

Return to:

Utilities Services Branch
Utilities Administration Building
19420 Central Boulevard
Land O' Lakes, FL 34637-7006

LICENSE AND MAINTENANCE AGREEMENT

THIS LICENSE AND MAINTENANCE AGREEMENT is made and entered by and between PASCO COUNTY, a political subdivision of the State of Florida, acting by and through its Board of County Commissioners, the governing body thereof, with an address of 37918 Meridian Avenue, Dade City, Florida 33525 hereinafter referred to as the "COUNTY," and the _____ COMMUNITY DEVELOPMENT DISTRICT, a local unit of special-purpose government established pursuant to Chapter 190, Florida Statutes, whose mailing address is _____, hereinafter referred to as the "APPLICANT."

WITNESSETH:

WHEREAS, the COUNTY maintains a wastewater Pump Station _____ on a parcel more particularly described in Exhibit A; and

WHEREAS, the APPLICANT states that it is a local unit of special purpose government established pursuant to Chapter 190, Florida Statutes that was organized for the purpose of maintaining common properties serving the residents of the _____ Community Development District situated within Pasco County, Florida; and

WHEREAS, the APPLICANT desires to install and maintain fencing of the type shown in Exhibit B within the COUNTY'S property (the "Facilities"), and incident to such installation and maintenance, the COUNTY requires a license and maintenance agreement; and

WHEREAS, in light of the aesthetic benefit to nearby residences, the COUNTY has determined it to be in the public's interest to allow Facilities in such area; and

WHEREAS, in return for access to the County's property, the COUNTY will receive indemnification from the District regarding Facilities; and

WHEREAS, the parties are desirous of entering into this Agreement for the purposes stated above.

NOW, THEREFORE, in consideration of the foregoing premises and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. RECITALS. The WHEREAS clauses set forth above are incorporated herein by reference and made a part of this Agreement.

2. GRANT OF LICENSE. The COUNTY hereby grants and delivers to the APPLICANT a nonexclusive license to use those portions of the COUNTY'S property as depicted on Exhibit A, which is attached hereto and incorporated herein by reference (herein "Subject Property"), for the maintenance of the Subject Property, and installation and maintenance of the Facilities pursuant to the terms and covenants herein. Any material change, alteration, modification, or addition to the Facilities or Subject Property as depicted on Exhibit A must have prior written approval by the COUNTY subject to its sole discretion.

3. MAINTENANCE OF PROPERTY AND FACILITIES.

The APPLICANT hereby agrees to maintain the Subject Property and Facilities in a safe and clean condition during the term of this Agreement and shall trim any vegetation to avoid any clear-sight violation. This obligation shall be the sole responsibility of the APPLICANT during the term of this Agreement. In no event shall any improvements placed by the APPLICANT block the visibility triangle of the intersections. The COUNTY agrees to the scope of work for the Facilities as defined herein. The APPLICANT agrees to be responsible for completing the work involved in the furnishing and/or planting of the Facilities. The APPLICANT agrees to maintain any landscaping in such manner that the height does not exceed the height of the District's proposed decorative security fence, which shall be six feet in height. The parties hereto further agree that the COUNTY, in allowing the Facilities, shall not assume any responsibility whatsoever for maintaining the Facilities. All responsibility for maintenance of the Facilities and surrounding areas remains

with the APPLICANT. If the APPLICANT no longer exists, refuses to maintain, or cannot maintain the Facilities, the COUNTY may maintain them but shall have no obligation whatsoever to do so and may remove the Facilities and secure its pump station in any manner deemed acceptable by the COUNTY. At no time shall the COUNTY have any ownership, control, or maintenance responsibilities with regard to the Facilities. The parties hereto agree that the COUNTY shall have the right, but not the obligation, to conduct inspections of the Facilities and if, in its sole discretion, the COUNTY deems it necessary, the COUNTY may request modifications to the Facilities to preserve the access to and functionality of, the pump station. The APPLICANT shall perform any modifications requested by the COUNTY. The parties agree that the COUNTY is the only person that may maintain a lock for access to the pump station and it is the COUNTY'S obligation to secure the pump station in any manner it deems necessary.

4. INDEMNIFICATION. The APPLICANT shall, to the extent permitted by section 768.28, Florida Statutes, and other applicable law, indemnify, defend, and hold harmless the COUNTY and all of its agents and employees from any claim, loss, damage, costs, charge, or expense, including attorney's fees and costs, arising from or in connection with 1) any work or thing whatsoever done or any condition created in or about the COUNTY'S Property for the Facilities as depicted on Exhibit A during the term of this Agreement; 2) any act, omission or negligence of the APPLICANT or any of the APPLICANT'S licensees or the partners, directors, officers, agents, employees, invitees, or contractors of the APPLICANT or of the APPLICANT'S tenant; or 3) any accident, injury, or damage whatsoever occurring in or at the COUNTY'S Subject Property as it relates to the Facilities. The APPLICANT hereby expressly indemnifies the COUNTY for the consequences of any negligent act or omission of the APPLICANT, its agents, servants, and employees, except that the APPLICANT will not be liable under this provision for damages arising out of the injury or damage to persons or property directly caused or resulting from the negligence of the COUNTY or any of its agents, servants, or employees.

The APPLICANT'S obligation to defend and indemnify shall not be excused because of the APPLICANT'S inability to evaluate liability or because the APPLICANT evaluates liability and determines the APPLICANT is not liable or determines the COUNTY is solely negligent. Only a final adjudication or judgment

finding the COUNTY solely negligent shall excuse performance of this provision by the APPLICANT. If a judgment finding the COUNTY solely negligent is appealed and the finding of negligence is reversed, the APPLICANT will be obligated to indemnify the COUNTY for the cost of the appeal(s). The APPLICANT shall pay all costs and fees related to this obligation and its enforcement by the COUNTY.

This provision shall also pertain to any claims brought against the COUNTY by any employee of the APPLICANT, contractor, subcontractor, or anyone directly or indirectly employed by any of them. The APPLICANT'S obligation under this provision shall not be limited in any way by the APPLICANT'S limit of or lack of sufficient insurance protection. This section shall survive any termination of this Agreement.

5. SIGNS. Any Facilities that are signs, as signs are defined in the Pasco County Land Development Code, are required to have the appropriate County approval pursuant to Section 406.1 of the Pasco County Land Development Code, and all other applicable County ordinances, prior to any installation of any signs. The Applicant agrees to obtain such appropriate County approval prior to installing any Facilities that are signs. This Agreement is not intended in any way, and shall not be construed in any way, to grant any County approval for installation of signs without the prior County approval indicated in this Section, or vest any right in the Applicant to appropriate County approval of any sign.

6. COUNTY PERMITS. The APPLICANT agrees to obtain any required COUNTY Property Use or Building Permit prior to entering or performing any work in the Subject Property, including the installation of the Facilities. The APPLICANT shall submit all permit applications to the Utilities Services Branch for review and approval prior to submittal to the permitting agency.

7. TERMINATION. The COUNTY or APPLICANT may terminate this Agreement in writing at any time and for any reason in whole, or from time to time, in part. Upon termination the APPLICANT shall immediately cause the Facilities to be removed and restore the Subject Property to the condition prior to installing such Facilities, and in no case later than thirty (30) days from the date of termination. This obligation by the APPLICANT shall survive any termination of this Agreement.

8. WAIVER OF CLAIMS. The APPLICANT hereby waives all claims against the COUNTY for loss or damage resulting from interference by a public agency, or official, or natural phenomena including,

but not limited to, fire, water, tornado, hurricane, or other severe storms, or any commotion, riot, or criminal activity. The APPLICANT further hereby waives all claims against the COUNTY for compensation for loss or damage of any kind sustained for any reason as a result of the COUNTY'S allowing the construction or the COUNTY'S modification of the Facilities pursuant to this Agreement.

9. NOTICES. Whenever either party desires to give notice unto the other, written notice shall be sent via hand delivery, first class mail or overnight carrier to:

<u>County:</u>	<u>Applicant:</u> _____
Pasco County Utilities Services Branch	_____
Utilities Administration Building	_____
19420 Central Boulevard	_____
Land O' Lakes, FL 34637-7006	_____

All notices shall be effective upon receipt. Any party may change their representative to get notice or their address by giving notice in this manner without the need of formal amendment of this Agreement.

10. LIMITATION OF AGREEMENT. It is expressly stipulated that this Agreement is a license for permissive use only and that the use of the Subject Property shall not operate to create or to vest any property right or interest in the APPLICANT.

11. PRIOR AGREEMENTS. This Agreement represents the entire Agreement between the parties and supersedes and nullifies any and all prior agreements, negotiations or understandings, written or oral relating to the matters set forth herein. Prior Agreements, negotiations or understandings, if any, shall have no force or affect whatsoever on this Agreement.

12. ASSIGNMENT. No assignment, delegation, transfer or novation of this Agreement or any part hereof shall be made, except as outlined in Paragraph 17 below, unless approved in writing and signed by all parties to this Agreement.

13. SEVERABILITY. If any part, term or provision of this Agreement is held to be illegal, unenforceable or in conflict with any applicable federal, state or local law or regulation, such part, term or provision shall be severable, with the remainder of this Agreement remaining valid and enforceable.

14. MODIFICATIONS. No modification, addendums or amendments of any kind whatsoever may be made to this Agreement unless in written consent and signed by both parties.

15. SOVEREIGN IMMUNITY. Nothing in this Agreement shall be construed in any way to waive the sovereign immunity of the COUNTY or of the APPLICANT.

16. LAW AND VENUE. This Agreement shall be governed by the laws of Florida. Venue for any dispute, claim or action arising out of or related to this Agreement shall be in the Circuit Court of the Sixth Judicial Circuit in and for Pasco County, Florida (Westside). Each party hereto shall bear their own attorneys' fees and costs in the event of any dispute, claim, action or appeal arising out of or related to this Agreement.

17. AGREEMENT RUNS WITH THE LAND AND BINDING EFFECT. This Agreement shall run with the land and the burdens and benefits of this Agreement shall be binding upon, and shall inure to all successors in interest, including all mortgagees, to the parties of this Agreement. Any such successor shall give notice to the COUNTY of its acquiring the land benefiting from this Agreement and its intent to continue the benefits of this Agreement. Should notice not be received, the Agreement shall terminate with the original party to the Agreement and the subsequent purchaser being jointly responsible for the removal of the Facilities and restoration of the right-of-way as outlined in Paragraph 7. The COUNTY shall record a copy of this Agreement in the Official Records of Pasco County, Florida, within thirty (30) days of its approval and provide a recorded copy to the APPLICANT within ten (10) days of its recordation.

18. DEFAULT. In the event of a default hereunder by the APPLICANT of its obligation, the COUNTY may proceed to enforce the provisions of this Agreement pursuant to the provisions of the Pasco County Land Development Code Section 108, or specific performance at its option.

19. PARTIES DRAFTED EQUALLY. The COUNTY and the APPLICANT agree that both parties have played an equal and reciprocal part in the drafting of this Agreement. Therefore, any uncertainty or ambiguity existing herein, if any, shall not be interpreted against either party, but shall be interpreted according to the application of the rules of interpretation for arm's-length agreements.

20. TIME. Time is of the essence to all parts of this Agreement.

21. TERM. This Agreement shall be for an initial term of one (1) year and shall automatically renew thereafter on an annual basis, unless terminated by the COUNTY or the APPLICANT as provided herein.

IN WITNESS WHEREOF, the parties hereto have executed the foregoing agreement on this _____ day of _____, 20__.

BOARD OF COUNTY COMMISSIONERS
OF PASCO COUNTY, FLORIDA

Flip Mellinger
Assistant County Administrator
(Utilities Services)

APPLICANT: _____
COMMUNITY DEVELOPMENT DISTRICT

SIGNATURE

By: _____
NAME

Its: _____
TITLE

WITNESSES:

Signature of Witness

Signature of Witness

Print Name of Witness

Printed Name of Witness

STATE OF FLORIDA
COUNTY OF _____

The foregoing instrument was acknowledged before me this _____ day of _____, 20__,
by _____ in his/her capacity as _____ of _____
_____ CDD and by _____ in his/her capacity as _____
of _____ CDD on behalf of the company. He/She is
personally known to me or has produced _____ as identification.

Notary Public

Printed Name of Notary Public

My Commission Expires: _____

EXHIBIT A