

EFFLUENT DISPOSAL EASEMENT AGREEMENT

THIS EFFLUENT DISPOSAL EASEMENT AGREEMENT (this "Easement Agreement") is made and entered into on this ___ day of _____, 2020 (the "Effective Date"), between the CITY OF GULF BREEZE, a Florida municipal corporation, whose address is 1070 Shoreline Drive, Gulf Breeze, Florida 32561 (hereinafter "City") and THE SCHOOL BOARD OF SANTA ROSA COUNTY, FLORIDA, a district school board constituted as provided in Article IX, Section 4, of the Florida Constitution, whose address is 5086 Canal Street, Milton, Florida 32570 (hereinafter "Owner").

WHEREAS, City owns the Tiger Point Golf Club, located at 1255 Country Club Road, Gulf Breeze, Florida; and

WHEREAS, City has sold and conveyed to Owner approximately 45 acres of land that was part of the Tiger Point Golf Club's West Course, which property is located at 1255 Country Club Road, Gulf Breeze, Florida, and is more particularly described on Exhibit "A" attached hereto (hereinafter the "Property"); and

WHEREAS, Owner plans to construct a new school on the Property; and

WHEREAS, City, through its wholly owned utility, South Santa Rosa Utility System, maintains and operates wastewater treatment facilities that produce treated effluent of a quality that may be safely disposed of through a permitted effluent disposal system; and

WHEREAS, the Property has been used by City as a part of the Tiger Point Golf Club's West Course and as an effluent disposal irrigation spray field that is part of the slow-rate public access land application effluent disposal system provided for under the permit issued to City by the Florida Department of Environmental Protection ("FDEP") for operation of its wastewater treatment facilities (Permit Number FLA010212); and

WHEREAS, the West Course of the Tiger Point Golf Club is closed and the Property is therefore no longer needed for the City's recreational purposes, but that portion of the Property described in the attached Exhibit "B" ("Irrigation Field") is still needed by the City for effluent disposal in accordance with FDEP Permit FLA010212; and

WHEREAS, without this Easement Agreement, upon the sale of the Property, the City would lose the Property's permitted effluent disposal capacity, which averages 253,000 gallons per day ("GPD") annually; and

WHEREAS, Owner has agreed to grant to City an easement for the operation and maintenance of an effluent disposal system to include subsurface irrigation and/or spray field irrigation for effluent disposal from City's wastewater treatment facilities on the Irrigation Field to accommodate permitted capacity of 253,000 GPD annual average of effluent disposal capacity that would otherwise be lost upon the sale of the Property to Owner; and

WHEREAS, Owner agrees to allow disposal of an annual average of 253,000 GPD of effluent disposal capacity on the Irrigation Field; and

WHEREAS, the parties are entering into this Easement Agreement to provide for their respective rights and obligations with respect to the disposal of effluent on the Irrigation Field;

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants and conditions hereinafter set forth, and for other good and valuable consideration, the parties hereby agree as follows:

1. Recitals. The foregoing recitals are true and correct and are hereby incorporated herein by reference.

2. Termination of Existing Agreements. Any agreements addressing effluent disposal on the Property by the City existing prior to the Effective Date of this Agreement are hereby terminated as to this Property effective as of the Effective Date.

3. Term of Easement. This Easement Agreement and all terms and conditions hereof shall be perpetual; provided, however, that City may terminate this Easement Agreement as to all or any portion of the Irrigation Field by written notice to Owner in the event that City, in its sole discretion, determines that City no longer needs all or any portion of the Irrigation Field as provided for hereunder for purposes of effluent disposal. Upon such termination, (a) all portions of the Effluent Disposal System (as defined in Section 5 below), if any, that are owned by City and located upon that portion of the Irrigation Field as to which this Easement Agreement is terminated may be removed by City, but if not removed by City within sixty (60) days after termination, shall be deemed abandoned by City and shall become the sole property of Owner, and (b) City shall deliver to Owner, in recordable form, (i) a written termination of this Easement Agreement and (ii) a quit-claim deed conveying to Owner all of City's right, title, and interest in and to the Property, thereby releasing all such interest in and to the Irrigation Field and the Roadway Parcel (defined below).

4. Grant of Easements.

a. Upon the terms and subject to the conditions of this Easement Agreement, Owner hereby grants to City, its successors and assigns, the perpetual, unobstructed, exclusive right, privilege and easement on, over, under and across the Irrigation Field:

- (i) To dispose of, discharge and disperse an annual average of 253,000 GPD (the "Requirement") of wastewater effluent on the Irrigation Field; and
- (ii) To enter upon, occupy and use the Irrigation Field for any and all of the uses and purposes set forth in this Agreement, including without limitation for the exercise and performance of City's rights and obligations under Section 5 below; and

- (iii) To exercise all other rights and privileges with respect to the Irrigation Field as are necessary or convenient for the full enjoyment thereof for the uses and purposes set forth herein;
- b. Upon the terms and subject to the conditions of this Easement Agreement, Owner hereby grants to City, its successors and assigns, the perpetual, unobstructed, non-exclusive right, privilege and easement on, over, under and across the roadway described on Exhibit "C" attached hereto ("Roadway Parcel") for pedestrian and vehicular access to the Irrigation Field for the uses and purposes set forth in this Agreement and for the purpose of installing, constructing, altering, using, operating, inspecting, maintaining, repairing, removing, and replacing underground pipes and facilities to connect the City-owned "Utility Property" described on Exhibit "D" attached hereto;

TO HAVE AND TO HOLD the same unto City, its successors and assigns, forever.

Notwithstanding the foregoing, Owner shall be entitled to use the Irrigation Field for all uses and purposes that do not restrict or interfere with the exclusive rights, privileges and easements granted to City under this Easement Agreement or otherwise reduce the permitted effluent disposal capacity of the Irrigation Field to less than the Requirement; provided, however, that in no event shall Owner cause, suffer or permit any permanent structure to be constructed or maintained on or over any portion, part or component of the Effluent Disposal System (as defined in Section 5 below) located on the Irrigation Field.

The parties acknowledge that the Property must accommodate both the school facility that Owner intends to construct on the Property and the Effluent Disposal System that City will construct and/or modify on the Irrigation Field pursuant to this Agreement. The parties therefore agree to cooperate, collaborate, and compromise with each other in good faith throughout the planning, design and construction of both projects to ensure that the objectives of both parties are met as effectively and efficiently as reasonably possible.

The rights and easements hereby granted shall burden the Irrigation Field and run with the land for the benefit of City, its successors and assigns.

5. Obligations of City and Owner. So long as this Easement Agreement remains in effect, Owner shall accept and allow City to dispose of on the Irrigation Field the Requirement of effluent by means of the following-described Effluent Disposal System.

- a. City may and shall, at its sole cost and expense, which costs and expenses have been offset by Owner's payment of a fee in the amount of Three Hundred Twenty-Four Thousand Five Hundred Twenty-one and No/100s Dollars (\$324,521.00) ("Fee"), install, construct, re-construct, use, operate, maintain, repair, remove, replace, relocate and expand from time to time, a subsurface irrigation system and/or a slow-rate public access land application effluent disposal system on, over, under and across the Irrigation Field as allowed and permitted for effluent disposal pursuant to Section 403.051, et. seq., Florida

Statutes, and Chapter 62-610, Florida Administrative Code, and to include all portions, parts and components thereof, including without limitation the spray irrigation system currently existing on the Irrigation Field, pipes, pipelines, lift stations, pumps, pumping facilities, spray nozzles, and other equipment and appurtenances and all future additions, accessions, modifications thereto, including but not limited to modifications to provide for a subsurface irrigation system, and any and all transmission lines, pipes and facilities required to extend and connect the City's wastewater treatment system to such effluent disposal systems on the Irrigation Field (collectively the "Effluent Disposal System") as necessary to accommodate, accept and dispose of not less than the Requirement of effluent. City shall install, at its sole cost and expense, one or more meters at the effluent's point or points of entry onto the Irrigation Field for City's use in measuring and monitoring the volume of effluent disposed of through the Effluent Disposal System. In meeting its obligations hereunder, City shall abide by all applicable parts of Section 403.051, et seq., Florida Statutes, Chapter 62-610, Florida Administrative Code, FDEP Permit Number FLA010212, and all other applicable permits and laws, including, but not limited to, the Code of Ordinances and Land Development Code of Santa Rosa County, Florida. City shall also undertake such actions and practices for the use of effluent irrigation water that are protective of human health and the environment, including, but not limited to, actions and practices to ensure that: i) no above ground hose bibs (faucets) are allowed to be connected to any pipe that contains reclaimed effluent water; ii) reclaimed effluent water is not used to fill swimming pools or hot tubs; iii) bubbler or subsurface type irrigation systems are used around pool planters; iv) no cross-connections are made between the Effluent Disposal System and potable water systems; v) a buffer of seventy-five (75) feet is maintained between the edges of the wetted areas of the Effluent Disposal System and any existing or approved (but not yet constructed) portable water supply wells; and vi) no cross connections are made between the Effluent Disposal System and wells, potable or non-potable, that non-potable wells used as backups to reclaimed water have backflow preventers, and that Owner notifies and receives permission from City, and as necessary FDEP, before a non-potable well is added as a back-up to the Effluent Disposal System.

- b. In the event City is required to construct a transmission line to transport the treated effluent to the Irrigation Field, City shall be solely responsible for the costs of construction, installation, maintenance, and repair of the transmission line.
- c. In the event City is required to install, construct, alter, inspect, maintain, repair, remove, or replace underground pipes and facilities within the Roadway Parcel described on Exhibit "C," City shall be solely responsible for restoring such roadway to its condition as existing immediately prior to such work.
- d. Prior to Owner's commencement of construction of improvements on the Property, City may continue to operate the spray irrigation system existing on the

Property, with the right to dispose of the currently permitted 253,000 GPD on the Property. Prior to Owner's commencement of construction of improvements on the Property, City shall maintain the entirety of the Property, solely at the City's expense, consistent with the City's maintenance program for the Property as implemented prior to the date of this Agreement.

- e. Owner shall provide thirty (30) days written notice to City prior to the commencement of construction of improvements on the Property, and upon receipt of such notice, City may, in its sole discretion, remove components of the spray irrigation system existing on those portions of the Property that lie outside the Irrigation Field and will no longer be part of the Effluent Disposal System because of such improvements. Any components of the existing system that lie outside of the Irrigation Field and that City does not remove within the thirty (30) days prior to the commencement of construction shall be deemed abandoned by City and shall become the sole property of Owner. For the avoidance of doubt, any components of the existing system that lie within the Irrigation Field are and will continue to be the property of the City and may be removed at any time and from time to time in the City's discretion. Further, the parties shall collaborate with each other in good faith to develop means to achieve the Requirement under Section 4.a. above during construction.
- f. By executing this Agreement, City acknowledges receipt in full of the Fee described in Section 5.a of this Easement Agreement. For the avoidance of doubt, City further acknowledges and agrees that during the entire term of this Easement Agreement Owner shall not be required to make any further or additional payment to City for the costs of operating, maintaining, constructing, or reconstructing any portion of the Effluent Disposal System except to reimburse for any damage that may be caused to such System as a result of activities by Owner.

6. Licenses and Permits. City shall be solely responsible for obtaining and maintaining, at its sole cost and expense, all applicable licenses and permits required for the legal operation of the Effluent Disposal System in accordance with the terms and conditions of this Easement Agreement. Upon Owner's request, City shall provide copies of such permits and licenses to Owner. Owner shall at all times operate and maintain the Effluent Disposal System in accordance with all applicable licenses and permits, including FDEP Permit Number FLA010212.

7. Informational Signage. City may and shall post on the Irrigation Field and adjacent portions of the Property informational signage, in accordance with FDEP Permit Number FLA010212 and all applicable FDEP rules and regulations, to advise that treated effluent is being dispersed onto the Irrigation Field in accordance with FDEP rules and regulations and that the effluent is not potable water. The signs and labeling will clearly identify the Effluent Disposal System to prevent inadvertent human consumption.

8. Warranty of Title to Property. Owner represents and warrants to City that Owner is the sole owner in fee simple of the Property, including the Irrigation Field, that Owner has good right, power and authority to enter into and grant this Easement Agreement without the consent or joinder of any other person or party; that title to the Irrigation Field is free and clear of all claims, liens and encumbrances; and that Owner shall warrant and defend City's right, title, interest and estate in, to and under this Easement Agreement against the claims of all persons claiming by, through, or under the Owner, but none other.

9. Assignment, Assumption and Binding Effect. City may assign this Easement Agreement, in whole or in part, upon written notice to Owner. This Easement Agreement shall run with the Irrigation Field and shall be binding upon and against, and enforceable by and against, the parties hereto and their respective successors, successors-in-title and assigns, including but not limited to all transferees of all or any portion of or interest in the Irrigation Field. Each transferee of all or any portion of or interest in the Irrigation Field shall, by acceptance of such property or interest, be deemed to have assumed and agreed to pay and perform all obligations of Owner under this Easement Agreement that arise or accrue on or after the date that the transferee acquired such property or interest.

10. Notices. All notices, requests and other communications required or desired hereunder (each, a "notice") shall be in writing and shall be delivered by (i) personal delivery, (ii) "next business day" delivery by a nationally recognized overnight delivery service with evidence of delivery, or (iii) electronically or by facsimile transmission with confirmation of delivery, addressed to the following addresses:

If to Buyer: The School Board of Santa Rosa County, Florida
Attn: Timothy S. Wyrosdick, Superintendent
5086 Canal Street
Milton, Florida 32570
Fax: _____
Email: WryosdickT@mail.santarosa.k12.fl.us

With copies to: Paul R. Green, Esq.
General Counsel
The School Board of Santa Rosa County, Florida
5217 Canal Street
Milton, Florida 32570
Fax: _____
Email: pgreen@paulrgreenlaw.com

and

Daniel B. Harrell
Gonano & Harrell
1600 S. Federal Highway, Suite 200
Fort Pierce, Florida 34950
Email: ddharrell@gh-law.com

If to Seller: Samantha Abell
City Manager
City of Gulf Breeze
P. O. Box 640 (32562-0640)
1070 Shoreline Drive
Gulf Breeze, FL 32562
Fax: 850-934-5114
Email: sabell@gulfbreezefl.gov

With copy to: Mary Jane Bass, Esq.
Beggs & Lane, RLLP
P. O. Box 12950 (32591-2950)
501 Commendencia Street
Pensacola, FL 32502
Fax: 850-469-3331
Email: mjb@beggslane.com

or at such other address as may be designated by either of the parties in a written notice given in accordance with the provisions of this Section 10.

All notices shall be deemed to have been sufficiently given and received for all purposes, whether actually received or not, (i) on the date of delivery, if delivered prior to 5:00 p.m. central time on a day that is a Business Day by personal delivery, facsimile or electronic transmission, or (ii) on the next Business Day, if delivered on a day other than a Business Day or after 5:00 p.m. central time on a day that is a Business Day by personal delivery, nationally recognized overnight delivery service, facsimile or electronic transmission. Notice shall be deemed delivered if delivery is attempted between 9:00 a.m. and 5:00 p.m. central time on a Business Day and is refused, rejected or fails due to abandonment or closure. All notices, requests and other communication may be given by counsel to the party giving such notice.

11. Attorneys' Fees. In the event of a dispute arising under this Easement Agreement, whether or not a lawsuit or other proceeding is filed, the prevailing party shall be entitled to recover its reasonable attorneys' fees and costs, whether incurred without a lawsuit having been filed or incurred before suit, during suit or at the appellate level. The prevailing party shall also be entitled to recover any attorneys' fees and costs incurred in litigating the entitlement to attorneys' fees and costs, as well as in determining or quantifying the amount of attorneys' fees and costs due it. The reasonable costs to which a prevailing party is entitled shall include costs that are taxable under any applicable statute, rule, or guideline, as well as non-taxable costs reasonably incurred by the prevailing party.

12. Time of the Essence. Time is of the essence of this Easement Agreement.

13. Covenant of Further Assurances. The parties agree to execute such other documents and perform such other acts that any party hereto may reasonably request in order to more fully effectuate and carry out the purposes of this Easement Agreement.

14. Governing Law. This Easement Agreement shall be governed by and construed in accordance with the laws of the State of Florida.

15. Counterparts. This Easement Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

16. Entire Agreement. This Easement Agreement constitutes the entire agreement by and among each of the parties hereto with respect to the subject matter hereof and all prior agreements, negotiations and understandings, written or verbal, with respect to the subject matter hereof are hereby superseded.

IN WITNESS WHEREOF, the parties have executed and delivered this instrument on the day and year first above written.

*[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK.
SIGNATURES ON FOLLOWING PAGES.]*

Signed, sealed and delivered
in the presence of:

Print Name: _____

Print Name: _____

STATE OF FLORIDA
COUNTY OF SANTA ROSA

The foregoing instrument was acknowledged before me by means of physical presence this ____ day of _____, 2020, by Clifton L. "Buddy" Hinote, Chairperson of The School Board of Santa Rosa County, Florida, a district school board, on behalf of the Board. He is personally known to me or presented his current Florida driver's license as identification.

AFFIX NOTARY SEAL

Notary Public
Print Name: _____
My commission expires: _____

*SIGNATURE PAGE TO EFFLUENT DISPOSAL AGREEMENT BETWEEN
CITY OF GULF BREEZE AND THE SCHOOL BOARD OF SANTA ROSA COUNTY, FLORIDA*

CITY OF GULF BREEZE
a Florida municipal corporation

By: _____
Cherry Fitch, Mayor

Attest:

Leslie Guyer, City Clerk

(AFFIX CITY SEAL)

Signed, sealed and delivered in the presence of:

Print Name: _____

Print Name: _____

Legal in form and valid as drawn:

Approved as to content:

Mary Jane Bass, City Attorney

Samantha D. Abell, City Manager

STATE OF FLORIDA
COUNTY OF SANTA ROSA

The foregoing instrument was acknowledged before me by means of physical presence this ____ day of _____, 2020, by Cherry Fitch, as Mayor of City of Gulf Breeze, a Florida municipal corporation, on behalf of said corporation. She is personally known to me or presented her current Florida driver's license as identification.

AFFIX NOTARY SEAL

Notary Public
Print Name: _____
My commission expires: _____

*SIGNATURE PAGE TO EFFLUENT DISPOSAL AGREEMENT BETWEEN
CITY OF GULF BREEZE AND THE SCHOOL BOARD OF SANTA ROSA COUNTY, FLORIDA*

EXHIBIT "A"

Legal Description of Property

The approximate location of the Property, containing approximately 45 acres, is shown as "SRCSB Purchase" on the sketch attached as Exhibit "A-1" to that certain Purchase and Sale Agreement dated _____, 2020, between the City of Gulf Breeze, as seller, and The School Board of Santa Rosa County, Florida, as buyer. The final legal description of the Property will be determined by a current survey that is consistent with the foregoing, and such survey legal description shall be substituted for this Exhibit "A" prior to the execution of this Effluent Disposal Easement Agreement.

EXHIBIT “B”

Legal Description of Irrigation Field

The approximate location of the Irrigation Field, containing approximately 11 acres, is shown as “Irrigation Field Easement” on the sketch attached as Exhibit “A-1” to that certain Purchase and Sale Agreement dated _____, 2020, between the City of Gulf Breeze, as seller, and The School Board of Santa Rosa County, Florida, as buyer. The final legal description of the Irrigation Field will be determined by a current survey that is consistent with the foregoing, and such survey legal description shall be substituted for this Exhibit “B” prior to the execution of this Effluent Disposal Easement Agreement.

EXHIBIT "C"

Legal Description of Roadway Parcel

An easement 20 feet wide connecting the Irrigation Field Easement to the City-owned Utility Property adjacent to the northeastern boundary of the Property, the approximate location of which is designated as "Access Easement" on the sketch attached as Exhibit "A-1" to that certain Purchase and Sale Agreement dated _____, 2020, between the City of Gulf Breeze, as seller, and The School Board of Santa Rosa County, Florida, as buyer. The final legal description of the Roadway Parcel will be determined by a current survey that is consistent with the foregoing, and such survey legal description shall be substituted for this Exhibit "C" prior to the execution of this Effluent Disposal Easement Agreement.

EXHIBIT "D"

Legal Description of City-Owned Utility Property

That certain parcel of real property owned by the City which is adjacent to the northeasterly boundary of the Roadway Parcel (i.e., the "Access Easement" as shown on the sketch attached as Exhibit "A-1" to that certain Purchase and Sale Agreement dated _____, 2020, between the City of Gulf Breeze, as seller, and The School Board of Santa Rosa County, Florida, as buyer) and is shown as the "Utility Property" on said sketch. The final legal description of the City-owned Utility Property will be determined by a survey or recorded deed legal description that is consistent with the foregoing, and such survey or recorded deed legal description shall be substituted for this Exhibit "D" prior to the execution of this Effluent Disposal Easement Agreement.