

**PLANTATION BAY UTILITY  
INTERLOCAL AGREEMENT**

This Agreement is made and entered into this 6th day of February, 2013 between the City of Bunnell, a municipal corporation of the State of Florida ("City" or "Party") and Flagler County, a political subdivision of the State of Florida ("County" or "Party") and hereafter collectively be referred to as the "Parties."

**RECITALS**

**WHEREAS**, Plantation Bay Utility Co., owns and operates a potable water and sanitary wastewater utility system ("Utility System") pursuant to a certificate of authorization issued by the Florida Public Service Commission to serve an area within Flagler County and Volusia County; and,

**WHEREAS**, the service territory of the Utility System is located within unincorporated Volusia and Flagler Counties; and,

**WHEREAS**, the City and County have cooperated with one another such that respectively they are acquiring the potable water and central wastewater assets of the Utility System with the understanding that ownership and operation of the Utility System will be handled on a joint basis between the two Parties; and,

**WHEREAS**, the Parties now wish to enter into an interlocal agreement to establish their respective rights and obligations concerning the ownership, operation, maintenance, financing, expansion, and control of the Utility System.

**WHEREAS**, this Interlocal Agreement is authorized pursuant to the provisions of Chapters 125, 163, and 166, Florida Statutes, and other applicable law.

**NOW, THEREFORE**, in consideration of the foregoing and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

**SECTION 1. Recitals.** The above Recitals are true and correct and are hereby incorporated into this Agreement.

**SECTION 2. Definitions.** The following terms shall have the meanings set forth below:

2.1 **Consent of the Parties** means the affirmative vote or written consent of the Parties holding a majority of the voting percentages.

2.2 **Deadlock** means a standstill, state of inaction or of neutralization caused by: the opposition of the Parties; an impasse in management; the action or inaction of the one of the Parties, a tie vote (i.e. 50/50), or a Party's refusal to vote or to join in a

5. Economic Projects that will provide substantial job creation and/or capital investment.

SECTION 5. Rates and Charges. The current water, wastewater and reclaimed water rates being charged within the Service Territory are attached as Exhibit "B." Upon acquisition of the Utility System, the Parties agree to promptly conduct rate proceedings to fix user rates. The Parties hereby acknowledge that, based on the data presently available to them, an increase will be necessary to operate the Utility System responsibly. The adjusted rates shall be as determined after notice to customers and evidence presented at a hearing as required by Florida law and the standards of the Utility. Utility related charges shall be set by resolution.

5.1 The Parties agree to conduct the initial rate study after all debt service terms, grants and capital expenditures are finalized. The County will be responsible for administering and overseeing the initial rate study. The Parties shall have their costs for the study reimbursed by the Utility System. Both Parties shall participate in the conduct of the study and at a minimum the rates shall cover all operational expenses, capital costs not already financed, and all debt service costs of the Utility, including the repayment of any outstanding due diligence costs related to the acquisition and the costs of the rate study.

5.2 The Parties agree that Utility rates will stand on their own merit to meet the financial requirements of the Plantation Bay Utility System and shall not be tied to the charges assessed and collected by the City or County for their respective utility systems. Nor shall the Utility rates be based on any permitted charges authorized under Section 180.191 Florida Statutes, or any successor law. Utility rates shall be established as required by state law and the standards adopted by the Parties for the Utility. This provision shall survive the termination of this Agreement.

5.3 Should the City and County agree pursuant to the terms of this Agreement that the County shall be sole owner of the Utility System, and the City becomes a bulk sale customer of the Utility, the County shall provide water and wastewater services at its cost which shall be calculated by factoring in only the production, treatment, and distribution (pump/main lines) costs for water service and factoring in only the collection/transmission, treatment, and disposal costs for wastewater service. There shall not be service charges in excess of direct costs and the overhead for these Utility services. Additionally, the following provisions apply, all of which shall survive the termination of this Agreement.

5.4 Neither Party shall be permitted to charge hydrant and other fire flow fees to the other.

5.5 Neither Party shall be permitted to assess capital charges or capacity fees for short-term capacity usage, if determined available and supplied for a period not to exceed 5 years.

5.6 Neither Party shall deny providing available utility capacity to the other Party in the secondary service areas shown in Exhibit A, upon the payment of applicable capacity charges. Available Utility capacity shall be determined by the maximum usage of the facility less current usage, plus committed capacity, less 20% of the remaining capacity.

SECTION 6. Permits/Regulatory Matters. The Parties agree to retain the permits issued by the St. Johns River Water Management District ("SJRWMD") and the Florida Department of Environmental Protection ("DEP") for the Utility System as stand-alone permits, rather than incorporated into any other City or County permitted water allocation or capacity. The Parties shall approve all new permits or renewals of existing permits for the Utility System as required from time to time.

SECTION 7. Annexation. The City agrees not to pursue annexation into the City limits of any property within the Utility's service area either non-voluntarily, as a requirement of providing utility service, or by any other coercive method. A purely voluntary annexation which is unrelated and unconnected with the provision of Utility services is permitted.

SECTION 8. Policy and Oversight The City Council of Bunnell and the Flagler County Board of County Commissioners shall fulfill the typical role each currently fills with the current utilities each body operates. For the purpose of conducting business and taking action with respect to the Utility System, they shall meet jointly when feasible, but may act independently if necessary. In the event of a Deadlock of the Parties, the matter shall, at the request of any Party, be resolved pursuant to the dispute resolution process in this Agreement. Consent of the Parties shall be necessary to affect any of the following actions:

(a) The entry into or modification of any utility agreement or developer agreement that does not meet the Utility's standard development agreement guidelines.

(b) Any agreement for purchase or sale of real estate, bulk service or other agreement directly or indirectly impacting the development of the Utility System; or the amendment or modification thereof;

(b) Sale, exchange or transfer of all or any portion of the Utility System or any of its operations;

(c) The adoption of a budget and any increase in the overall adopted budget. If an impasse occurs with the adoption of a budget, the prior year's budget will remain in effect until resolved;

(d) Expenditure of more than \$50,000 for an item not in a budget approved by the Parties (in a single transaction or series of related transactions) for capital items (as defined under generally accepted accounting principles);

(e) The commencement of any legal action or proceedings or the waiver, settlement, compromise, or confession of any judgment with respect to any claims or causes of action against or by any third parties;

(f) Require an additional monetary contribution, including its due date;

(g) The setting of rates, fees, and charges; and

(h) Approval of any loans/debt, provided, however, that the initial loan provided in Subsection 11.1 and any loans made prior to closing on the Utility System are hereby deemed approved.

SECTION 9. Administration and Management . The City Manager and County Administrator shall have equal authority for the overall management and administration of the Utility System. They shall operate the Utility System as its own enterprise fund and not to be part of any other enterprise fund maintained by either the County or City, nor to be part of the general fund of either the County or City. They shall meet at least once quarterly and more frequently as needed to administer and manage the Utility System. Together or through their designees they shall:

(a) Act as the overall manager of the Utility System with the duties and authority to act as a single management unit to provide for its operation and maintenance, including obtaining any governmental approvals or permits;

(b) Oversee permitting and construction of facilities to insure proper completion consistent with the goals and objectives contained herein;

(c) Acquire equipment and property other than real property;

(d) Oversee contractual obligations with respect to the Utility System;

(e) Obtain insurance for the assets and operation of the Utility System;

(f) Insure that all accounting and operational books and records are properly maintained;

(g) Direct the expenditure and investment of funds in accordance with Florida Statutes Section 218.415 as amended from time-to-time or its successor;

(h) Oversee the development of an annual budget for consideration and approval of the Parties.

(i) Develop grant applications, financing recommendations and other similar financially related activities to assist the Utility System with meeting its financial short and long term needs and obligations;

(j) Approve standard utility/developer agreements for utilities in accordance with adopted guidelines; and

(k) Address any other issue not addressed herein as necessary to properly manage the Utility System realizing that such arrangements may change over time.

**SECTION 10. Utility Operations.** Daily operations of the Utility System shall generally be handled in the following manner. It is understood by the Parties that additional personnel and other changes may be necessary to develop the most effective, cost efficient method of operating the Utility System.

10.1 Utility Manager – The Utility Manager shall be the City Utility Manger who shall oversee the daily physical operations of the utility system. This shall include but not be limited to direct and indirect supervision of plant operators, meter readers, scheduling, non-capital system repairs, emergency repairs, testing, reporting, and compliance, system maintenance, etc.

a. Cost Reimbursement - The Utility shall reimburse the City for half of all direct expenses related to the Utility Manager.

b. Administrative Support – The Utility shall reimburse the City for half of all direct expense related to City’s Utility Manager’s Administrative Assistant.

10.2 Plant Operations – The Utility shall hire at least two full-time employees whose primary purpose is to operate the plant facilities and perform other services as needed for the Utility. These employees may also assist as needed in work related to the distribution/collection system. These employees shall be employees of the City and their direct cost of wages and benefits shall be reimbursed or paid by the Utility System. Dual certification employees (water and wastewater) shall be hired if possible. Single certification employees shall be hired with a requirement to become dual certified within 24 months of employment. When additional assistance is needed the City will provide utility individuals, teams and/or equipment from the City’s Utility Personnel per subsection 10.6 below.

10.3 Distribution/Collection System Maintenance – The Utility shall hire at least two full-time persons to work on maintenance of the distribution/collection system. These persons shall be employees of the City and their direct cost of wages and benefits shall be reimbursed or paid by the Utility System. They shall be certified accordingly for that work. Other utility employees from the plant will assist with distribution/collection maintenance to the greatest extent possible. When additional assistance is needed the City will provide utility individuals, teams and/or equipment from the City’s Utility Personnel per subsection 10.6 below.

10.4 Meter Reading - The Utility shall either hire a full time meter reader or shall reimburse the City for this service or some combination thereof as determined by the County Administrator and City Manager. If an employee(s) is hired the employer will be the City’s. When additional assistance is needed the City will provide utility individuals and/or equipment from the City’s Utility Personnel per subsection 10.6 below.

10.5 Billing - The Utility shall either hire a part- or full-time billing person or shall reimburse the City for this service or some combination thereof as determined by the County Administrator and City Manager. If an employee (s) is hired the employee will be the City's employee. When additional assistance is needed the City will provide utility individuals and/or equipment from the City's Utility Personnel per subsection 10.6 below.

10.6 Additional Assistance to the Utility System – When additional assistance is needed the City will provide utility individuals, teams and/or equipment from the City's Utility Personnel. Reimbursement for personnel will occur at the direct cost for wages and benefits for the time expended on the Utility assignment. Equipment reimbursement will be per a working hourly rate established by the County Administrator and City Manager working with the Utility Manager. Supplies utilized shall be purchased directly by the Utility whenever possible, but if supplied by the City they shall be reimbursed at cost plus 10% overhead or replaced directly to the City by the Utility. Additional assistance provided shall be billed monthly by the City to the Utility.

10.7 Assistance Provided by the Utility System – Reimbursement for Utility personnel and equipment to the City or County shall be made in the same manner as provided in subsection 10.6. In some cases swapping of services may be permitted between the two entities without cross billing as approved by the City Manager and County Administrator.

10.8 The County Administrator and City Manager may determine that for any of the foregoing the County shall be the entity providing employees or supplies and in such event the provisions related to hiring, control and reimbursement shall be made applicable to the County in the same manner as provided for the City.

SECTION 11. Utility Finances and Accounting - The finances for the Utility shall be the administrative responsibility of the County. The Utility System's accounting records shall be maintained in accordance with generally accepted governmental accounting standards as promulgated by the Governmental Accounting Standards Board. The City, and its designated personnel, shall have access to the records at all reasonable times.

11.1 The County shall secure a short-term loan for five (5) years or less, for up to \$500,000 for any operational and start-up costs and for the potential reimbursement of costs not covered by loan proceeds to purchase the Utility System and may include due diligence costs, legal fees, loan origination costs, operating cash, purchase of tools and equipment, repairs, capital improvements, and such other costs as may be agreed to by the County Administrator and City Manager if not prohibited by the lending instruments.

11.2 The Utility shall hire a part or full-time employee to perform the finance and accounting functions. This employee shall be an employee of the County and the Utility shall pay or reimburse the County for the direct cost of the wage and benefits of such

employee on a monthly basis. When additional assistance is needed the County will provide finance personnel from the County. Reimbursement for such personnel shall be at the employee's hourly rate including benefits paid by the County for the time spent on the Utility assignment. Additional assistance provided shall be billed monthly by the County to the Utility.

11.3 The County shall annually audit the financial statements of the Utility System through the County's annual independent audit. The County shall be reimbursed by the Utility System for the costs related to the annual audit of the Utility System.

11.4 The County shall maintain separate bank accounts for the Utility System with qualified public depositories as defined in Chapter 280 Florida Statutes, and the funds shall not be commingled with any other funds of the County unless specifically authorized by the City. At its expense, the City may retain an independent auditor to audit the books of the Utility System.

11.5 The County shall provide to the City, within 20 days after the end of each of fiscal quarter and at the end of each fiscal year the following financial statements for the operation of the Utility System:

- (a) Balance sheet as of the end of such period;
- (b) Statement of income or loss and a statement of Party capital accounts for such period; and
- (c) Statement of cash flows for such period.

SECTION 12. Utility System Capital Improvements. The County will diligently pursue construction of the Utility System's capital improvements in a timely manner in accordance with the Utility Engineer's Report and available funds.

12.1 The County Engineer or designee will oversee and manage the procurement, contracting, and construction of capital projects with assistance provided by the City Engineer. The County Engineer shall bill the Utility monthly for engineering services performed by the County Engineering Department at the employee's hourly rate including benefits paid by the County for time spent on the project.

12.2 Capital improvements shall be designed, bid, and constructed in accordance with any County, State, and Federal requirements, as applicable, to include any specific grant or loan requirements of any agency. All work shall be procured as required by state law, the County's procurement policies and any requirement imposed by a grant funding source. For competitive bid or RFP process, the Parties shall each provide an equal number of staff representatives to sit on any evaluation committee.

12.3 Prior to entering into a contract for construction of the capital improvements ("Construction Contract"), the County shall set forth protocols for the City to review and inspect the capital improvement projects including, but not limited to, the following City rights:

(a) Inspection of capital improvements either as primary inspector or as assistant with the primary inspector as determined on a case by case basis by the City Manger and County Administrator;

(b) Approval of the construction contract, and associated cost of the capital improvement, as a condition of execution by the County;

(b) Receipt of monthly construction progress reports;

(c) Receipt each month of contractor draw requests or invoices, proof of payment to contractors and associated construction lien waivers;

(d) Review of change orders that affect the design of the Utility System that, in the aggregate, increase the contract cost by more than ten percent (10%).

12.4 The County shall be responsible for providing documentation as may be required by any granting or funding agency or institution for any capital improvement funded or financed by grant, loan, or some other form of credit. The County shall be reimbursed by the Utility for the County personnel assigned this work in meeting such obligations based on the direct costs of the employee's wage and benefits for the time expended, including any out of pocket costs, as incurred or expended by the County.

12.5 The County Administrator and City Manager may agree subject to notice to their respective boards that the foregoing activities in Section 12 can be principally performed by the City. In that event the provisions of Section 12 shall be made applicable to the City in the same manner as provided for the County.

SECTION 13. Professional Services. Legal, planning, consultant and procurement professional services (including, but not limited to, work required by or for granting or lending agencies and work associated with engineering, surveying, economic or other experts) for the Utility shall be provided by the County and such services shall be reimbursed by the Utility on a monthly basis. Reimbursement for such services when performed by employees of the County shall be at the employee's hourly rate including benefits paid by the County for time spent on the Utility assignment. The use of County employees shall not prevent the County from procuring outside consultants to perform any work in aid of County personnel working on Utility matters or to perform any work for the Utility System in lieu of using County personnel. In such cases and with the consent of the City Manager, the County shall adhere to the County's procurement policies and the other provisions of this Agreement and provided that such consultant or expert costs are within the adopted annual Utility budget. The County Administrator and City Manager may agree to use City personnel in like fashion for Utility assignments and the City shall be reimbursed in like manner.

ARTICLE 14. Termination. This Agreement shall terminate upon the occurrence of any one of the following events:

- (a) Upon Consent of the Parties; and
- (b) Upon implementation of the County's Option to Acquire after twenty years.

SECTION 15. City or County Sale. In the event either Party desires to sell its ownership/rights in the Utility, the other Party shall have the right of first refusal in accordance with the procedures and for the purchase amounts specified herein:

15.1 The Party desiring to sell shall notify the other Party by certified mail, return receipt requested, of its desire to sell. The other Party shall have sixty (60) calendar days from the date the certified mail was sent, to respond in turn by certified mail, return receipt requested, either for or against acquiring the selling Party's interest. If the offer to sell is accepted, the obligation to buy/sell shall be considered mutually binding upon the Parties at the consideration provided in Section 15.2. If the offer to sell is refused by the other Party, the selling Party is free to sell its interest at current fair market value. In such event the selling Party shall be deemed to convey a one (1%) percent interest to the other Party such that the other Party will then have a fifty-one (51%) percent interest in the Utility System. Such conveyance of the one (1%) interest shall survive the termination of this Agreement.

15.2 The selling Party shall be entitled to one-half (½) the purchase price including the 150 credits valued at \$5,000 per credit (for a total of \$3,125,000), less one-half (½) of any outstanding debt or credits related to the original purchase of the assets from Plantation Bay Utility Company.

15.3 Costs of Closing. The purchasing Party shall bear any transfer costs, excluding any costs the selling Party incurs such as for its own legal counsel. Any title insurance premium shall be borne by the purchasing Party and any other closing adjustments that are usual and customary shall be paid by the purchasing Party as of the date of Closing.

15.4 Cooperation and Interest. Any Party transferring its Utility interest shall execute or cause to be executed or delivered any and all documents required to fully transfer such interest to the acquiring Party. Any monetary amounts owed by the selling Party at the time of Closing must be paid out of the sale proceeds in full. Following the date of Closing, the selling Party shall have no further rights to any funds or Utility assets following the date of Closing, and all such rights shall vest in the selling Party's transferee. Upon the consummation of the sale at the Closing, this Agreement shall terminate except for any rights and obligations that survive pursuant to the provisions of this Agreement.

SECTION 16. County Option to Acquire. After twenty years the County shall have the option, but not the obligation, to acquire the Utility from the City at a fixed

amount of \$3,125,000. If the County exercises this option no deduction for any purchase debt or credits or other outstanding debt shall be deducted.

16.1 The County may exercise this option by providing notice after approval of the option by the Board of County Commissioners. Such notice shall be sent the City by certified mail, return receipt requested.

16.2 The County shall pay for all closing costs and shall release, or hold the City harmless, from all debt and other future liabilities as of the effective date of closing.

16.3 The City shall transfer its Utility interest by executing or causing to be executed or delivered any and all documents required to fully transfer such interest to the County, and allow for a smooth and orderly transition. Following the date of Closing, the selling Party shall have no further rights to any funds or Utility assets, and all such rights shall vest in the County. Upon the consummation of the sale at the Closing, this Agreement shall terminate except for any rights and obligations that survive pursuant to the provisions of this Agreement.

#### SECTION 17. Events of Default and Dispute Resolution.

17.1 Event of Default. The following shall constitute a default under the terms of this Agreement:

(a) Failure to provide a monetary contribution that is due in a timely manner as required herein; provided that, at the election of the non-defaulting Party, this may be treated as an abandonment;

(b) Failure to proceed with the Utility System construction and operation as set forth in the Utility's adopted Capital Improvements Plan and any FDEP consent order; or,

(c) Failure of a Party's management representative to participate in the management of the Utility System or attend meetings.

17.2 Cure of a Default. In the event either Party determines that a default of this Agreement has occurred, then such Party shall provide written notice of said default and specify a demand for cure. The defaulting Party shall provide a written response within thirty (30) days and provide a plan for curing the default. Said cure must be completed within ninety (90) days from the date of written response. In the event a Party denies the existence of a default as provided or has not cured the default, such matter shall be resolved through the dispute resolution process.

17.3 Dispute Resolution Process. The Parties agree to resolve any Deadlock, or dispute related to the performance of this Agreement, in the following manner.

(a) Any Party may initiate the dispute resolution process by providing written notice to the other Party. After transmittal and receipt of a notice specifying the area(s) of disagreement, the Parties or their representatives shall meet at reasonable times and places, as mutually agreed upon, to discuss the issues. If discussions between the Parties fail to meet or resolve the dispute within thirty (30) days of the notice described in this section, the Parties shall appoint a mutually acceptable neutral third-party to act as a mediator. The mediation contemplated by this section is intended to be a cost effective, informal and non-adversarial process, with the objective of helping the Parties reach a mutually acceptable and voluntary agreement. The decision-making shall rest solely with the Parties. The mediator shall assist the Parties in identifying issues, fostering joint problem-solving and exploring settlement alternatives. The mediator's fees and costs in connection with any such dispute resolution shall be divided evenly between the Parties. Attorney's fees shall be borne by the respective Party incurring said fees.

(b) If the Parties are unable to reach a mediated settlement within sixty (60) days of the mediator's appointment or if no mediator is appointed, either Party may terminate the settlement discussions by written notice to the other Party. In such event, either party may initiate the dispute resolution process in Chapter 164 Florida Statutes. Any action initiated based upon a claimed default shall not terminate this Agreement and both Parties shall continue to operate under the terms of this Agreement.

SECTION 18. General Provisions.

18.1 Term. This Agreement shall have an unlimited term and may be terminated only upon of the events under Section 14 or as a result of any final action pursuant to Florida Statutes Chapter 164. under the default procedures provided in Section 17.

18.2 Rights of Creditors and Third Parties under Agreement. This Agreement is entered into by the Parties for the exclusive benefit of the Parties and their successors and assignees. No third party shall have any rights under this Agreement.

18.3 Notices. Except as otherwise provided in this Agreement, any notice required or permitted to be given pursuant to the provisions of this Agreement shall be effective as of the date of receipt. The current addresses of the Parties are:

City Manager  
City of Bunnell  
1769 E. Moody Blvd.  
Bunnell, FL 32110  
386-437-7500  
[amartinez@bunnellcity.us](mailto:amartinez@bunnellcity.us)

City Attorney  
City of Bunnell  
P.O. Box 819  
Bunnell, FL 32110  
386-437-1668  
[attorneynowell@gmail.com](mailto:attorneynowell@gmail.com)

County Administrator  
Flagler County  
1769 East Moody Blvd., Bldg. #2

County Attorney  
Flagler County  
1769 East Moody Blvd., Bldg #2

Bunnell, FL 32110  
386-313-4000  
[ccoffey@flaglercounty.org](mailto:ccoffey@flaglercounty.org)

Bunnell, FL 32110  
386-313-4005  
[ahadeed@flaglercounty.org](mailto:ahadeed@flaglercounty.org)

18.4 **Applicable Law.** This Agreement and the rights of the Parties shall be governed by, construed and enforced in accordance with the laws of the State of Florida, without regard to the conflict of laws rules thereof.

18.5 **Counterparts.** This Agreement may be executed in several counterparts and all counterparts so executed shall constitute one Agreement binding on all parties hereto, notwithstanding that all the Parties are not signatories to the original or the same counterpart.

18.6 **Severability.** If any one or more of the provisions of this Interlocal Agreement is held to be contrary to any express provision of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall, for any reason whatsoever, be held invalid, then such covenants or provisions shall be null and void, shall be deemed separable from the remaining covenants or provisions of this Interlocal Agreement, and shall in no way affect the validity of the remaining covenants or provisions of this Interlocal Agreement; provided, however, that the public interest in the terms set forth herein is not substantially adversely impacted.

18.7 **Inurement.** Except as herein otherwise provided, this Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns. This Agreement shall survive any future annexations that may occur of all or any part of the Service Territory and this Agreement shall not be used as a basis for supporting or not supporting annexation of all or any portion of the Service Territory except as provided by Section 7 hereof.

18.8 **Exhibits.** Exhibits and Schedules, if any, referred to in this Agreement are incorporated by reference into this Agreement.

18.9 **Amendments.** Except as otherwise specifically provided for herein, any amendment of this Agreement must be in writing and approved by both Parties.

18.10 **Exercise of Discretion.** In the event that any matter herein requires, permits, or contemplates Consent of the Parties, such Party(s) may exercise such consent rights in its sole and absolute discretion without any fiduciary or other duty to any other person, except as may be limited by the law applicable to local government utilities.

18.11 **Sovereign Immunity.** Each party to this Interlocal Agreement expressly retains all rights, benefits and immunities of sovereign immunity that they presently enjoy under the Constitution and statues of the State of Florida, and particularly with respect to Chapter 768, Florida Statutes. Notwithstanding anything set forth in any section of this Interlocal Agreement to the contrary, nothing in this Interlocal Agreement shall be deemed as a waiver of immunity or the limits of liability of either Party beyond any statutory limited waiver of immunity or limits of liability which may have been

adopted by the Florida Legislature or may be adopted by the Florida Legislature, and any liability of either Party for damages shall not exceed the statutory limits of liability, regardless of the number or nature of any claim which may arise including but not limited to a claim sounding in tort, equity or contract. Nothing in this Interlocal Agreement shall inure to the benefit of any third party for the purposes of allowing any claim against any party, which would otherwise be barred under the doctrine of Sovereign Immunity or by operation of law.

18.12 Public Records. The Parties acknowledge that all documents related to this Agreement or the Utility System are subject to the provisions of Chapter 119, Florida Statutes. Such documents shall be available for inspection and copying upon request and/or payment of any reasonable expenses associated therewith.

18.13 Authority to Execute Agreement. The Parties agree and acknowledge that they have complied with the requirements of Florida Statutes Section 163.01 in exercising their home rule powers in executing this Agreement. The Parties agree that this Agreement is valid, binding, and enforceable, and each Party warrants that it has the requisite power and authority to be bound by this Agreement. The Parties agree that they shall not challenge in any administrative or judicial forum the validity or enforceability of this Agreement.

18.14 Legal Venue. The venue for all lawsuits involving any dispute, controversy, or claim arising out of or in connection with this Agreement shall be brought in the Circuit Court of Flagler County, Florida.

18.15 Amendments and Waivers. Except as provided herein, no amendment or modification of this Interlocal Agreement shall be binding upon the Parties unless evidenced in a writing signed by duly authorized officers of each Party. Any waiver on the part of any Party of any provision or condition of this Interlocal Agreement must be in a writing signed by the Party to be bound by such waiver.

18.16 Further Assurances. Each Party shall from time to time execute and deliver all documents and instruments and do all things and acts as any other Party reasonably requires to effectively carry out, clarify or more completely express the intent and meaning of this Interlocal Agreement. Except where this Interlocal Agreement expressly provides for a different standard, if this Interlocal Agreement provides for a determination, decision, consent or approval of a Party, the Party shall act in a commercially reasonable manner and without unreasonable delay.

18.17 Indemnity. No official, employee or agent of any Party, (each of whom shall be an "Indemnitee") shall have any liability, responsibility or accountability in damages or otherwise for any loss suffered in the operation of the Utility System subject to the provisions of Florida Statutes Chapter 768. Each Indemnitee shall be indemnified by the Parties and the Parties hereby agree to indemnify, pay, protect and hold harmless each Indemnitee from and against any and all liabilities, obligations, losses, damages, actions, judgments, suits, proceedings, costs, expenses and disbursements of any kind or nature arising out of such Indemnitee's connection with the Utility System, provided that

the same were not the result of (as determined by a final adjudication) fraud, bad faith, gross negligence or willful misconduct on the part of the Indemnatee. The foregoing includes, without limitation, all reasonable legal fees, costs and expenses of defense, appeal and settlement of any and all suits, actions or proceedings instituted against such Indemnatee and all costs of investigation in connection therewith that may be imposed on, incurred by or asserted against an Indemnatee in any way relating to or arising out of the Utility System. Nothing in this section shall limit the rights of any Party against any other Party for breach of this Agreement.

SECTION 19. Effective Date. The County shall file an executed copy of this Agreement with the Clerk of the Circuit Court for Flagler County pursuant to Section 163.01, Florida Statutes at the County's expense. This Agreement shall not be effective until executed by both parties..

**THIS SPACE INTENTIONALLY LEFT BLANK**

**SIGNATURE PAGE FOLLOWS**

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement on the date first above written.

ATTEST:

CITY OF BUNNELL

Daniel E. Davis  
Daniel E. Davis, City Clerk

By: Catherine D. Robinson  
Catherine D. Robinson, Mayor

Date: 4-8-2013



Gail Wadsworth, DC  
Gail Wadsworth, Clerk of the Court

FLAGLER COUNTY, FLORIDA

By: Nate McLaughlin  
Nate McLaughlin, Chair



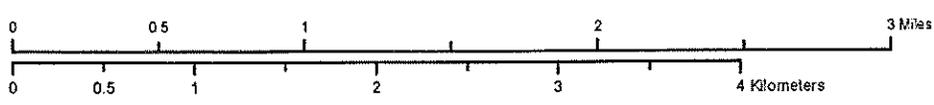
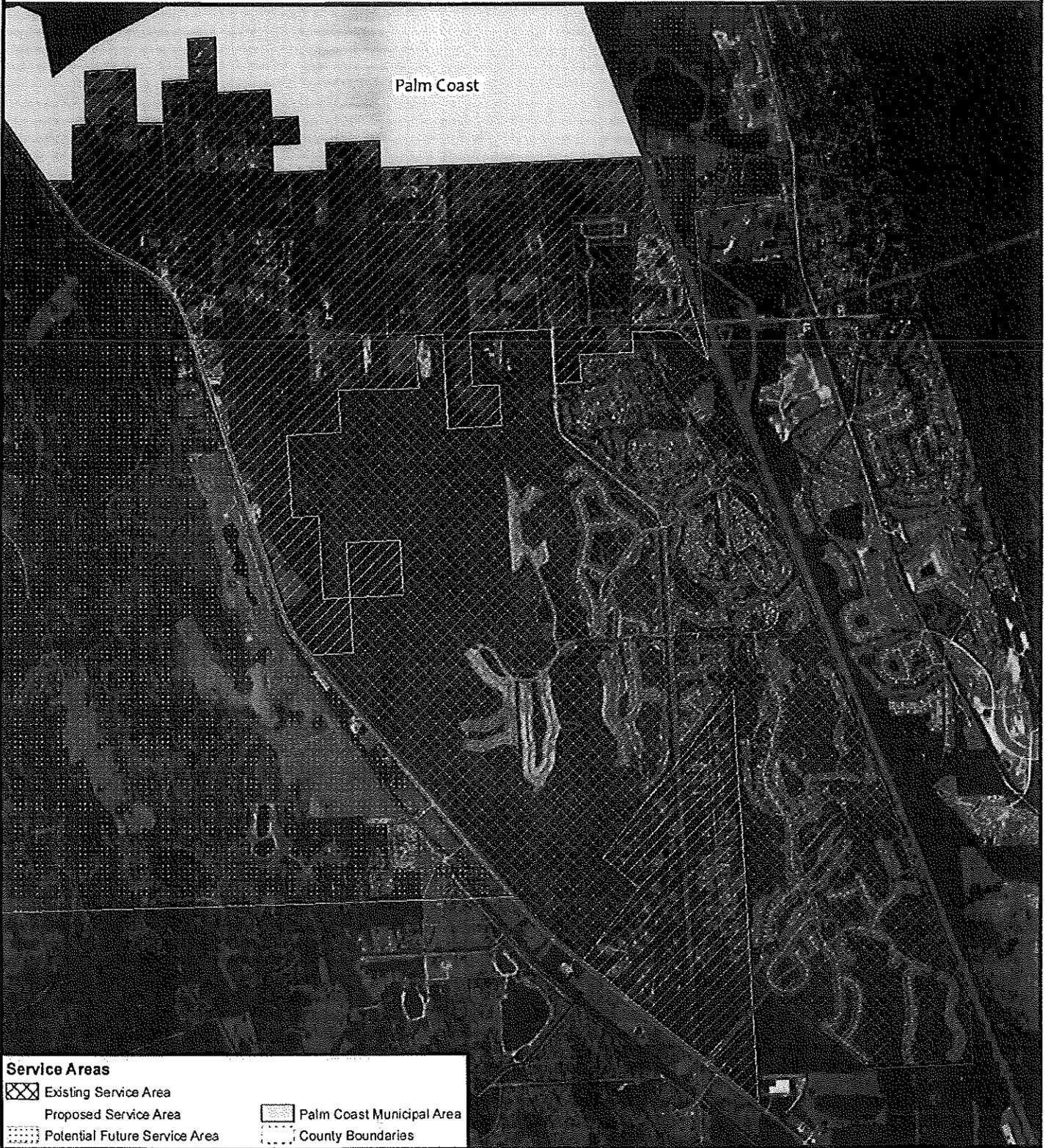
Approved as to form and legality:

M. J. [Signature]

**EXHIBIT "A"**

**SERVICE TERRITORY DESCRIPTION/MAP**

# Plantation Bay Utility Existing and Proposed Service Areas - January 28, 2013



This product has been compiled from the most accurate source data from Flagler County Government. However, this product is for reference purposes only and is not to be construed as a legal document or survey instrument. Any reliance on the information contained herein is at the user's own risk. Flagler County assumes no responsibility for any use of the information contained herein or any loss resulting therefrom.

EXHIBIT "B"  
PLANTATION BAY UTILITY  
RATE SCHEDULE  
(EXISTING)

# PLANTATION BAY RATE SCHEDULE

Twenty First Revised Sheet No. 20.0  
Cancels Twentieth Revised Sheet No. 20.0

NAME OF COMPANY: Plantation Bay Utility Company

WATER TARIFF

RESIDENTIAL SERVICE

RATE SCHEDULE RS

<u>AVAILABILITY</u>	-	Available throughout the area served by the Company.																				
<u>APPLICABILITY</u>	-	For water service for all purposes in private residences and individually metered apartments units.																				
<u>LIMITATIONS</u>	-	Subject to all of the Rules and Regulations of this tariff and General Rules and Regulations of the Commission.																				
<u>BILLING PERIOD</u>	-	Monthly																				
<u>RATE</u>	-	<table border="0"> <thead> <tr> <th><u>Meter Size</u></th> <th><u>Base Facilities Charge</u></th> </tr> </thead> <tbody> <tr> <td>5/8" x 3/4"</td> <td>\$ 11.62</td> </tr> <tr> <td>Full 3/4"</td> <td>\$ 17.45</td> </tr> <tr> <td>1"</td> <td>\$ 29.08</td> </tr> <tr> <td>1 1/2"</td> <td>\$ 58.14</td> </tr> <tr> <td>2"</td> <td>\$ 93.04</td> </tr> <tr> <td>3"</td> <td>\$ 186.09</td> </tr> <tr> <td>4"</td> <td>\$ 290.75</td> </tr> <tr> <td>6"</td> <td>\$ 581.54</td> </tr> <tr> <td>Gallage Charge Per 1,000 gallons</td> <td>\$ 3.34</td> </tr> </tbody> </table>	<u>Meter Size</u>	<u>Base Facilities Charge</u>	5/8" x 3/4"	\$ 11.62	Full 3/4"	\$ 17.45	1"	\$ 29.08	1 1/2"	\$ 58.14	2"	\$ 93.04	3"	\$ 186.09	4"	\$ 290.75	6"	\$ 581.54	Gallage Charge Per 1,000 gallons	\$ 3.34
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<u>TERMS OF PAYMENT</u>	-	Bills are due and payable when rendered and become delinquent if not paid within twenty (20) days. After five (5) working days written notice is mailed to the customer separate and apart from any other bill, service may then be discontinued.																				
<u>EFFECTIVE DATE</u>	-	For service rendered on and after July 1, 2011																				
<u>TYPE OF FILING</u>	-	2011 Index Rate Adjustment																				

Mr. Mori Hossein  
ISSUING OFFICER

President  
TITLE

Twentieth Revised Sheet No. 19.0  
 Cancels Nineteenth Revised Sheet No. 19.0

NAME OF COMPANY: Plantation Bay Utility Company

WATER TARIFF

GENERAL SERVICE

RATE SCHEDULE GS

<u>AVAILABILITY</u>	-	Available throughout the area served by the Company.																				
<u>APPLICABILITY</u>	-	To any customer for which no other schedule applies.																				
<u>LIMITATIONS</u>	-	Subject to all of the Rules and Regulations of this tariff and General Rules and Regulations of the Commission.																				
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<u>TYPE OF FILING</u>	-	2011 Index Rate Adjustment																				

Mr. Mori Hosselni  
 ISSUING OFFICER

President  
 TITLE

Twenty Fourth Revised Sheet No. 18.0  
 Cancels Twenty Third Revised Sheet No. 18.0

NAME OF COMPANY: Plantation Bay Utility Company

WASTEWATER TARIFF

RESIDENTIAL SERVICE

RATE SCHEDULE RS

<u>AVAILABILITY</u>	-	Available throughout the area served by the Company.						
<u>APPLICABILITY</u>	-	For wastewater service for all purposes in private residence and individually metered apartment units.						
<u>LIMITATIONS</u>	-	Subject to all of the Rules and Regulations of this tariff and General Rules and Regulations of the Commission.						
<u>BILLING PERIOD</u>	-	Monthly						
<u>RATE</u>	-	<table> <thead> <tr> <th><u>Meter Size</u></th> <th><u>Base Facilities Charge</u></th> </tr> </thead> <tbody> <tr> <td>All meter sizes</td> <td>\$ 18.95</td> </tr> <tr> <td>Gallonge Charge Per 1,000 gallons (Maximum of 10,000 gallons)</td> <td>\$ 3.66</td> </tr> </tbody> </table>	<u>Meter Size</u>	<u>Base Facilities Charge</u>	All meter sizes	\$ 18.95	Gallonge Charge Per 1,000 gallons (Maximum of 10,000 gallons)	\$ 3.66
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<u>TERMS OF PAYMENT</u>	-	Bills are due and payable when rendered and become delinquent if not paid within twenty (20) days. After five (5) working days written notice is mailed to the customer separate and apart from any other bill, service may then be discontinued.						
<u>EFFECTIVE DATE</u>	-	For service rendered on and after July 1, 2011						
<u>TYPE OF FILING</u>	-	2011 Index Rate Adjustment						

Mr. Mori Hosseini  
 ISSUING OFFICER

President  
 TITLE

Twenty Second Revised Sheet No. 17.0  
 Cancels Twenty First Revised Sheet No. 17.0

NAME OF COMPANY: Plantation Bay Utility Company

WASTEWATER TARIFF

GENERAL SERVICE

RATE SCHEDULE GS

<u>AVAILABILITY</u>	-	Available throughout the area served by the Company.	
<u>APPLICABILITY</u>	-	For wastewater service to all customers for which no other schedule applies.	
<u>LIMITATIONS</u>	-	Subject to all of the Rules and Regulations of this tariff and General Rules and Regulations of the Commission.	
<u>BILLING PERIOD</u>	-	Monthly	
<u>RATE</u>	-	<u>Meter Size</u>	<u>Base Facilities Charge</u>
		5/8" x 3/4"	\$ 18.95
		Full 3/4"	\$ 28.44
		1"	\$ 47.37
		1 1/2"	\$ 94.75
		2"	\$ 151.61
		3"	\$ 303.23
		4"	\$ 473.77
		6"	\$ 947.59
		Gallage Charge Per 1,000 gallons	\$ 4.40
<u>MINIMUM CHARGE</u>	-	Base Facilities Charge	
<u>TERMS OF PAYMENT</u>	-	Bills are due and payable when rendered and become delinquent if not paid within twenty (20) days. After five (5) working days written notice is mailed to the customer separate and apart from any other bill, service may then be discontinued.	
<u>EFFECTIVE DATE</u>	-	For service rendered on and after July 1, 2011	
<u>TYPE OF FILING</u>	-	2011 Index Rate Adjustment	

Mr. Mori Hosseini  
ISSUING OFFICER

President  
TITLE