior Mortgage through or by reason of which the successor shall have succeeded to the rights of Lessors under this Lease.

22.9 Leasehold Mortgage. The District shall not pledge or encumber the estate created by this Lease.

23. **Lessors' LIEN.**

23.1 Lien. Lessors shall have, and the District grants to Lessors, a security interest in any furnishings, equipment, fixtures, inventory, accounts receivable, licenses and other personal property of any kind belonging to the District, or the equity of the District in such items, on the Leased Property or elsewhere. Such security interest is granted for the purposes of securing the payment of Rent and other charges, assessments, penalties, and damages required under this Lease to be paid by the District, and of securing the performance of all other obligations of the District under this Lease.

23.2 Remedies. Upon the District's default or breach of any terms and conditions of this Lease, Lessors shall have all remedies available under applicable law, including, without limitation, the right to take possession of any or all of the items referred to in Section 23.1 and dispose of them by public or private sale in a commercially reasonable manner, or to store them at the District's cost, or to abandon or discard them.

23.3 Statutory or Common Law Liens. The provision for a landlord's lien as described in this Section shall be in addition to, and not in substitution for, any landlord's lien and similar remedies otherwise provided by statutory or common law.

23.4 Uniform Commercial Code. To the extent, if any, that this Lease grants Lessors any lien or lien rights greater than provided by the laws of the State of Florida pertaining to landlord's liens, this Lease is intended as and constitutes a security agreement within the meaning of the Uniform Commercial Code. Lessors, in addition to the rights prescribed in this Lease, shall have a Security Interest, as that term is defined under this state's Uniform Commercial Code, in the items referred to in Section 24.1 to secure the payment to Lessors of the various amounts provided for in this Lease. The District agrees to and shall execute and deliver to Lessors such financing statements and such further assurances as Lessors may, from time to time, reasonably consider necessary to create, perfect, and preserve the lien described and all additions, substitutions, replacements, and accessions thereto, and all proceeds of its or their sale or other disposition (under the Uniform Commercial Code, other statutory provisions, or

otherwise). Lessors, at the expense of the District, may cause such financing statements and assurances to be recorded and re-recorded, filed and re-filed, and renewed or continued, at such times and places as may be required or permitted by law to create, perfect, and preserve such liens. In the event the District fails to promptly execute and return to Lessors such financing statements and other instruments as Lessors may require to create, preserve, and perfect its lien, the District shall and does hereby designate Lessors to act as the District's agent for the sole and limited purpose of executing such financing statements and other instruments and any such execution by Lessors pursuant to this Lease shall be effective and binding upon the District as though executed originally by the District. The District's designation of Lessors as agent hereunder shall not be subject to revocation until this Lease is terminated.

24. **MISCELLANEOUS.**

24.1 Unavoidable Delays. If either Party's performance of any obligation under this Lease is delayed or prevented by an Unavoidable Delay, the period of such delay or prevention shall be deemed added to the time provided for by this Lease for such performance, provided that such Party shall have given Notice to the other Party of such Unavoidable Delay within thirty (30) days after its onset. Failure to give such Notice shall operate as a waiver of any right to extend the time for performance of such obligation.

24.2 Estoppel Certificates. The District agrees that at any time and from time to time during the Term, within ten (10) days after request by Lessors, it will execute, acknowledge, and deliver to Lessors or to any prospective purchaser, assignee, or mortgagee designated by Lessors, a certificate which states (a) that this Lease is unmodified and in full force and effect, or if there have been modifications, that this Lease is in full force and effect as modified, and identifying the modification agreements; (b) the date to which the Rent has been paid; (c) the nature and extent of any existing default by either Party as to which a Notice has been given to the other Party; (d) whether or not there are any setoffs, defenses, or counterclaims against enforcement of the obligations to be performed under this Lease existing in favor of the District; and (e) other matters which Lessors may reasonably request.

24.3 No Merger. The interest, estate, and rights of the District under this Lease shall be deemed to be separate and distinct from Lessors' interest, estate, and rights in or to the Leased Property, notwithstanding that any such interests, estates, or rights shall at any time or times be held by or vested in the same person or entity. In no event shall the leasehold interest, estate, or rights of the District under this Lease merge with any interest, estate, or rights of Lessors in or to the Leased Property.

24.4 No Broker. Each party warrants and represents to the other that no real estate brokers, agents, salesmen, or finders are involved in this transaction. If a claim for brokerage or similar fees in connection with this transaction is made by any broker, agent, salesman, or finder claiming to have dealt through or on behalf of one of the Parties to this Lease, then such Party shall indemnify, defend, and hold harmless the other Party from all liabilities, damages, claims, costs, fees, and expenses (including reasonable attorneys' fees and court costs, including those for appellate matters) with respect to such claim for brokerage. The provisions of this Section shall survive the expiration or termination of this Lease.

24.5 Notice. Each Notice shall be deemed to have given when given in accordance with the provisions of the Lease.

24.6 Consents. Whenever under this Lease Lessors' consent or approval is expressly or impliedly required, it may be arbitrarily withheld except as otherwise specified in this Lease. If the District requests Lessors' consent or approval, and if in connection with such request Lessors seek the advice of their attorneys, architect and/or other adviser or expert, then the District shall pay such persons' costs and fees reasonable to such request and the preparation of related documents.

24.7 Survival. All obligations of the District or Lessors which are or may be intended by their nature to be performed and/or complied with after the expiration or earlier termination of this Lease shall survive such expiration or termination. Express provisions in this Lease which require or permit survival in specific instances, or as to specific obligations, shall not be deemed a limitation upon the generality of this survival clause.

24.8 Provisions Severable. Every provision of this Lease shall be valid and be enforced to the fullest extent permitted by law. If any provision of this Lease, or the application of such provision to any person or circumstance, shall be determined by appropriate judicial authority to be illegal, invalid, or unenforceable to any extent, such provision shall, only to such extent, be deemed stricken from this Lease as if never included. The remainder of this Lease, and the application of such provision to persons or circumstances other than those as to which such provision is held illegal, invalid, or unenforceable, shall not be affected. Nothing in this Lease shall be construed to require the District to use its taxing power in contravention of any constitutional or statutory law requirement.

24.9 Modification. This Lease may be changed, amended, or modified only by an agreement in writing signed by the Party against whom such change, amendment, or modification is sought to be enforced.

24.10 Dispute Resolution. The Mandatory Dispute Resolution provisions of Section 15 of the Lease shall apply to this Lease Terms.

24.11 Approvals. T&C currently holds certificates of authority for the Leased Property (excluding the Irrigation quality water System) from the Florida Public Service Commission ("FPSC"). In the event T&C or the District determines that this Lease requires the approval of the FPSC pursuant to Section 367.071, Florida Statutes, either party may submit a request for approval of the Lease with the FPSC. If applicable pursuant to Section 367.071, Florida Statutes, this Lease shall be contingent upon FPSC approval. The parties are entering into the Lease pursuant to the provisions of Section 367.022(2), Florida Statutes, which exempt the District and T&C from regulation by the FPSC as the Leased Property will be operated, managed and controlled by the District pursuant to the Lease. In the event the FPSC opens a docket to determine whether the District is exempt from FPSC regulation at any time during the term of the Lease or in the event T&C has concerns regarding the exemption of the transaction from FPSC regulation or oversight, T&C has the right to terminate this Lease upon thirty (30) days' notice, provided if the FPSC determines in a final order after all appeals that the District

**Lease/Option
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and T&C is exempt from FPSC jurisdiction under the Lease and the Lease has not been terminated by T&C prior to such time, T&C's right to terminate the Lease under this Section will cease. Upon a termination of the Lease pursuant to this Section, the provisions for orderly transition upon termination set forth in Section 16 of this Lease Terms shall apply.

EXECUTION OF THE LEASE SHALL BE DEEMED EXECUTION OF THIS **EXHIBIT C** BY LESSORS AND THE DISTRICT, NOTWITHSTANDING ANY PROVISION TO THE CONTRARY. HOWEVER, A SEPARATE LEASE AGREEMENT, INCORPORATING THE TERMS OF THIS **EXHIBIT C**, OR A MEMORANDUM OR SHORT FORM OF THIS LEASE, SHALL BE EXECUTED BY THE PARTIES TO IT UPON REQUEST OF Lessors, AND RECORDED BY LESSORS.

RIDER C-1

BASE RENT

	<u>Water</u>	<u>Sewer</u>	<u>Irrigation</u>	<u>Total</u>
Annual Base Rent (monthly) (as of December, 2016)	\$10,764.00	\$9,866.67	\$2,477.08	\$23,107.75
Annual Base Rent (monthly)/ERC	\$51.75	\$48.13	\$12.59	\$112.47

The Annual Base Rent is calculated based on Lessors' actual cost of the Leased Property on the Commencement Date of the Lease times a return on common equity ("ROE") of 11.16%, based on the range of ROE in Order No. PSC-16-0254-PAA-WS of the Florida Public Service Commission, issued June 29, 2016 ("ROE Order")¹. The Annual Base Rent shall be due and payable in twelve (12) monthly installments, together with applicable taxes, on the first day of each month during the term of the Lease Terms, based on the number of ERCs connected to the System as of the first day of each month times the Annual Base Rent (monthly)/ERC². Annual Base Rent payments for partial months shall be prorated based on a thirty (30) day month. Additional Rent shall be calculated as provided in this **Rider C-1** and as provided in **Rider C-2** below and as otherwise provided in the Lease.

A. The Annual Base Rent shall be automatically increased monthly as follows:

I. Renewal and Replacement Expenditures by Lessors

In the event that Lessors exercise their option under Section 7.2 of the Lease Terms and makes improvements/additions to the Leased Property (real or personal, tangible or intangible property) for renewal, replacement or enhancement of existing Leased Property, then the Annual Base Rent shall be adjusted based upon the following formula:

(Actual cost of each renewal, replacement and enhancement improvement/addition) x ROE based on the then effective ROE Order

Example

\$1,000,000 replacement water project, \$2,000,000 replacement sewer project

	Water	Sewer	Total
Cost of project (\$)	1,000,000	2,000,000	3,000,000
x 11.16%[ROE]			x 11.16%
Additional monthly Base Rent (\$)			\$27,900.00

¹ The ROE Order establishes a range of return on equity. The District is not subject to the jurisdiction of the Florida Public Service Commission or the ROE Order, but incorporates the findings of the Commission on ROE for purposes of the Lease.

² For purposes of determination of ERCs connected as of the first day of a month, once a customer is connected to the System, that customer's ERCs shall not be deducted from future monthly ERC counts in the event of disconnection or termination of service to such customer.

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The actual cost of a renewal and replacement expenditure shall be certified to the District by Lessors' project engineer. The additional Rent payment shall be added to the District's monthly Base Rent payments commencing with the month after the project engineer has certified to the District that the improvement/addition has been placed in service.

II. Expansion Expenditures by Lessors

In the event that Lessors exercise their option under Section 7.2 of the Lease Terms and makes improvements/additions to the Leased Property (real or personal, tangible or intangible property) to expand the capacity of the System to serve additional equivalent residential connections ("ERCs"), and to the extent that previous improvements/additions to the Leased Property to serve additional ERCs have not yet been fully incorporated within the Base Rent as used and useful as of the effective date of this Lease Terms (collectively referred to as "Expansion Related Improvement"), then the Annual Base Rent shall be automatically adjusted on a monthly basis based upon the following formula:

$$\left[\frac{\text{[(Actual cost of each Expansion Related Improvement)] / (Number of additional ERCs of capacity added to the System by the Expansion Related Improvement)}}{\text{then effective ROE Order}} \times (\text{Number of ERCs connected to Expansion Related Improvements during the month}) \right]$$

Example

Existing \$1,000,000 Expansion Related Improvement water facility with 7,000 ERC capacity; new \$2,000,000 Expansion Related Improvement sewer facility with 3,500 ERC capacity; 30 new ERCs connected to both Expansion Related Improvements in a given month.

	Water	Sewer	Total
Cost of new facilities (\$)	1,000,000	2,000,000	3,000,000
ERC capacity	7,000	3,500	
New ERCs for the month	<u>30</u>	<u>30</u>	
x 11.16%[ROE]	<u>x 11.16%</u>	<u>x 11.16%</u>	
Additional monthly Base Rent (\$)	\$39.86	\$159.43	<u>\$199.29</u>

The actual cost of expansion capital expenditure shall be certified to the District by Lessors' project engineer. The additional Rent payment shall be added to the District's monthly Base Rent payments commencing with the month after the project engineer has certified to the District that the capital improvement has been placed in service. Once all of the ERC capacity of an Expansion Related Improvement has been utilized, the additional Rent payments for such facility will be capped.

III. Mixed Renewal and Replacement and Expansion Capital Expenditures by Lessors

In the event that a capital expenditure by Lessors has elements of both a renewal and replacement expenditure and an expansion expenditure, then Lessors' project engineer shall certify to the District the percentage and amount of the total cost of the capital expenditure that relates to renewal and replacement and the percentage and amount of the total cost of the capital expenditure that relates to expansion. The amounts certified by the project engineer for renewal and replacement shall be applied under Section I above. The amounts certified by the project engineer for expansion shall be applied under Section II above.

B. The Annual Base Rent shall be automatically decreased monthly as follows:

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In the event that the District acquires any part of the System pursuant to an exercise of a Purchase Option or Put Option, as defined in the Lease, or in the event a part of the System is permanently taken out of service, then the monthly Base Rent payments shall be decreased by the following formula:

(Original cost of each part of the System acquired or taken out of service) x the current ROE Order

Example

	Water	Sewer	Reuse	Total
Original Cost of System acquired (\$)	1,000,000	2,000,000	1,000,000	4,000,000
x 11.16%[ROE]	<u>x 11.16%</u>	<u>x 11.16%</u>	<u>x 11.16%</u>	<u>x 11.16%</u>
Reduction to monthly Base Rent (\$)	\$9,300.00	\$18,600.00	\$9,300.00	\$37,200.00

The original cost of the parts of the System acquired by the District or permanently taken out of service shall be certified to the District by Lessors' accounting professionals. The reduction to monthly Base Rent shall be applied to the District's monthly Base Rent payments commencing with the month after the acquisition of the parts of the System by the District or the date a part of the System is permanently taken out of service.

C. Memorializing Automatic Adjustment to Annual Base Rent

In the event of an adjustment to the Annual Base Rent pursuant to Subpart A or Subpart B of this **Rider C-1**, Lessors shall prepare a revised **Rider C-1** with the adjusted Annual Base Rent, which revised **Rider C-1** shall be substituted for and supersede the then current **Rider C-1**, which revised **Rider C-1** shall be attached to the Lease and automatically made a part thereof without the requirement for formal amendment.

D. Rate Covenant

As additional security to Lessors under the Lease, the District shall fix, establish and maintain such rates, fees, charges and collect such fees, rates or other charges for the product, services and facilities of the System, and revise the same from time to time, whenever necessary, as will always provide in each fiscal year, net revenues of the System adequate at all times to pay in each fiscal year at least one hundred forty percent (140%) of the Annual Base Rent due in such fiscal year. Net revenues mean all revenues of the System collected by the District, except AFPI and Connection Fees, less all operating and maintenance expenses of the System, renewal and replacement reserves and debt service, but excluding the Annual Base Rent expense. Lessors may, in their discretion, waive any or all of this requirement for a given year upon request from the District. In the event the District issues bond indebtedness that requires the District to maintain debt service coverage as a condition of such indebtedness, any such debt service coverage earned by the District in a given year may be used by the District to satisfy the Rate Covenant requirements set forth above.

E. Rent Limitation

Provided the District is in compliance with each of its covenants and obligations under the Lease, the amount of Annual Base Rent and Additional Rent for each year of the Lease that exceeds the net revenues of the System plus AFPI collected by the District in such year may be deferred by the District until such time as the District has sufficient net revenues of the System plus AFPI collected by the District to pay

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such deferrals plus accrued interest at the rate provided in Section 218.74(4). Notice of intent to utilize a deferral shall be provided to T&C with each payment of Annual Base Rent and Additional Rent.

RIDER C-2

O&M TERMS

Article 1 DEFINITIONS

"Abnormal or Biologically Toxic Material" is defined as any substance or combination of substances contained in the raw water or influent wastewater received or treated at any of the Facilities in sufficient concentrations or amounts so as to either:

interfere with the biological processes necessary for the removal of organic and chemical constituents from the raw water or influent wastewater in a manner required to meet Applicable Law including the discharge limits specified in the District's Discharge Permit(s);

cause a failure to meet the requirements of the Environmental Permits and/or Applicable Law; or

cause the effluent wastewater discharged from the Facilities or the Process Residue to become hazardous waste as defined under RCRA and/or hazardous substances as defined under CERCLA.

Abnormal or Biologically Toxic Materials may include, but are not limited to, concentrations of heavy metals, phenols, cyanides, pesticides, herbicides, priority pollutants as listed by USEPA, or any substance that violates the local or USEPA standards for finished water.

"Additional Services" shall mean any other services which the District requests in writing for Operator to perform that are outside the scope of services as provided herein, and are agreed upon by Operator and District. Additional Services will be invoiced separately to the District as Additional Rent.

"Adjustment Date" shall mean each and every anniversary of the Commencement Date.

"Affiliate" shall mean "related parties" to Operator and the District within the meaning of Section 144(a)(3) of the Internal Revenue Code.

"Lease" is defined in the Preamble to this Lease.

"Lease Year" is defined as any consecutive twelve (12) month period during the term of the Lease (including the renewal options) that begins on the Commencement Date and subsequently ends on the end of business on the day prior to each anniversary of that date.

"Annual Maintenance Expenditures" is defined as the total of all expenses incurred annually by Operator in connection with the discharge of its maintenance responsibilities as provided by Section 4.4 of this **Rider C-2**; provided however that the Annual Maintenance Expenditures shall exclude Operator's direct labor expenses and related benefits for those positions that are assigned by Operator to the operation and maintenance of the Facilities, as those costs are included in the Base Compensation hereunder. The Annual Maintenance Expenditures shall specifically include, but shall not be limited to, all materials, supplies, parts, outside subcontractors, specialized services, and rental equipment, as well as the cost of Operator's direct labor expenses and related benefits for positions not included in the Base Compensation hereunder. As stated in Section 4.5 hereunder, any individual expenditure for the repair and/or

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replacement of Facilities' equipment or structure, other than a Capital Improvement, whose unit cost (as to any single event or function) exceeds ten thousand dollars (\$10,000.00) shall be subject to the District's prior approval and shall be considered an Extraordinary Cost.

"Annual Repair and Maintenance Limit" is defined as the total of all Annual Maintenance Expenditures in an amount up to a maximum of three hundred thousand dollars (\$300,000.00) for the first Lease Year. For each Lease Year thereafter, the Annual Repair and Maintenance Limit shall be reviewed by Operator and the District and approved by District in conjunction with presentation of an annual report by Operator, provided, however, that in the absence of an approval by District for any given year, the Annual Repair and Maintenance Limit from the prior year shall be increased on each Adjustment Date by the Price Index and by a multiplier with a numerator equal to the Base Rent for the then current Lease Year and a denominator equal to the Base Rent for the prior Lease Year.

"Applicable Law" is defined as those laws, rules, regulations, codes, administrative and judicial orders, directives, guidelines, judgments, rulings, interpretations or similar requirements or actions of any federal, state, local government, agency or executive or administrative body of any of the foregoing, including SDWA, CERCLA and RCRA, in each case that pertain to the (a) parties' respective responsibilities under this Lease; (b) operation or maintenance of the Facilities; (c) health and welfare of individuals working at or visiting the Facilities; and (d) the collection, delivery, treatment and disposal of the District's raw and finished water, wastewater, Process Residue and/or related wastes. This definition specifically includes the terms, conditions, requirements or schedules of any administrative or judicial settlement or enforcement related, in any way, to the Facilities, to the collection, delivery, pretreatment, or treatment of the District's raw and finished water or wastewater, to the handling, transportation, treatment and disposal of Process Residue and to each of the District's Environmental Permits issued for the Facilities.

"Authorized Representative" is defined in Section 7.1 below.

"Base Compensation" is defined in Section 8.1 below.

"Capital Improvement(s)" shall mean changes, modifications, additions, or upgrades to the Facilities constructed or implemented by the District or with the District's prior approval.

"CERCLA" is defined as the federal Comprehensive Environmental Response Compensation and Liability Act, as same may be amended from time to time, 42 USC §9601 et seq.

"Change of Law" is defined as the occurrence of any of the events listed in (i) through (iv) below, which results or can reasonably be expected to result in (a) the need to make a Capital Improvement at or to the Facilities in order for Operator to operate the Facilities in accordance with this Lease and Applicable Law; or (b) an increase or decrease to the cost of managing, operating or maintaining the Facilities in accordance with this Lease and Applicable Law; or (c) a material and adverse effect on the scope of Operator's liabilities or obligations under this Lease:

- (i) there is passed or promulgated any federal, state, or other local law, statute, ordinance, rule or regulation different from those existing on the date this Lease is executed; or
- (ii) there is passed or promulgated any amendment to, or change in, any federal, state, or other local law, statute, ordinance, rule or regulation (including any applicable sales tax regulation) following the date of this Lease; or
- (iii) following the execution of this Lease, there comes into existence an order or judgment of any federal, state, or local court, administrative agency or other governmental body

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containing interpretations of any Applicable Law relating to the operation or maintenance of the Facilities or the health and safety of Operator's employees that is inconsistent with generally accepted interpretations in effect on the date this Lease is executed; or

- (iv) after the effective date of this Lease, any change occurs which affects the issuance or renewal, or causes a suspension, termination, interruption, revocation, denial or failure of renewal (for reasons other than Operator fault or failure by Operator to comply with the terms of this Lease) of any Environmental Permit, official permit, license or necessary approval by the USEPA, the Occupational Safety and Health Administration or the State Environmental Agency.

"Commencement Date" shall mean the date designated by the parties hereunder for the commencement of their respective obligations. The parties agree that the Commencement Date shall be the Commencement Date of the Lease as defined in the Lease Terms, Exhibit C.

"Demobilization Expenses" is defined as Operator's actual documented costs related to the termination of Services by the District pursuant to Section 9.2 hereunder. Demobilization Expenses include, without limitation, the below-listed items:

- (a) Non-capitalized items, which include labor expenses for employees terminated by Operator as a result of a termination of Services, including pay out of vacation accruals, and benefits carryover, legal and other administrative costs. The parties agree that the District's costs for these non-capitalized items shall be capped at one hundred and fifty thousand dollars (\$150,000.00).

and

- (b) Capital purchases of items specifically used for rendering the Services hereunder.

"District's Discharge Permit(s)" and/or *"Discharge Permit(s)"* shall refer to all permits and licenses issued to the Lessors, District or Operator on behalf of the District by FDEP or the Charlotte County or Lee County Health Departments and required for the discharge of wastewater and reclaimed water from the Facilities, as they may be amended, renewed or replaced from time to time.

"District Environmental Permit(s)" or *"Environmental Permit(s)"* shall refer to the District's Discharge Permits, permits and licenses issued to the Lessors, District, or Operator on behalf of the District by SFWMD required for the withdrawal and use of raw water, and all other permits and licenses issued to the Lessors, District, or Operator on behalf of the District, and required for the operation of the Facilities and provision of water, wastewater and reclaimed water to the public, as they may be amended, renewed or replaced from time to time.

"Environmental Compliance Guarantee" is defined in Section 6.1.

"Extraordinary Cost(s)" shall mean any expenditure for either the repair and/or replacement of Facilities' equipment or structure whose unit cost (as to any single event or function) exceeds four thousand dollars (\$4,000). Extraordinary Cost(s) shall include all expense (including the first \$4,000 of expenses) necessitated by the repair and or replacement of equipment or structure damaged by parties unrelated to and not under the supervision of Operator. Extraordinary Cost(s) shall include subcontractor costs, materials, and supplies, provided that Extraordinary Cost(s) shall not include Operator's direct labor expenses for normal scheduled hours, but shall include Operator's overtime labor costs. Extraordinary Costs may include an administrative fee on Operator's subcontractor and materials costs of seven percent

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(7%). Extraordinary Cost shall be subject to the District's pre-approval in accordance with Sections 4.5(b) and 7.8.

"Facilities" or "District's Facilities" is defined as the System described in the Lease.

"FDEP" shall mean the Florida Department of Environmental Protection.

"Force Majeure" is defined as any act, event, or condition to the extent that it adversely affects the ability of, either party to perform any obligation under this Lease (except for payment obligations) if such act, event or condition, in light of any circumstances that should have been known or reasonably believed to have existed at the time, is beyond the reasonable control and is not a result of the willful or negligent act, error, omission or failure to exercise reasonable diligence on the part of the party relying thereon, including the party's affiliates, employees, agents, officers, sub-contractors and vendors; provided, however, that the contesting party in good faith or failure in good faith to contest such action or inaction shall not be construed as a willful or negligent act, error, omission or lack of reasonable diligence of either party, and provided further that the party relying thereon uses due diligence to recommence performance as soon as practicable and to mitigate the impacts on cost of performance.

- (a) Inclusions subject to the foregoing, such acts, events or conditions may include, but shall not be limited to, the following:
- (i) landslide, sinkhole, earthquake, fire, explosion, flood, hurricane, tornado, sabotage, or similar occurrence, acts of a public enemy, terrorism, extortion, war, blockade, insurrection, riot or civil disturbance;
 - (ii) the failure of any appropriate governmental agency or private utility to provide and maintain utilities;
 - (iii) the inability of Operator and its subcontractors to gain and maintain access to all areas of the Facilities and/or adjoining the Facilities where Operator is required to provide services or perform any work hereunder;
 - (iv) the preemption, confiscation, diversion, destruction, or other interference by, on behalf, or with authority of a governmental body in connection with a declared or asserted public emergency or any condemnation or other taking by eminent domain or similar action, in the possession of property, equipment or materials located at the Facilities, or in the performance of the Services to be performed by Operator hereunder;
 - (v) strikes, work stoppages, or labor disputes affecting Operator and any subcontractor excluding material suppliers and employees of Operator or a subcontractor;
 - (vi) with respect to Operator, the presence at the Facilities of (i) subsurface structures, materials or conditions having historical, geological, archeological, religious or similar significance; (ii) any habitat of an endangered or protected species; or (iii) functioning subsurface structures used by utilities on, underneath, near or adjacent to the Facilities;
 - (vii) with respect to Operator, (i) the presence of non-authorized hazardous materials or regulated substances in environmental media anywhere in, on or under the Facilities as of the Commencement Date; (iii) the off-site migration of pollutants and/or off-site contamination, including any migration of pollutants that is not caused by the negligence of Operator; or (iv) contamination of the Facilities from groundwater, soil or airborne

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hazardous materials or regulated substances migrating from sources outside the Facilities to the extent not caused by Operator's negligence;

- (viii) with respect to Operator, damage to the Facilities caused by third parties not related to or under the control of Operator including, but not limited to, other contractors and subcontractors for the District; and
 - (ix) the failure of any subcontractor or supplier to furnish services, materials, chemicals or equipment on the dates agreed to, but only if such failure is the result of an event that would constitute Force Majeure if it affected Operator directly, and Operator is not able after exercising all reasonable efforts to timely obtain substitutes.
- (b) Exclusions. For illustration purposes and not as a limitation, none of the following acts, events or conditions shall constitute an event of Force Majeure:
- (i) general economic conditions, interest or inflation rate fluctuations, commodity prices or changes in process, or currency or exchange rate fluctuations;
 - (ii) changes in the financial condition of the District, Operator, or any of their Affiliates or subcontractors;
 - (iii) union work rules which increase Operator's operating cost for the Facilities;
 - (iv) any impact of prevailing wage laws on Operator's costs, provided however that such requirements or demands may constitute a Change of Law entitling Operator to additional compensation;
 - (v) the consequence of Operator error or omission, including any errors or omissions of Operator Affiliates or subcontractors; and/or
 - (vi) litigation against the District and/or Operator.

"Non-Processible Water or Wastewater" is defined as influent raw water or influent wastewater (i) which contains Abnormal or Biologically Toxic Materials; or (ii) which is otherwise materially detrimental to the operation and performance of the Facilities; or (iii) which exceeds the design capabilities of the Facilities as defined by the Operations and Maintenance Manual for the Facilities or as provided in submissions made to regulatory agencies in connection with the construction and/or the permitting of the Facilities, and which accordingly cannot be processed to permit requirements.

"Operator" is Lessors or their affiliate or contractor.

"Party" is defined as the District or Operator, and collectively the District and Operator are defined as the *"Parties"*.

"Price Index" shall mean the Consumer Price Index for all Urban Consumers (CPI-U) for the U.S. City Average for all Services, 1982-84=100 as published monthly by the U.S. Department of Commerce, Bureau of Labor Statistics. In the event that this Price Index is changed, or if a substantial change is made in the terms or number of items contained in the Price Index, then the Price Index shall be adjusted to the figure that would have been arrived at had the manner of computing the Price Index in effect as of the Commencement Date not been altered. In the event such Price Index (or a successor or substitute index) is not available, a reliable governmental or other non-partisan publication evaluating the information

therefore used in determining the Price Index shall be used. No adjustments or re-computations, retroactive or otherwise, shall be made due to any revision that may later be made in the first published figure of the Price Index for any year.

“*Process Residue*” is defined as grit, screenings water and wastewater sludge, bio-solids and other residues generated by or through the operation of the Facilities.

“*RCRA*” is defined as the Resource Conservation Recovery Act, as same may be amended from time to time, 42 USC §8921 *et seq.*

“*SDWA*” is defined as the Safe Drinking Water Act, as may be amended from time to time, 42 USC §300f *et seq.*

“*Services*” is defined in Section 4.1.

“*Shutdown*” is defined as the cessation or substantial interruption of normal operations at the Facilities due to the failure of operating equipment or interruption of the processes of the Facilities for reasons other than the negligence of Operator or its employees, agents or subcontractors.

“*SFWMD*” shall mean the South Florida Water Management District.

“*State*” is defined as the State of Florida.

“*USEPA*” refers to the United States Environmental Protection Agency.

Article 2 PURPOSE

During the term of the Lease, Operator shall operate and maintain the Facilities for the District, and Operator agrees to operate, and maintain the Facilities in accordance with these O&M Terms under the direction, management and control of the District, Applicable Law, and all permits, licenses, manufacturer’s protocols, and specifications applicable to the operation and maintenance of the Facilities. Each party hereto agrees that it will cooperate in good faith with the other and its agents, employees, representatives, officers, contractors, and subcontractors to facilitate the performance of the mutual obligations set forth in these O&M Terms.

Article 3 DISCLOSURE OF INFORMATION

Operator represents and warrants to the District that it has disclosed, and will in the future disclose, any and all material information it now has, or may have in the future, relating to the Facilities that may be relevant to the performance of its duties and obligations in this Lease. The District will, in the future, disclose any and all material information it may have relating to the Facilities that may be relevant in the performance of Operator’s duties and obligations in this Lease. Such information shall include, but shall not be limited to, the appropriate sections of any vulnerability or security assessment performed (including any vulnerability assessments performed in accordance with 42 USCS §300i-2 or any other similar statute), environmental audits, prior permit violations and/or dealings with regulatory agencies.

Article 4 SCOPE OF SERVICES AND OPERATOR'S RESPONSIBILITIES

Section 4.1 General

Subject to the terms and conditions provided herein, District's control, management and direction, and District's appropriation of sufficient funds for payment of Additional Services, Annual Maintenance Expenditures, Base Compensation, and Extraordinary Costs, Operator shall operate, maintain, repair, replace and manage the Facilities during the term as set forth in this Article 4 (hereinafter the "Services").

Section 4.2 Standard of Care

The Services provided by Operator are of a professional nature and shall be performed in accordance with the degree of skill and care ordinarily exercised by members of Operator's profession in the geographic region of the Facilities at the time the Services are performed.

Section 4.3 Process Control

- (a) Operator shall operate and maintain the Facilities and all equipment and processes contained therein in accordance with relevant operation and maintenance manuals for the Facilities, Applicable Law, and the Environmental Permits.
- (b) During any District-approved construction or other modification of the Facilities, the District and Operator will work together to maintain Operator's access to the Facilities and to minimize disruption and outages to the Facilities' existing equipment and components. The District and Operator will jointly develop a plan of action that will address protection to the Facilities' equipment and processes during any such construction and/or other rehabilitation period while providing for the continued operation of the Facilities to the extent reasonably possible.

Section 4.4 Routine Maintenance of the Facilities and Equipment

Subject to the limitations set forth in Section 4.5 below, Operator shall (i) perform routine preventive and corrective maintenance in accordance with manufacturers' specifications and approved operating and maintenance procedures developed for equipment and processes of the Facilities; (ii) repair and/or replace equipment; (iii) routinely clean and lubricate equipment; (iv) routinely make equipment inspections and needed adjustments; (v) perform predictive maintenance as appropriate; (vi) perform building and grounds janitorial services for the Facilities and cleaning of all equipment and vehicles; (vii) perform plumbing and electrical maintenance; (viii) maintain vehicles and light duty service trucks necessary for daily operations; and (ix) maintain all of the Facilities' instrumentation, including instrumentation provided to Operator by the District. Operator shall schedule and track all preventive and corrective maintenance and perform spare parts inventory control in accordance with standard industry practice.

Section 4.5 Repairs and Replacement

- (a) The District shall be responsible for all Annual Maintenance Expenditures. On a monthly basis, Operator shall (i) invoice the District for all Annual Maintenance Expenditures incurred during the preceding month, and (ii) report to the District on the balance remaining unexpended on the Annual Repair and Maintenance Limit. The District shall pay the Contractor's invoices for Annual Maintenance Expenditures within thirty (30) days of its receipt of such invoices. Operator shall not incur any Annual Maintenance Expenditures above the Annual Repair and Maintenance Limit without the prior written approval of the District. Any and all costs in excess of the Annual

Repair and Maintenance Limit shall be invoiced to and paid by the District in the same manner as described immediately above.

- (b) Operator shall not incur any single maintenance related expenditure whose unit cost exceeds ten thousand dollars (\$10,000.00) without the prior written approval of the District, except in the case of emergencies threatening the immediate shutdown of, or the substantial reduction in the operational capacity of any of the Facilities, or the life, health or property of the District and/or Operator, their employees and/or agents or others (for purposes of this Section 4.5 only, all such emergencies shall be referred to collectively and individually as an "Emergency") when Operator determines that a condition constitutes an Emergency, Operator may begin taking the necessary abatement action, including all necessary equipment repairs, immediately without the District's prior approval. Any qualified maintenance related expenditure which is ten thousand dollars (\$10,000) or less incurred during the Emergency shall considered an Annual Maintenance Expenditure subject to the District's subsequent review and approval. Any such expenditure unnecessarily incurred in an Emergency shall be borne by Operator without reimbursement by the District, but only to the extent it is subsequently determined that Operator's actions in incurring such cost were not consistent with good and prudent industry practice given the information available to Operator at the time the decision to incur such cost was made.

Section 4.6 Staffing

- (a) Operator shall provide qualified and, where required, certified staffing for the operation and maintenance of the Facilities in accordance with the District's Environmental Permits.
- (b) Operator shall provide an appropriate level of training for its personnel.
- (c) Operator shall comply with the requirements and policies of the District regarding Equal Employment Opportunity (EEO) hiring, but only to the extent same is in compliance with Applicable Law.

Section 4.7 Disposal of Process Residue

- (a) As the agent for the District, Operator shall dispose of Process Residue.
- (b) Operator shall dispose of Process Residue either at an approved landfill or at an approved land application site. Operator will work with the District to secure an approved hauler and land application sites. Title and ownership of Process Residue shall remain with the District notwithstanding such services by Operator.
- (c) The costs of transportation and disposal of Process Residue shall be initially funded by Operator. The District shall reimburse Operator the costs of transportation and disposal of Process Residue on a monthly basis based on actual invoices paid by Operator, copies of which are provided by Operator to the District.

Section 4.8 Testing and Laboratory Analysis

Operator shall perform or shall contract with a laboratory certified by the State to perform all sampling and laboratory analysis required by the District's Environmental Permits. Laboratory procedures and analysis shall conform to the then current edition of Standard Methods for the Examination of Water and Wastewater, or shall be in accordance with testing requirements of the District's Environmental Permits.

Section 4.9 Odor and Noise Control

- (a) Operator shall operate the Facilities within the limits and capabilities of the Facilities' equipment to effectively control odor and noise and ensure that there is no avoidable disruption of adjacent neighborhoods.
- (b) Odor complaints received by Operator shall be reported to the District within twenty-four (24) hours and contain the name, address, phone number, date and time, Operator contact person, nature of odor, probable origin of the odor and the action Operator will implement or has implemented to remedy and/or mitigate said odor.

Section 4.10 Safety Program

Operator shall implement a proper safety program. Such safety program shall comply with Applicable Laws and Operator agrees that it will adhere to all portions of that safety program.

Section 4.11 Communications

- (a) To keep the District informed about the status of the Facilities, Operator shall develop an informational communications program, subject to the District's approval, which shall be comprised of a written monthly report to the District on the operational status and maintenance of the Facilities and other reports or communications procedures to address non-routine information, events and emergencies.
- (b) Operator may interface with regulatory agencies without the District's consent in matters related to compliance with the District's permits, including the Environmental Permits, and/or with respect to matters required under Operator's staff certification and licensing requirements and/or as otherwise necessary to comply with Applicable Law, including communication during emergency situations. Operator shall, as soon as practicable and in reasonable detail, inform the District of the subject matter of such communications with regulatory agencies. All other communications with regulatory agencies, the media, or community groups may occur only upon the District's request or with the District's prior approval.

Section 4.12 Reports

- (a) Operator shall maintain computerized and other necessary records of operations, maintenance, repair and improvement activities at the Facilities and shall prepare and submit to the District a monthly report, delivered to the District not later than twenty (20) days following the end of each month, including a narrative and itemized summary of operations, maintenance, repair and replacement activities (including the draw-down against the Annual Repair and Maintenance Limit) and data required for monthly reporting to local, state and federal agencies. The monthly report shall also include the following items: (i) copies of process residue manifests; (ii) insurance claims that are filed or pending; and (iii) copies of all reports and correspondence made by Operator to local, State and federal regulatory agencies on behalf of the District.
- (b) Operator shall collect the data for all permit monitoring and operating reports required by Applicable Law or by this Lease and shall deliver the required monitoring and operating reports to the District and to the appropriate regulatory agencies having competent jurisdiction over same. If required pursuant to Applicable Law, Operator shall attest as to the accuracy and completeness of the data collected for each report. The District, however, shall at all times be responsible for maintaining all required permits for the ownership and operation of the Facilities.

- (c) All Facilities' records and data, including but not limited to operation reports, laboratory reports and monitoring documentation, but excluding Operator's budgetary and financial information, are the property of the District or Lessors and cannot be destroyed by Operator without written consent of the District. All site-specific operating procedure guidelines, preventive maintenance and safety programs and plant evaluation reports will, upon termination of the Lease, become and remain the property of the District or Lessors, as applicable.

Section 4.13 Emergency Response

- (a) Operator shall provide emergency response when required. Emergencies include situations in which, absent Operator's action, there is a risk of: (i) the Facilities' noncompliance with Applicable Law and Environmental Permits; (ii) failure of the Facilities to operate; (iii) circumstances affecting the safety of persons or property; (iv) adverse impact of hurricanes and other extreme weather conditions and other natural or man-made disasters; and (v) the occurrence of an event of Force Majeure or Shutdown.
- (b) Operator shall provide said emergency response as promptly as possible, but, absent extraordinary circumstances, within ninety (90) minutes of being notified of the existence of the emergency and the need to respond thereto.
- (c) All costs incurred by Operator in responding to emergencies shall be borne by the District, except where specifically provided otherwise, and where such emergency, production stoppage or failure of the Facilities to operate is a direct result of Operator's failure to operate and maintain the Facilities in accordance with the terms of the Lease.
- (d) In the event of sudden damage or destruction of any portion of the Facilities, or in the event of an emergency which in the reasonable judgment of Operator is likely to result in material loss or damage to any portion of the Facilities, or constitute a threat to human health or safety, Operator may suspend operations of those portions of the Facilities which are reasonably determined to be affected by the emergency and may make such emergency repairs as are necessary to mitigate or reduce such loss, damage or threat. Operator shall provide prompt notice to the District of any such damage, destruction or threat and of any emergency repairs that have or will be taken. The District and Operator shall cooperate in good faith in pursuing reasonable measures to mitigate any threats to human health or safety, or the environment.
- (e) Within thirty (30) days of the Commencement Date, Operator shall develop an emergency response plan that shall designate emergency team members and identify the standard operating procedures to be followed. In the event of an evacuation, Operator will report to the District's designated emergency management location, or other site to be specified by the District's authorized representative.

Section 4.14 Accounting Records

Operator shall maintain up-to-date financial and accounting records as they apply to the Annual Maintenance Expenditures, emergency expenditures and other expenditures not covered by the Base Compensation. The records must be kept in accordance with Operator's standard accounting practices and made available to the District within thirty (30) working days of the District's written request.

Section 4.15 Inventory and Condition of Facilities Equipment

- (a) Operator shall submit an initial written inventory of all hand tools, consumables and expendable supplies and spare parts at each of the Facilities to District. The District shall have twenty (20) days to verify and accept Operator's written inventories submitted pursuant to this Section 4.15(a).
- (b) At the termination of the Lease, Operator shall provide the District with inventory in quantity and/or value equal to or greater than the initial inventory, reasonable wear and tear excepted. Operator shall be permitted to leave only an amount of Process Residue at the Facilities that is less than or equal to the amount of Process Residue listed in the inventory prepared by Operator and accepted by the District pursuant to Section 4.15(a) above.
- (c) Operator shall prepare and submit an initial assessment report on the conditions of the Facilities and process equipment. The assessment report shall include a list of repair or replacement projects and recommended Capital Improvements necessary to ensure that the operation of the Facilities will conform to Applicable Law and Environmental Permits together with the projected costs associated with same.

Section 4.16 Manufacturers' Warranties

Operator shall be responsible for maintaining all manufacturers' warranties on new equipment purchased by the District after the Commencement Date. In addition, Operator shall assist the District in enforcing the warranties and guarantees, if any, for existing equipment used in connection with the operation of the Facilities. Under no circumstances shall Operator's obligations hereunder include any express or implied warranties with respect to all Facilities equipment.

Section 4.17 Additional Services

Operator may, at the request of the District, perform Additional Services. Where applicable, Operator shall charge those rates for Additional Services set forth in **Exhibit A** to this **Rider C-2**. The rates in **Exhibit A** to this **Rider C-2** shall be adjusted from time to time by the Parties without the need for an amendment to the Lease to reflect inflation. Where activities or projects undertaken by Operator in the performance of Additional Services do not have set rates listed in **Exhibit A** to this **Rider C-2**, the parties shall agree in writing to such rates or project costs prior to the commencement of such activities.

Article 5 CAPITAL PROJECTS

Section 5.1 Capital Improvements as Additional Services

It is recognized by both parties that one of the benefits of the O&M Terms is the ability of Operator to undertake for the District certain Capital Improvement projects at the Facilities as Additional Services.

Section 5.2 Recommended Capital Improvements

- (a) Operator shall, within ninety (90) days after the Commencement Date, provide to the District a listing of recommended Capital Improvements and an estimate of the corresponding costs in order to ensure that the operation of the Facilities will continue to conform to Applicable Law and/or in order to improve the reliability of operations.

- (b) Operator may propose and/or, subject to the Lease, make, with written District approval, additional Capital Improvements in order to comply with a Change of Law, reduce costs, increase energy efficiency, or improve the Facilities' operations. Any savings resulting from the construction of such Capital Improvements shall be shared by the parties in accordance with Section 5.2(g) below. Any Capital Improvements that, in the District's reasonable opinion, negatively impact, on either a short-term or long-term basis, effluent quality, the margin of safety necessary to ensure compliance with Applicable Law, or service levels will not be approved.
- (b) Operator may, if requested in writing by the District, but shall not be obligated to, finance or arrange financing and/or provide for the design and construction/installation of Capital Improvements requested by the District, subject to mutually agreeable terms and conditions.
- (c) Prior to any Capital Improvement undertaken pursuant to this Section 5.2, Operator shall submit detailed plans, construction estimates and construction schedules to the District for review and written approval which approval shall not be unreasonably withheld or delayed.
- (d) Operator will not be relieved of its responsibilities to perform under the O&M Terms if its recommendations in Section 5.2(a) and 5.2(b) are not implemented by the District unless the District's failure to implement such recommendations prevents Operator from complying with its obligations hereunder.
- (e) During any District-approved construction or other modification of the Facilities, the District and Operator will work together to maintain Operator's access to the Facilities and to minimize disruption and outages to the Facilities' existing equipment and components. The District and Operator will jointly develop a "Plan of Action" that will address protection to Facilities' equipment and processes during any such construction and/or other rehabilitation period while providing for the continued operation of the Facilities as much as possible.
- (f) If the District has decided to authorize and approve Capital Improvements proposed by Operator, the parties shall negotiate an equitable adjustment to the Base Compensation and shall duly take into account during such negotiations projected operational savings or additional operational costs, projected costs of the proposed Capital Improvements and proposed financing source and financing terms and conditions. The parties shall refrain from implementing any such Capital Improvements proposed by Operator until they have reached agreement on the amount by which the Base Compensation should be adjusted.

Article 6 ENVIRONMENTAL COMPLIANCE

Section 6.1 Environmental Compliance

Operator will assure that the operation of the Facilities will comply with all provisions of Applicable Law, including the Environmental Permits, related to the operation of the Facilities, subject to the following conditions:

- (a) The receipt at the Facilities of influent that contains Non-Processible Water or Wastewater; and/or
- (b) An event of Force Majeure or Shutdown; and/or

- (c) The District's failure or refusal to approve or fund necessary Capital Improvements, maintenance, repair, and/or replacement activities in excess of the single expenditure repair and maintenance approval limit or the Annual Repair and Maintenance Limit; and/or
- (d) The District's failure or refusal to approve operational/process changes necessary in order to allow Operator to continue to comply with Applicable Law or Environmental Permits.

In the event that Operator is excused from compliance for any of the reasons set forth in this Section above, Operator shall provide the best treatment reasonably possible within the constraints of the Facilities' design, condition and physical limitations and shall resume normal operations within a reasonable time.

Section 6.2 Fines and Penalties

In the event that Environmental Permits or Applicable law violations occur following the Commencement Date and such violations are not excused as provided in Section 6.1, Operator shall be responsible for fines, penalties, or damages or the admission of Operator fault for violations that may be imposed by Applicable Law. Prior to settlement or payment of any such fines, penalties or damages, Operator reserves the right to contest government or private actions, suits or proceedings for violations through administrative procedures or otherwise.

Article 7 DISTRICT'S RESPONSIBILITIES

Section 7.1 The District's and Operator's Representatives

From time to time, the District and Operator shall each designate authorized representatives (each an "Authorized Representative") to administer this Lease. Either party to this Lease shall provide written notice to the other party of any change to the Authorized Representatives no less than fifteen (15) days prior to the change.

Section 7.2 Permits

The District shall be responsible for obtaining and maintaining all state, federal, and local permits and licenses required for ownership, operation and maintenance of the Facilities, including without limitation, the District's Discharge Permits. The District shall also be responsible for the payment of all regulatory and governmental fees associated with ownership and operation of the Facilities and the District's equipment used in connection with the operation and maintenance of the Facilities. Operator shall provide reasonable assistance to the District in obtaining and maintaining all required state, federal, and local permits and licenses associated with the ownership, operation and maintenance of the Facilities.

Section 7.3 Utilities

- (a) Except as provided in Section 7.3(b) below, the District shall assume all responsibility and cost for arranging for the delivery and utilization of utility services for the operation of Facilities, including water, wastewater and electricity and telephone.
- (b) Operator shall provide communications devices for its employees as it deems fit.

Section 7.4 Compliance with Laws

The District will comply with Applicable Law pertaining to the management, ownership, operation, maintenance, repair and replacement of the Facilities to the extent that the responsibility of complying with those laws is not specifically assumed by Operator under the terms of these O&M Terms. Operator shall not be responsible for District's failure to comply with any provision of Applicable Law that is not otherwise specifically assumed by Operator hereunder.

Section 7.5 License to Use the Facilities

The District hereby grants Operator, without charge, a limited license during the term of the Lease for access to and use of Operator's use of the Facilities, including all equipment, structures, facilities and vehicles under the District's ownership and which have been assigned by the District to the Facilities, solely for the purpose of discharging Operator's responsibilities and obligations under these O&M Terms and for no other purpose.

Section 7.6 Notice of Litigation

In the event that the District receives notice of or undertakes the defense or the prosecution of any action, claim, suit, administrative or arbitration proceeding or investigation in connection with the operation and/or maintenance of the Facilities, the District shall give Operator prompt notice of such proceedings and shall inform Operator in advance of all hearings regarding such action, claim, suit, proceeding, or investigation. In the event Operator receives notice of any action, claim, suit, administrative or arbitration proceeding or investigation in connection with the ownership, operation and/or maintenance of the Facilities, Operator shall give the District prompt notice of such proceedings and shall inform the District in advance of all hearings regarding such action, claim, suit, proceeding, or investigation.

Section 7.7 Access

The District shall have full and unrestricted access to any and all parts of the Facilities at any and all times to review the performance of Operator and inspect the Facilities during normal business hours. In connection with such visits and inspections, the District agrees on behalf of itself, and further agrees to require its agents, licensees, or invitees, to comply with all reasonable safety rules and regulations adopted by Operator and/or promulgated by any governmental authority that regulates work place safety.

Section 7.8 Approval or Disapproval of Proposed Extraordinary Costs

In the event that Operator provides written notice to the District in accordance with Section 4.5(b) that it proposes to incur an expenditure requiring the District's approval, other than for Emergencies, the District shall provide Operator with approval or disapproval of the proposed action within five (5) business days of receipt of such notice, unless such approval or disapproval requires action by the District Board of Supervisors, in which event the time for approval or disapproval shall be extended as necessary.

Section 7.9 General Authority

The District shall perform all duties and discharge all responsibilities and obligations relating to the operation and maintenance of the Facilities not expressly assumed by Operator pursuant to the terms of these O&M Terms or reasonably implied therein.

Article 8 COMPENSATION

Section 8.1 Base Compensation

- (a) For the period beginning on the Lease Term, the District shall pay Operator an annual fee (the “**Base Compensation**”) equal to the actual and direct expenses of Operator in providing the services, as more fully described on **Exhibit B** to this **Rider C-2**. The Base Compensation shall be invoiced monthly.
- (b) Base Compensation and any and all other payments due Operator by the District under this Lease is due on the date of invoice, shall be subject to the provisions of the Local Government Prompt Payment Act, Section 218.70, et seq., Florida Statutes, and shall be paid on or before forty-five (45) days after the due date (the “**Payment Date**”).
- (c) If revision or correction is required to any invoice, including but not limited to providing backup documentation, the revised invoice shall be forwarded in a timely manner.
- (d) Base Compensation and Other Compensation as provided in Section 8.2 comprise the total compensation, other than for Additional Services, due Operator for the Services (“**Total Services Compensation**”).

Section 8.2 Other Costs and Expenses

Unless specifically provided otherwise in this Lease, Operator will not be required to bear the costs of the following (“**Other Compensation**”):

- (e) Expenses resulting from a change in the scope of Services to the Facilities;
- (b) Expenses resulting from a Change in Law that changes operational requirements for the Facilities;
- (c) All repairs necessitated by the occurrence of a disabling event qualifying under the definition of Force Majeure or Shutdown hereunder;
- (d) Special, additional or extraordinary expenses incurred by Operator in providing an emergency response following the occurrence of a disabling event qualifying under the definition of Force Majeure or Shutdown hereunder;
- (c) Water or sewage use fees associated with and/or equated to domestic water usage and/or wastewater discharge;
- (d) Expenses related to municipal or private surveillance and alarm monitoring by third party vendors;
- (e) Professional engineering fees not included within the scope of Operator’s obligations under the Lease;
- (f) Expenses incurred from the treatment of Non-Processible Water or Wastewater, including without limitation, any penalties and fines that may be assessed as a result therefrom;
- (g) All costs attributable to the consumption of electric power

- (h) Capital Improvements, unless agreed to otherwise by the parties;
- (i) Taxes as provided in Section 8.4 below; and
- (j) All expenses necessitated by the repair and/or replacement of equipment or structures damaged by parties unrelated to, not under the supervision of, and not an agent, employee, vendor or subcontractor of Operator.

For the listed items specified above, the District shall reimburse or compensate Operator only for authorized costs incurred by Operator including Operator's administrative costs and overhead associated with these items.

Section 8.3 Change in Scope

- (a) In the event of a Change of Law or other factors which results in the necessity for either an increase or decrease of five percent (5%) or more in Operator's cost of providing the Services hereunder, one party may provide notice to the other party in accordance with Section 12.8 and the parties shall negotiate in good faith to adjust the Base Compensation to account for such change in Operator's costs. If the parties are unable to reach a negotiated agreement within sixty (60) days of the date of notice, then the parties shall submit the change in Operator's costs for resolution under the dispute resolution provisions of the Lease.
- (b) The amount of Base Compensation may be reduced in accordance with paragraph 8.3(a) above if any of the Facilities are decommissioned by the District and the District provides written notice of same to Operator.

Section 8.4 Taxes

Operator shall be responsible for any corporate or income taxes related to District's payment of Total Compensation, and all other taxes imposed on Operator's income or payroll. To the extent that Operator pays sales taxes on materials or services for which the District is obligated to reimburse Operator under the term of this Lease, Operator shall not be entitled to any mark-up on such taxes.

Section 8.5 Accrual of Interest on Late Payments

Any and all payments due to the District by Operator shall accrue interest after the payment date at the rate provided under the provisions of the Local Government Prompt Payment Act, Section 218.70, et seq., Florida Statutes, or the maximum rate permitted by Applicable Law from the original due date and until payment is received. Operator shall invoice the District for any accrued interest.

Article 9 TERM AND TERMINATION

Section 9.1 Term

- (a) The O&M Terms shall remain in full force and effect for the term of the Lease, as extended from time to time, unless terminated as provided for in Section 9.2 below.
- (b) After the termination or expiration of the Lease, the O&M Terms may be renewed for three (3) successive periods of up to five (5) years per renewal upon agreement of the parties. Modifications to the Base Compensation during any renewal term shall be made pursuant to Section 8.1(b) of this Lease.

Section 9.2 Termination

- (a) The failure of either party to comply with any of the material terms of the O&M Terms or the Lease shall constitute a default. Upon default by one party, the other party may send written notice of default and opportunity to cure. Such notice shall clearly specify the nature of the default and provide the defaulting party forty-five (45) days to cure the default. If the default is capable of being cured within forty-five (45) days but is not cured within forty-five (45) days, the non-defaulting party may send a notice of termination to the defaulting party at any time prior to a cure of the default by the non-defaulting party. O&M Terms shall terminate at midnight of the day following receipt of the notice of termination. In the case of default that cannot be cured within forty-five (45) days, the O&M Terms shall not terminate so long as the defaulting party has given written notice of the intention to cure to the other party and the defaulting party has commenced and is diligently pursuing a cure. Evidence of such cure and its diligent pursuit shall be provided from the party determined to be in default to the satisfaction of the other party. In the event that Operator abandons the Facilities during the term of the Lease, the District may terminate the O&M Terms immediately with notice without an opportunity to cure. This section shall not apply to a default by District for failure to comply with the provisions of the Local Government Prompt Payment Act, Section 218.70, et seq., Florida Statutes, provided such failure of compliance may be deemed a default by District under the Lease.
- (b) In the event of the termination of the O&M Terms under Section 9.2(a) above, the District shall pay Operator for the Services provided and invoiced by Operator up to the effective date of termination plus the unamortized balance of Capital Improvements financed or paid for by Operator, if any, as reflected on Operator's financial statements, plus Operator's Demobilization Expenses, and less any costs or damages caused by or arising out of a default by Operator. No later than sixty (60) days prior to the date of termination, Operator shall provide the District with an itemized listing of its Demobilization Expenses, including a list of unamortized capital expenses. No later than thirty (30) days prior to the date of termination, the District shall inform Operator of which, if any, capital items on Operator's above-referenced itemized list the District would wish to acquire. Upon payment of the Demobilization Expenses, Operator shall transfer ownership of such desired items to the District. Payment of all Demobilization Expenses shall be made within thirty (30) days of the date of termination.
- (c) Upon notice of expiration or termination of the O&M Terms, Operator shall continue to provide the operations, maintenance, and management services required hereunder until the effective date of termination if requested by the District. During this period, Operator shall assist the District or any party designated by the District, in assuming and transitioning the operation and maintenance of the Facilities. Operator consents to the District or any party designated by the District meeting with those of Operator's employees assigned to the Facilities for the purpose of soliciting employment at the Facilities post-expiration or termination of the O&M Terms, which meeting(s) shall be held within sixty (60) days prior to the effective date of expiration or termination of the Lease. Operator agrees that the District or any party designated by the District may, without compensation to Operator, hire any such Operator employees as of the effective date of expiration or termination of the O&M Terms.
- (d) Termination of the O&M terms for default by a defaulting party shall not automatically terminate the Lease, provided such termination may be deemed a default by the non-defaulting party under the Lease.

Article 10 RISK MANAGEMENT

Section 10.1 Operator's Insurance

- (a) Worker's Compensation. Operator shall maintain and, prior to commence of this contract, provide the District with evidence of workers' compensation insurance providing Florida statutory (Section 440, Florida Statutes) limits to cover all employees and include Employers Liability coverage with limits of not less than five hundred thousand dollars (\$500,000.00) for accidents or disease. The District will be given a thirty (30) day written notice of cancellation or non-renewal.
- (b) Commercial General Liability: Operator shall maintain and, prior to commencement of this contract, provide the District with evidence of commercial general liability insurance to include: 1) premises/operations, contractual liability, products/completed operations, (including XCU hazards) and personal and advertising injury for limits of one million dollars (\$1,000,000.00) per occurrence; 2) fire damage for limits of one hundred thousand dollars (\$100,000.00) per occurrence; 3) medical payments for limits not less than five thousand dollars (\$5,000.00) per person and 4) a general, aggregate limit of eight million dollars (\$8,000,000.00). The District will be given a thirty (30) day written notice of cancellation or non-renewal. The District shall be included as an additional insured with respect to the Services performed under this Lease except for any claim against or loss suffered by the District arising as a result of the District's negligence or fault and, in circumstances of joint fault or negligence, except to the extent of the loss attributable to the District's proportionate degree of negligence or fault.
- (c) Contractor's Pollution Liability Insurance. Operator shall maintain, during the term hereof, a policy providing pollution liability coverage for those activities performed by Operator at the District's Facilities with a limit of five million dollars (\$5,000,000) for each claim and five million dollars (\$5,000,000) aggregate. The District shall be included as additional insured under this policy
- (d) Automotive Liability Insurance. Operator shall maintain and, prior to commencement of this contract, provide the District with evidence of business automobile liability insurance to include: 1) coverage for any automobile for limits of one million dollars (\$1,000,000.00) combined single limit (bodily injury & property damage) per occurrence and 2) Personal Injury Protection (Florida no fault) with full statutory limits. The District will be given a thirty (30) day written notice of cancellation or non-renewal and include the District as an additional insured.
- (e) Excess Liability. Operator shall maintain an Excess Liability Policy with maximum self-insured retention per occurrence insured in the Excess Liability Policy of twenty-five thousand dollars (\$25,000.00) and a policy limit of five million dollars (\$5,000,000.)
- (f) Obtaining Insurance. Operator shall not commence work pursuant to this Lease until it shall have obtained all insurance required by this Section 10.2, and such insurance shall have been approved by the District as to form, amount and carrier.
- (g) The District as Additional Insured. Except for Worker's Compensation and Employer's Liability Policies, the insurance to be provided by Operator shall insure the District as additional insured as required under the provisions of Section 10.2. This provision shall not create or be deemed to create any liability on the part of said additional insured which would not otherwise exist under the laws of the State of Florida.

- (h) **Proof of Insurance.** Within ten (10) business days of the commencement of the Lease by both parties, Operator shall furnish satisfactory proof of coverage of the insurance required to be obtained under the provisions of this Section 10.2. The certificate of insurance shall provide that the District shall receive at least thirty (30) days' notice prior to cancellation of such policies.
- (i) **Waiver of Subrogation.** To the extent permitted by law, and only if such action does not invalidate the insurance carried by either party, Operator on behalf of itself and its insurers waive their rights of subrogation with respect to losses occurring to property of the other party insured as required hereunder.

Section 10.2 Operator's Liability

- (a) In the event that any claims(s) raised against Operator on account of this Lease, or on account of the Services performed hereunder, is/are covered under Operator's insurance policies required of Operator hereunder, Operator shall not be responsible for any loss, damage or liability beyond the policy amounts contractually required hereunder. With respect to any cause of action and/or claim raised against Operator that is not covered by the insurance policies required of Operator hereunder arising under this Lease, Operator's liability shall not exceed an amount equal to two hundred fifty thousand dollars (\$250,000.00).
- (b) Notwithstanding Operator's services provided pursuant to Section 4.10, under all circumstances, Operator should not assume any obligation or incur any liability for any injury, death or damage caused by (i) unsafe site conditions not created by Operator or by any of its agents, employees and subcontractors, (ii) work being performed by other parties not related to Operator, (iii) the negligence of the District, and/or (iv) the negligence of any third party not related to Operator.

Article 11 DISPUTE RESOLUTION

Section 11.1 Applicability

The Dispute Resolution provisions set forth in Section 15 of the Lease are incorporated into and made a part of this Lease and shall govern all Disputes under these O&M Terms.

Section 11.2 Covenant to Continue Work

During resolution of any dispute under this Article, Operator and the District shall each continue to perform all of their respective obligations under the O&M Terms without interruption or delay.

Section 11.3 Disclaimer of Third Party Beneficiaries

The O&M Terms are solely for the benefit of the Parties to it, and no right or cause of action shall accrue upon or by reason of this Lease, to or for the benefit of any third party not an actual party to this Lease, including utility customers.

Article 12 MISCELLANEOUS

Section 12.1 Relationship

Except as provided in Section 4.7(a) of the Lease, the relationship of Operator to the District is that of independent contractor for all purposes under these O&M Terms, including for the purposes of applicable wage, tax, fringe benefit and worker compensation laws. These O&M Terms are not intended to create, and shall not be construed as creating, between Operator and the District, the relationship of principal and agent, joint venturers, co-partners or any other similar relationship, the existence of which is hereby expressly denied.

Section 12.2 Amendments

These O&M Terms may be modified only by a written amendment signed by both parties.

Section 12.3 Assignment

Section 18 of the Lease shall apply to the O&M Terms.

Section 12.4 Force Majeure

A party's performance of any obligation under the O&M Terms shall be excused if, and to the extent that, the party is unable to perform because of any event of Force Majeure. In any such event, the party unable to perform shall be required to resume performance of its obligations under this Lease upon the termination of the event or cause that excused performance hereunder or as soon as practicable notwithstanding the event of Force Majeure.

Section 12.5 Survival

Termination or expiration of the O&M Terms or the Lease shall not release either party from any liabilities or obligations set forth in the O&M Terms which (i) the parties have expressly agreed shall survive any such termination or expiration; or (ii) remain to be performed or by their nature would be intended to be applicable following such termination or expiration.

RIDER C-2

**EXHIBIT A
FEE SCHEDULE FOR ADDITIONAL SERVICES**

Labor Classification	Regular Rate	Overtime Rate
Unskilled Laborer	\$60/hour	\$90/hour
Plant Operator (Class B)	\$70/hour	\$105/hour
Plant Operator (Class C)	\$65/hour	\$97.50/hour
Skilled Maintenance	\$65/hour	\$97.50/hour
Electrician	\$70/hour	\$105/hour
Controls Technician	\$75/hour	\$112.50/hour
Equipment Type	Regular Rate	
Backhoe with Operator	\$125/hour	
Loader with Operator	\$125/hour	
Track-hoe with Operator	\$175/hour	
Dump Truck with Operator	\$100/hour	
Utility Vehicle with Operator	\$65/hour	
Flat Bed Truck with Operator	\$85/hour	
Portable Pump (4" trash)	\$35/hour	
Generator (35-45 kw)	\$40/hour	
Vactor Truck with One Operator	\$225/hour	
TV Truck with Operator	\$200/hour	
TV/Cleaning (min 2,000' emergency)	\$200/hour	

RIDER C-2

EXHIBIT B BASE COMPENSATION DESCRIPTION

Operating Costs and Expenses:

- (a) employee expenses and taxes (including but not limited to salaries, wages, bonuses, and other compensation of all Operator employees and their social benefits, including employer contributions under local statutes, life, medical, and disability insurance, workmen's compensation, unemployment compensation, social security, and retirement benefits) and any fees or other charges payable in respect of the grant of immigration status (e.g., visas, work permits for Operator employees).
- (b) expenditures for new service initiation, repair, maintenance and alternations and routine operating capital expenditures (e.g., tools, oils and grease, replacement of membrane filters, replacement of pumps, meter change outs, etc.).
- (c) administrative and general expenses, office supplies, office rent and allocated affiliate overhead, billing, postage, software, banking fees.
- (d) fees and costs for engineers, hydro-geologists, accountants, consultants, lawyers and other third parties retained by Operator to perform services hereunder.
- (e) service charges and fees imposed by third parties.
- (f) uniforms and laundry services.
- (g) insurance to be obtained by Operator
- (h) chemicals, fuel, electricity, supplies, meters, meter boxes, meter reading devices, and inventories
- (i) utilities fees and charges imposed by third parties, disposal costs, vendor charges.
- (j) license, software and royalty fees imposed by third parties.
- (k) taxes (except Operator income taxes), assessments, regulatory fees, charges and impositions.
- (l) vehicles, communications equipment, computer equipment, equipment leases, office and warehouse storage leases.
- (m) bill collection expenses, agreement enforcement expenses, conflict resolution expenses.
- (n) travel expenses.
- (o) emergency expenditures as provided hereunder.
- (p) permit, regulatory and environmental compliance fees, costs and other charges
- (q) laboratory and regulatory testing expenses
- (r) penalties, fines, fees and costs assessed against the System not the fault of Operator
- (s) any and other operating expenses incurred by Operator as are not specifically provided for hereunder.

RIDER C-3

LEASED PROPERTY ALTERATIONS PROTOCOL

It is the common desire of both the Lessors and the District that timely initiatives for the renewal, replacement, enhancement, addition and expansion of water production and treatment capacity, sewer treatment and disposal capacity, irrigation quality water production and distribution capacity, customer service and billing operations be commenced so that there is always present within the System sufficient water production and treatment capacity, sewer treatment and disposal capacity and irrigation quality water production and distribution capacity and administrative capacity to serve existing customers and permit new connections for water, sewer and reuse services to occur in conformance with applicable ordinances, laws and regulations regardless of the growth experienced within the Community;

Accordingly, the Parties agree to the following protocol for constructing alterations to the Leased Property:

SECTION 1. PURPOSE AND DEFINITION. All capitalized words and terms not otherwise defined herein shall have the meaning set forth in the Lease unless the content implies or infers a contrary or different meaning. The following terms shall have the meanings as defined herein unless the context requires otherwise:

"Alterations Protocol" shall mean this **Rider C-3** to the Lease Terms, including any amendments and supplements executed and delivered in accordance with its terms.

"Annual Report" means the annual report required to be supplied to Lessors by the District projecting the capacity requirement for development within the Community for each Fiscal Year during the Term of the Lease and all extensions thereto.

"Build-Out" shall mean the total number of residential, commercial, office, governmental, ancillary community and industrial units, lots and parcels that can be built within the Community based upon applicable comprehensive plans, land use and zoning designations, and approved development plans, all as amended from time to time.

"Build-Out Capacity" shall mean the estimated twenty-five thousand (25,000) ERCs of water and sewer capacity and corresponding irrigation quality water capacity needed to provide utility service within the Community at Build-Out, together with such other ERCs of water, sewer and irrigation quality water capacity requested from outside the Community during the term of the Lease Terms, as extended from time to time, which requests are agreed to by Lessors and the District.

"Capacity Expansion Project" shall mean a project, program, upgrade or improvement to acquire, improve, expand or construct incremental capacity increases in water production and treatment capacity, wastewater treatment and disposal capacity, and reclaimed water production facilities, including real and personal, tangible and intangible property improvements and additions.

"Community" shall mean the geographic boundaries of the District, as revised from time to time.

"Construction Costs" means the costs of construction financing, labor, materials, equipment, supplies, tangible and intangible personal property, professional and design services associated with the design, permitting, construction, construction management, installation, inspection and testing of a Project, and associated legal, accounting and allocated overhead costs.

"Contractor" means a qualified utility contractor.

"Domestic Wastewater" shall have the meaning found in Rule 62-600.200(25), Florida Administrative Code, as it may be amended from time to time.

"Equivalent Residential Connection" or "ERC" means a standard unit used in this Alterations Protocol to calculate the capacity of a Capacity Expansion Project.

"FDEP" shall mean the Florida Department of Environmental Protection, and delegate of the Florida Department of Environmental Protection, or any successor thereto.

"Fiscal Year" shall mean the period commencing on October 1 of each year and continuing through the next September 30th.

"District Capacity Requirement" shall mean the additional capacity to be included in any Capacity Expansion Project proposed by Lessors that may be requested by the District, within their discretion, as provided in Section 3(B).

"Local Distribution and Collection Facilities" shall mean, by way of example and not limitation, water, sewer, and reuse distribution mains, collection mains, force mains, lift or pump stations and service lines required to provide water, sewer and irrigation quality water service to an individual development or subdivision and which primarily serve such individual development or subdivision. The term Local Distribution and Collection Facilities shall not include Capacity Expansion Projects.

"MGD" is an abbreviation for the term "million gallons per day."

"Operating Policies and Procedures" shall mean such policies and procedures, as may be adopted by the District, from time to time, to govern the provision of water, sewer and irrigation quality water service by the District, which policies and procedures shall be subordinate to the provisions of this Alterations Protocol, the Lease Terms, and the Lease in the event of a conflict between their terms.

"Permit Criteria Manual" shall mean the construction, engineering and technical standards and guidelines for the construction, acquisition and design of improvements and additions to the System as provided in the Permit Criteria Manual adopted by the District, as amended from time to time with the mutual agreement of Lessors and the District, and which shall be incorporated herein by reference.

"Plant Facilities" shall mean a portion of the System including, by way of example and not limitation, water supply wells, water and sewer treatment plants, major pumping facilities, and production, treatment and disposal facilities, supervisory control and data acquisition ("SCADA") systems, monitoring software and hardware, equipment, vehicles, and major water transmission, sewer collection and reclaimed water distribution lines (not including Local Distribution and Collection Facilities) which provide water supply, water and sewer treatment, distribution and transmission of water, sewer and irrigation quality water services to the Community and the administration of the utility, and the Real Property upon which such facilities are located.

"Potable Water" shall mean water which meets all applicable federal, State and local laws, regulations and standards regarding domestic water quality and which is intended for human consumption, as such term is defined in Rule 62-550, Florida Administrative Code, as it may be amended from time to time.

"Project" shall mean a Capacity Expansion Project or an R&R Project.

"Reuse Water" shall mean treated Domestic Wastewater, which is intended for "reuse," as such term is defined by Rule 62-610.200(49), Florida Administrative Code, as it may be amended from time to time.

"R & R Project" shall mean a means a project, program, upgrade or improvement to renew, replace or enhance the then existing Plant Facilities.

"State" shall mean the State of Florida.

"System" means all of the Leased Property, including real and personal, tangible and intangible property.

"Utility Service" means Water, Sewer and Reuse Water Service, as a combined or individual service.

"Utility Standards" shall mean the Permit Criteria Manual and such other construction, engineering and technical standards and guidelines for the design and construction, acquisition and installation of System facilities agreed to in writing between Lessors and the District.

SECTION 2. RIGHT TO PROVIDE R&R PROJECTS AND CAPACITY EXPANSION PROJECTS.

(A) During the Term of the Lease Terms, Lessors have the right, but not the obligation, to undertake R&R Projects and Capacity Expansion Projects for which they will have responsibility for site acquisition, planning, design, permitting, construction, construction management and installation and funding. Lessors shall plan, design, permit and construct such R&R Projects and Capacity Expansion Projects in compliance with applicable DEP rules and regulations and the Utility Standards.

(B) To assist in planning for the implementation and financing of Projects, the District shall provide Lessors with Annual Reports setting forth the District's proposed five (5) year (by Fiscal Year) Capital Improvement Plan and the anticipated five year (by Fiscal Year) flows and capacity required to service the Community.

(C) On or before the 1st of June of each year during the Term, Lessors and the District shall jointly meet to review the Annual Reports.

SECTION 3. FUTURE PROJECTS.

(A) Upon receipt of the most recent Annual Reports from the District, Lessors shall identify and propose the specific Projects that Lessors elect to provide pursuant to Section 2 above, and the estimated project construction commencement date for each Project in the ensuing Fiscal Year (the "Lessors' Projects"). The Parties shall jointly consider the most recent Annual Report including the most recent relevant information in finalizing the size, scope, configuration, location and timing of any proposed Lessors' Projects.

(B) The District shall have the right to propose to Lessors that Lessors upsize, expand or reconfigure any proposed specific Lessors Project to provide the District capacity in addition to that proposed by Lessors, and the District shall have the right to propose its own Capacity Expansion Projects (the "District's Projects"). Lessors shall have the right upon receipt of a District's Project proposal to determine whether it will undertake the District's Project or permit the District to undertake said project.

(C) For each Capacity Expansion Project, Lessors and the District shall determine the capacity of the Plant Facilities constructed, expressed in ERCs.

(D) Lessors shall coordinate in advance with the District in all matters relating to the preliminary design, location, permitting and final design and estimated Construction Costs prior to commencing construction on any Project.

(E) Upon the completion of construction of each Project, said Project facilities shall be added to and incorporate into the Leased Property (and System), subject to the terms of the Lease Terms.

(F) The District may plan, design, permit and construct any Local Distribution and Collection Facilities that it chooses; provided such activity is done upon advance notification and good faith consultation with Lessors, and such activity is reasonably consistent with and does not unreasonably interfere with the most recent Annual Report.

(G) Lessors and the District may collaborate and enter into one or more agreements to provide for planning, designing, permitting or constructing any System facilities or Local Distribution and Collection Facilities, whether or not such activity is contemplated by this Alterations Protocol.

SECTION 4. DESIGN, CONSTRUCTION AND CONVEYANCE OF PROJECTS.

(A) Lessors shall submit in writing to the District, for its review for consistency with the Utility Standards prior to the commencement of construction, all drawings, plans and specifications required for the construction of any Project. The District shall timely and reasonably review such drawings, plans and specifications and provide Lessors with a list of changes and deficiencies within ten (10) business days of submittal. Any items not set forth on the list shall be deemed approved. Failure to provide a list of changes and deficiencies identified to such drawings, plans and specifications within such ten (10) day period shall be deemed approval of the drawings, plans and specifications.

(B) Lessors shall submit to and receive acknowledgement from the District for the Contractor's final bid price for the Construction Costs for each Project. The District shall timely and reasonably review such bid price and provide a list of changes and deficiencies within ten (10) business days of submittal. Any items not set forth on the list shall be deemed approved by the District. Failure of the District to provide a list of changes and deficiencies within such ten (10) day period shall be deemed approval of the bid price. Any change order or modification to the Contractor's final bid price for the Construction Costs shall be subject to the timely and reasonable review of the District within ten (10) business days of submittal in accordance with the same procedure as for the final bid price. Lessors shall use their best efforts to secure Construction Costs competitive with like/kind projects in the vicinity of the Community.

(C) Lessors shall obtain all necessary federal, State and local permits or approvals required for the construction of each Project it undertakes. If required by the issuing authority or if necessary to expedite permit processing, the District shall join in and execute any such applications and documents reasonably required in order to seek any such approvals or permits. Lessors shall provide the District with copies of all written permits and approvals received.

(D) Lessors will require their Contractors to warrant that all Projects are constructed in accordance with the approved plans and specifications, and also in accordance with all other applicable federal, State and local laws.

(E) Lessors shall not be required to pay review or inspection fees set by the District for development review or inspection of any Project.

SECTION 5. COMPLETION OF CONSTRUCTION. At substantial completion of construction by Lessors of any Project, the District shall have ten (10) days to timely and reasonably inspect the Project and provide Lessors a list of deficiencies from the approved plans and specifications ("**Punch List**"). Failure of the District to provide a Punch List or any deficiencies not set forth on the Punch List within such ten (10) day period shall be deemed waiver of any deficiencies that could have been identified. Lessors shall work with the contractor to remedy the deficiencies in the Punch List. Upon completion of construction by Lessors of any Project, Lessors shall furnish the District one (1) set of "record" drawings showing the Project facilities as finally constructed and other appropriate details as certified by the engineer of record. In addition, Lessors shall provide the District with all manuals provided to Lessors for the operation of any Plant Facilities and any warranties on the Plant Facilities, as applicable. In addition, Lessors shall provide to the District with a schedule of the actual Construction Costs of the Plant Facilities constructed or installed by Lessors.

SECTION 6. ADDITIONAL RENT TO Lessors RELATED TO PROJECTS.

(A) Pursuant to Section 3 of this **Rider C-3**, Section 4 of the Lease Terms, and **Rider C-1** of the Lease Terms, the District shall begin paying Rent on the Leased Property immediately and on each

Project that is part of the Leased Property in the month after such Project is added to the Leased Property. As Additional Rent thereto with respect to the Leased Property and each such Project, Lessors shall be entitled to receive from the District an allowance for funds prudently invested (“AFPI”) for each ERC of unused capacity in the Leased Property and such Project. AFPI recognizes that Lessors have agreed to temporarily bear the carrying cost of unused capacity in the Leased Property and each Project which has been constructed for the benefit of the District until such capacity is utilized or retired by the District, but which carrying costs are not included in the calculation of Base Rent.

(B) AFPI shall be paid by the District to Lessors if, as and when new ERCs are connected to the Project and AFPI paid to the District, or the capacity is otherwise utilized or retired by the District. With respect to a particular Project, AFPI shall be calculated on a per ERC/per month basis from the date of completion of a Project to the date of utilization or retirement of the capacity of such Project. The District’s rate consultant shall calculate appropriate AFPI charges from time to time, and the District shall adopt and amend such AFPI charges from time to time. For each new ERC connected to the System, the District shall levy and collect the required AFPI from the new customer at the time of connection to the System or at such sooner date as determined by the District. The District shall utilize the AFPI collected from new customers to fund AFPI payments to Lessors, or in lieu thereof, the District can fund AFPI payments to Lessors from other available District funds. The District shall remit to Lessors all AFPI accruing on a monthly basis.

(C) Upon acquisition by the District of title to any of the Leased Property as provided in Section 2 of the Lease Terms, the District shall pay Lessors all accrued AFPI for unused capacity in such Leased Property from available District funds, such payment to be made simultaneously with the closing of the transfer to the District as the final Additional Rent payment for such Leased Property. In the event the District determines insufficient funds exist to make such a final Additional Rent payment to Lessors, then the balance of any final Additional Rent payment due Lessors may be payable in the form of a taxable promissory note or notes from the District to Lessors, in such denominations and maturities as reasonably determined by the District, which note or notes shall be freely tradable by the Lessors, with the same bondholder pledges, security, rights and privileges as provided for in any District Revenue Bonds, with such covenant protections as provided in any District bond resolutions, but with such note or notes subordinate to any such District Revenue Bonds. The following sets forth an example of the calculation of AFPI due Lessors on acquisition of title to any part of the Leased Property by the District:

**EXAMPLE OF ACCRUED AFPI PAYMENT ON
DISTRICT ACQUISITION OF PROJECT**

Project: Wastewater Treatment Plant #1	Total Capacity of Project	8,500 ERCs		
	Current Capacity Utilized	5,525 ERCs		
	Unused Capacity at Acquisition	2,975 ERCs		
		<u>Water</u>	<u>Sewer</u>	<u>Irrigation</u>
Example AFPI Per ERC		\$2,364	\$2,480	\$1,909
ERCs Upon Conversion or Acquisition of WWTP #1		<u>0</u>	<u>2,975</u>	<u>0</u>
AFPI Payment to Lessors re WWTP #1 at Closing		\$0	\$7,378,000	

(D) In lieu of requiring the District to pay Rent and Additional Rent on a Project as provided above, Lessors shall have the option to submit all or any portion of a Project to the District for reimbursement of Lessors’ actual costs incurred (a “Reimbursement Project”). A Reimbursement

Project shall not be included as Leased Property for purposes of Rent calculation pursuant to **Rider C-1** of the Lease Terms, but shall be considered Leased Property for all other purposes.