



Interoffice Memorandum

July 19, 2023

TO: Mayor Jerry L. Demings
-AND-
County Commissioners

FROM: Ed Torres, M.S., P.E., LEED AP, Director
Utilities Department

A handwritten signature in blue ink, appearing to be "Ed Torres", written over a light blue rectangular background.

**SUBJECT: BCC AGENDA ITEM – Consent Agenda
August 8, 2023, BCC Meeting
Able Linen – Commercial Laundry Services Wastewater Flow
Monitoring Agreement
Contact Person: Lindy Wolfe, P.E., LEED AP, Manager
Utilities Engineering Division
407-254-9918**

The property owner, Able Land Investments LLC, and tenant, Able Linen LLC, are constructing a new commercial laundry facility at 227 East Lancaster Road, Orlando, Florida 32809. Wastewater capital charges for the property were determined based on flow estimates pursuant to subsection 37-5(b)(5)b of the Orange County Code.

The property owner and tenant have submitted a signed and sealed engineering study estimating wastewater flows and have agreed to enter into a Flow Monitoring Agreement with the Utilities Department.

The agreement provides for an initial 10-year period to monitor the wastewater discharges from the facility. The County may extend the monitoring period in the event of a material breach by the property owner or tenant, as described in the agreement. During the term of the agreement, a monthly monitoring fee will be assessed, and additional capital charges will be levied if the six-month average wastewater flow exceeds the signed and sealed engineering estimate at any time.

The County Attorney's Office and Risk Management Division reviewed the document and find it acceptable as to form. Utilities Department staff recommends approval.

Action Requested: Approval and execution of Able Linen – Commercial Laundry Services Wastewater Flow Monitoring Agreement by and among Able Linen LLC, Able Land Investments LLC, and Orange County for an initial 10-year period to monitor wastewater discharges from the facility.

District 3.

ABLE LINEN – COMMERCIAL LAUNDRY SERVICES WASTEWATER FLOW MONITORING AGREEMENT

THIS ABLE LINEN – COMMERCIAL LAUNDRY SERVICES WASTEWATER FLOW MONITORING AGREEMENT (the “**Agreement**”) is made and entered into as of the date of latest execution below by and among ABLE LINEN LLC, a Florida limited liability company authorized to do business in the State of Florida (the “**Tenant**”), whose address is 227 East Lancaster Road, Orlando, Florida 32809, ABLE LAND INVESTMENTS LLC, a Florida limited liability company authorized to do business in the State of Florida (the “**Owner**”), whose address is 9343 Southern Breeze Drive, Orlando, Florida 32836 (the Tenant and the Owner are referred to together as the “**Operator**”), and **Orange County**, a charter county and political subdivision of the State of Florida (the “**County**”), whose address is 201 South Rosalind Avenue, Orlando, Florida 32801. In this Agreement, the Tenant, the Owner, and the County may be referred to individually as a “**Party**” or collectively as the “**Parties.**”

RECITALS

WHEREAS, Section 37-5, Orange County Code (the “**Code**”), provides for the assessment of wastewater capital charges for (a) new connections to the wastewater system and for (b) increased flows to the wastewater system due to altering the interior or use of a structure; and

WHEREAS, establishments that have wastewater flows in addition to flows associated with standard Orange County Factors, as described in subsection 37-5(b)(5)b., of the Code, must submit an estimate of wastewater flows, and actual flows may be subject to monitoring to verify the accuracy of the flow estimate; and

WHEREAS, wastewater capital charges for the property described below have been determined based on flow estimates calculated pursuant to subsection 37-5(b)(5)b., of the Code; and

WHEREAS, pursuant to subsection 37-5(b)(1) of the Code, capital charges, and the right to service related thereto, are valid only for the property specified in the application for service; and the rights related to the capital charges may not be transferred or sold for use on any other property; and

WHEREAS, the Owner owns certain property located at 227 East Lancaster Road, Orlando, Florida 32809, which is located within unincorporated Orange County and is

more particularly described in **Exhibit “A”** attached to and incorporated in this Agreement by this reference (the “**Property**”); and

WHEREAS, the Owner leased the Property to the Tenant, pursuant to that certain lease dated January 1, 2023 (the “**Lease**”); and

WHEREAS, the Tenant is constructing a new commercial laundry facility (the “**Facility**”) on the Property, which is more particularly shown on **Exhibit “B”** attached to and incorporated in this Agreement by this reference; and

WHEREAS, the Property is located within the County’s wastewater service territory and, therefore, the County is the appropriate provider of wastewater service; and

WHEREAS, the County responded to the Tenant’s request for capacity information with a capacity letter dated June 23, 2023, stating the County has sufficient existing infrastructure to accept a maximum of 57.6 gallons per minute (“**gpm**”) peak hourly flow wastewater discharge (“**Peak Hourly Flow**”); and

WHEREAS, the Tenant submitted to the County an engineering study, signed and sealed by a professional engineer licensed in the State of Florida (the “**Engineering Study**”), estimating the operational wastewater flows for the Facility to be 91.900 Equivalent Residential Units (“**ERUs**”), which is equivalent to 20,677.50 gallons per day (“**gpd**”) (the “**Current Capacity Flow**”); and

WHEREAS, the Tenant, on behalf of the Owner, has (i) submitted to the County construction plans for approval (the “**Construction Plans**”), (ii) paid capital charges for the Current Capacity Flow, and (iii) obtained Orange County Building Permits B22904943 and B22905164.

NOW, THEREFORE, in consideration of fees and charges specified in this Agreement, the covenants contained in this Agreement, and other good and valuable consideration, the receipt of which is acknowledged, the County, the Owner and the Tenant agree as follows:

SECTION 1. Recitals. The above Recitals are true and correct and are incorporated in and form a material part of this Agreement.

SECTION 2. Capital Charge Payments Remain with the Property. Pursuant to Section 37-5 of the Code, wastewater capacity may only be purchased for the property specified in the application for service and may not be transferred to another property. Accordingly, all wastewater capacity purchased to serve the Facility is purchased on behalf of the Property, runs with the Property, and may not be transferred to any other property.

SECTION 3. Current Capacity Flow.

- a. Based upon the Engineering Study, the flow associated with the Property is 20,677.50 gpd on the day this Agreement is executed. Thereafter, the Current Capacity Flow is equal to 20,677.50 gpd, plus the flow associated with any additional wastewater capacity purchased for the Property after the execution of this Agreement.
- b. The wastewater discharge from the Property must not exceed the Peak Hourly Flow.

SECTION 4. Metering, Fees and Compliance.

- a. The Operator shall ensure the potable water meter remains unobstructed for both the County and the Orlando Utilities Commission (“OUC”) meter readings and inspections, since the Facility is located within the OUC water service area.
- b. A monthly monitoring fee, per the Board of County Commissioners’ applicable rate resolutions, as amended from time to time, will be assessed and billed to the Tenant.
- c. No changes to the Property use, water and wastewater plumbing, or utility mains that may increase the wastewater flows for the Property from the Current Capacity Flow may be made by the Operator without prior review, inspection, and written approval of the County.
- d. Wastewater flow will be monitored by the County, using OUC water meter readings. Based on the Engineering Study, in order to account for evaporative losses, the wastewater flow will equal 90% of the metered water flow.
- e. The Operator must allow the County access to the Property, at any time upon reasonable notice, to (a) inspect the meter and the water and wastewater plumbing; (b) read the water meter; and (c) conduct monitoring tests, including, but not limited to, tests of usage and flows.
- f. For the term of the Agreement, monitoring for compliance with the Current Capacity Flow will be based on a six-month rolling average of wastewater flow. The “**Billing Period Wastewater Flow**” shall equal the volume (in gallons) of water consumption for the billing period, multiplied by a factor of 0.90 and divided by the number of days in that billing period. The County will calculate the volume for each billing period as the difference between the beginning and ending readings of all meters for the Property.

- i. If any Billing Period Wastewater Flow exceeds the Current Capacity Flow, the County may issue a written warning to the Operator notifying them of the exceedance.
- ii. If, at any time, the six-month average Billing Period Wastewater Flow exceeds the Current Capacity Flow, the Tenant, on behalf of the Operator, shall purchase additional wastewater capacity in an amount calculated by the difference between the six-month average Billing Period Wastewater Flow and the Current Capacity Flow. The cost of wastewater capacity will be calculated using the applicable Orange County wastewater capital charge at the time of purchase.
- iii. If additional wastewater capacity is purchased, as described in subsection 4.f.ii. above, and at a later date a six-month average Billing Period Wastewater Flow exceeds the cumulative Current Capacity Flow, the Tenant, on behalf of the Operator, must purchase additional wastewater capacity from the County as described in subsection 4.f.ii. above.
- iv. The Tenant, on behalf of the Operator, shall pay to the County within 30 days any additional wastewater capital charges that may be due and owing for the Property. If the additional charges assessed are not paid within 30 days from the date of notice from the County that additional capital charges are due and owed, the County may draw on the Balance, as defined in and required pursuant to Section 5 below.
- v. The Tenant's failure to provide monthly payment including, but not limited to, capital charges (if any), past due charges, related service charges, deposits, applicable utility or public service taxes, or current usage charges may result in the interruption of water and wastewater services to the Property.
- vi. Notwithstanding anything contained in this Agreement to the contrary, the Owner will be held responsible for the payment of wastewater capital charges, past due charges, related service charges, applicable utility or public service taxes, and current usage charges if the Tenant does not pay for such charges when due and the Balance is insufficient to pay for such charges in full.

SECTION 5. ERUs Purchased; Deposit. In anticipation of this Agreement, the Operator has made a deposit for the purchase of additional wastewater capacity in the

amount of \$492,124.50 (the “**Deposit**”), which represents 150% of the Current Capacity Flow based on the current value of one ERU. The actual number of ERUs purchased shall be calculated at the time the ERUs are needed pursuant to Section 4 above. Within 180 days after the Effective Date of this Agreement, the Tenant may apply for a refund of \$426,507.90, which represents the Deposit less 20% of the capital charges associated with the Current Capacity Flow (the “**Refund**”). The Tenant relinquishes all rights to a refund of any unused portion of the Deposit if an application for a refund is not made within 180 days of the Effective Date of this Agreement.

- a. The County may draw upon the remaining balance of the Deposit after the Refund (the “**Balance**”) if additional wastewater capital charges are not paid as described in Section 4 of this Agreement. The Balance must be maintained at 20% of the capital charges associated with the Current Capacity Flow, which is equivalent to \$65,616.60 as of the Effective Date of this Agreement. The Tenant’s failure to maintain the minimum required Balance may result in the interruption of water and wastewater services to the Property.
- b. The Tenant may apply for a refund of the unused portion of the Balance within 180 days after the termination of this Agreement. The Tenant shall not have any right to interest on the Deposit or Balance. The Tenant relinquishes all rights to a refund of any unused portion of the Balance if an application for a refund is not made within 180 days after termination of this Agreement.

SECTION 6. Indemnification of the County. To the fullest extent permitted by law, the Operator assumes liability for, and will indemnify, defend, and hold harmless the County and its respective officials, officers, employees, and agents from and against all liability (including negligence and strict liability), claims, suits, actions, and losses for personal injury, property damage, or financial loss including attorneys’ fees and costs (as specified in Section 17 below) arising at any time from any aspect of this Agreement, other than claims and losses arising from the negligence of the County, its employees or agents. Nothing contained herein shall constitute a waiver of the County’s sovereign immunity or the provisions of Section 768.28, Florida Statutes.

SECTION 7. Monitoring. The County may initiate monitoring on the date the Facility receives its Certificate of Occupancy or on the Effective Date of this Agreement, whichever is later, and will continue monitoring for a period of 10 years (the “**Monitoring Period**”), unless this Agreement is sooner terminated pursuant to Section 13 below. In the event there is a change in tenant/lessee, the County may extend the period of monitoring, not to exceed a period of 10 years if the use of the Property is not changed. In the event of a material breach of this Agreement by the Operator, the County may extend the Monitoring Period for a period not to exceed 10 years from the date of the breach following written notice of breach to the Operator, and provided that the Operator has not cured such breach within 30 days following the date of the notice. For purposes of this Agreement, “**material breach**” shall mean (a) the failure of the Operator to pay or cause to be paid any amounts due hereunder, following notice and ability to cure such non-

payment; or (b) any failure of the Operator to provide the County (or its representatives) reasonable access to the meter to allow the County to monitor compliance with this Agreement; or (c) any breach of subsection 4.c. above or Section 9 below.

SECTION 8. Term of Agreement. The term of this Agreement shall be for the same term as the Monitoring Period described in Section 7 above. The term may be extended with the Monitoring Period pursuant to Section 7 above or terminated sooner pursuant to Section 13 below.

SECTION 9. Sale of Property. The Owner shall provide the County with 60 days prior notice of the sale or transfer of the Property, or any portion thereof. Provided further that at the time of the closing of the sale or transfer of all or any portion of the Property, the successor party(s) in ownership (the “**Successor**”) shall execute an acknowledgment and agreement whereby the Successor acknowledges the existence of this Agreement, assumes the Owner’s obligations under this Agreement, and agrees to be bound by the terms of this Agreement (the “**Assumption**”). The fully-executed Assumption must be delivered to the County within 30 days after the date of such sale or transfer. Capital charges run with the Property, as stated in Section 2 above.

SECTION 10. Limitation on Assignment. Except as set forth in Section 9, without the express written consent of the County, neither the Owner nor the Tenant may assign its interests in this Agreement to another person or entity.

SECTION 11. Change in Tenant. The Owner shall assume all the obligations and responsibilities of the Tenant upon the expiration or termination of the Lease to the Tenant.

SECTION 12. Recording. The Parties agree that an executed copy of this Agreement, including the Exhibits, will be recorded by the Operator at the Operator’s expense in the Public Records of Orange County, Florida. The obligations imposed in this Agreement run with the land.

SECTION 13. Termination. The County may terminate this Agreement and the provision of wastewater service to the Property as set forth herein due to any material breach (as defined in Section 7 above) of this Agreement, after providing the Operator notice of the breach, or anticipated breach, and providing the Operator 30 days to cure the breach or anticipated breach. Notwithstanding anything to the contrary in this Section 13, the County does not have a duty to provide the Operator a time to cure a breach of Section 9 of this Agreement.

SECTION 14. Notice. Any notice required or allowed to be delivered hereunder must be in writing and be deemed to be delivered when (a) hand-delivered to the official designated in this Section 14; (b) delivered when such notice is sent by Federal Express or other nationally recognized overnight courier service; or (c) received when such notice is sent by the United States mail, postage prepaid, certified mail, return receipt requested, all to be addressed to a Party at the address set forth opposite the Party’s name

below, or such other address as the Party shall have specified by written notice to the other Party delivered in accordance therewith.

If to the County: Orange County Utilities Department
9150 Curry Ford Road
Orlando, Florida 32825-7600
Attention: Manager, Utilities Customer Service

With copy to: Orange County Administrator's Office
Orange County Administration Building
201 South Rosalind Avenue, 5th Floor
Orlando, Florida 32801-3527

If to the Owner: ABLE LAND INVESTMENTS LLC
9343 Southern Breeze Drive
Orlando, Florida 32836-5057
Attention: Manager

If to the Tenant: ABLE LINEN LLC
10782 Wharton Court
Orlando, Florida 32821-8627
Attention: Manager

If to the Operator: One notice to the Owner and one notice to the Tenant

SECTION 15. Governing Law. The Parties agree that the Parties entered into this Agreement in the State of Florida. This Agreement and its provisions are to be construed, controlled, and interpreted according to the laws of the State of Florida, without giving effect to any choice of law or rules thereof which may direct the application of laws of another jurisdiction.

SECTION 16. Jurisdiction. Any legal proceeding of any nature brought by any Party against the other to enforce any right or obligation under this Agreement, or arising out of any matter pertaining to this Agreement, must be exclusively submitted for trial before the Circuit Court of the Ninth Judicial Circuit in and for Orange County, Florida; or, if the Circuit Court does not have jurisdiction, then before the United States District Court for the Middle District of Florida (Orlando Division); or if neither of such courts shall have jurisdiction, then before any other court sitting in Orange County, Florida, having subject matter jurisdiction. The Parties consent and submit to the exclusive jurisdiction of any such court and agree to accept service of process outside the State of Florida in any matter to be submitted to any such court pursuant to this Agreement and expressly waive all rights to trial by jury for any matters arising under this Agreement.

SECTION 17. Attorneys' Fees and Costs. If any Party files suit or brings a judicial action or proceeding against the other to recover any sum due hereunder or for default or breach of any of the covenants, terms or conditions contained in this Agreement,

each Party will be responsible for its costs, fees and expenses incurred (including the fees and expenses of attorneys and paraprofessionals) in connection with such suit, action or proceeding (whether or not such costs, fees and expenses are taxable to the other Party as such by any law) through any and all final appeals arising out of such suit, action or proceeding.

SECTION 18. Headings. The headings or captions of sections and descriptive headings in this Agreement are inserted for convenience only and will not affect the construction or interpretation hereof.

SECTION 19. Severability. If any part of this Agreement is found invalid or unenforceable by any court, such invalidity or unenforceability will not affect the other parts of this Agreement if the rights and obligations of the Parties and if the intention of the Parties can continue to be effective. To that end, this Agreement is declared severable.

SECTION 20. No Third-Party Beneficiaries. This Agreement is solely for the benefit of the formal Parties to this Agreement and no rights or cause of action may accrue upon or by reason of this Agreement, to or for the benefit of, any third party not a formal party to this Agreement.

SECTION 21. Entire Agreement. This instrument constitutes the entire Agreement between the Parties and supersedes all previous discussions, understandings, and agreements between the Parties relating to the subject matter of this Agreement.

SECTION 22. Amendment. This Agreement may not be amended unless the amendment is in writing and approved by the County, the Owner, and the Tenant.

SECTION 23. Effective Date. The Effective Date of this Agreement shall be the date of the recording of this Agreement in the Public Records of Orange County.

SECTION 24. Liability. Notwithstanding anything to the contrary in this Agreement, in the event the Operator fails to meet its obligations under this Agreement, the County may pursue its remedies from the following sources in the following order: (i) the Deposit or Balance and then, (ii) the Operator, jointly or severally.

SECTION 25. Land Use Approvals. This Agreement does not grant or assure or indicate any future grant of any land use, zoning, subdivision, density, or development approvals, permissions, or rights with respect to the Property, including the Facility, or any other property or land referred to in this Agreement.

SECTION 26. Non-Waiver. The failure of either Party to insist on the other Party's compliance with its obligations under this Agreement in any one or more instances will not operate to release the other Party from its duties to comply with its obligations in all other instances.

SECTION 27. Remedies. No remedy conferred upon the County in this Agreement is intended to be exclusive of any other remedy, and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Agreement or now or hereafter existing at law or in equity or by statute, Orange County Code, or otherwise. No single or partial exercise by the County of any rights, power, or remedy under this Agreement shall preclude any other or further exercise thereof.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed by their respective duly authorized representatives on the dates set forth below.



ORANGE COUNTY, FLORIDA

By: Board of County Commissioners

By: *Ronald B. Bunch*
for Jerry L. Demings
Orange County Mayor

Date: August 8, 2023

ATTEST: Phil Diamond, CPA, County Comptroller
As Clerk of the Board of County Commissioners

By: *Jennifer Ann-Kline*
Deputy Clerk

TENANT: Able Linen LLC, a Florida limited liability company

By: [Signature]
Mohamad Aburish
Manager

Date: 7/13/23

Signed, sealed, and delivered in our presence as witnesses:

Signature: [Signature]

Printed Name: Daniel Schlosser

Signature: [Signature]

Printed Name: Hector De Santos

STATE OF Florida
COUNTY OF Orange

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 13 day of July, 2023, by Mohamad Aburish as Manager of Able Linen LLC, a Florida limited liability company, on behalf of the Company, who is personally known to me or has produced Driver license as identification.

(Notary Seal)

[Signature]
Notary Public

Daniel Schlosser
Name Printed or Stamped



DANIEL PAYTON SCHLOSSER
Notary Public
State of Florida
Comm# HH299805
Expires 8/11/2026

My Commission Expires: 08-11-2026

OWNER: Able Land Investments LLC, a Florida limited liability company

By: [Signature]
Mohamad Aburish
Manager

Date: 7/13/23

Signed, sealed, and delivered in our presence as witnesses:

Signature: [Signature]

Printed Name: Daniel Schlosser

Signature: [Signature]

Printed Name: Heitor de Santos

STATE OF Florida
COUNTY OF Orange

The foregoing instrument was acknowledged before me by means of physical presence or online notarization, this 13 day of July, 2023, by Mohamad Aburish, as Manager of Able Land Investments LLC, a Florida limited liability company on behalf of the Company. He is personally known to me or has produced Driver license as identification.

[Signature]
Notary Public

Daniel Schlosser
Name Printed or Stamped



DANIEL PAYTON SCHLOSSER
Notary Public
State of Florida
Comm# HH299805
Expires 8/11/2026

My Commission Expires: 08-11-2026

EXHIBIT A - PROPERTY

PARCEL ONE:

Lot 1, 2, 7 and 8, Block 31 of W R ANNOS ADDITION TO PINECASTLE, according to the Plat thereof as recorded in Plat Book F, Page(s) 53 and 53A, of Public Records of ORANGE County, Florida.

EXHIBIT B - FACILITY

