

5A-4

**PALM BEACH COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA ITEM SUMMARY

Meeting Date: February 23, 2010 Consent Regular
 Public Hearing

Submitted By: Administration

Submitted For: Administration

I. EXECUTIVE BRIEF

Motion and Title: Staff recommends motion to approve:

- A) a Memorandum of Developer Agreement with the Seacoast Utility Authority and;
- B) the Scripps Florida Phase II/Briger Developer Agreement with the Seacoast Utility Authority.

Summary: On May 2, 2006, the Board of County Commissioners (BCC) approved the Grant Agreement with The Scripps Research Institute (Scripps). On February 28, 2006, the BCC approved an Agreement (R2006-0423) for the donation and purchase and sale with Lester Family Investments, L.P. (Lester) for 70 acres of property within the Briger Property to be utilized by Scripps Florida. The Grant Agreement requires the County to enter into a Developer Agreement (Agreement) with Seacoast Utilities to reserve water and sewer capacity reservations for 1.6 million square feet of bioscience use on the 70 acres. The Agreement requires the payment of 50% the total connection charges, (\$1,570,908.60) or \$785,454.30 at the time the Agreement is executed and the payment of the Annual Capacity Reservation Fees in the amount of \$262,795.55 at the time the Agreement is executed for a total of \$1,048,249.85. The Grant Agreement requires Scripps to enter into the form of the Ground Lease with the County on the 70 acres within six (6) months of the County receiving the entitlements for the Property. Under the Grant Agreement, the County is only responsible for the payment of fees to Seacoast which are customarily due at the time of entering into this Agreement, with Scripps being responsible for all on-going obligations for maintaining water and sewer capacity. District 1 (MJ)

Background and Policy Issues: On November 6, 2007, the BCC approved an Agreement (R2007-1888) with Lester to jointly fund professional services related to a joint application for a Development of Regional Impact (DRI), Future Land Use Amendment, Concurrency Approval, Planned Community Development District and a Conceptual Environmental Resource Permit for the 863 Briger property, including the 70 acres for Scripps Florida, in the amount of \$716,662.

Attachments:

- 1. Memorandum of Developer Agreement
- 2. Scripps Florida Phase II/Briger Developer Agreement

Recommended by: _____	2-10-10
Department Director	Date
Approved By: _____	2-10-10
Assistant County Administrator	Date

II. FISCAL IMPACT ANALYSIS

A. Five Year Summary of Fiscal Impact:

Fiscal Years	<u>2010</u>	<u>2011</u>	<u>2012</u>	<u>2013</u>	<u>2014</u>
Capital Expenditures	<u>\$1,048,249.85</u>				
Operating Costs					
External Revenues					
Program Income (County)					
In-Kind Match (County)					

NET FISCAL IMPACT \$1,048,249.85

No. ADDITIONAL FTE POSITIONS (Cumulative)

Is Item Included In Current Budget? Yes X No _____

Budget Account No.: Fund 3052 Department 429 Unit B349


Object 6505 Reporting Category _____

B. Recommended Sources of Funds/Summary of Fiscal Impact:


C. Departmental Fiscal Review:

III. REVIEW COMMENTS

A. OFMB Fiscal and/or Contract Dev. and Control Comments:



OFMB
11/11/10
2/17/10



Contract Dev. and Control
This Contract complies with our contract review requirements.

B. Legal Sufficiency:



Assistant County Attorney
2/17/10

C. Other Department Review:

Department Director

SCRIPPS FLORIDA PHASE II/BRIGER

MEMORANDUM OF DEVELOPER AGREEMENT

BY DEVELOPER AGREEMENT dated the _____ day of _____, 2010, by and between PALM BEACH COUNTY, hereinafter referred to as "Developer" and SEACOAST UTILITY AUTHORITY, hereinafter referred to as "Authority", the parties have entered into an agreement for the provision of water and/or sewer utility service(s) to the property(ies) owned and/or controlled by Developer in Palm Beach County, Florida and described in Exhibit "A" attached hereto and made a part hereof, hereinafter referred to as the "Property".

In consideration of Authority executing the Developer Agreement, the terms and conditions of which are incorporated herein by reference as though fully set forth herein, Developer has agreed to certain matters, including but not limited to the following:

1. Developer has agreed to construct certain on-site and off-site water treatment and sewage collection and disposal facilities and make payment of certain rates, fees and charges to the Authority in accordance with the Authority's Service Code as it may be amended from time to time.
2. Developer has granted Authority the exclusive right to provide water and sewer service to the Property and will grant to or procure for the Authority all necessary on-site and off-site easements, rights-of-way, rights of ingress and egress to any part of the property for the operation of the Authority's utility facilities. In the event Developer fails to deliver any easements required by Authority, upon the Authority's election, this Developer Agreement shall serve as the Authority's authorization to substitute the Developer Agreement as a recorded easement sufficient for the Authority's needs.

The Developer Agreement and this Memorandum of Developer Agreement are binding upon Developer and its respective assigns and successors by merger, consolidation, conveyance or otherwise which shall be subject to the terms and conditions of the Developer Agreement and this Memorandum of Developer Agreement, including but not limited to any allocation of hydraulic share and escalation of rates, fees and charges. In the event of a conflict between the terms of this Memorandum of Developer Agreement and the terms of the Developer Agreement, the terms of the Developer Agreement shall control. The rights and obligations of any assigns and successors of Developer can be determined by a review of the complete Developer Agreement and a copy of which can be obtained at the address of the Authority as listed below.

SCRIPPS FLORIDA PHASE II/BRIGER

IN WITNESS WHEREOF, this Memorandum of Developer Agreement was executed this _____ day of _____, 2010.

SEACOAST UTILITY AUTHORITY
4200 Hood Road
Palm Beach Gardens, Florida 33410

By: _____
Maria Davis, Chair

Attest: _____
Jessica Moore, Authority Clerk

STATE OF FLORIDA)
COUNTY OF PALM BEACH)

The foregoing instrument was acknowledged before me this _____ day of _____, 2010, by Maria Davis and Jessica Moore, Chair and Authority Clerk, respectively of Seacoast Utility Authority, who are both personally known to me.

Notary Signature

Print Name
Notary Public - State of Florida
Commission No.
My Commission Expires:

SCRIPPS FLORIDA PHASE II/BRIGER

ATTEST:

**SHARON R. BOCK, CLERK &
COMPTROLLER**

**PALM BEACH COUNTY BOARD,
FLORIDA, Political Subdivision of the
State of Florida
BOARD OF COUNTY COMMISSIONERS**

By: _____
Deputy Clerk

By: _____
Burt Aaronson, Chair

**APPROVED AS TO FORM
AND LEGAL SUFFICIENCY**

**APPROVED AS TO TERMS
AND CONDITIONS**

By: _____
County Attorney

By: 
Department Director

SCRIPPS FLORIDA PHASE II/BRIGER

JOINDER AND CONSENT OF PROPERTY OWNER
(If other than Developer)

WITNESSES:

PROPERTY OWNER:

Signature

By: _____

Print Name

Its: _____

Print Title

STATE OF _____)
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____, 2010, by _____ of _____ who is personally known to me or who has produced _____ as identification

Notary Signature

Print Name

Notary Public - State of Florida

Commission No.

My Commission Expires:

SCRIPPS FLORIDA PHASE II/BRIGER

MORTGAGEE JOINDER AND CONSENT

WITNESSES:

MORTGAGEE:

(Signature)

By: _____
(Print Name)

Its: _____
(Print Title)

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2010, by _____ of _____ who is personally known to me or who has produced _____ as identification

Notary Signature

Print Name
Notary Public - State of Florida
Commission No:
My Commission Expires:

SCRIPPS FLORIDA PHASE II/BRIGER

SCRIPPS PARCELS – O.R.B. 21129, PG. 218 & 229
LEGAL DESCRIPTION

PARCEL I

THAT PORTION OF SECTION 26, TOWNSHIP 41 SOUTH, RANGE 42 EAST, IN PALM BEACH COUNTY, FLORIDA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 26; THENCE SOUTH 89°55'48" WEST ALONG THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 26, A DISTANCE OF 2371.01 FEET; THENCE SOUTH 00°04'12" EAST, A DISTANCE OF 1280.00 FEET TO A POINT OF CURVATURE OF A CURVE CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 1210.00 FEET; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 10°02'48", AN ARC DISTANCE OF 212.17 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE, CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 1210.00 FEET, THROUGH A CENTRAL ANGLE OF 33°57'12", AN ARC DISTANCE OF 717.04 FEET TO A POINT OF TANGENCY; THENCE SOUTH 44°04'12" EAST, A DISTANCE OF 19.33 FEET; THENCE SOUTH 00°55'48" WEST, A DISTANCE OF 56.57 FEET; THENCE SOUTH 45°55'48" WEST, A DISTANCE OF 1046.96 FEET TO A POINT OF CURVATURE OF A CURVE CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 50.00 FEET; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 53°07'48", AN ARC DISTANCE OF 46.36 FEET TO A POINT OF REVERSE CURVATURE WITH A CURVE CONCAVE TO THE SOUTH, HAVING A RADIUS OF 100.00 FEET; THENCE WESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 16°13'00", AN ARC DISTANCE OF 28.30 FEET TO A POINT OF REVERSE CURVATURE WITH A CURVE CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 50.00 FEET; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 53°35'38", AN ARC DISTANCE OF 46.77 FEET TO A POINT OF COMPOUND CURVATURE WITH A CURVE CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 2376.96 FEET; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 33°26'46", AN ARC DISTANCE OF 1387.54 FEET TO THE INTERSECTION WITH A RADIAL LINE; THENCE NORTH 79°53'00" EAST ALONG SAID RADIAL LINE, A DISTANCE OF 1166.96 FEET TO THE POINT OF BEGINNING.

CONTAINING 30.00 ACRES, MORE OR LESS.

TOGETHER WITH:

EXHIBIT "A"

SCRIPPS FLORIDA PHASE II/BRIGER

PROPERTY DESCRIPTION (continued)

PARCEL II

THAT PORTION OF SECTION 26, TOWNSHIP 41 SOUTH, RANGE 42 EAST, PALM BEACH COUNTY, FLORIDA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 26; THENCE SOUTH 89°55'48" WEST ALONG THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 26, A DISTANCE OF 2371.01 FEET; THENCE SOUTH 00°04'12" EAST, A DISTANCE OF 140.00 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE SOUTH 00°04'12" EAST, A DISTANCE OF 1140.00 FEET TO A POINT OF CURVATURE OF A CURVE, CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 1210.00 FEET; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 10°02'48", AN ARC DISTANCE OF 212.17 FEET TO THE INTERSECTION OF A RADIAL LINE; THENCE SOUTH 79°53'00" WEST ALONG A LINE RADIAL TO THE FOLLOWING CURVE, A DISTANCE OF 1166.96 FEET TO A POINT ON SAID CURVE, CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 2376.96 FEET; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 10°02'48", AN ARC DISTANCE OF 416.79 FEET TO A POINT OF TANGENCY; THENCE NORTH 00°04'12" WEST, A DISTANCE OF 1140.00 FEET; THENCE NORTH 44°55'47" EAST, A DISTANCE OF 56.57 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF DONALD ROSS ROAD AS DESCRIBED IN OFFICIAL RECORDS BOOK 4296, PAGE 1151, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA; THENCE NORTH 89°55'47" EAST ALONG SAID SOUTH RIGHT-OF-WAY LINE AND EASTERLY PROLONGATION, A DISTANCE OF 1086.96 FEET; THENCE SOUTH 45°04'12" EAST, A DISTANCE OF 56.57 FEET TO THE POINT BEGINNING.

CONTAINING 40.00 ACRES, MORE OR LESS.

EXHIBIT "A" (continued)

SCRIPPS FLORIDA PHASE II/BRIGER

DEVELOPER AGREEMENT

THIS AGREEMENT made and entered by date last signed, _____, 2010 by and between PALM BEACH COUNTY, hereinafter referred to as "Developer", and SEACOAST UTILITY AUTHORITY, hereinafter referred to as "Authority".

WHEREAS, Developer owns or controls lands located in Palm Beach County, Florida, and described in Exhibit "A", attached hereto and made a part hereof as if fully set out in this paragraph and hereinafter referred to as the "Property", and Developer intends to develop the Property by constructing improvements thereon; and

WHEREAS, Developer desires that the Authority provide central water distribution and sewage collection service for Developer's Property herein described; and

WHEREAS, the Authority is willing to provide, in accordance with the provisions of this Agreement and Authority's prevailing Service Code, central water and sewer services to the Property and thereafter operate applicable facilities so that the occupants of the improvements on the Property will receive an adequate water supply and sewage collection and disposal service from Authority;

NOW, THEREFORE, for and in consideration of the premises, the mutual undertakings and agreements herein contained and assumed, Developer and Authority hereby covenant and agree as follows:

1. The foregoing statements are true and correct.
2. Developer agrees to strictly adhere to Authority's prevailing Service Code and all other directives of the Authority's Governing Board.
3. Assurance of Title - At the time of execution of this Agreement, the Developer agrees to deliver to Authority a copy of a Title Insurance Policy, or an opinion of title from a qualified attorney-at-law addressed to the Authority in a form and substance satisfactory to Authority with respect to the Property, which opinion shall include a current report on the status of the title, setting out the name of the legal title holders, the outstanding mortgages, taxes, liens and covenants. The provisions of this paragraph are for the purpose of evidencing Developer's legal right to grant the exclusive rights of service contained in this Agreement.
4. Fees - To induce Authority to provide water and sewer service to the Property, Developer hereby agrees to pay to Authority the following fees:
 - a. Connection Charges - Payment for the allocable portion of water treatment plant, sewage treatment plant, master water transmission lines and master pumping stations and sewage force mains as described in Exhibit "B".
 - b. Administrative Fee - Payment to defray the cost of document preparation, plan review, inspection and engineering coordination. This fee shall be paid to the Authority at the time plans are submitted for review. No portion of this fee shall be refundable.
 - c. Meter Fee - The charge imposed by the Authority for the water meter, meter box, and appurtenances, together with the installation of these facilities, installed at the request of Developer. Said charge shall be paid in accordance with Authority's Water Service Policy.

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- d. Deposit - This fee shall be paid upon submittal of the water and/or sewer service application form.

Payment of the connection charges does not and will not result in Authority waiving any of its rates or rules and regulations, and their enforcement shall not be affected in any manner whatsoever by Developer making payment of same. Authority shall not be obligated to refund to Developer any portion of the value of the connection charges for any reason whatsoever, except for that which may be provided for in Exhibit "C", nor shall Authority pay any interest or rate of interest upon the connection charges paid.

Neither Developer nor any person or other entity holding any of the Property by, through or under Developer, or otherwise, shall have any present or future right, title, claim or interest in and to the connection charges paid or to any of the water or sewer facilities and properties of Authority, and all prohibitions applicable to Developer with respect to no refund of connection charges, no interest payment on said connection charges and otherwise, are applicable to all persons or entities, except for that which may be provided in Exhibit "C".

Any user or consumer of water or sewer service shall not be entitled to offset any bill or bills rendered by Authority for such service or services against the connection charges paid. Developer shall not be entitled to offset the connection charges against any claim or claims of Authority, including claims for breach of contract, damages or charges of the like of Authority.

5. Payment - Developer shall pay connection fees for 50% of the connection charges for all capacity reserved hereunder at the time of execution of the developer agreement, and the remaining 50% will be paid individually as each meter installation is required or in the case of a master metered project when the meter is required. This payment may be for the entire project or for specific phases, however plant capacity shall only be reserved for that portion for which connection charges have been paid. In the event Developer elects to pay connection charges in phases, he shall pay such connection charges as stated above for each phase prior to the commencement of each such phase.

6. Equivalent Residential Connections Reserved - The parties agree that the capacity needed to provide service to the Property is 581.818 equivalent residential connections (ERCs) for water supply and 581.818 equivalent residential connections (ERCs) for wastewater removal. Developer agrees that the number of ERCs of capacity reserved hereby shall not exceed the number of ERCs of development for which capacity is reserved hereby pursuant to Exhibit "B".

7. Capacity Reservation Fees - Developer agrees to pay Capacity Reservation Fees on each phase of Developer's project commencing at the time that Developer pays his connection charges on such phase. Developer understands that capacity is guaranteed for Developer's needs only for and to the extent that Capacity Reservation Fees are continuously paid. Stated otherwise, if Developer elects not to pay Capacity Reservation Fees on any phase of his construction project, he understands that he risks capacity not being available for Developer's needs for such phase(s) when Developer needs same. As active connections are made, the Capacity Reservation Fees obligation of Developer shall be proportionately reduced. The Capacity Reservation Fees shall be invoiced to Developer by Authority annually on the basis of 100% of the total number of units reserved in the Agreement as adjusted to actual connections to the system as provided in the Uniform Extension Policy. If Developer fails to pay or renew Capacity Reservation Fees, after 30 days written notice, all remaining reserved capacity shall lapse and no additional connections will be allowed for the project until accrued Capacity Reservation Fees have been paid.

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8. On-Site Installation - To induce Authority to provide the water treatment and sewage collection and disposal facilities, and to continuously provide consumers located on the Property with water and sewer services, unless otherwise provided for herein, Developer hereby covenants and agrees to construct and to transfer ownership and control to Authority, the on-site water distribution and sewage collection systems represented in Exhibit "C" herein. The term "on-site water distribution and sewage collection systems" means and includes all water distribution and supply mains, lines and pipes, and related facilities, and sewage collection lines, facilities and equipment, including pumping stations, constructed within the boundaries of Developer's property adequate in size to serve each lot or unit with the property or as otherwise required by Authority, which are referred to in Exhibit "C" hereof and will be dedicated by Developer to Authority.

Upon completion of construction, Developer's engineer of record shall submit to Authority all proper documentation as described in Authority's Developer Procedures and Construction Standards and Specifications. Developer understands and agrees that Authority will withhold service to the property until all items are received and found to be acceptable to Authority.

By these presents, Developer hereby covenants to transfer to Authority title to all water distribution and sewage collection systems installed by Developer or Developer's contractor represented in Exhibit "C" of this Agreement dealing with those sanitary collection and potable water supply facilities that will be transferred from Developer to Authority, pursuant to the provisions of this Agreement. Such conveyance shall take effect at the time Authority issues its final letter of acceptance. Developer agrees to warrant and/or guaranty all utility facilities being dedicated to Authority against faulty workmanship and defective materials for a period of one (1) year from the date of Authority's final letter of acceptance.

Authority agrees that the issuance of the final letter of acceptance for the water distribution and sewage collection systems installed by Developer shall constitute the assumption of responsibility by Authority for the continuous operation and maintenance of such systems from that date forward, subject to the terms and conditions contained herein. Developer understands and agrees that the Authority shall assume ownership and responsibility for facilities only up to the point of service as defined by the Authority. Developer agrees to pay all costs associated with adjusting or relocating facilities herein dedicated to Authority during and after the warranty period when such adjustments or relocations are caused by changes initiated by Developer or his successors and assigns.

In the event that Authority, for whatever reason, does not take possession, ownership and control of on-site facilities constructed by the Developer, and provides master metered service to the Developer for the use of several customers within the on-site facilities, the Developer shall be required to maintain water quality at each individual outlet which is in compliance with all drinking water standards promulgated by the Florida Department of Environmental Protection and Palm Beach County Health Department. At no time shall such water quality standards be required to be in excess of those attained at Authority's point of delivery to the master meter.

9. Off-Site Installation - Developer may be required to construct or improve, at his sole expense, certain off-site water and/or sewer facilities, if necessary, in order to connect Developer's on-site facilities to Authority's existing water and/or sewer systems. All provisions in Section 8 above, entitled On-Site Installation, pertaining to specifications, plans, permits and approvals shall also be applicable to all off-site water and sewer facilities construction. If applicable, such off-site facilities to be dedicated to the Authority shall be shown on Exhibit "B".

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10. Easements - Developer hereby grants and gives to Authority, its successors and assigns, but subject to the terms of this Agreement, the exclusive right or privilege to construct, own, maintain or operate the water and sewer facilities to serve the Property; and the exclusive right or privilege to construct, own, maintain, alter, replace and operate said facilities in, under, upon, over and across the present and future streets, roads, alleys, easements, reserved utility strips and utility sites, and any public place as provided and dedicated to public use in the record plats, or as provided for in agreements, dedications or grants which are independent of said record plats. Developer agrees to utilize Authority's standard form of easement deed and to provide title insurance as described in Authority's Developer Procedures for all on-site and off-site easements. Developer shall obtain any and all necessary off-site easements that may be required in order to carry out the terms, conditions and intent hereof, at Developer's expense, and shall convey same to Authority in accordance with this paragraph. Mortgagees, if any, holding prior liens on the Property shall be required to release such liens, subordinate their position or join in the grant or dedication of the easements or rights-of-way, or give to Authority assurance by way of a "non-disturbance agreement", that in the event of foreclosure, mortgagee would continue to recognize the easement rights of Authority, and not extinguish the Authority's easement rights. All water distribution and sewage collection facilities, save and except consumer installations, shall be covered by easements or rights-of-way if not located within platted or dedicated roads or rights-of-way for utility purposes.

Developer hereby further agrees that the foregoing grants or promises of grants include the necessary right of ingress and egress to any part of the property upon which Authority is constructing or operating such facilities; that the foregoing grants shall be for such period of time as Authority or its successors or assigns require such rights, privileges or easements in the construction, ownership, maintenance, operation or expansion of the water and sewer facilities, that in the event Developer and Authority agree that Authority is to install any of its water or sewer facilities in lands within the Property lying outside the streets and easement areas described above, then Developer or the owners shall grant to Authority, without cost or expense to Authority, the necessary easement or easements for such "private property" installations. Authority covenants that it will use due diligence in ascertaining all easement locations; however, should Authority install any of its facilities outside a dedicated easement area, Authority will not be required to move or relocate any facilities lying outside a dedicated easement area, so long as the facilities do not interfere with the then or proposed use of the area in which the facilities have been installed. The use of easements granted by Developer to Authority shall preclude the use by other utilities of these easements, such as for cable television, telephone, electric or gas utilities, unless otherwise agreed to in writing by Authority.

In the event Developer fails to actually deliver such easement, upon the Authority's election, this document shall serve as Authority's authorization to substitute this Agreement as a recorded easement sufficient for Authority's needs.

Developer hereby affirms that, to the best of Developer's knowledge and belief, all properties within which water and/or sewer facilities are to be constructed are free of soil and ground water contamination, and Developer shall keep and maintain such properties free of soil and groundwater contamination during the course of development. Any party that assumes the rights or obligations of Developer by operation of law or otherwise hereby indemnifies and holds Authority and Developer harmless for all claims and damages resulting from such contamination, whether existing before development began or occurring during or after development.

SCRIPPS FLORIDA PHASE II/BRIGER

11. Agreement to Serve - Upon the completion of construction of the on-site and off-site water and sewer facilities required hereunder by Developer, its inspection, the issuance of the final letter of acceptance by Authority, and when all appropriate governmental agency approvals have been received, and when utility systems are in compliance with Authority's Service Code, and the other terms of this Agreement, Authority covenants and agrees that it will connect or oversee the connection of the water distribution and sewage collection facilities installed by Developer to the central facilities of Authority in accordance with the terms and intent of this Agreement. Such connection shall at all times be in accordance with rules, regulations and orders of the applicable governmental authorities. Authority agrees that once it provides water and sewer service to the Property and Developer or others have connected consumer installations to its system, that thereafter Authority will continuously provide, at its cost and expense, but in accordance with other provisions of this Agreement, including rules and regulations and rate schedules, water and sewer service to the Property in a manner to conform with all requirements of the applicable governmental authority having jurisdiction over the operations of Authority.

12. Exclusive Right to Provide Service - Developer, as a further and essential consideration of this Agreement, agrees that Developer, or the successors and assigns of Developer, shall not (the words "shall not" being used in a mandatory definition) engage in the business or businesses of providing potable water and sewer services to the Property during the period of time Authority, its successors and assigns, provide water and sewer services to the Property, it being the intention of the parties hereto that under the foregoing provision and also other provisions of this Agreement, Authority shall have the sole and exclusive right and privilege to provide water and sewer services to the Property and to the occupants of such residence, building or unit constructed thereon, except for the providing by Developer, from its own sources and lines, of water for irrigation uses.

13. Rates - Authority agrees that the rates to be charged to Developer and individual consumers of water and sewer services shall be those set forth in the Service Policies of Authority. However, notwithstanding any provision of this Agreement, Authority, its successors and assigns, may establish, amend or revise, from time to time in the future, and enforce rates or rate schedules so established and enforced. Rates charged to Developer or consumers located upon the Property shall at all times be identical to rates charged for the same classification of service, as are or may be in effect throughout the service area of Authority.

Notwithstanding any provision in this Agreement, Authority may establish, amend or revise, from time to time in the future, and enforce rules and regulations covering water and sewer services to the Property, including the Authority's Service Code. In the event of a conflict of the provisions of this Agreement, such rules and regulations shall control.

Any such initial or future increased rates, rate schedules, and rules and regulations established, amended or revised and enforced by Authority from time to time in the future, as provided by law, shall be binding upon Developer; upon any person or other entity holding by, through or under Developer; and upon any user or consumer of the water and sewer services provided to the Property by Authority.

14. Binding Effect of Agreement - This Agreement shall be binding upon and shall inure to the benefit of Developer, Authority and their respective assigns and successors by merger, consolidation, conveyance or otherwise subject to the terms and conditions of this Agreement as contained herein. Developer understands and agrees that capacity reserved hereunder cannot and shall not be assigned by Developer to Third Parties, except in the case of a bona fide sale of Developer's Property, or other valid transfer or assignment of Property,

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including, without limitation, the transfer or assignment of the Property as a result of a judicial proceeding such as mortgage foreclosure or sale, assignment for the purposes of obtaining financing, and the transfer of rights by Developer to The Scripps Research Institute in accordance with the Ground Lease Agreement between Palm Beach County and the Scripps Research Institute, to be entered into between those parties at a later date. In any such case, the Developer shall provide a Notice or evidence of such assignment, or partial assignment as the case may be, to Authority. Nothing herein shall preclude sales of individual units and assignment of rights of water and sewer service pertaining thereto.

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

PALM BEACH COUNTY
301 North Olive Avenue
West Palm Beach, FL 33401
Attention: Robert Weisman, County Administrator

and to Authority, at:

SEACOAST UTILITY AUTHORITY
4200 Hood Road
Palm Beach Gardens, FL 33410
Attention: Developer Agreement Coordinator

16. Laws of Florida - Regardless of where executed, this Agreement shall be governed by the laws of the State of Florida. Notwithstanding contrary principles of conflicts of law, if any, and it shall be and become effective immediately upon execution by both parties hereto, subject to any approvals which must be obtained from governmental authorities, if applicable.

17. Force Majeure - In the event that the performance of this Agreement by Authority or Developer is prevented or interrupted in consequence of any cause beyond the control of Authority or Developer, including, but not limited to, Acts of God or of the public enemy, war, national emergency, allocation of or other governmental restrictions upon the use or availability of labor or materials, rationing, civil insurrection, riot, racial or civil rights disorder or demonstration, strike, embargo, flood, tidal wave, fire, explosion, bomb detonation, nuclear fallout, windstorm, hurricane, earthquake, or other casualty or disaster or catastrophe, unforeseeable failure or breakdown of pumping transmission or other facilities, any and all governmental rules or acts or orders or restrictions or regulations or requirements, acts or action of any government or public or governmental authority or commission or board or agency or agent or official or officer, the enactment of any statute or ordinance or resolution or regulation by governmental entities having jurisdiction over the operation of Authority or Developer or otherwise having valid legal jurisdiction, excluding any acts or rules or regulations adopted by Authority, or rule or ruling or order, order or decree or judgment or restraining order or injunction of any court, said party shall not be liable for such non-performance.

18. Indemnification - Any party that assumes the rights or obligations of Developer by operation of law or otherwise hereby agrees to indemnify and hold Authority and Developer harmless from and against any and all liabilities, claims, damages, costs and expenses (including reasonable attorney's fees) to which Authority may become subject by reason of or arising out of such party's breach or non-performance of this Agreement. This

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indemnification provision shall survive the actual connection to Authority's water and sewer systems hereby

MISCELLANEOUS PROVISIONS

19. Recordation of Agreement - Upon completion of execution of this Agreement by Developer and Authority, Authority shall cause a Memorandum of Agreement to be recorded with the Clerk of the Circuit Court of Palm Beach County.
20. The rights, privileges, obligations and covenants of Developer and Authority shall survive the completion of the work of Developer with respect to completing the facilities and services to any development phase and to the Property as a whole.
21. This Agreement supersedes all previous agreements or representations, either verbal or written, heretofore in effect between Developer and Authority, made with respect to the matters herein contained, and when duly executed, fully constitutes the agreement between Developer and Authority. No additions, alterations or variations of the terms of this Agreement shall be valid, nor can provisions of this Agreement be waived by either party, unless such additions, alterations, variations or waivers are expressed in writing and duly signed by all signatories herein.
22. There is no deadline for the development of the Property. Authority shall be required to provide the water and wastewater services secured under this Agreement, unless Developer fails to make payment for Connection Charges, Annual Capacity Reservation Fees, or is otherwise in default of the material provisions of this Agreement.
23. Whenever approvals of any nature are required by either party to this Agreement, it is agreed that same shall not be unreasonably withheld or delayed.
24. The submission of this Developer Agreement for examination by Developer does not constitute an offer, but becomes effective only upon execution thereof by Authority.
25. Notwithstanding the gallonage calculations that could be made hereunder relative to ERCs, by an execution hereof, Developer agrees that the intention of this agreement is to reserve a given number of units of capacity for the Property described in Exhibit "A" and not for purposes of any other calculations.
26. It is agreed by and between the parties hereto that all words, terms and conditions contained herein are to be read in concert, each with the other, and that a provision contained under one heading may be considered to be equally applicable under another in the interpretation of this Agreement.
27. The parties hereto recognize that prior to the time Authority may actually commence upon a program to carry out the terms and conditions of this Agreement, Authority may be required to obtain approval from various state and local governmental authorities having jurisdiction and regulatory power over the construction, maintenance and operation of Authority. The Authority agrees that it will diligently and earnestly make the necessary and proper applications to all governmental authorities and will pursue the same to the end and that it will use its best efforts to obtain such approval. Should Developer create, enhance or preserve wetlands on the Property, Developer shall either: (i) pay any costs of permitting incurred by the Authority, including mitigation costs, associated with the impact of such wetlands on the Authority's currently permitted consumptive use allocation from its Hood Road Well Field; (ii) provide the Authority, at Developer's sole cost and expense, with an alternative water supply which replaces the incremental loss of water from the Authority's

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Hood Road Well Field attributable to the presence of such wetlands; or (iii) maintain sufficient water levels in such wetlands so that no harm will be attributable to the Authority for impact to such wetlands resulting from drawdown associated with the Authority's currently permitted consumptive use allocation from its Hood Road Well Field. The term "wetland" as used in this paragraph shall have the meaning ascribed to it by Section 1.8 of the South Florida Management District's Basis Of Review For Water Permit Applications ("BOR"), as it may be amended from time to time. The term "wetland" is not intended to encompass storm water management systems, unless such systems would otherwise qualify as wetlands under the BOR.

Developer, at his own cost and expense, agrees to provide necessary assistance to Authority in obtaining the approvals provided for herein.

28. In the event that the Authority requires that relocation or improvement of existing water and sewer utilities are necessary for the Developer's property, Developer will bear the cost in full for such improvements or relocations.

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

30. Authority shall, at all reasonable times and hours, have the right of inspection of Developer's internal lines and facilities. This provision shall be binding on the successors and assigns of the Developer.

31. This Agreement is binding on the successors and assigns of the parties hereto.

32. There shall be no liability whatsoever on Authority for failure to deliver water and/or sewer service to Developer according to Developer's needs or schedules. This Agreement constitutes a promise of good faith and not a timetable for delivery of utility services.

33. Each party hereby agrees to grant such further assurances and provide such additional documents as may be reasonably required, each by the other, in order to carry out the terms, conditions and comply with the express intention of this Agreement.

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IN WITNESS WHEREOF, Developer and Authority have executed or have caused this Agreement, with the named Exhibits attached, to be duly executed in several counterparts, each of which counterpart shall be considered an original executed copy of this Agreement.

AUTHORITY:
SEACOAST UTILITY AUTHORITY

By: _____
Maria Davis, Chair

Attest: _____
Jessica Moore, Authority Clerk

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me this ____ day of _____, 2010, by Maria Davis and Jessica Moore, Chair and Authority Clerk, respectively of Seacoast Utility Authority, who are both personally known to me.

Notary Signature

Print Name
Notary Public - State of Florida
Commission No:
My Commission Expires:

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ATTEST:

**SHARON R. BOCK, CLERK &
COMPTROLLER**

**PALM BEACH COUNTY BOARD,
FLORIDA, Political Subdivision of the
State of Florida
BOARD OF COUNTY COMMISSIONERS**

By: _____
Deputy Clerk

By: _____
Burt Aaronson, Chair

**APPROVED AS TO FORM
AND LEGAL SUFFICIENCY**

**APPROVED AS TO TERMS
AND CONDITIONS**

By: _____
County Attorney

By: 
Department Director

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JOINDER AND CONSENT OF PROPERTY OWNER

(If other than the Developer)

WITNESSES:

PROPERTY OWNER:

(Signature)

By: _____

(Print Name)

Its: _____

(Print Title)

STATE OF _____

COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2010, by _____ of _____ who is personally known to me or who has produced _____ as identification

Notary Signature

Print Name
Notary Public - State of Florida
Commission No:
My Commission Expires:

SCRIPPS FLORIDA PHASE II/BRIGER

MORTGAGEE JOINDER AND CONSENT

WITNESSES:

MORTGAGEE:

(Signature)

By: _____
(Print Name)

Its: _____
(Print Title)

STATE OF _____
COUNTY OF _____

The foregoing instrument was acknowledged before me this ____ day of _____, 2010, by _____ of _____ who is personally known to me or who has produced _____ as identification

Notary Signature

Print Name
Notary Public - State of Florida
Commission No:
My Commission Expires:

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SCRIPPS PARCELS – O.R.B. 21129, PG. 218 & 229
LEGAL DESCRIPTION

PARCEL I

THAT PORTION OF SECTION 26, TOWNSHIP 41 SOUTH, RANGE 42 EAST, IN PALM BEACH COUNTY, FLORIDA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 26; THENCE SOUTH 89°55'48" WEST ALONG THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 26, A DISTANCE OF 2371.01 FEET; THENCE SOUTH 00°04'12" EAST, A DISTANCE OF 1280.00 FEET TO A POINT OF CURVATURE OF A CURVE CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 1210.00 FEET; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 10°02'48", AN ARC DISTANCE OF 212.17 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE, CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 1210.00 FEET, THROUGH A CENTRAL ANGLE OF 33°57'12", AN ARC DISTANCE OF 717.04 FEET TO A POINT OF TANGENCY; THENCE SOUTH 44°04'12" EAST, A DISTANCE OF 19.33 FEET; THENCE SOUTH 00°55'48" WEST, A DISTANCE OF 56.57 FEET; THENCE SOUTH 45°55'48" WEST, A DISTANCE OF 1046.96 FEET TO A POINT OF CURVATURE OF A CURVE CONCAVE TO THE NORTHWEST, HAVING A RADIUS OF 50.00 FEET; THENCE SOUTHWESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 53°07'48", AN ARC DISTANCE OF 46.36 FEET TO A POINT OF REVERSE CURVATURE WITH A CURVE CONCAVE TO THE SOUTH, HAVING A RADIUS OF 100.00 FEET; THENCE WESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 16°13'00", AN ARC DISTANCE OF 28.30 FEET TO A POINT OF REVERSE CURVATURE WITH A CURVE CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 50.00 FEET; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 53°35'38", AN ARC DISTANCE OF 46.77 FEET TO A POINT OF COMPOUND CURVATURE WITH A CURVE CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 2376.96 FEET; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 33°26'46", AN ARC DISTANCE OF 1387.54 FEET TO THE INTERSECTION WITH A RADIAL LINE; THENCE NORTH 79°53'00" EAST ALONG SAID RADIAL LINE, A DISTANCE OF 1166.96 FEET TO THE POINT OF BEGINNING.

CONTAINING 30.00 ACRES, MORE OR LESS.

TOGETHER WITH:

EXHIBIT "A"

SCRIPPS FLORIDA PHASE II/BRIGER

PROPERTY DESCRIPTION (continued)

PARCEL II

THAT PORTION OF SECTION 26, TOWNSHIP 41 SOUTH, RANGE 42 EAST, PALM BEACH COUNTY, FLORIDA, DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID SECTION 26; THENCE SOUTH 89°55'48" WEST ALONG THE NORTH LINE OF THE NORTHEAST QUARTER OF SAID SECTION 26, A DISTANCE OF 2371.01 FEET; THENCE SOUTH 00°04'12" EAST, A DISTANCE OF 140.00 FEET TO THE POINT OF BEGINNING; THENCE CONTINUE SOUTH 00°04'12" EAST, A DISTANCE OF 1140.00 FEET TO A POINT OF CURVATURE OF A CURVE, CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 1210.00 FEET; THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 10°02'48", AN ARC DISTANCE OF 212.17 FEET TO THE INTERSECTION OF A RADIAL LINE; THENCE SOUTH 79°53'00" WEST ALONG A LINE RADIAL TO THE FOLLOWING CURVE, A DISTANCE OF 1166.96 FEET TO A POINT ON SAID CURVE, CONCAVE TO THE NORTHEAST, HAVING A RADIUS OF 2376.96 FEET; THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE, THROUGH A CENTRAL ANGLE OF 10°02'48", AN ARC DISTANCE OF 416.79 FEET TO A POINT OF TANGENCY; THENCE NORTH 00°04'12" WEST, A DISTANCE OF 1140.00 FEET; THENCE NORTH 44°55'47" EAST, A DISTANCE OF 56.57 FEET TO THE SOUTH RIGHT-OF-WAY LINE OF DONALD ROSS ROAD AS DESCRIBED IN OFFICIAL RECORDS BOOK 4296, PAGE 1151, OF THE PUBLIC RECORDS OF PALM BEACH COUNTY, FLORIDA; THENCE NORTH 89°55'47" EAST ALONG SAID SOUTH RIGHT-OF-WAY LINE AND EASTERLY PROLONGATION, A DISTANCE OF 1086.96 FEET; THENCE SOUTH 45°04'12" EAST, A DISTANCE OF 56.57 FEET TO THE POINT BEGINNING.

CONTAINING 40.00 ACRES, MORE OR LESS.

EXHIBIT "A" (continued)

SCRIPPS FLORIDA PHASE II/BRIGER

PAYMENT SCHEDULE

Connection Charges - Developer agrees to pay Authority the following Connection Charges to induce Authority to reserve the following plant and main capacities for Developer's proposed connections within the Property. Developer understands that such capacities are only reserved upon payment of charges by Developer to Authority. Said charges to be paid by Developer are those which are set forth in Authority's Uniform Extension Policy. These charges may be changed from time to time and such charges shall change in accordance with the order of the Authority's Governing Board. In the event the property use exceeds ERCs listed below, Developer, its successors, and assigns agree to pay all prevailing Authority rates, fees, and charges associated with such overage.

This project consists of 1,600,000 square feet of office buildings. The following schedule outlines the charges to be paid at this time for capacity to be reserved.

The following formula was used to determine Developer's share of plant and main capacity:

<u>Customer Category</u>	<u>Total ERC's</u>	<u>Charge per ERC</u>	<u>Total Charges</u>
Non-Residential	581.818	\$2,700.00	\$1,570,908.60

50 percent of all connection charges paid at time of signing this Agreement = \$785,454.30.

Connection charge payment when meter/meters are requested = \$785,454.30.

Capacity Reservation Fees:

Annual Capacity Reservation Fees calculated as follows (100% of ERC's reserved):

581.818 ERCs x \$451.68 = \$262,795.55 = Annual Capacity Reservation Fees.

Payable at the time Developer Agreement is executed and annually thereafter until all the meters are set. In accordance with Section 7 herein, as active connections are made, the Annual Capacity Reservation Fees obligation of Developer shall be proportionately reduced.

Administrative Fees, Meter Fee and Deposit are not shown on this payment schedule, but payment of same is required as shown in Service Code.

EXHIBIT "B"

SCRIPPS FLORIDA PHASE II/BRIGER

WATER AND SEWER SYSTEM CONTRIBUTIONS

The Developer shall provide, install and dedicate to Authority all pipe, services, mains and appurtenances thereto in accordance with the Authority's standards and specifications as indicated on the plans drawn by _____ being Project No. _____ Sheets _____ dated _____.

Said plans may be subject to revisions prior to final approval by Authority.

Actual materials shall be as described on the final Bill of Sale as prepared by the Developer and transmitted to the Authority for approval and acceptance.

Water:

The point of delivery for this Project's water distribution system will be the water meter located at the property line.

Wastewater:

The point of collection (delivery) for this Project's sanitary sewer system will be the sanitary sewer manhole located at the property line.

EXHIBIT "C"