



**II. FISCAL IMPACT ANALYSIS**

**A. Five Year Summary of Fiscal Impact:**

Fiscal Years	2019	2020	2021	2022	2023
Capital Expenditures	_____	_____	_____	_____	_____
Operating Costs	<u>\$600</u>	<u>\$200</u>	_____	_____	_____
External Revenues	_____	_____	_____	_____	_____
Program Income (County)	_____	_____	_____	_____	_____
In-Kind Match (County)	_____	_____	_____	_____	_____
<b>NET FISCAL IMPACT</b>	<u>\$600</u>	<u>\$200</u>	_____	_____	_____

# ADDITIONAL FTE POSITIONS (Cumulative) \_\_\_\_\_

Is Item Included in Current Budget?                      Yes   X                        No \_\_\_\_\_

Does this item include the use of federal funds?    Yes \_\_\_\_\_                      No   X  

Budget Account No.:

Fund   1232   Department   380   Unit   3010   Object   3401   Program \_\_\_\_\_

**B. Recommended Sources of Funds/Summary of Fiscal Impact:**  
Minimal Fiscal Impact - \$200 per month rent

**C. Department Fiscal Review:**

*A. Neary*

**III. REVIEW COMMENTS**

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

*Frank Glerke*                      *Dr. J. Jacobson* 6/19/19  
 OFMB <sup>PRO</sup> <sub>6/17</sub>                      <sup>SP/14</sup> <sub>BR 6/17</sub>                      Contract Development & Control

**B. Legal Sufficiency:** *[Signature]* 6/20/19  
 Assistant County Attorney

**C. Other Department Review:**  
 \_\_\_\_\_  
 Department Director

ATTACHMENT 1

LEASE AGREEMENT

THIS LEASE AGREEMENT ("Lease") dated as of this \_\_\_ day of \_\_\_\_\_ 2019, by and between FLORIDA INLAND NAVIGATION DISTRICT, an independent special taxing district of the State of Florida, hereinafter referred to as Landlord, and PALM BEACH COUNTY, a political subdivision of the State of Florida, hereinafter referred to as Tenant.

RECITALS

- A. Landlord is the owner of a parcel of land located in Palm Beach County, Florida intended for use as a dredged material management area for the long-term maintenance of the Intracoastal Waterway, said parcel being designated in the Landlord's Long-Range Dredging Plan as Material Storage Area 617-C (MSA-617-C) (the "Premises").
- B. Tenant is undertaking the stabilization of Tarpon Cove Islands (the "Project").
- C. Tenant has requested Landlord to make the Premises available to Tenant and its contractor and subcontractors for the handling and temporary storage of rock material needed by the Project.
- D. DISTRICT is of the opinion that such use by the LESSEE pursuant to the provisions of this agreement is in the public interest.
- E. Landlord is willing to make the Premises available to Tenant for the Project upon the terms and conditions of this Lease.

WITNESSETH

THEREFORE, in consideration of the promises and mutual covenants and agreements contained herein, and other valuable consideration, the sufficiency of which is mutually acknowledged, Landlord and Tenant hereby agree as follows:

1. INCORPORATION OF RECITALS

The foregoing recitals are true, correct and incorporated herein by reference.

2. PREMISES/TERM/LICENSE

Landlord hereby leases to Tenant that property located in Palm Beach County, Florida and known as MSA-617C, as more particularly described in Exhibit "A" attached hereto and made a part hereof by reference (the "Premises"), for a term commencing subsequent to Palm Beach County Board approval of the lease and terminating October 31, 2019 (the "Term").

3. PAYMENT OF RENT

- a. Tenant hereby covenants and agrees to pay to Landlord as rent for the term of this Lease a base rent in the amount of Two Hundred Dollars (\$200.00) per month ("Base Rent"), together with applicable sales taxes thereon. Base Rent is due and payable monthly in advance on the first day of each calendar month.
- b. Tenant shall make any and all payments due hereunder to Landlord at that address set forth as follows unless otherwise notified by Landlord in writing:

FLORIDA INLAND NAVIGATION DISTRICT ATTN:  
EXECUTIVE DIRECTOR

1314 MARCINSKI ROAD

JUPITER, FLORIDA 33477-9427

- c. Tenant agrees to pay any and all charges and deposits for utilities serving the Premises in addition to said Rent.
- d. Tenant shall pay such other charges without demand and without setoff all sums of money or charges as required to be paid by Tenant under this Lease. If such amounts or charges are not paid at the time provided in this Lease, they shall be collectible as additional charges with the next installment of rent due hereunder and shall bear interest from the due date thereof to the date of payment at the rate of eighteen percent (18%) per annum or such lesser rate as shall be the maximum permitted by law.

4. COVENANTS OF LANDLORD

Landlord covenants that said Tenant, on paying the said rent and performing the covenants aforesaid, shall and may peaceably and quietly have, hold and enjoy the said Premises for the term aforesaid, PROVIDED ALWAYS, that this Lease is conditioned upon the prompt payment of rent in the manner and at the time stated herein and that there shall be no breach by Tenant of any of the other covenants or agreements of this Lease on Tenant's part to be performed. In any or either of such events, Landlord may immediately, or at any time thereafter and without demand or notice, enter into and upon the Premises and repossess the same without becoming a trespasser, without prejudice to Landlord's legal rights to recover rent.

5. INTENTIONALLY DELETED

6. USE OF PREMISES/CONDUCT OF BUSINESS

- a. Tenant shall continuously occupy and use the Premises solely for the handling and temporary storage of rock, other materials and equipment for the construction of the Project (hereinafter called the "Permitted Use"). Tenant shall not use the Premises for any other uses without Landlord's prior written consent.

- b. Tenant shall, at Tenant's expense, comply with all laws, ordinances and regulations of the United States, State of Florida, and the County of Palm Beach, including, without limitation, all applicable permits and conditions thereof, pertaining to the use and occupancy of the Premises, and shall not make any use of the Premises which shall unreasonably disturb Landlord's neighbors or otherwise become a nuisance. Tenant shall take reasonable measures to ensure that trucks travelling between the Premises and Ellison Wilson Rd observe the posted speed limits, including, but not limited to, providing additional traffic enforcement resources.
- c. Tenant shall limit its activities on the Premises to the hours of 8:00 a.m. to 6:00 p.m. on weekdays, except for legal holidays, during which no activities shall occur on the Premises without the written consent of the Executive Director.

7. TENANT'S FIXTURES AND ALTERATIONS

- a. Tenant agrees that it will not make any alterations (whether structural or otherwise), improvements or additions to the Premises without first obtaining the written consent of Landlord, which shall not be unreasonably withheld or delayed. All alterations, improvements and additions made by Tenant and all chattels affixed by Tenant to the Premises shall be removed from the Premises at the expiration or earlier termination of this Lease, except as otherwise provided herein.
- b. In addition to the above, Tenant shall also procure from the appropriate governmental agencies all necessary permits and authorizations before proceeding with any alteration, repair or improvement, and shall at all times comply with such permits and all conditions thereof, all at Tenant's expense.
- c. As additional consideration for this Lease, Tenant agrees to install a temporary project sign at the site entrance identifying the project by name, the selected Contractor, and relevant contact information, all at Tenant's expense.

8. ASSIGNMENT AND SUBLETTING

- a. Tenant shall not voluntarily, involuntarily, or by operation of law, assign, transfer, mortgage or otherwise encumber (herein collectively referred to as an "assignment") this Lease or any interest of Tenant herein, in whole or in part, nor sublet the whole or any part of the Premises, nor permit the Premises or any part thereof to be used or occupied by others, without the prior written consent of Landlord in each and every instance, which shall not be unreasonably and arbitrarily withheld. The consent of Landlord to any assignment or subletting shall not constitute a waiver of the necessity for such consent to any subsequent assignment or subletting. If this Lease or any interest of Tenant herein be assigned or if the whole or any part of the Premises be sublet or used or occupied by others after having obtained Landlord's prior written consent thereto, Tenant shall nevertheless remain fully liable for the full performance of all obligations under this Lease to be performed by Tenant and Tenant shall not be released therefrom in any manner.

- b. Should Tenant, in violation of the provisions of this Paragraph, assign this Lease, or sublet the Premises or any portion thereof without obtaining Landlord's prior written consent, then such assignment or sublease shall be null and void and of no force and effect. Such act on the part of Tenant shall be deemed a default of Tenant entitling Landlord to exercise any of the rights and remedies therefor as set forth in Paragraph 17 hereof.
- c. In the event Tenant assigns or sublets the Premises pursuant to this Paragraph 8 of this Lease Agreement, any rent collected by Tenant as sublessor or assignor which exceeds the amount of rent due from Tenant to Landlord hereunder shall be due and payable to Landlord.

9. LIENS

- a. Mechanics' or Materialmen's Liens: Tenant shall not cause any liens of mechanics, laborers or materialmen to stand against the Premises for any labor or material furnished or claimed to have been furnished to Tenant in connection with any work of any character performed or claimed to have been performed on the Premises, by or at the direction of Tenant.

If the Premises or any part thereof or Tenant's leasehold interest therein becomes subject to any suppliers, vendors, mechanics, laborers, materialmen's or other lien, encumbrance or charge (collectively hereinafter called a "lien"), other than a lien caused by the actions of the Landlord, Tenant shall promptly notify Landlord of the filing or the threatened filing of any such lien, shall promptly cause the lien to be satisfied or transferred to other security.

- b. Landlord's Liability. for Tenant's Liens: It is hereby agreed by the parties hereto that Landlord will not be liable for any labor, services or materials furnished or to be furnished to Tenant or to anyone holding the Premises, or any part thereof, through or under Tenant, and that no liens for any labor or material shall attach to or affect the interest of Landlord in and to the Premises. All contracts for construction or repair shall contain the above cautionary language and shall require all subcontractors, materialmen and laborers to be so advised. Failure of Tenant to so notify and advise such contractor(s) in writing prior to the commencement of any work to be performed shall constitute a default hereunder and entitle Landlord to those rights and remedies set forth in Paragraph 17 hereof.

10. NON-LIABILITY OF LANDLORD/WAIVE INDEMNIFICATION

- a. As a consideration for the making of this Lease and in light of the fact that Tenant has had the opportunity to make such inspections and tests as Tenant, in Tenants' judgment, has deemed necessary, Tenant accepts the Premises in its "As-Is Condition" and Landlord shall not be liable for any condition, latent or patent, existing in, on or under the Premises, nor for injury or damage which may be sustained to person or property of Tenant or any other person caused by or resulting from water, rain, groundwater, soil, sand, silt or any other material which may leak or flow from or into any part of the Premises or from the breakage, leakage, obstruction or other defect of the dikes, pipes, weirs, or other fixtures, from noise, vibration, smoke or odors emanating from the Premises, or from any other source or cause whatsoever, whether the same damage or injury shall be caused by or be due to the negligence of Landlord, nor the interference with light or incorporeal hereditaments, specifically excluding from such indemnification such damage or injury which results from the gross negligence of Landlord, nor shall Landlord be liable for any defect in the Premises, latent or otherwise, except as provided by law.
- b. Tenant, to the extent permitted under Section 768.28, Florida Statutes, shall indemnify, defend and save Landlord harmless from and against any and all claims, actions, damages, liability and expense (including disbursements) in connection with the loss of life, personal injury, damage to property or business, natural resource damage, fines and penalties arising from, related to, or in connection with the occupancy or use by Tenant of the Premises or occasioned wholly or in part by any act or omission of Tenant, its contractors, subcontractors, subtenants, licensees, or concessionaires, or its or their respective agents, servants or employees. Provided that the foregoing indemnification shall not be construed to constitute an agreement by the Tenant to indemnify the Landlord for the Landlord's negligent, willful or intentional acts or omissions.
- c. Tenant shall include in any construction contract for work upon or involving the Premises that the contractor shall indemnify and hold harmless the Tenant and Landlord, their officers and employees, from liabilities, damages, losses and costs, including, but not limited to, reasonable attorney's fees, to the extent caused by the negligence, recklessness, or intentional wrongful misconduct of the contractor and persons employed or utilized by the contractor in the performance of the construction contract.
- d. Tenant shall be responsible for the payment of any fines or administrative penalties assessed and any remedial or mitigation actions required due to or arising out of any violation or alleged violation by Tenant or Tenant's employees, agents or contractors of laws, ordinances and regulations of the United States, State of Florida, and the County of Palm Beach, including, without limitation, all applicable permits and conditions thereof, pertaining to the use and occupancy of the Premises.
- e. The provisions of this Section 10 shall survive the termination of this Lease.

11. INSURANCE

Without waiving the right to sovereign immunity as provided by section 768.28, Florida Statutes, (Statute), the Tenant represents that it is self-insured with coverage subject to the limitations of the Statute, as may be amended.

If Tenant is not self-insured, Tenant shall, at its sole expense, purchase and maintain in full force and effect at all times during the term of this Agreement, the insurance with limits not less than those contained in the Statute.

The Tenant agrees to maintain or to be self-insured for Workers' Compensation insurance in accordance with Chapter 440, Florida Statutes.

Should Tenant contract with a third-party to perform any service related to the Agreement, Tenant shall require the third-party to provide the following minimum insurance:

- a. Commercial General Liability insurance with minimum limits of \$1,000,000 combined single limit for property damage and bodily injury per occurrence and \$2,000,000 per aggregate. Such policy shall be endorsed to include Tenant and Landlord as Additional Insureds. Tenant shall also require that third-party to include a Waiver of Subrogation against Landlord.
- b. Business Automobile Liability insurance with minimum limits of \$1,000,000 combined single limits for property damage and bodily injury per occurrence.
- c. Workers' Compensation insurance in compliance with Chapter 440, Florida Statutes, and which shall include coverage for Employer's Liability with minimum limits of \$1,000,000 each accident.

When requested, the Tenant shall provide an affidavit or Certificate of Insurance evidencing insurance or self-insurance.

Compliance with the foregoing requirement shall not relieve the Tenant of its liability and obligations under this Agreement.

12. REPAIRS AND MAINTENANCE OF PREMISES

- a. Tenant shall at all times at its sole cost and expense keep and maintain the Premises, including, without limitation, the landscape buffer, perimeter fence and gate, dike and weir in good order, condition and repair and shall not commit or suffer any waste on the Premises.
- b. Tenant will repair promptly at its own expense any damage to the Premises caused by bringing into the Premises any property or equipment for Tenant's use, or by the installation or removal of such property or equipment, regardless of fault or by whom such damage shall be caused.



- c. Tenant, at Tenant's sole cost, shall completely remove Tenant's Project Materials and equipment from the Premises and properly dispose or reuse the same not later than October 31, 2019.
- d. In the event Tenant defaults in the performance of any of its obligations under this Paragraph 12, Landlord, in addition to Landlord's other remedies under this Lease, at law or in equity, may, but shall not be obligated to, cure such default on behalf of Tenant and Tenant shall reimburse Landlord upon demand for any sums paid or costs incurred curing such default.
- e. The provisions of this Paragraph 12 shall survive the termination of this Lease Agreement.

13. INTENTIONALLY DELETED

14. PLANS

The following plans will guide the development, use and management of the Premises. These plans, if not already developed, will be developed in accordance with the schedule and methodology stipulated below. Tenant shall seek and receive written approval from Landlord prior to deviating from these approved plans and shall advise Landlord in writing upon discovery that it has deviated from any of the criteria or standards of these approved plans:

- a. LOCAL COORDINATION: Tenant's contractors will provide points of contact with the Palm Beach County Department of Environmental Resources Management and Florida Inland Navigation District. Tenant will maintain constant contact (and coordinate any required staging activities and management of public and private interests) with these parties during all phases of the project.
- b. SITE RESTORATION PLAN: Tenant shall submit a site restoration plan to Landlord for its approval prior to placing any material or equipment on the Premises. This plan will describe: plans and specifications, as well as a timeline, for the restoration of the Premises to the same condition as existed at the commencement of the Term, fair wear and tear excluded; sampling and testing protocols for collecting information on the then-existing soils [including physical (grain size and soil classification) and chemical characteristics] for comparison with the results of the baseline sampling plan; and plans for remediating any identified contamination in excess of allowable levels set forth in the Environmental Laws referenced in Paragraph 15 of this Lease or the Soil Cleanup Target Levels (Direct Exposure-residential) set forth in Chapter 62-777, F.A.C.; and a post-dredge topographic survey of the existing material within the Facility.

15. HAZARDOUS MATERIALS:

Tenant agrees that, during the term of this Lease, it:

- a. Shall keep or cause the Premises to be kept free of hazardous wastes or substances.

- b. Shall not cause or permit, as a result of any intentional or unintentional act or omission on the part of Tenant, or Tenant's assignees, employees, agents or contractors, a release of hazardous wastes or substances onto the Premises.
- c. Shall comply with and ensure compliance by its assignees, employees, agents or contractors and all others under its direction with all applicable federal, state, and local laws, ordinances, rules, and regulations.
- d. The terms "hazardous waste", "hazardous substance", "disposal", "release", and "threatened release", if used in this Lease, shall have the same meaning as set forth in the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. (CERCLA), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and recovery Act, 49 U.S.C. Section 6901 et seq., the Florida Resource and Management Act, Chapter 403, Florida Statutes, the Pollution, Spill, Prevention, and Control Act, Chapter 376, Florida Statutes, or any other applicable state or federal laws, rules, or regulations adopted pursuant to any of the foregoing.
- e. Shall immediately provide Landlord with notice of any release or threatened release of hazardous waste on or about the Premises, and shall immediately provide Landlord with notice of any injury or action taken by any local, state, or federal governmental body with respect to hazardous waste on or about the Premises.
- f. Shall remove any hazardous waste or hazardous substances which exceed allowable levels in the ground or the groundwater within the Premises, to the extent caused by or arising from Tenant's use of the Premises.

16. EVENTS OF DEFAULT

The following shall constitute Events of Default:

- a. If Tenant defaults in the payment of any sum of money due hereunder and such default shall continue for three (3) days after the date of notice from Landlord to Tenant.
- b. If Tenant defaults in fulfilling any of the other covenants of this Lease on Tenant's part to be performed hereunder and such default shall continue for the period of fifteen (15) days after notice from Landlord to Tenant specifying the nature of said default, or, if the default so specified shall be of such a nature that the same cannot be reasonably cured or remedied within said fifteen (15) day period, if Tenant shall not in good faith have commenced the curing or remedying of such default within such fifteen (15) day period and shall not thereafter diligently proceed therewith to completion.

- c. If any execution or attachment shall be issued against Tenant or any of Tenant's property and shall not be discharged or vacated within seven (7) days after the issuance thereof.
- d. The vacation of the Premises by Tenant prior to the end of the Initial Term or Renewal Term.
- e. The failure to fully remove from the Premises within the time periods specified herein all material deposited on the Premises by Tenant.

In the Event of Default, Landlord shall provide Tenant with such written notice thereof as shall be required under Florida law.

17. REMEDIES IN EVENT OF DEFAULT

- a. In the event of a default hereunder and such default shall continue after the giving of written notice thereof to Tenant, Landlord may at Landlord's option:
  - i. terminate the Lease and retake possession of the Premises for its own account,
  - ii. stand by and do nothing, holding the Tenant liable for the Rent due as it matures, including any accelerated Rent,
  - iii. retake possession of the Premises for the account of the Tenant, holding the Tenant liable for the difference between the Rent stipulated to be paid under the Lease and what, in good faith, the Landlord is able to recover from a reletting, or
  - iv. avail itself of any other option or remedy available under Florida law; and, in any event Tenant, shall give up the Premises to Landlord.
- b. If the notice provided herein shall have been given and this Lease shall be terminated; or if the Premises become vacant or deserted; then, in addition to all other remedies of Landlord, Landlord may without notice re-enter the Premises either by force or otherwise and, by summary proceedings or otherwise, dispossess Tenant and/or the legal representative of Tenant or other occupant of the Premises, and remove effects and repossess and enjoy the Premises, together with all alterations, additions and improvements, all without being liable to prosecution or damages therefor.
- c. If Tenant defaults in the performance of any of the terms and conditions of this Lease and Landlord employs the services of an attorney to enforce performance of Tenant hereunder, Tenant shall pay a reasonable attorney's fee as well as all expenses and costs incurred by the Landlord pertaining thereto and in enforcement of any remedy available to the Landlord.

18. SURRENDER OF POSSESSION/HOLDING OVER

- a. At the end of the tenure of this Lease, Tenant shall quit and deliver up the Premises to Landlord in as good a condition as they are now, excepting reasonable wear and tear.
- b. Should Tenant hold over in possession of the Premises after the expiration of the Initial Term or, if applicable, the Renewal Term hereof, without the execution of a new lease or extension or renewal agreement, Tenant, at the option of Landlord, shall be deemed to be occupying the Premises from month to month, subject to being terminated by either party upon at least fifteen (15) days written notice, at the rent in effect during the last month of the term or any extension or renewal thereof and otherwise subject to all of the other terms and conditions of the Lease on a monthly basis.
- c. Should Tenant refuse to give up possession of the Premises after the expiration of the term hereof and after demand to do so by Landlord, Landlord may demand double the monthly rent. In addition, Tenant shall be liable for all court costs, attorney's fees and other costs related to removing Tenant from the Premises.

19. ACCESS BY LANDLORD

Landlord may, during the term of this Lease at reasonable times, enter to inspect the Premises upon reasonable advance oral notice to Tenant, except that no notice shall be required in emergency situations. Landlord also reserves the right to enter the Premises at any time to make such repairs, additions or alterations as it may deem necessary for the safety, improvement, or preservation thereof, upon reasonable advance oral notice to Tenant, except that no notice shall be required in emergency situations, but Landlord assumes no obligation to do so, and the performance thereof by Landlord shall not constitute a waiver of Tenant's default in failing to perform the same. Landlord shall in no event be liable for any inconvenience, disturbance, loss of business or the damage to Tenant by reason of the performance by Landlord of any work in, upon or under the Premises.

20. PAYMENT OF TAXES AND ASSESSMENTS

Tenant shall assume full responsibility for and shall pay all liabilities that accrue to the Premises and/or to the improvements thereon, including any and all ad-valorem taxes and drainage and special assessments or taxes of every kind and all construction liens which may be hereafter lawfully assessed and levied against the Premises, resulting from Tenant's use of the Lease Premises for the purposes provided for herein.

21. EXECUTION OF ESTOPPEL CERTIFICATE

At any time, and from time to time, upon the written request of Landlord, Tenant, within ten (10) days of the date of such written request, agrees to execute and deliver to Landlord, without charge and in a form satisfactory to Landlord, a written statement: (a) ratifying this Lease; (b) confirming the commencement and expiration dates of the term of this Lease; (c) certifying that Tenant is in possession of the Premises, and that this Lease is in full force and effect and has not been modified, assigned, supplemented or amended, except by such

writings as shall be stated; (d) certifying that all conditions and agreements under this Lease to be satisfied or performed by Landlord have been satisfied and performed, except as shall be stated; (e) certifying that Landlord is not in default under this Lease and there are no defenses or offsets against the enforcement of this Lease by Landlord, or stating the defaults and/or defenses claimed by Tenant; and (f) such other information as Landlord or mortgagee shall require.

22. PERFORMANCE BOND

Prior to the any use of the Premises, Tenant's contractor shall deliver to Landlord a surety bond issued by a surety reasonably satisfactory to Landlord in the principal amount of Five Hundred Thousand and No/ 100 Dollars (\$500,000.00), conditioned on Tenant's complete removal from the Premises of all materials placed thereupon by Tenant during the term of this Lease not later than October 31, 2019.

23. EMINENT DOMAIN

- a. If the whole of the Premises shall be acquired or condemned by eminent domain for any public or quasi-public use or purpose, then the term of this Lease shall cease and terminate as of the date of title vesting in such proceeding and all rentals shall be paid up to date and Tenant shall have no claim against Landlord for the value of any unexpired term of this Lease.
- b. If any part of the Premises shall be acquired or condemned as aforesaid, and in the event that such partial taking or condemnation shall render the Premises unsuitable for the business of Tenant, then the term of this lease shall cease and terminate as of the date of title vesting in such proceeding. Tenant shall have no claim against Landlord for the value of any unexpired term of this Lease and rent shall be adjusted to the date of such termination. In the event of a partial taking or condemnation which is not extensive enough to render the Premises unsuitable for the business of Tenant, then Landlord shall promptly restore the Premises to a condition comparable to its condition at the time of such condemnation less the portion lost in the taking, and this Lease shall continue in full force and effect without any reduction or abatement of rent.
- c. In the event of any condemnation or taking as aforesaid, whether whole or partial, Tenant shall not be entitled to any part of the award paid for such condemnation, Landlord is to receive the full amount of such award, and Tenant hereby expressly waives any right or claim to any part thereof.
- d. Although all damages in the event of any condemnation are to belong to Landlord whether such damages are awarded as compensation for diminution in value of the leasehold or to the fee of the Premises, Tenant shall have the right to claim and recover from the condemning authority, but not from Landlord, such compensation as may be separately awarded or recoverable by Tenant in Tenant's own right on account of any and all damage to Tenant's operations by reason of the condemnation and for or on account of any cost or loss to which Tenant might be put in removing Tenant's fixtures, leasehold improvements and equipment.

24. ATTORNEYS' FEES

In the event this Agreement shall be the subject of litigation between the parties hereto for any reason whatsoever, the prevailing party in such litigation shall recover from the other party the costs of such action, including, but not limited to, reasonable attorneys' fees incurred in any and all mediation, arbitration, trial, appellate, post-judgment, bankruptcy and administrative proceedings.

25. NOTICES

Each notice, correspondence, document or other communication (collectively, "Notice") required or permitted to be given hereunder shall be in writing and shall be delivered either by personal delivery (including delivery by services such as Federal Express) or by depositing it with the United States Postal Service or any official successor thereto, certified mail, return receipt requested, with adequate postage prepaid, addressed to the appropriate party as follows:

If to Tenant: Palm Beach County  
Department of Environmental Resources Management  
2300 North Jog Road, 4<sup>th</sup> Floor  
West Palm Beach, FL 33411  
Attention: Department Director

With a copy to: Palm Beach County  
County Attorney  
301 North Olive Avenue, Suite 601  
West Palm Beach, FL 33401  
Attn: Scott A. Stone, Esq.

If to Landlord: Florida Inland Navigation District  
1314 Marcinski Road  
Jupiter, FL 33477  
Attn: Executive Director

With a copy to: Peter L. Breton, Esq.  
Breton, Lynch, Eubanks & Suarez-Murias, P.A.  
605 North Olive Avenue, 2<sup>nd</sup> Floor  
West Palm Beach, FL 33401

Except as provided herein to the contrary, Notice shall be deemed delivered at the time of personal delivery, or, if mailed, on the third mail delivery day after the day of mailing as provided above, and the time period in which a response to any Notice must be given or any action taken with respect thereto shall commence to run from the date it is personally delivered or, if mailed, the date of receipt so deemed. In addition, the inability of the United States Postal Service to deliver because of a change of address of the party of which no Notice was given to the other party shall be deemed to be the receipt of the Notice sent. Changes of address and persons to whom Notice shall be addressed shall be made by Notice hereunder.

26. MISCELLANEOUS

- a. Tenant has inspected the Premises and is familiar with its present condition and takes said Premises in "As-Is" condition.
- b. The failure of Landlord or Tenant to take any action against the other for violation of any of the terms of the Lease shall not prevent a subsequent act of a similar nature from being a violation of the Lease.
- c. No act or agreement to accept surrender of the Premises from Tenant shall be valid unless in writing signed by the parties hereto.
- d. This Lease fully and completely expresses all agreements and understandings of the parties hereto. Furthermore, this Lease shall be binding upon and shall inure to the benefit of the respective heirs, successors, assigns and legal representatives of the parties hereto and shall not be changed or terminated unless in writing and signed by the parties hereto.
- e. THE PARTIES HERETO HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER PARTY AGAINST THE OTHER PERTAINING TO ANY MATTER WHATSOEVER ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS LEASE OR TENANT'S USE AND OCCUPANCY OF THE PREMISES.
- f. Tenant hereby acknowledges Tenant's responsibility to insure Tenant's property maintained within or upon the said Premises at Tenant's expense.
- g. Tenant shall not change or install additional locks on any gates without Landlord's express written consent. In the event Tenant changes or installs additional locks, Tenant shall provide Landlord with duplicate keys therefor at Tenant's expense.
- h. If any term or condition of this Lease shall, to any extent, be held invalid or unenforceable, the remainder of the terms and conditions of this Lease shall not be affected thereby, and this Lease shall be valid and enforceable to the fullest extent permitted by law.
- i. Receipt of rent by Landlord, with knowledge of any breach of this Lease by Tenant, or of any default by Tenant in the observance or performance of any of the conditions or covenants of this Lease, shall not be deemed to be a waiver of any provision of this Lease.
- j. This Lease shall not be recorded in the Office of the Clerk of any Circuit Court in the State of Florida, except that Landlord may file a memorandum of this Lease.
- k. This Lease shall be construed under the laws of the State of Florida.

- l. The Section headings of this Lease are for convenience only and are not to be considered in construing the same.
- m. This Lease may be executed in counterparts, all of which taken together shall be deemed an original, with a facsimile and/or an e-mail signature serving as an original thereof.
- n. Each party represents and warrants to the other that: (a) it is duly authorized and competent to execute this Lease; (b) it has all necessary power and authority to enter into this Lease and to perform the agreements contained in this Lease; and (c) the person signing this Lease on behalf of such party is authorized to execute and deliver this Lease on behalf of such party.
- o. The parties participated in the drafting of this Lease and/or had it reviewed by competent counsel. Accordingly, no presumption shall be given in favor of: or against, any party in interpreting this Lease and the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Lease.
- p. RADON GAS

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.

[THE REMAINDER OF THIS PAGE IS BLANK]



IN WITNESS WHEREOF, the parties hereto have set forth their hands and seals on the year and date aforesaid.

Signed, sealed and delivered in the presence of:

AS TO LANDLOARD:

FLORIDA INLAND NAVIGATION DISTRICT

\_\_\_\_\_  
Witness  
Print Name: \_\_\_\_\_

\_\_\_\_\_  
Don Donaldson, Chair

DATED: \_\_\_\_\_

\_\_\_\_\_  
Witness  
Print Name: \_\_\_\_\_

Approved to form and legal sufficiency:

\_\_\_\_\_  
Peter L. Breton, Esq., General Counsel

ATTEST:

AS TO TENANT:

Sharon R. Bock  
Clerk & Comptroller

Palm Beach County, a political  
subdivision of the State of Florida

By: \_\_\_\_\_  
Deputy Clerk

By: \_\_\_\_\_  
Mack Bernard, Mayor


Dated: \_\_\_\_\_

(Official Seal)

Approved as to form and legal sufficiency:

Approved as to terms and conditions:

By: \_\_\_\_\_  
Scott A. Stone, Esq., Assistant County Attorney

By:   
Deborah Drum, Director  
Department of Environmental Resources  
Management

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EXHIBIT "A"

LEGAL DESCRIPTION OF PREMISES

EXHIBIT A

BOUNDARY SURVEY  
PART OF SECTIONS 29 & 32  
TOWNSHIP 41 SOUTH, RANGE 43 EAST  
PALM BEACH COUNTY, FLORIDA

PROJECT SITE MSA 617-C  
(EXPANDED)

LEGAL DESCRIPTION: PARCEL MSA 617-C (PREVIOUSLY KNOWN AS PARCEL MSA 617-A)  
DEED BOOK 640, PAGES 363-365 AND DEED BOOK 711, PAGE 160

ALL THAT PORTION OF THE E 1/2 OF THE SE 1/4 OF SECTION 29, TOWNSHIP 41 SOUTH,  
RANGE 43 EAST, PALM BEACH COUNTY, FLORIDA, LYING SOUTH OF A LINE PARALLEL  
TO AND 800 FEET DISTANT NORTH FROM, WHEN MEASURED AT RIGHT ANGLES TO, THE  
SOUTH LINE OF SAID E 1/2 OF THE SE 1/4 OF SECTION 29, TOWNSHIP 41 SOUTH, RANGE  
43 EAST, AND LYING EAST OF THE EASTERLY BOUNDARY OF THE 500 FOOT RIGHT-OF-  
WAY OF THE INTRACOASTAL WATERWAY FROM JACKSONVILLE TO MIAMI, FLORIDA,  
AS THAT RIGHT-OF-WAY IS SHOWN ON A MAP RECORDED IN THE PUBLIC RECORDS OF  
SAID PALM BEACH COUNTY, IN PLAT BOOK 17, AT PAGE 7. THE ABOVE DESCRIBED  
TRACT CONTAINS 9.50 ACRES BY DEED, 9.74 ACRES BY SURVEYOR, MORE OR LESS.

SUBJECT TO:

THE RIGHT OF WAY OF ELLISON WILSON ROAD AS DESCRIBED IN OFFICIAL RECORDS BOOK  
BOOK 539, PAGE 486-487

AND;

A DRAINAGE EASEMENT AS DESCRIBED IN OFFICIAL RECORDS BOOK 7393, PAGES 1805-1810.

AND;

A DRAINAGE EASEMENT AS DESCRIBED IN OFFICIAL RECORDS BOOK 7370, PAGES 1107-1111.

TOGETHER WITH THE FOLLOWING PARCELS OF LAND (EXPANSION PARCELS):

LEGAL DESCRIPTION: PARCEL B (PARCEL III OF DEED RECORD BOOK 990 PAGE 379-384.)

THAT PART OF THE NORTH 300 FEET OF THE NORTHEAST QUARTER OF SECTION 32,  
TOWNSHIP 41 SOUTH, OF RANGE 43 EAST, WHICH LIES EAST OF THE RIGHT-OF-WAY OF  
THE INTRACOASTAL WATERWAY, AND WEST OF THE NORTHEAST QUARTER, OF THE  
NORTHEAST QUARTER, OF THE NORTHEAST QUARTER OF THE NORTHEAST QUARTER OF  
OF SAID SECTION, CONTAINING 2.88 ACRES BY SURVEYOR, MORE OR LESS.

AND;

LEGAL DESCRIPTION: PARCEL A (DEED RECORD BOOK 897 PAGE 261-262)

THE NE 1/4 OF THE NE 1/4 OF THE NE 1/4 OF THE NE 1/4 OF SECTION 32,  
TOWNSHIP 41 SOUTH, RANGE 43 EAST, CONTAINING 2.5 ACRES BY DEED,  
2.55 ACRES BY SURVEYOR, MORE OR LESS.

BOTH OF THE ABOVE PARCELS SUBJECT TO:

ANY RIGHTS OF WAY OR EASEMENTS OF ELLISON WILSON ROAD, ( A 80 FOOT RIGHT  
OF WAY AS PRESENTLY CONSTRUCTED, MAINTAINED AND MONUMENTED), ALONG OR  
WITHIN THE EASTERLY PORTION OF THE HEREIN DESCRIBED PARCEL OF LAND.