



Interoffice Memorandum

October 7, 2019

TO: Mayor Jerry L. Demings
and Board of County Commissioners

FROM: Raymond E. Hanson, P. E., Director
Utilities Department

A handwritten signature in black ink, appearing to read "R. Hanson", is written over the "FROM" field.

**SUBJECT: BCC AGENDA ITEM – Consent Agenda
October 22, 2019 BCC Meeting
FreshPoint Facility Expansion Wastewater Flow Monitoring
Agreement
Contact Person: Andres Salcedo, P. E.
Deputy Director, Utilities Department
407-254-9719**

FreshPoint Central Florida, Inc., the property owner, is constructing an expansion to a warehouse and food distribution facility at 8801 Exchange Drive. 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 has submitted a signed and sealed engineering study estimating wastewater flows and has 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 owner, 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 Orange County Attorney's Office and Risk Management staff have reviewed the document and find it acceptable as to form. Orange County Utilities staff recommends approval.

Action Requested: Approval and execution of FreshPoint Facility Expansion Wastewater Flow Monitoring Agreement by and between FreshPoint Central Florida, Inc. and Orange County for an initial 10-year period to monitor wastewater discharges from the facility.

District 6.

FRESHPOINT FACILITY EXPANSION WASTEWATER FLOW MONITORING AGREEMENT

THIS FRESHPOINT FACILITY EXPANSION WASTEWATER FLOW MONITORING AGREEMENT (the “**Agreement**”) is made and entered into as of the date later executed below by and between **FreshPoint Central Florida, Inc.**, a Florida profit corporation (the “**Owner**”), whose address is 8801 Exchange Drive, Orlando, Florida 32809, 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 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 Owner’s 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 property located at 8801 Exchange Drive, Orlando, Florida 32809, which is located within unincorporated Orange County, as such property is more particularly described in **Exhibit “A”** attached to and incorporated in this Agreement by this reference (the “**Property**”); 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 Owner is constructing an expansion to a warehouse and food distribution 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 County responded to the Owner’s request for hydraulic information with a Hydraulic Analysis letter dated July 27, 2018, stating the County has sufficient existing infrastructure to accept a maximum of 27.5 gallons per minute (“**gpm**”) peak hourly flow wastewater discharge (“**Peak Hourly Wastewater Flow**”); and

WHEREAS, the Owner 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 179.376 Equivalent Residential Units (“**ERUs**”), which is equivalent to 40,717 gallons per day (“**gpd**”) (4.760 ERUs at 300 gpd, plus 174.616 ERUs at 225 gpd) (the “**Current Capacity Flow**”); and

WHEREAS, 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 an Orange County Building Permit Number B17904014 (the “**Building Permit**”) for the expansion of the Facility.

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 and the Owner 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. Purchased Capacity Remains 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 by the Owner for 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 40,717 gpd on the day this Agreement is executed. Thereafter, the Current Capacity Flow is equal to 40,717 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 Wastewater Flow.

SECTION 4. Metering, Fees and Compliance.

- a. The Owner shall ensure that all potable water meters remain unobstructed for both the County and the Orlando Utilities Commission (“OUC”) meter readings and inspections, since this project 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 Owner.
- 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 Owner without prior review, inspection, and written approval of the County.
- d. Wastewater flow will be monitored by the County, using OUC water meter readings.
- e. The Owner must allow the County access to the Property, at any time upon reasonable notice, to (a) inspect the wastewater plumbing; and (b) conduct monitoring tests, including, but not limited to, tests of usage and flows. The County will use reasonable efforts to perform such inspections or tests in a manner that will not interfere with access to or use of the Property.
- 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**” is equal to the volume (in gallons) of water consumption for the billing period 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 Owner notifying them of the exceedance.
 - ii. If, at any time, the six-month average Billing Period Wastewater Flow exceeds the Current Capacity Flow, the Owner 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 Owner must purchase additional wastewater capacity from the County as described in subsection 4.f.ii above.
- iv. The Owner shall pay to the County, within 30 days following receipt of written notice from the County, 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 following receipt of notice that additional capital charges are due and owed, the County may draw on the Letter of Credit required pursuant to Section 5 below.
- v. The Owner'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 following receipt of written notice from the County.

SECTION 5. Letter of Credit. A Letter of Credit acceptable to the County is required as part of this Agreement for the duration of the Owner's obligations under this Agreement. The Letter of Credit must be drawn on a financial institution having an office for the Letter of Credit presentation in either Orange, Seminole, or Osceola counties, and the financial institution must be on the State of Florida approved "Qualified Public Depositories" list for local governments, as identified in Chapter 280, Florida Statutes. Sysco Corporation, on behalf of the Owner, has provided a draft Letter of Credit acceptable to the County simultaneous with the execution of this Agreement, a copy of which is attached and incorporated herein as **Exhibit "C"**, in the amount representing 20% of the Current Capacity Flow, which equates to 8,143 gpd or 36.191 ERUs, for a total of \$121,095.09. If Sysco Corporation fails to maintain the Letter of Credit in accordance with the terms of this Agreement, the Owner shall provide the County with a Letter of Credit in the same amount and under the same terms as the Letter of Credit supplied by Sysco Corporation. Failure to continuously maintain a Letter of Credit by Sysco Corporation or the Owner shall be a breach of this Agreement by the Owner and may result in the interruption of water and wastewater services to the Property following receipt of written notice from the County.

SECTION 6. Indemnification of the County. To the fullest extent permitted by law, the Owner 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 reasonable attorneys' fees and costs (as specified in Section 16 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 for a period of 10 years (the "Monitoring Period"), unless sooner terminated pursuant to Section 12 below. In the event of a material breach of this Agreement by the Owner, the County may extend the Monitoring Period for a period not to exceed 10 years from the date of the breach following written notice to the Owner of the breach of this Agreement, and provided that the Owner 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 Owner 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 Owner 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, Section 5 above, or Section 9 below.

SECTION 8. Term of Agreement. The initial term of this Agreement is for 10 years from the date that the County begins monitoring the Property pursuant to Section 7 above. The term may be extended pursuant to Section 7 above, or terminated sooner pursuant to Section 12 below.

SECTION 9. Sale of Property. Except as provided in this Section 9, the Owner's right to sell or transfer the Property, or any portion of its ownership or leasehold interest in the Property, is not restricted by this Agreement; provided, however, that 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 (i) the successor party(s) has caused a replacement Letter of Credit, in form and substance consistent with Section 5 above, and acceptable to the County, to be issued prior to the transfer, and (ii) 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 shall execute an acknowledgment and agreement whereby the successor party acknowledges the existence of this Agreement and agrees to be bound by the terms of this Agreement. The agreement and acknowledgment signed by the successor party must be delivered to the County within 30 days after the date of such sale or transfer, and prior to the expiration of the Owner's Letter of Credit. If the successor party does not provide the County a replacement Letter of Credit, or an acknowledgement binding the successor party to the terms of this Agreement as specified above, the Owner will be in breach of this Agreement, and the County will have the right to collect the full

amount due on the Letter of Credit from the Owner and immediately thereafter terminate this Agreement. Capital charges run with the Property, as stated in Section 2 above.

SECTION 10. Limitation on Assignment. If, pursuant to Section 9 above, the Owner sells, transfers, or assigns all or any portion of its ownership or leasehold interest in the Property or any portion thereof, then the Owner shall assign this Agreement *pro tanto*, and shall cause the transferee to assume to the same extent the rights and obligations of the Owner. Without the express written consent of the County, the Owner may not assign its interests in this Agreement to another person or entity.

SECTION 11. Recording. The Parties agree that an executed copy of this Agreement, including the Exhibits, will be recorded by the Owner at the Owner's expense in the Public Records of Orange County, Florida. The obligations imposed in this Agreement run with the land.

SECTION 12. Termination. Notwithstanding anything to the contrary, this Agreement may be terminated upon written mutual consent of the Owner and the County for which notice shall be provided in accordance with Section 13 below. 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 Owner notice of the breach, or anticipated breach, and providing the Owner 30 days to cure the breach, and the Owner fails to cure the breach. For the purposes of termination, the cure period may be extended upon mutual written agreement by the Parties. Notwithstanding anything to the contrary in this Section 12, the County does not have a duty to provide the Owner a time to cure a breach of Section 9 of this Agreement.

SECTION 13. 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 13; (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: Assistant 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: FreshPoint Central Florida, Inc.
8801 Exchange Drive
Orlando, Florida 32809-7970
Attn: Preston Fletcher

SECTION 14. 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 15. Jurisdiction. Any legal proceeding of any nature brought by either 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 16. Attorneys' Fees and Costs. If either 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 17. 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 18. 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 19. 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 20. 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 21. Amendment. This Agreement may not be amended unless the amendment is in writing and approved by the County and the Owner.

SECTION 22. 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 23. Liability. Notwithstanding anything to the contrary in this Agreement, in the event the Owner fails to meet its obligations under this Agreement, the County may pursue its remedies from the following sources in the following order: (i) the Letter of Credit and then, (ii) the Owner.

SECTION 24. 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 25. 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.

[SIGNATURES ON FOLLOWING PAGES]

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: Bryan M. Brooks
for Jerry L. Demings
Orange County Mayor

Date: 22 Oct 19

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

By: Jennifer Klimetz
for Deputy Clerk

Print: Jennifer Klimetz

OWNER: FreshPoint Central Florida, Inc., a Florida profit corporation

By: [Signature]
Print Name: PRESTON FLETCHER
Title: PRESIDENT
Date: 09.16.19

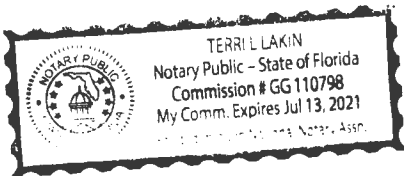
Signed, sealed, and delivered in our presence as witnesses:

Signature: [Signature]
Printed Name: DAVID YELONSKY
Signature: [Signature]
Printed Name: William D. Bore II

STATE OF Florida
COUNTY OF Orange

The foregoing instrument was acknowledged before me this 16 day of September, 2019, by Preston Fletcher as President of FreshPoint Central Florida, Inc. a Florida profit corporation, on behalf of the Company, who is personally known to me or has produced _____ as identification.

(Notary Seal)



[Signature]
Notary Public
Terril Lakin
Name Printed or Stamped

My Commission Expires: July 13, 2021

LEGAL DESCRIPTION:

All of Block "A", ORLANDO CENTRAL PARK NUMBER FORTY-NINE as recorded in Plat Book 12, Page 64, Public Records of Orange County, Florida.

AND

That part of those certain platted streets as shown on the plat of "BLOCK TWO, PROSPER COLONY SUBDMISION of Section 33, Township 23 South, Range 29 East" as recorded in Plat Book D, Page 110, Public Records of Orange County, Florida, lying Southerly of the South boundary of Block "D", MORNINGSIDE PARK as recorded in Plat Book W, Page 26, Public Records of Orange County, Florida and Northerly of the North boundary of Block "A", ORLANDO CENTRAL PARK NUMBER FORTY-NINE as recorded in Plat Book 12, Page 64, Public Records of Orange County, Florida, being described as follows:

Begin at the Northwest corner of Block "A", of ORLANDO CENTRAL PARK NUMBER FORTY-NINE as recorded in Plat Book 12, Page 64, Public Records of Orange County, Florida; thence run North 00 degrees 20 minutes 47 seconds West 20.00 feet along the East right-of-way line of Exchange Drive as shown on said plat of ORLANDO CENTRAL PARK NUMBER FORTY-NINE to a point on the North boundary of the South 1/2 of that certain platted street lying South of Lots 81, 82 and 83 and the North of Lots, 110, 111 and 112 as shown on the plat of "Block Two, PROSPER COLONY SUBDMISION of Section 33, Township 23 South, Range 29 East" as recorded in Plat Book D, Page 110, Public Records of Orange County, Florida; thence run North 89 degrees 36 minutes 14 seconds East 684.06 feet along said North boundary to a point on the East boundary of the Southeast 1/4 of said Section 33; thence run south 00 degrees 22 minutes 33 seconds East 20.00 feet to the Northeast corner of the aforesaid Block "A"; thence run South 89 degrees 36 minutes 14 seconds West 684.07 feet to the POINT OF BEGINNING.

AND

Parcel 1: The East 149.6 feet of Lot 97, and the West 12.7 feet of Lot 98, and the East 94.9 feet of the West 126.9 feet of Lot 99, Block "E", PROSPER COLONY, according to the plat thereof as recorded in Plat Book D, Page 108, Public Records of Orange County, Florida, all in Section 34, Township 23 South, Range 29 East.

AND

Parcel 2: Lot 97, less the East 149.6 feet thereof, Block "E", PROSPER COLONY COMPANY'S SUBDMISION of Section 34, Township 23 South, Range 29 East, according to the plat thereof as recorded in Plat Book D, Page 108, Public Records of Orange County, Florida. TOGETHER WITH the East 1/2 of vacated street West of Lot 97, Block E, PROSPER COLONY, all in Section 34, Township 23 South, Range 29 East.

AND

That portion of Lot 99, PLAN OF BLOCK E PROSPER COLONY, according to the plat thereof as recorded in Plat Book D, Page 108, Public Records of Orange County, Florida, described as follows:

Commence at the Northeast corner of Lot 99 and run West 15 feet to the Point of Beginning, run South 56.90 feet, South 44 Degrees West 77.07 feet, Southwesterly along curve 7.15 feet, South 33.06 feet, Southwesterly along curve, North 170 feet, East 94.9 feet to the Point of Beginning; and Commence at the Northeast corner of Lot 99 and run West 109.9 feet to the Point of Beginning, run South 170 feet, Southwesterly along curve 94.9 feet, North 174.61 feet, East 94.9 feet to the Point of Beginning.

AND

The East 162.3 feet of the West 175 feet of Lot 98, PLAN OF BLOCK E PROSPER COLONY, according to the plat thereof as recorded in Plat Book D, Page 108, Public Records of Orange County, Florida.

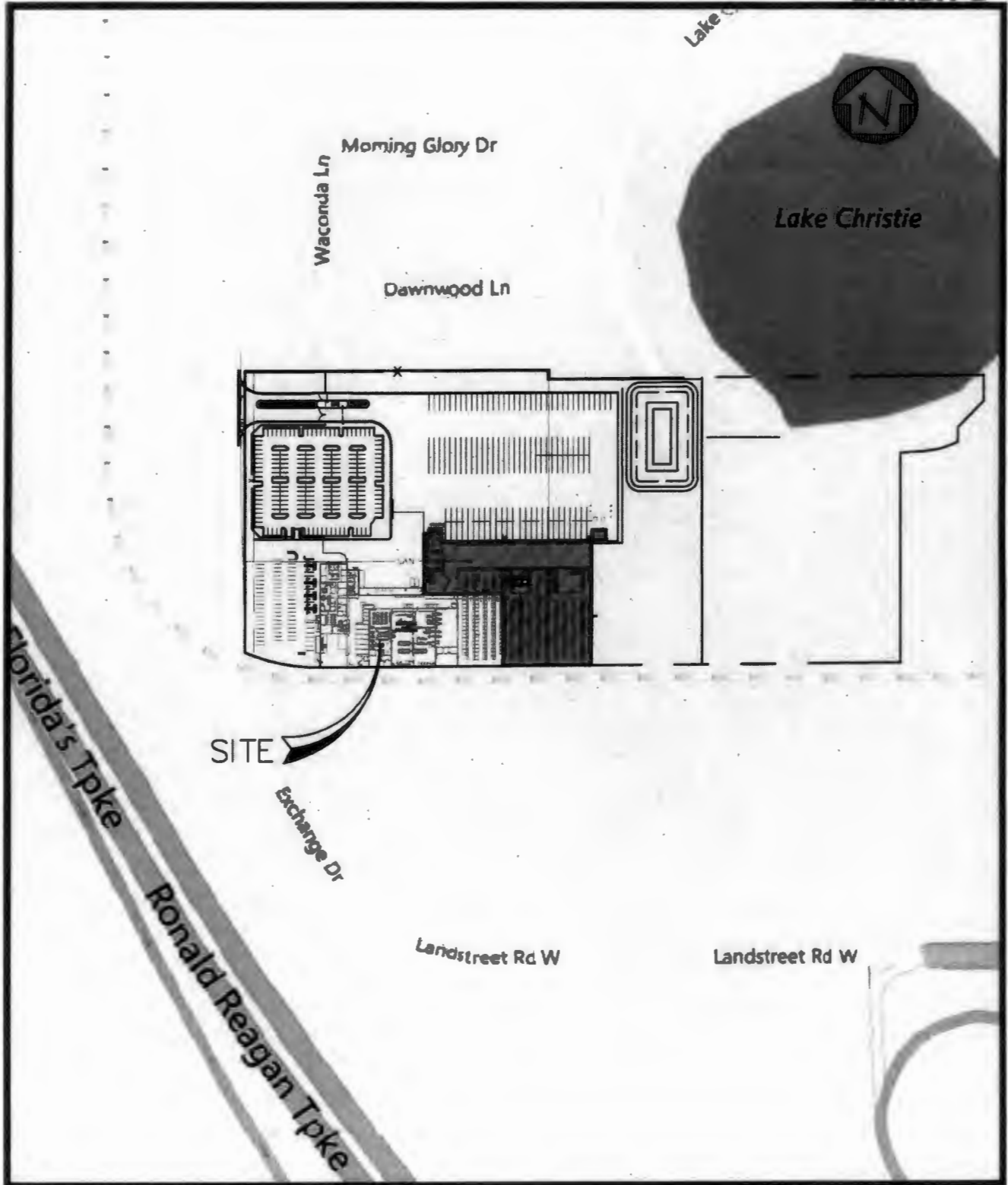
AND

The East 94.9 feet of the West 269.9 feet of Lot 98, the East 62.9 feet of Lot 98, and the West 32 feet of Lot 99, in Block E, of PROSPER COLONY, Section 34, Township 23 South, Range 29 East, according to the Plat thereof, as recorded in Plat Book D, at Page 108, of the Public Records of Orange County, Florida.

CONTAINING: 22.550 ACRES, more or less.

KELLY, COLLINS & GENTRY, INC.	Scale: NOT TO SCALE	EXHIBIT A
	Date: 06/12/19	
ENGINEERING / PLANNING	S: _____ T: _____ R: _____	Exhibit:
	Job # :976.000	Source:
	Drawn by: CAD	Area:
	Appvd. by: JAB	A1 of 1

EXHIBIT B



KELLY, COLLINS & GENTRY, INC. ENGINEERING / PLANNING	Scale: 1" = 300'	EXHIBIT B
	Date: 06/13/2019	
	S: 33 T: 23S R: 29E	Exhibit: LOCATION EXHIBIT
	Job # : 976.000	Source:
Drawn by: CLN	Appvd. by: JAB	Areg: ORANGE COUNTY
		B1 of 1

EXHIBIT C

PNC Bank, National Association
International Trade Product Delivery
500 First Avenue - 2nd Floor
Pittsburgh, PA 15219
Mail Stop: P7-PFSC-02-T

Client Care: 1-800-682-4689
SWIFT Address: PNCUS33



PLEASE REVIEW THIS DRAFT LETTER OF CREDIT. WE RECOMMEND THAT YOU ALSO REVIEW THIS DRAFT WITH THE BENEFICIARY IN ORDER TO ENSURE THE PROPOSED WORDING IS SATISFACTORY TO THE BENEFICIARY. THIS WILL REDUCE THE POSSIBILITY THAT THE BENEFICIARY MAY REQUIRE AMENDMENTS TO THE LETTER OF CREDIT AFTER IT IS ISSUED.

IF YOU ARE SATISFIED WITH THIS DRAFT, PLEASE HAVE AN AUTHORIZED SIGNATORY SIGN WHERE INDICATED BELOW. OTHERWISE, PLEASE MARK YOUR REVISIONS ON THIS DRAFT AND HAVE AN AUTHORIZED SIGNATORY SIGN WHERE INDICATED BELOW AND RETURN TO PNC BANK, EITHER BY FAX TO 412-762-6118 OR BY E-MAIL.

THE FOLLOWING DRAFT HAS NOT BEEN ISSUED AS A LETTER OF CREDIT, AND IT IS NOT AN ORIGINAL INSTRUMENT. THE TERMS OF THIS DRAFT ARE NOT FINAL AND THE WORDING OF THE LETTER OF CREDIT MAY BE REVISED UPON REVIEW BY PNC BANK, WHETHER OR NOT YOU HAVE REQUESTED CHANGES. THIS DRAFT IS NOT A PRE-ADVICE FOR THE ISSUANCE OF A LETTER OF CREDIT AND IS NOT IRREVOCABLE, AND THIS DRAFT SHALL NOT BE CONSTRUED AS A COMMITMENT TO ISSUE A LETTER OF CREDIT AT THIS TIME OR IN THE FUTURE, NOTWITHSTANDING (I) ANY ASSISTANCE WE MAY HAVE PROVIDED IN PREPARING THIS DRAFT AND (II) THE CONSENT OF ANY PARTY TO THE WORDING OF THIS DRAFT. FORWARDING THIS DRAFT TO YOU DOES NOT IMPLY THAT PNC BANK HAS COMPLETED OUR COMPLIANCE REVIEW AND, IN THE EVENT WE DETERMINE THIS TRANSACTION DOES NOT COMPLY WITH APPLICABLE REGULATIONS, PNC BANK WILL NOT ISSUE THIS LETTER OF CREDIT.

YOUR CONSENT TO THE WORDING OF THIS DRAFT SUPERCEDES ANY INCONSISTENT PROVISION IN THE APPLICATION FOR LETTER OF CREDIT. IF THIS LETTER OF CREDIT INCLUDES ANY PROVISION THAT DOES NOT CONFORM TO STANDARD LETTER OF CREDIT PRACTICE, THE UNDERSIGNED ACKNOWLEDGES AND AGREES THAT ALL PROVISIONS OF THE AGREEMENT, INCLUDING WITHOUT LIMITATION THOSE RELATING TO REIMBURSEMENT AND INDEMNIFICATION, APPLY TO THIS LETTER OF CREDIT. FOR INSTANCES WHEN THE APPLICATION INDICATES AN EXPIRY DATE OF ONE YEAR FROM ISSUANCE, THE EXPIRATION DATE ON THE LETTER OF CREDIT, IF ISSUED, WILL BE ONE YEAR FROM THE ISSUANCE DATE WHICH MAY DIFFER FROM THE DATE OF THIS DRAFT.

SYSCO CORPORATION CONSENTS TO THE WORDING OF THIS SPECIMEN WITH REVISIONS AS NOTED BELOW.

AUTHORIZED SIGNATURE

IRREVOCABLE STANDBY LETTER OF CREDIT NO.XXXXXXXX-00-000

DATE: (ISSUE DATE)

BENEFICIARY:
ORANGE COUNTY, FLORIDA
C/O ORANGE COUNTY UTILITIES
9150 CURRY FORD ROAD
ORLANDO, FL 32825
ATTN: ASSISTANT MANAGER,

APPLICANT:
SYSCO CORPORATION
1390 ENCLAVE PARKWAY
HOUSTON, TEXAS 77077

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CUSTOMER SERVICE DIVISION

PROJECT NAME: FRESHPOINT FACILITY EXPANSION WASTEWATER FLOW MONITORING AGREEMENT.

AMOUNT: USD \$121,095.09 (ONE HUNDRED TWENTY ONE THOUSAND NINETY FIVE AND 09/100 UNITED STATES DOLLARS)

DATE OF EXPIRY: (1 YEAR FROM ISSUANCE)

AT THE REQUEST AND FOR THE ACCOUNT OF THE APPLICANT, WE, PNC BANK, NATIONAL ASSOCIATION ("ISSUER"), HEREBY ESTABLISH OUR IRREVOCABLE STANDBY LETTER OF CREDIT NO. XXXXXXXX-00-000, IN FAVOR OF ORANGE COUNTY, A CHARTER COUNTY AND POLITICAL SUBDIVISION OF THE STATE OF FLORIDA ("BENEFICIARY"), AND AUTHORIZE YOU TO DRAW ON PNC BANK, NATIONAL ASSOCIATION, IN THE MAXIMUM AGGREGATE AMOUNT OF USD \$121,095.09 (ONE HUNDRED TWENTY ONE THOUSAND NINETY FIVE AND 09/100 UNITED STATES DOLLARS), WHICH IS PAYABLE AT SIGHT AGAINST PRESENTATION OF YOUR DEMAND, WHEN ACCOMPANIED BY THIS LETTER OF CREDIT AND ANY OF THE FOLLOWING DOCUMENTS:

1. A STATEMENT SIGNED BY THE ORANGE COUNTY MAYOR OR AUTHORIZED REPRESENTATIVE READING AS FOLLOWS: "THE PERFORMANCE OF APPLICANT'S OBLIGATION HAS NOT BEEN COMPLETED YET AND THE LETTER OF CREDIT WILL EXPIRE WITHIN 45 DAYS FROM THE DATE OF DRAWING WITHOUT BEING EXTENDED OR REPLACED TO THE COUNTY'S SATISFACTION";

OR

2. A STATEMENT SIGNED BY THE ORANGE COUNTY MAYOR OR AUTHORIZED REPRESENTATIVE READING AS FOLLOWS: "PNC BANK, NATIONAL ASSOCIATION HAS LOST ITS DESIGNATION AS A 'QUALIFIED PUBLIC DEPOSITORY' PURSUANT TO FLORIDA STATUTES, CHAPTER 280, AND AN ACCEPTABLE REPLACEMENT LETTER OF CREDIT HAS NOT BEEN RECEIVED BY THE COUNTY FOLLOWING NOTICE TO APPLICANT";

OR

3. A STATEMENT SIGNED BY THE ORANGE COUNTY MAYOR OR AUTHORIZED REPRESENTATIVE READING AS FOLLOWS: "THE DRAWING IS DUE TO THE APPLICANT'S FAILURE TO COMPLY WITH THE TERMS OF 'FRESHPOINT FACILITY EXPANSION WASTEWATER FLOW MONITORING AGREEMENT' APPROVED BY THE ORANGE COUNTY BOARD OF COUNTY COMMISSIONERS ON _____."

A SUM NOT TO EXCEED USD \$121,095.09 (ONE HUNDRED TWENTY ONE THOUSAND NINETY FIVE AND 09/100 UNITED STATES DOLLARS) SHALL BE AVAILABLE FOR PARTIAL OR FULL DRAW BY PRESENTATION OF YOUR DEMAND AT SIGHT IF ACCOMPANIED BY A WRITTEN STATEMENT AS DESCRIBED IN THE PRECEDING PARAGRAPHS.

THIS LETTER OF CREDIT SHALL BE IN FULL FORCE AND EFFECT UNTIL (1 YEAR FROM ISSUANCE) AND WILL BE AUTOMATICALLY EXTENDED, WITHOUT AMENDMENT FOR ADDITIONAL PERIODS OF ONE (1) YEAR FROM THE PRESENT OR ANY FUTURE

EXPIRATION DATE, UNLESS WE NOTIFY YOU IN WRITING BY CERTIFIED MAIL, OR OVERNIGHT COURIER, SENT TO YOU AT THE ABOVE ADDRESS AT LEAST SIXTY (60) DAYS PRIOR TO THE THEN PRESENT EXPIRATION DATE, NOTIFYING YOU THAT WE ELECT NOT TO EXTEND THIS LETTER OF CREDIT FOR AN ADDITIONAL PERIOD OF ONE YEAR.

DRAWS MUST BE PRESENTED NO LATER THAN (1 YEAR FROM ISSUANCE) OR ANY EXTENDED EXPIRATION DATE AND MUST BEAR THE CLAUSE: "DRAWN UNDER LETTER OF CREDIT NO.XXXXXXXXXX-00-000 OF PNC BANK, NATIONAL ASSOCIATION, DATED (ISSUE DATE)."

PARTIAL AND MULTIPLE DRAWINGS ARE PERMITTED; PROVIDED, HOWEVER, THAT ANY PAYMENT MADE UNDER THIS LETTER OF CREDIT SHALL REDUCE THE AMOUNT AVAILABLE UNDER IT.

WE, PNC BANK, NATIONAL ASSOCIATION, HEREBY AGREE THAT ALL DRAWS PRESENTED UNDER AND IN COMPLIANCE WITH THE TERMS OF THIS LETTER OF CREDIT SHALL BE DULY HONORED UPON PRESENTATION TO PNC BANK, NATIONAL ASSOCIATION AT 201 EAST PINE STREET, SUITE 200, ORLANDO, FL 32801, ATTN: LEXIE ISAAC/KRISTINA M. SANDERS RES DEV/REAL ESTATE FINANCE.

THIS LETTER OF CREDIT WILL BE CONSIDERED AS CANCELLED UPON RECEIPT BY US OF THE ORIGINAL LETTER OF CREDIT OR UPON ANY PRESENT OR FUTURE EXPIRY DATE HEREUNDER, WHICHEVER SHALL OCCUR FIRST.

THIS LETTER OF CREDIT IS SUBJECT TO THE INTERNATIONAL STANDBY PRACTICES 1998 (ISP98) (INTERNATIONAL CHAMBER OF COMMERCE PUBLICATION NO. 590) AND TO THE PROVISIONS OF FLORIDA LAW. IF A CONFLICT BETWEEN ISP98 AND FLORIDA LAW SHOULD ARISE, FLORIDA LAW SHALL PREVAIL. IF A CONFLICT BETWEEN FLORIDA LAW AND THE LAW OF ANY OTHER STATE OR COUNTRY SHALL ARISE, FLORIDA LAW SHALL PREVAIL.

PNC BANK, NATIONAL ASSOCIATION
INTERNATIONAL TRADE SERVICE OPERATIONS