

**Eric Fryson**

**From:** TeresiS@gtlaw.com  
**Sent:** Thursday, October 18, 2012 10:23 AM  
**To:** Filings@psc.state.fl.us  
**Cc:** GildanP@gtlaw.com; Caroline Klancke; lobbins@deanmead.com; mcintyred@stlucieco.org; dacton@martin.fl.us; jwharton@sflaw.com  
**Subject:** Bluefield Utilities, LLC; Docket No. 090459-WS  
**Attachments:** Withdrawal of Objection to Certification.pdf

**a. The full name, address, telephone number, and e-mail address of the person responsible for the electronic filing**

Phillip C. Gildan, Esq.  
 Greenberg Traurig, P.A.  
 777 S. Flagler Drive, Suite 300 East  
 West Palm Beach, FL 33401  
 (561) 650-7967  
[gildanl@gtlaw.com](mailto:gildanl@gtlaw.com)

**b. The docket number and title if filed in an existing docket:**

Docket s: 090459-WS  
 Application of Bluefield Utilities, LLC

**c. The name of the party on whose behalf the document is filed:**

St. Lucie County, Florida

**d. The total number of pages in each attached document: 42**

**e. A brief but complete description of each attached document.**

St. Lucie County's Withdrawal of Objection to Certification with copy of Settlement Agreement attached as Exhibit "A"

Sheryl A. Teresi  
 Document Center Operator and Administrative Assistant to  
 Stephen D. Sanford, Esq. and Phillip C. Gildan, Esq.  
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DOCUMENT NUMBER-DATE

07092 OCT 18 2012

BEFORE THE FLORIDA PUBLIC SERVICE COMMISSION

In re: Application for original certificates for proposed water and wastewater system and request for initial rates and charges in Martin and St. Lucie counties by Bluefield Utilities, LLC.

DOCKET NO. 090459-WS

ST. LUCIE COUNTY'S WITHDRAWAL  
OF OBJECTION TO CERTIFICATION

St. Lucie County, Florida, through its undersigned counsel, withdraws its Objection of St. Lucie County, Florida to Application for Original Certificates for Proposed Water and Wastewater System and Request for Initial Rates and Charges in Martin and St. Lucie Counties, filed on October 7, 2009, and the Amendment thereto, filed on October 7, 2009, conditioned upon approval by the Florida Public Service Commission of the Settlement Agreement Among Bluefield Utilities, LLC, Evans Utilities Company, Inc. Evan Properties, Inc., the St. Lucie County Water and Sewer District, and St. Lucie County, Florida, dated September 18, 2012, and subject to the provisions of paragraph 6 therein. A copy of said Settlement Agreement is attached to this Withdrawal as "Exhibit A".

Respectfully submitted this 8<sup>th</sup> day of October, 2012, by:

GREENBERG TRAUERIG, P.A.  
777 South Flagler Drive, Third Floor East  
West Palm Beach, Florida 33401  
(561) 650-7900/(561) 655-6222 FAX

  
PHILLIP C. GILDAN

DOCUMENT NUMBER-DATE

07092 OCT 18 09

FPSC-COMMISSION CLERK

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served by electronic mail this 18<sup>th</sup> day of October, 2012, to:

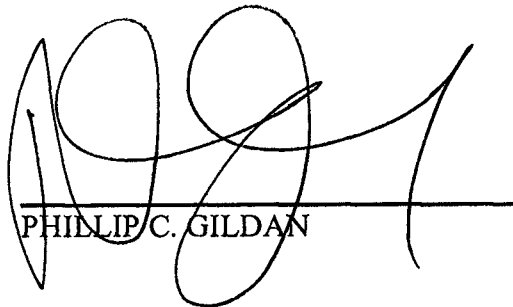
Caroline Klancke  
Office of General Counsel  
Florida Public Service Commission  
2540 Shumard Oak Boulevard  
Tallahassee, Florida 32399-0850  
cklancke@psc.state.fl.us

Michael Minton & Lee Dobbins  
Dean Mead Minton & Zwemer  
1903 South 25<sup>th</sup> Street, Suite 200  
Fort Pierce, FL 34947  
mminton@deanmead.com  
ldobbins@deanmead.com

Daniel S. McIntyre  
St. Lucie County Attorney  
2300 Virginia Avenue  
Fort Pierce, FL 34982  
mcintyred@stlucieco.org

David A. Acton  
Martin County Administrative Center  
2410 SE Monterey Road  
Stuart, FL 34996-3397  
dacton@martin.fl.us

John L. Wharton  
Sundstrom, Friedman & Fumero, LLP  
2548 Blairstone Pines Drive  
Tallahassee, FL 32301  
jwharton@sfflaw.com



PHILLIP C. GILDAN

**SETTLEMENT AGREEMENT AMONG  
BLUEFIELD UTILITIES, LLC,  
EVANS UTILITIES COMPANY, INC.  
EVANS PROPERTIES, INC.,  
THE ST. LUCIE COUNTY WATER AND SEWER DISTRICT,  
AND  
ST. LUCIE COUNTY, FLORIDA**

**THIS AGREEMENT** is made and entered into this 18 day of September, 2012, by and among St. Lucie County, a political subdivision of the State of Florida (hereinafter referred to as the ("County")), the St. Lucie County Water and Sewer District, a Chapter 153, Part II, Florida Statutes utility district ("District"), Bluefield Utilities, LLC, a Florida limited liability company (hereinafter referred to as "Bluefield"), Evans Utilities Company, Inc., a Florida corporation ("Evans Utilities"), and Evans Properties, Inc., a Florida corporation ("Evans") (each a "Party" and collectively the "Parties").

**RECITATIONS**

**WHEREAS**, Bluefield is a subsidiary of Evans Utilities, which is a subsidiary of Evans.

**WHEREAS**, Evans is a family owned company that currently predominately grows citrus on its properties.

**WHEREAS**, following the lead of other progressive, diversified agricultural businesses in Florida, Evans has undertaken to form and certificate utilities for a number of its properties across the state.

**WHEREAS**, Evans is undertaking these steps in order to diversify its business activities and position itself to take advantage of potential opportunities to meet water and wastewater needs.

**WHEREAS**, such opportunities may include, but not be limited to (a) supplying water for bio-fuel production, which requires large quantities of water and close proximity to crop-lands, (b) bulk-water sales to municipalities or other large water users, (c) providing water and wastewater service for future development as approved by the Board of County Commissioners, to the extent such approval is required by the County Land Development Code or (d) performing environmental services, such as water retention or cleansing facilities to meet coming water quality standards. Water retention and storage capacity could be provided under contract to one or more governmental entities or credits could be sold to agri-business or other users that are required to have retention and storage capacity.

**WHEREAS**, the granting of a certificate to provide water or wastewater service in a territory does not imply that the certificate is issued for any specific class of service, and it is common for the Florida Public Service Commission ("FPSC") to grant an original water certificate and approve rates for services which may be in demand at a future time.

**WHEREAS**, the benefits to Evans of having a certificated utility include, but will not be limited to, Evans' improved position to enter into contracts with bulk users, governmental entities, and other utilities, Evans' ability to obtain more favorable financing for constructing infrastructure improvements, and Evans' ability to provide water and wastewater services for the Bluefield proposed certified properties as and when needed.

**WHEREAS**, on or about September 11, 2009, Bluefield filed an application before the Florida Public Service Commission ("FPSC") for the certification of a public utility with territory in St. Lucie County and Martin County, FPSC Docket No. 090459-WS (the "Bluefield Application").

**WHEREAS**, on or about October 15, 2009, the County filed an objection to the Bluefield Application with the FPSC, raising certain concerns as set forth therein.

**WHEREAS**, this Agreement is intended to address the County's and the District's concerns with respect to the Bluefield Application.

**NOW, THEREFORE**, for and in consideration of the mutual promises, covenants, representations, and warranties entered into between the Parties, and in consideration of the benefits to accrue to each it is agreed as follows:

1. **Utility Boundaries:** As an inducement for the County to withdraw its objections, Bluefield agrees that within St. Lucie County, Bluefield shall not provide domestic utility service outside the boundaries of Bluefield's territory, as such territory is certificated by the FPSC (the "Utility Territory"), without prior written approval from the County Commission sitting as the District governing board. The portion of Bluefield's proposed Utility Territory lying within the County is depicted in **Attachment 1**, attached hereto and made a part hereof. Bluefield shall not apply to the FPSC for any expansion of its Utility Territory within the utility service territory of the District, nor shall Bluefield otherwise extend domestic potable water and/or wastewater utility service outside its Utility Territory within the utility service territory of District, without prior written approval from the County Commission sitting as the District governing board. This paragraph shall not prohibit Bluefield from, (a) providing surface water retention and/or cleansing services that would require Bluefield to take surface water from outside of Bluefield's Utility Territory, cleanse and/or retain it inside its Utility Territory and deliver it back outside of its Utility Territory, (b) selling water retention or cleansing services or credits to customers outside of Bluefield's Utility Territory, or (c) delivery of bulk potable or non-potable water to the City of Port St. Lucie or the Fort Pierce Utility Authority, or any other customers not located within the District's utility service area, even though the utility lines delivering such water may pass through the District's utility service area, provided the District does not waive any authority it has pursuant to Chapter 153, Part II, Florida Statutes. The parties hereto agree that the County may enforce the provisions of this paragraph by specific performance or injunctive relief and Bluefield waives any defense that the FPSC has jurisdiction to reject the contractual right provided in this section.

2. **County Review:** The District shall have the right to review and approve the engineering plans and specifications for any Water or Wastewater Systems to be constructed within the Utility Territory in

St. Lucie County. For the purposes of this Agreement, "Water or Wastewater Systems" shall be defined as water supply facilities, potable water, wastewater and reclaimed water treatment facilities, effluent disposal facilities, and related pipelines, lift stations, pumps and other potable water or wastewater facilities, serving residential development or non-agricultural commercial development. The District shall provide approval or comments on any such engineering plans submitted or resubmitted to the District within forty-five (45) days of receipt of such plans. The District's comments, if any, shall set forth the changes required to such engineering plans and specifications in order for them to receive the District's approval. Approval of such engineering plans and specifications shall not be unreasonably withheld. As an example, which shall not be considered exclusive, requiring the design of such Water or Wastewater Systems to include either (a) significant overcapacity (above the capacity required by the Florida Department of Environmental Protection ("FDEP")) thereby resulting in materially increased costs to utility rate payers, or (b) design elements that the FPSC would deem "not used or useful", and therefore would prohibit Bluefield from charging rate payers for the cost of such design elements, shall be considered "unreasonable" for purposes of this Agreement. Any Water or Wastewater Systems constructed within the Utility Territory in St. Lucie County shall also be required to comply with the applicable requirements of the St. Lucie County Land Development Code relating to land use, zoning, site planning and construction permitting, provided however, that Bluefield does not waive any of its rights as a FPSC regulated utility.

3. Preemption by Public Service Commission: Utility facilities (a) serving biofuel production, energy or alternative energy production or uses related to biofuel or energy production, (b) serving agriculture or agriculture related uses, or serving a surface water cleansing, retention or treatment facility, or (c) providing services for delivery of bulk potable or non-potable water to the City of Port St. Lucie or the Fort Pierce Utility Authority, or any other customers not located within the District's utility service area, even though the utility lines delivering such water may pass through the District's utility service area, shall not be considered Water or Wastewater Systems for the purposes of this Agreement, and Paragraphs 2 and 4 of this Agreement and Attachment 3 attached hereto, shall not apply to such facilities. Bluefield shall be permitted to provide water and wastewater services to the foregoing uses, pursuant to applicable regulation by the FPSC and/or the FDEP, which shall preempt any regulation by the County or the District. Any Water or Wastewater Plant serving the foregoing uses constructed within the Utility Territory in St. Lucie County shall also be required to comply with the applicable requirements of the St. Lucie County Land Development Code relating to land use, zoning, site planning and construction permitting, provided however, that Bluefield does not waive any of its rights as a FPSC regulated utility .

4. Special Provisions re Utility Service to Evans Properties located in the Vicinity of S.R. 70: As an additional inducement for the County to withdraw its objections, Bluefield and Evans agree to the following special provisions which shall apply to the Evans properties located in the vicinity of S.R. 70 that comprise a part of the Bluefield utility service territory, as depicted in Attachment 2 to this Agreement (the "S.R. 70 Properties"). In the event that Bluefield desires to develop Water or Wastewater Systems, as that term is defined above, serving any part of the S.R. 70 Properties, then the District shall have an option to acquire such Water or Wastewater Systems as set forth in Attachment 3 to this Agreement. The parties hereto agree that the County or the District may enforce the provisions of this paragraph by specific performance or injunctive relief in a court action, and Bluefield and Evans

waive any defense that the FPSC has jurisdiction to reject the contractual rights provided in this section and Attachment 3 or to prevent enforcement of such contractual rights in a court action. As further provided in Attachment 3, if the County does not exercise its option, then Bluefield may continue to own and operate the constructed Water and Wastewater Systems and provide utility services to the S.R. 70 Properties in accordance with its FPSC certificate.

5. Withdrawal of County Objection: Promptly upon the execution of this Agreement, the County agrees to execute a certificate withdrawing its objections to the Bluefield Application, conditioned upon approval of this Agreement by the FPSC, and subject to the provisions of paragraph 6 below, to be included as a part and condition of the FPSC approval of the certificate requested by the Bluefield Application.

6. FPSC Approval: This Agreement, together with the County's certificate withdrawing its objections to the Bluefield Application as provided in paragraph 5 above, shall be jointly submitted to the FPSC by the parties for its recognition and approval and for the issuance of a utility certificate for Bluefield. In the event the FPSC does not approve this Agreement, then the County's objections shall be reinstated and this Agreement shall be null and void and have no further effect. In the event that the Bluefield Application is withdrawn, or the issuance of a utility certificate for Bluefield is denied by the FPSC, then this Agreement shall be null and void and have no further force or effect. Bluefield shall not amend its FPSC Application without the prior written consent of the County, provided no consent shall be required by the County in the event Bluefield amends its FPSC Application to (i) remove any properties or parts of properties from the proposed Utility Territory, (ii) combine the Grove Land Utilities, LLC FPSC certificated water and wastewater service territory and the Bluefield Utility Territory into a single certificated service territory, provided however, that the Utility Territory and the S.R. 70 Properties, as defined herein, shall continue to be subject to the terms and covenants of this Agreement, and the Grove Land Utilities, LLC FPSC certificated water and wastewater service territory (the "Grove Land Territory"), as such territory is described in the Agreement between Grove Land Utilities, LLC, Evans Properties, Inc. and St. Lucie County Florida, dated December 6, 2011 (the "Grove Land Agreement") shall continue to be subject to the terms of the Grove Land Agreement, and the Grove Land Agreement shall remain applicable and be binding on the combined utility with respect to the Grove Land Territory after the combination, (iii) change its proposed tariff, or (iv) accommodate FPSC requests that do not relate to, affect, or impact the agreements of the parties set forth in this Agreement.

7. Notices: The Parties designate the following persons to be contacted and to receive all notices regarding this Agreement:

If to St. Lucie County or the District, such notice shall be addressed to such party at:

St. Lucie County Administration Office  
2300 Virginia Avenue  
Fort Pierce, Florida 34982  
Attention: County Administrator

With a copy to:

St. Lucie County Attorney's Office  
2300 Virginia Avenue  
Fort Pierce, Florida 34982  
Attention: County Attorney

If to Bluefield, Evans, or Evans Utilities such notice shall be addressed to such party at:

Evans Properties, Inc.  
660 Beachland Boulevard  
Vero Beach, FL 32963  
Attention: Ron Edwards

With a copy to:

Dean, Mead, Minton & Zwemer  
1903 South 25<sup>th</sup> Street, Suite 200  
Fort Pierce, FL 34947  
Attention: Michael D. Minton

Any Notice or other document required or allowed to be given pursuant to this Agreement shall be in writing and shall be delivered personally, or by overnight courier, or sent by Certified Mail, Postage Prepaid, Return Receipt Requested. The use of electronic communication is not considered as providing proper notice pursuant to this Agreement.

8. **Assignment:** This Agreement shall be binding upon, and inure to the benefit of, the County's, Bluefield's, Evans's and Evans Utilities' successors and assigns, excluding Grove Land Utilities, LLC, except as expressly provided in Paragraph 6 above. However, if the District or the District's utility is conveyed to or merges with another municipality, utility authority, or other entity, the terms and restrictions set forth in Paragraphs 1, 2 and 4 hereof, and in **Attachment 3** hereto, shall have no further force or effect and shall not be assignable to any successor entity, except as specifically set forth in Article Fifteen of **Attachment 3**.

9. **Beneficiaries:** This Agreement is solely for the benefit of the County, the District, Bluefield, Evans, and Evans Utilities and no causes of action shall accrue upon or by reason hereof to or for the benefit of any other party, who or which is not a Party to this Agreement.

10. **Amendment:** This Agreement cannot be modified or amended except by a written instrument executed by all Parties and supported by valid consideration.

11. **Applicable Law and Venue:** This Agreement will be interpreted in accordance with the laws of the State of Florida. Except to the extent that such matters are specifically within the exclusive jurisdiction of the FPSC or other governmental authority, venue for any action related to, arising out of,



or in any way connected to this Agreement shall be in the state and federal courts located in and for St. Lucie County, Florida and nowhere else, and the Parties agree to submit to the jurisdiction of such courts.

12. **Entire Agreement and Effective Date:** This Agreement constitutes the entire agreement and understanding between the Parties with regard to the content herein and has been entered into voluntarily and with independent advice and legal counsel and has been executed by authorized representatives of each Party on the date written above. This Agreement shall become effective (the "Effective Date") when the last party to this Agreement executes the Agreement. There are no representations, warranties or covenants of any nature, oral or written, which are not included herein.

13. **Severability:** If any provision or part of a provision of this Agreement shall be determined to be void or unenforceable by a court of competent jurisdiction, the remainder of this Agreement shall, to the extent possible to ensure that the Agreement satisfies the intent of the Parties, remain valid and enforceable by any Party.

14. **Construction of Agreement:** If any provision of this Agreement requires judicial interpretation, the Parties agree that they have each collectively participated in the negotiation and drafting of this Agreement and that there shall be no judicial or other presumption against either Party regarding the construction of this Agreement.

15. **Time is of the Essence:** Time is of the essence with respect to each provision of this Agreement.

16. **Interpretation:** Words used in this Agreement in the singular shall be held to include the plural and vice versa, and words of one gender shall be held to include other genders as the context requires. The terms hereof, herein, and herewith and words of similar import shall be construed to refer to this Agreement in its entirety and not to any particular provision unless otherwise stated.

17. **Counterparts:** This Agreement may be executed in a number of identical counterparts. If so executed, each of such counterparts is to be deemed an original for all purposes and all such counterparts shall, collectively, constitute one agreement, but, in making proof of this Agreement, it shall not be necessary to produce or account for more of such counterparts than are required to show that each party hereto executed at least one such counterpart.

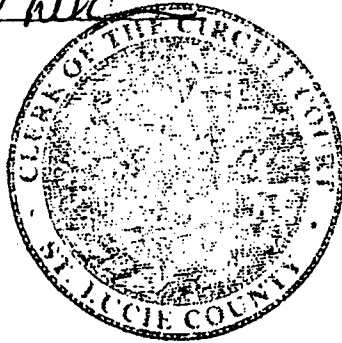
18. **Memorandum:** A memorandum of this Agreement in the form set forth on **Attachment 4** may be recorded by the District against the S.R. 70 Properties.

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, the Parties have executed this Agreement effective as of the date set forth above.

ATTEST:

By: Kelly Phelan  
Deputy Clerk



ST. LUCIE COUNTY, a political subdivision of the State of Florida

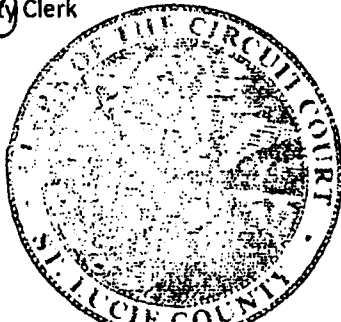
BY: [Signature]  
Chairman of the Board of County Commissioners

Approved as to form and legal sufficiency:

[Signature]  
Daniel S. McIntyre, County Attorney

ATTEST:

By: Kelly Phelan  
Deputy Clerk



BY: [Signature]  
Chairman of the Board of County Commissioners sitting as the St. Lucie County Water and Sewer District

Approved as to form and legal sufficiency:

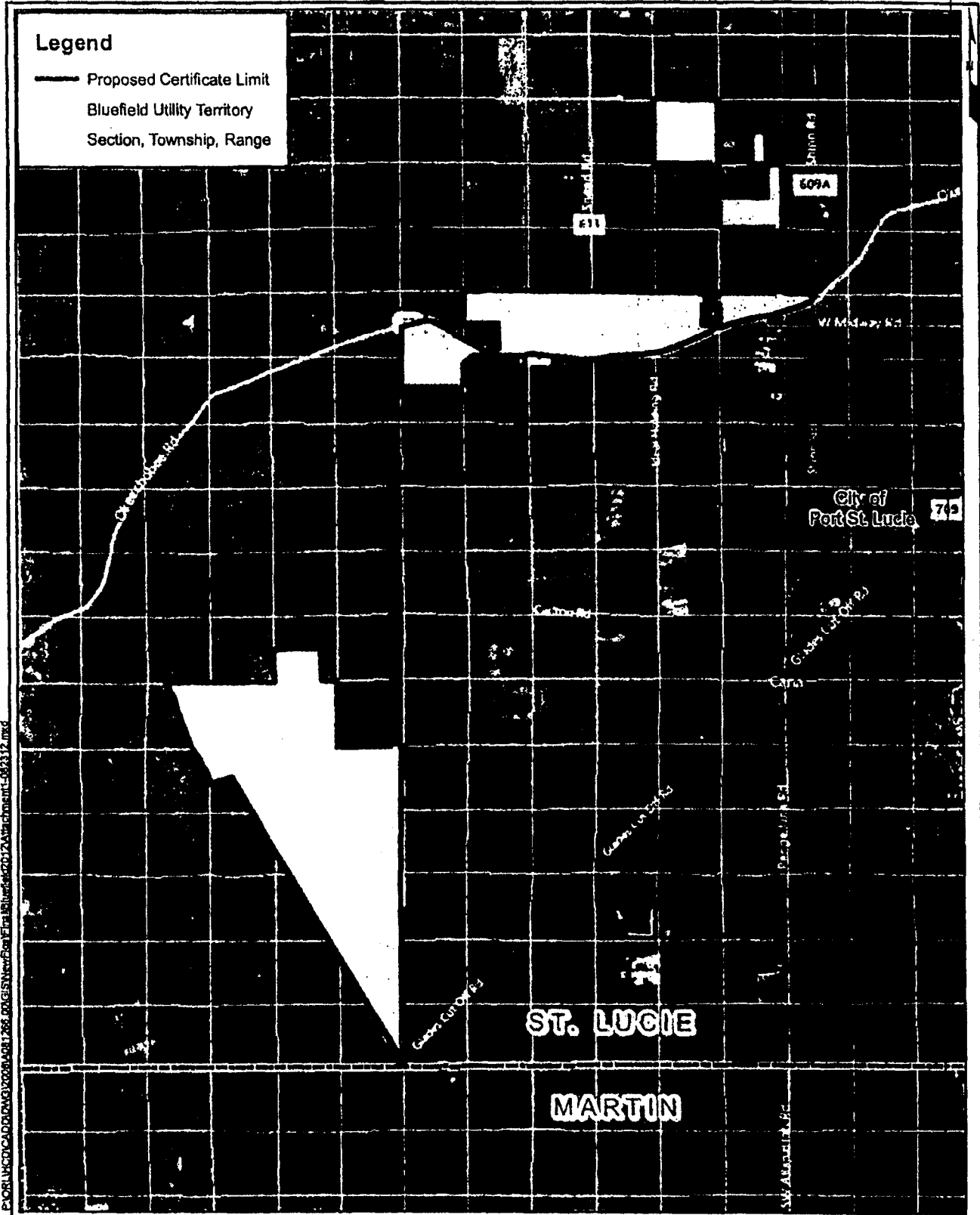
[Signature]  
Daniel S. McIntyre, County Attorney

BLUEFIELD UTILITIES, LLC, a Florida limited liability company  
By: Ronald L. Edwards  
Print Name: Ronald L. Edwards  
Its: Manager

EVANS PROPERTIES, INC., a Florida corporation  
By: Ronald L. Edwards  
Print Name: Ronald L. Edwards  
Its: President

EVANS UTILITIES COMPANY, INC., a Florida Corporation  
By: Ronald L. Edwards  
Print Name: Ronald L. Edwards  
Its: President

**ATTACHMENT 1**  
**THE PORTION OF BLUEFIELD'S PROPOSED UTILITY**  
**TERRITORY LYING WITHIN ST. LUCIE COUNTY**



P:\OR\HCD\AD\D\G\2008\081266\_D04\GIS\New\Bov\Final\Bluefield\2012\Attachment-082312.mxd

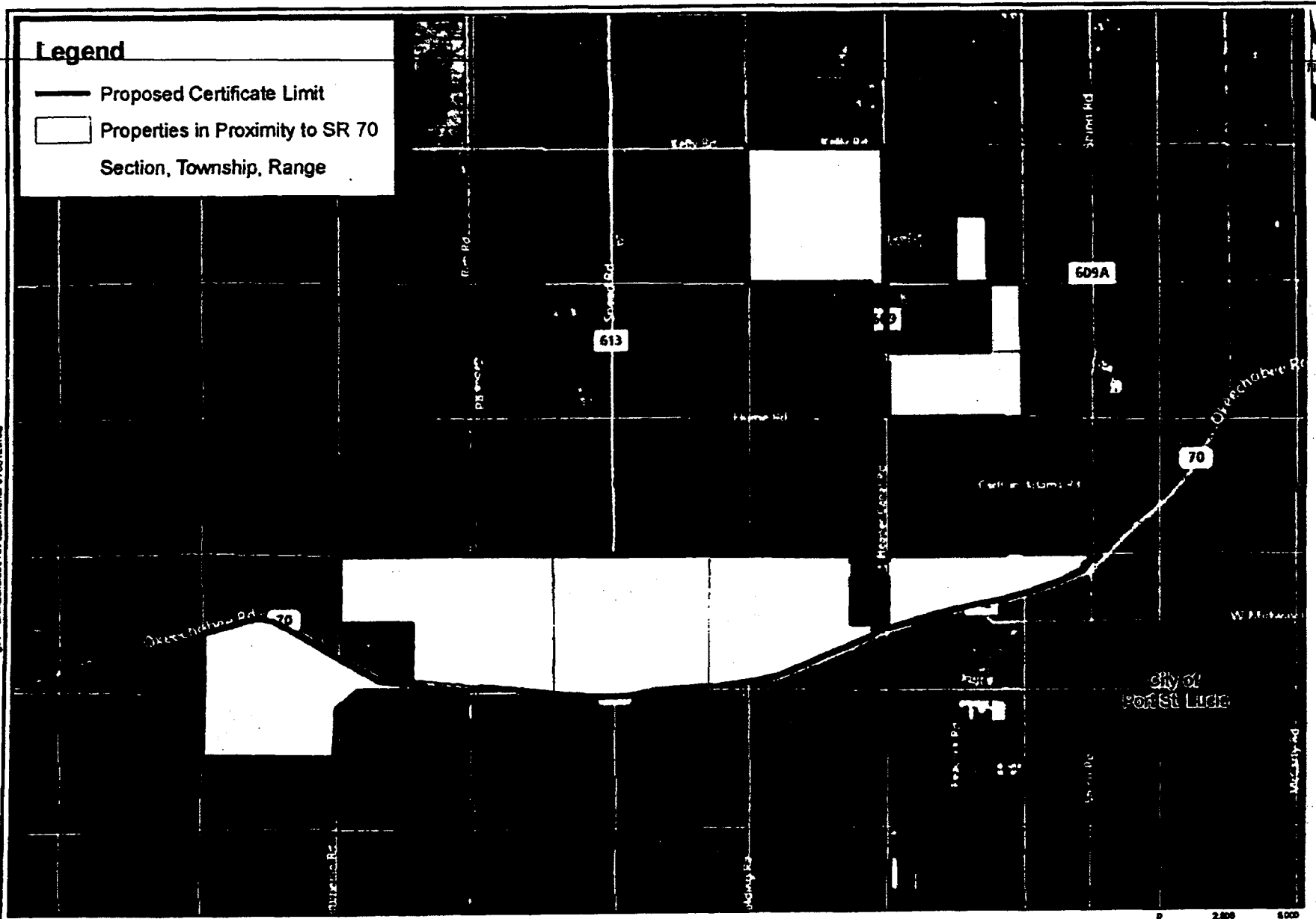
**gal consultants**  
transforming ideas into reality  
 618 E. South Street Suite 700  
 Orlando, Florida 32801  
 Phone 407.428.8299 Fax 407.542.1070

**BLUEFIELD UTILITIES**

ATTACHMENT

ATTACHMENT 2  
S.R. 70 PROPERTIES

P:\DRL\HCD\CADD\DWG\2008\VA01286.DWG\NewPipeFinal\Bluefield2012\Attachment2-073012.mxd



**gai consultants**  
transforming ideas into reality,  
818 E. South Street, Suite 700  
Orlando, Florida 32801  
Phone 407.423.8308 Fax 407.843.1070

BLUEFIELD UTILITIES  
PROPERTIES IN PROXIMITY TO SR 70

ATTACHMENT

2

**ATTACHMENT 3**

**Option to Acquire Terms and Condition**

Bluefield, Evans Utilities, Evans, the County, and the District agree to the following Option to Acquire Terms and Conditions ("Agreement"):

**ARTICLE ONE**

**Certain Definitions**

- "S.R. 70 Properties" means the name of the real property which is owned or controlled by Evans, located in the vicinity of S.R. 70 and included within the Bluefield utility service territory when certificated by the FPSC, as depicted in Attachment 2 to the Settlement Agreement.
- "Affiliate" means any entity owned or controlled, directly or indirectly by Evans, Bluefield, or Evans Utilities, or with a common ownership or control of or with Evans or Evans' shareholders.
- "Assignment and Assumption Agreement(s)" means the document by which Bluefield shall assign, and the District shall assume, in whole or in part, any Bluefield agreements, contracts, leases, permits or other such instruments relating to the Utility Systems at the time of Closing.
- "Bluefield" means Bluefield Utilities, LLC.
- "Board" shall mean the St. Lucie County Board of County Commissioners.
- "Bond Issue" shall mean any bond, note, bank loan, or other financing, or combination or series of such financings as determined by the MSTU, from time to time.
- "Capacity" means the amount of water, wastewater, or reclaimed water utility service plant capacity available for potable water withdrawal, treatment, storage, and distribution services, or sanitary wastewater collection, treatment, and disposal services, or reclaimed water services, respectively, as of the date of inquiry.
- "Closing" means the act(s) by which Bluefield, Evans Utilities and Evans transfers the Utility Systems to the District, in whole or in part, in accordance with the terms and conditions set forth in this Agreement.
- "Closing Date" means the time(s) at which Bluefield shall transfer the Utility Systems to the District, in whole or in part, all in accordance with the terms and conditions hereof.

- **“Connection Charges”** means impact fees paid to Bluefield or District, in accordance with the terms of this Agreement, in exchange for connecting to the Utility System and subsequently receiving utility service therefrom.
- **“Cost of Construction”** means the total reasonable and customary costs of Bluefield’s investment and unreimbursed expenses in the design, permitting, and construction of the Utility System, including any and all ancillary expenses, reasonable costs of capital, and other costs identified as a Cost of Construction hereunder. Real property costs shall be reimbursed at Fair Market Value as determined in accordance with Article Ten, Paragraph 9 below.
- **“County”** means St. Lucie County.
- **“District”** means The St. Lucie County Water and Sewer District.
- **“District Utility Director”** means that person appointed by the District to lead the District’s Utility Department.
- **“Developer Agreement”** means a standard contract approved by the District for use by Bluefield before Closing with such person or persons or entities that may be constructing homes or commercial properties within the S.R. 70 Properties, which agreements shall set forth the terms and conditions under which utility lines are designed, permitted, constructed, and service made available only within the S.R. 70 Properties.
- **“Engineer of Record”** means the engineer selected by Bluefield with primary oversight of the design, permitting, and construction of the Utility Systems.
- **“Evans”** means Evans Properties, Inc.
- **“Evans Utilities”** means Evans Utilities Company, Inc.
- **“FPSC”** means the Florida Public Service Commission.
- **“Lead Engineer”** means the engineer or engineering firm selected by Bluefield, and approved by the District, as its principal engineering agent in the design, permitting, and construction of the Utility Systems. The lead engineer may be, or may not be, the “Engineer of Record” on any particular phase of the design, permitting, and construction of the Utility Systems. Bluefield may substitute a new Lead Engineer from time to time with the approval of the District.
- **“MSTU”** means a municipal service taxing unit in accordance with Chapter 125, Part I, Florida Statutes, and Chapter 1-13.5 of the County Code of Ordinances, as amended from time to time.

- "MSTU Ordinance" means Chapter 1-13.5 of the County Code of Ordinances, as amended from time to time.
- "Option Acceptance" has the meaning set forth in Article Four, below.
- "Option Notice" has the meaning set forth in Article Four, below.
- "Peaking" means the hydraulic demand on the water portion of a Utility System measured in the output of the water treatment plant at the maximum usage hour of the maximum usage month, a/k/a "peak hourly flows."
- "Phasing Plan" has the meaning set forth in Article Four below.
- "Property" means all of the lands contained within the S. R. 70 Properties.
- "Real Property" means the real estate and interests in real property (including easements and/or rights-of-way) owned and held by Bluefield, Evans Utilities, Evans or their Affiliates, for the operation and maintenance of the Utility Systems, as will be acquired by the District at the time of Closing, including all building and improvements located thereon which are part of the Utility Systems.
- "Reclaimed Water" means water recovered from the wastewater treatment process as a byproduct thereof, and treated to sufficient extent, so as to be available for public access irrigation use within the Property, or other uses within or outside of the Property.
- "Reserved Capacity" means water, wastewater, or reclaimed water exclusively dedicated by the Utility Systems for use by developers within the Property.
- "Resolutions" means the official District document or documents adopted subsequent to the mandatory hearing required pursuant to Section 125.3401, Florida Statutes, prior to its acquisition of the Utility Systems.
- "Settlement Agreement" means the Settlement Agreement Among Bluefield Utilities, LLC, Evans Utilities Company, Inc., Evans Properties, inc. The St. Lucie County Water and Sewer District and St. Lucie County, Florida.
- "Tariff" means the promulgated FPSC document which sets forth the rates, charges, and terms for utility service to the Property. Bluefield and the District shall develop a tariff for customers to be served by the Utility Systems hereunder which mirrors, to the greatest extent possible, the tariff for the District's other customers, however, nothing herein contained shall preclude Bluefield and the District from setting rates and charges for utility service to the Property which, together with other District approved financial mechanisms, provide the opportunity to fully reimburse Bluefield and Evans for the Cost of Construction of the Utility System.

- “Transfer Assets” means all assets, business properties, and rights, both tangible and intangible, of the “Utility Systems” being transferred pursuant to this Option Agreement that Bluefield and Evans own as of a Closing Date, or which Bluefield or Evans may acquire thereafter for subsequent acquisition by the District.
- “Utility Standards” means standards approved by the District for construction of materials and supplies, including pipes, pumps, plans and facilities that are to be incorporated into the Utility Systems. The Utility Standards for construction shall be those as selected by Bluefield and approved by the District, which shall not require either (a) significant overcapacity (above the capacity required by the FDEP) thereby resulting in materially increased costs to utility rate payers, or (b) design elements that the FPSC would deem “not used or useful.
- “Utility Extension and Service Policies” means such methodologies, protocols, or standard operating procedures for utility service to the Property as may be adopted by the District with the advice of Bluefield. After transfer of the Utility System to the District, or portions thereof, as applicable, District shall not, in the mandatory sense, impose operating procedures on the Utility System that are more stringent or costly than those which the District imposes upon any of its other utility customers.
- “Utility Systems Master Plan” means the plan prepared by the Engineer of Record and approved by the District for the construction of the Utility Systems, from inception, through buildout, in phases.
- “Utility Systems” means the combination of the assets, facilities, plants, including land, constituting the water, wastewater, and reclaimed water systems which will be constructed and funded by Bluefield or Evans, which construction may take place in phases, which serve or are intended to be available to serve residential, or non-agricultural commercial customers anywhere within the S.R. 70 Properties, and which are subject to transfer pursuant to this Agreement, and any additions thereto in subsequent phases as they are thereafter enlarged, expanded, constructed, reconstructed and relocated from time to time and subsequently transferred to the District.

## ARTICLE TWO

### Intent of the Parties

Notwithstanding anything to the contrary set forth in this Agreement, it is the intent of the parties hereto that Bluefield shall have the right to build a Utility System or Systems to provide domestic water, wastewater and/or reclaimed water to a future residential, or non-agricultural commercial development or developments, within the S.R. 70 Properties, as more specifically set forth herein. Furthermore, it is the intent of the parties hereto that in the event that Bluefield desires to build a Utility System as described above, then the District may



exercise the right, but shall not be obligated, to acquire such Utility System or Systems from Bluefield, all as more specifically set forth herein. Bluefield may build multiple Utility Systems, or multiple phases of a single Utility System, as portions of the S.R. 70 Properties are developed, in which case the District may, but shall not be obligated to, exercise the right to acquire any, all or none of such Utility Systems, in accordance with the terms hereof. In the alternative, if the District acquires a Utility System from Bluefield, the District and Bluefield may enter into an agreement for the expansion of such Utility System to provide for additional development within the S.R. 70 Properties. It is the intent of the parties hereto that this **Attachment 3**, and the District's option to acquire Utility Systems set forth herein, shall only apply to Utility Systems serving residential or non-agricultural commercial development within the S.R. 70 Properties, and shall not apply to Utility Systems serving biofuel production, energy or alternative energy production or uses related to biofuel or energy production, or serving agriculture or agriculture related uses, or serving a surface water cleansing, retention or treatment facility.

### **ARTICLE THREE**

#### **Creation of an MSTU for S.R. 70 Properties.**

1. Upon approval of the Settlement Agreement by the FPSC, Evans shall submit a written petition to the Board to create an MSTU for the S.R. 70 Properties pursuant to the MSTU Ordinance. Formation of the MSTU at this time, while all of the land located within the S.R. 70 Properties is owned by a single land owner, is relatively easy, while formation of the MSTU after property as been conveyed to third parties would be more difficult. The parties hereto acknowledge and agree that the formation of the MSTU, in and of itself, does not obligate Bluefield to construct a Utility System to provide domestic water, wastewater and/or reclaimed water to a future residential, or non-agricultural commercial development or developments, within the S.R. 70 Properties, nor does it obligate the District to exercise its option to acquire such a Utility System. Formation of the MSTU at this time simply makes the foregoing possible. Formation of the MSTU does not constitute the exercise of the District's option.
2. Upon receipt of the written petition from Evans, the Board shall follow the procedures set forth in the MSTU Ordinance to create an MSTU, the boundaries of which shall be the S.R. 70 Properties and which shall be titled the "S.R. 70 Properties MSTU". The services to be provided in the MSTU shall be water, wastewater and reclaimed water utilities and other infrastructure improvements serving the S.R. 70 Properties. The County shall not levy or assess any taxes or special assessments within the MSTU until such time as Bluefield has provided its Option Notice to the District and the District has exercised its Option Acceptance. The County shall record a notice of MSTU creation, subject to this Agreement, against the S.R. 70 Properties.
3. Upon creation of the MSTU by the Board, Bluefield shall submit to the District an estimated cost for the maximum hypothetical build-out of water, wastewater and reclaimed

water facilities and other infrastructure improvements to serve the S.R. 70 Properties. The estimate shall be an estimate only and shall not be binding on any party. The District shall review the estimate and provide comments to Bluefield within ten (10) business days of receipt. Bluefield shall consider any comments received from the District and submit a final estimate to the County together with Evans', or Evans' affiliates as applicable, as owners of the S.R. 70 Properties, written consent to and approval of the levy of an ad valorem bond issue, and/or a special assessment bond issue, by the MSTU, as provided below. Upon receipt of the final estimate and written consent and approval by Evans, the Board, sitting as the governing body of the MSTU, shall approve an ad valorem bond issue in an amount estimated to fund the final estimate, estimated costs of issuance and a reasonable contingency, and submit the approved bond issue to approval of the voters residing on the S.R. 70 Properties, if any. If no voters reside on the S.R. 70 Properties, Evans, or its Affiliates, as applicable, as the property owner, shall provide its written consent to and approval of the bond issue.

4. If the bond issue is approved by the voters, or Evans, if no voters reside on the S.R. 70 Properties, then the bond issue shall be deemed approved, and the County may file a validation complaint in the Circuit Court to validate the bond issue. Evans shall cooperate with the County in prosecuting the validation complaint. In the event the bond issue is validated, then the County shall defer issuance of the validated bonds until such time as the District has exercised its Option Acceptance. Thereafter, the County, sitting as the governing body of the MSTU, may levy ad valorem taxes within the MSTU for the specific purpose of funding the validated bonds, and may issue the validated bonds in separate tranches and varying amounts as deemed necessary or useful from time to time to acquire or construct water, wastewater and reclaimed water facilities to provide service to the S.R. 70 Properties. If the bond issue is rejected by the voters, then the MSTU may levy a special assessment to provide funding of the bond issue, as provided in this Article Three.

5. The County, sitting as the governing body of the MSTU, may in combination with, or alternatively, levy a special assessment against the S.R. 70 Properties to fund the bond issue. Evans, and its Affiliates, as applicable, as owners of the S.R. 70 Properties, consent to and approve any such special assessments of the MSTU to fund, singly or in combination with ad valorem taxes, the bond issue.

6. Notwithstanding anything herein to the contrary, the validated bonds shall be secured solely by the ad valorem taxes or special assessments levied within the MSTU for the specific purpose of funding the validated bonds, and there shall be no general County or District backup pledge or security for repayment of the validated bonds, including, without limitation, no full faith and credit pledge of general County revenues, no County pledge to budget and appropriate revenues, and no District pledge of revenues.

7. If this Agreement is terminated or becomes unenforceable for any reason, and the MSTU has been formed but no bonds have yet been issued by the MSTU, then the County shall abolish the MSTU.

## ARTICLE FOUR

### Water, Wastewater, and Reclaimed Water Systems.

1. Bluefield has the right, but not the obligation, to design, permit, construct and operate Utility Systems to provide water, wastewater and reclaimed water service to customers within the S.R. 70 Properties. If Bluefield decides to construct the Utility Systems, then Bluefield will deliver written notice to the County and the District of its intention together with a preliminary design report, a non-binding estimated timetable for the design, permitting and construction of the Utility Systems and a non-binding estimate of cost (the "Option Notice"). The non-binding estimate of cost shall include an estimated Fair Market Value of any Real Property upon which the Utility Systems will be built, including fee title property and any utility easements for utility lines and/or lift stations. Upon receipt of the Option Notice, the County shall have until the first Board meeting held at least thirty (30) days after receipt of the Option Notice (e.g., if the Option Notice is received on September 1, the first Board meeting held after September 30 would apply) to determine whether to exercise the option for the MSTU to fund the design, permitting and construction of the Utility Systems by Bluefield and for the District to accept the Utility Systems for ownership and operation after completion of the construction (the "Option Acceptance"). The Option Acceptance shall be delivered to Bluefield and Evans within five (5) business days of approval. If the Board of County Commissioners does not approve the exercise of the foregoing option at the first Board meeting held at least thirty (30) days after receipt of the Option Notice, then the District's and the County's option to purchase such Utility Systems described in the Option Notice shall be deemed terminated and unenforceable, and this Agreement shall have no further force or effect with respect to such Utility Systems; provided that if Bluefield does not commence design, permitting and construction of the Utility Systems on or before the dates set forth in the Option Notice timetable, then the District's and the County's option with respect to such Utility Systems shall be reinstated and applicable thereafter to such Utility Systems. In such event, Bluefield may at any time thereafter deliver to the County a new notice of its intention to construct the Utility Systems, along with an updated preliminary design report, non-binding estimated timetable for the design, permitting and construction of the Utility Systems and non-binding estimate of cost (such notice shall also be referred to as an "Option Notice"). Upon receipt of such Option Notice, the County shall again have until the first Board meeting held at least thirty (30) days after receipt of the Option Notice (e.g., if the Option Notice is received on September 1, the first Board meeting held after September 30 would apply) to determine whether to exercise the option for the MSTU to fund the design, permitting and construction of the Utility Systems by Bluefield and for the District to accept the Utility Systems for ownership and operation after completion of the construction (the "Option Acceptance"). If the Board of County Commissioners does not approve the exercise of the foregoing option at the first Board meeting held at least thirty (30) days after receipt of the Option Notice, then the District's and the County's option to purchase such Utility Systems described in the Option Notice shall again be deemed terminated and unenforceable, and this Agreement shall have no further force or effect with respect to such Utility Systems, provided that if Bluefield does not commence design,

permitting and construction of the Utility Systems on or before the dates set forth in the updated Option Notice timetable, then the District's and the County's option with respect to such Utility Systems shall be again reinstated and applicable thereafter to such Utility Systems. In such event, Bluefield may again at any time thereafter deliver to the County a new notice of its intention to construct the Utility Systems, as set forth above, and the parties shall repeat the procedure set forth above.

2. Upon delivery of the Option Acceptance to Bluefield and Evans, Bluefield will commence design of the Utility Systems and the MSTU will commence the process for issuing the validated bonds to fund the design, permitting and construction of the Utility Systems. The MSTU's obligation to fund shall be undertaken on a best efforts basis, subject to legal compliance and marketability of the bonds. Bluefield and Evans shall reasonably cooperate with the MSTU for the issuance and marketing of the bonds. Any bonds issued by the MSTU will be funded by ad valorem taxes or special assessments levied only on that portion of the S.R. 70 Properties which the Utility Systems are designed to serve. In the event the MSTU is not able to issue and market the bonds within one hundred fifty (150) days of delivery of the Option Acceptance, in an amount sufficient to finance the entire estimated cost of construction as set forth in the Option Notice, the County shall provide written notice to Bluefield and Evans, and upon receipt of such notice, Bluefield and Evans may (i) terminate this Agreement at which time the County and the District option to acquire shall terminate; (ii) defer the MSTU's obligation to issue and market the bonds to a set date to provide the MSTU additional time to issue and market the bonds successfully, absent which Bluefield and Evans may exercise their right under (i) above, or (iii) negotiate an alternative funding mechanism with the MSTU, failing which Bluefield and Evans may exercise their right under (i) above. If such bond financing will impose interest rates higher than what Evans would pay to finance the construction without the bond financing, or if such bond financing will require terms or conditions which are commercially unreasonable or will cause Evans expenses which are materially higher than if it financed the construction without bond financing, then Evans may elect to finance the construction in lieu of the MSTU funding the construction with bond financing by providing written notice to the MSTU within thirty (30) days of the date established by the MSTU for marketing the bonds (the "Evans Financing"). The Evans Financing shall be assumable by the MSTU upon conveyance of the Utility Systems to the District.

3. After receipt of the Option Acceptance, Bluefield will select a reputable Lead Engineer. The Lead Engineer will serve as lead agent for Bluefield in the design, permitting, and construction for the Utility System. Bluefield may independently pursue the necessary permits for the Utility Systems so long as Bluefield does so with notice to and in coordination with the District. The provisions of Paragraph 2 of the Settlement Agreement and Articles Six and Seven below shall be applicable.

4. Using guidance from the Lead Engineer and/or such other firms as Bluefield may in its sole discretion select with the approval of the District, Bluefield may plan for the construction of the Utility Systems needed in order to serve the Property, in phases, based upon unit absorption within the S.R. 70 Properties. Bluefield's engineers may study, make recommendations to, and design, under the direction of Bluefield, systems necessary in order to meet the projected potable water

demand of the S.R. 70 Properties, through build-out, including provision for the appropriate "peaking" of demand on the systems. Such will include raw water supply services, including a study of the hydrogeologic framework system, an analysis of the raw water supply options, wellfield design, wellhead protection, and water plant concentrate disposal. In addition to the design and permitting of the potable water treatment plant and appurtenant facilities, the Engineer of Record shall be responsible for design and construction of all potable water transmission systems, such storage tanks and repump facilities as may be necessary, when necessary, and the location of such systems.

5. Similarly, appropriate wastewater collection, transmission, treatment, and disposal systems (including reclaimed water systems) shall be built and shall be designed, permitted and constructed by Bluefield. Any Utility Systems Master Plan prepared by Bluefield will include reclaimed water systems, and such reclaimed water systems will become part of the Utility Systems.

6. Bluefield shall have the sole option of preparing plans and specifications for the expansion of the Utility Systems, in phases (collectively, the "Phasing Plan"), subsequent to the initial Closing, and delivering the Phasing Plan to the District as part of the Closing process. In the future, when it is time to expand the Utility Systems, or parts thereof, the party doing so (whether the District or Bluefield), will ensure that, to the extent reasonable, permittable and feasible at such time, such construction follows said pre-approved Phasing Plan in completing such construction. The District and Bluefield will work together in good faith to effectuate the intent of the Phasing Plan. Bluefield and/or Evans (or Evans' successors or assigns to the S.R. 70 Properties) may amend the Phasing Plan from time to time as may be necessary to address changes to the development plans for the S.R. 70 Properties, and shall deliver such amended Phasing Plans to the District for review and approval, which approval will not be unreasonably withheld. Notwithstanding any other provision contained herein, if the District has accepted the first phase of the Phasing Plan, then the District cannot refuse to exercise its Option to take future phases of the Phasing Plan, thereby preventing the connection of such future phases to the first phase. Conversely, and notwithstanding any other provision contained herein, if the District does not exercise its Option with respect to the first phase of a phased utility system, then the District shall not have an Option to acquire future phases of that utility system.

7. If Bluefield conveys to the District any Utility Systems (ie. water or wastewater plants) which are designed and constructed with extra capacity in order to provide service to future phases of development, then upon development of such future phases, Bluefield, the County and the District shall proceed with the design, construction, funding, and turnover of such expansion of the Utility Systems (i.e. expansions of utility lines), in accordance with this Agreement and the District's Extension Policy. If Bluefield conveys to the District any Utility Systems (i.e. water or wastewater plants) which are designed to be expanded in order to provide service to future phases of development, then upon development of such future phases, the District shall expand such Utility Systems as needed in order to provide service to such future phases, in accordance with this Agreement and subject to compliance with the District's Extension Policy. Bluefield, Evans or Evans Utilities may enforce the provisions of this

paragraph by specific performance and/or any other remedy available at law or equity.

8. Bluefield shall further have the option of developing a schedule or schedules for future expansion of the Utility Systems to serve future lots and/or units within the Property, including the design, permitting, and construction thereof. Said schedule shall focus on "milestones" for such future construction, based upon the absorption of lots and/or new units constructed within the S.R. 70 Properties.

## **ARTICLE FIVE**

### **Matters of Financing**

1. If the County has provided Bluefield the Option Acceptance and the conditions for funding the Utility Systems by the MSTU in Article Four above have been satisfied and this Agreement has not been terminated, then Bluefield shall initially fund the design, permitting and construction of the Utility Systems, subject to monthly reimbursement by the MSTU from the bond funds received by the MSTU pursuant to Article Three and Article Four above. It shall be Bluefield's option as to how best to achieve such initial funding. Bluefield shall submit written monthly reimbursement requests to the District for allowable Costs of Construction, on forms and with such backup documentation as reasonably required by the District. Reimbursement requests approved by the District shall be paid to Bluefield by the MSTU in accordance with the Local Government Prompt Payment Act. The MSTU shall not be obligated to reimburse Bluefield for reimbursement requests in excess of the net bond funds received by MSTU to fund the Utility Systems. At the completion of construction, Bluefield and Evans shall transfer the Utility Systems to the District in accordance with Article Ten below.

2. In no event shall the District's own funds, revenues from the District's other customers, or general County funds be utilized to fund the Cost of Construction or fund the reimbursement of Bluefield for the Cost of Construction. Bluefield acknowledges that the County and the District do not guarantee that the reimbursement mechanism set forth above will fully reimburse Bluefield for the Cost of Construction. If the reimbursement mechanism set forth above does not fully reimburse Bluefield for the Cost of Construction, then the District shall adjust its rate schedule for the S.R. 70 Properties such that the rates, fees and charges for the S.R. 70 Properties shall be sufficient to reimburse Bluefield for any Cost of Construction not already reimbursed to Bluefield, including reasonable carrying costs on the unreimbursed Costs of Construction. Connection fees that may have been collected by Bluefield for the S.R. 70 Properties shall offset and reduce the Cost of Construction to be reimbursed by the District.

3. In order to ensure fair apportionment of the Cost of Construction of the Utility Systems among those third parties within the S.R. 70 Properties benefiting therefrom, the parties hereto covenant and agree that the financing of and the books and records of the Utility Systems shall be kept in such a manner that the Utility Systems serving the S.R. 70 Properties "stand on its own," and not be subsidized from other District utility system revenues; conversely, it is also the intent

of the parties that revenues derived from utility services provided within the S.R. 70 Properties not be utilized to subsidize District utility customers, or others, outside of the S.R. 70 Properties, provided the District may commingle funds on deposit for all of its utility systems. At such time as Bluefield has been fully reimbursed for the Cost of Construction of the Utility Systems at build-out, the District may consolidate utility service to the S.R. 70 Properties with utility service to the other properties within the District.

## **ARTICLE SIX**

### **Matters of Permitting**

Bluefield shall prepare, submit, process and secure all necessary permits for the construction and/or expansion of the Utility Systems from the appropriate regulatory agencies for the construction and/or expansion of the Utility Systems. The foregoing notwithstanding, if the District constructs any expansion of the Utility Systems after such Utility Systems have been conveyed to the District, then the District shall prepare, submit, process and secure all necessary permits for such expansion. Bluefield shall not obtain operating permits for the Utility Systems (See Article Nine below). For each phase of construction of the Utility Systems, Bluefield shall submit to the District one set of finalized engineering plans and specifications prepared and sealed by a professional engineer registered in the State of Florida. The plans and specifications shall show the Utility Systems, in phases, as appropriate. Bluefield shall cause its Lead Engineer to include in the submittal to the District specifications and shop drawings as required by the appropriate regulatory agencies governing the materials to be used and the method and manner of installation. The plans and specifications must be consistent with the Utility Standards and are subject to review and approval by the District. Bluefield's design engineer shall make such changes to the plans and specifications as reasonably required by the District to bring them into conformity with the Utility Standards. The District will provide comments, if any, to Bluefield within fifteen (15) working days of receipt of each submittal or resubmittal. If the District does not provide any comments within the foregoing time period, the District will be deemed to have accepted such submittal or resubmittal. After the District has accepted the plans and specifications, Bluefield may submit them for approval to the appropriate regulatory agencies. No construction shall commence until the appropriate regulatory agencies approve such plans and specifications and all required permits are acquired. Copies of all such submittals to the appropriate regulatory agencies shall be provided to the District's Utility Director when submitted to the regulatory agencies. When the permits and approved plans and specifications are returned by the appropriate regulatory agencies to Bluefield, it shall submit to the District a copy of the permit and the approved plans, specifications and shop drawings. The District hereby consents to and will cooperate with Bluefield in preparing, submitting and processing the permit applications.

## **ARTICLE SEVEN**

### **Matters of Construction**

1. Bluefield shall survey, design, test, permit, construct and install the Utility Systems for

purposes of providing utility services to the S.R. 70 Properties. The Utility Systems shall be of sufficient size to serve the occupants of the S.R. 70 Properties, however, such systems may, at Bluefield's option, be constructed in phases, all of which shall at time of construction comply with the engineering plans and specifications approved by the District in accordance with Article Six above, and the requirements of all regulatory agencies having jurisdiction over the development of Utility Systems.

2. After the approval of the plans and specifications by the appropriate regulatory agencies, Bluefield, or the Engineer of Record, shall set up a preconstruction conference with the Engineer of Record, utility contractor, and appropriate building official of St. Lucie County and the Utility Director of the District, or his/her designee. The District shall be given a minimum of five (5) working days notice of any preconstruction conference. Additionally, five (5) working days notice prior to the commencement of the construction of the improvements shall be given to the District.

3. During the construction of the Utility Systems, District shall have the right to inspect such construction to determine compliance with the approved plans and specifications (separate from inspection by the appropriate building officials of St. Lucie County). Inspection by the District shall in no way relieve Bluefield of its responsibility to construct the Utility Systems in accordance with the approved plans and permits. The Engineer of Record shall also have the obligation to inspect the construction to determine compliance with the approved plans and specifications. Bluefield shall cause its contractor(s) to correct any deficiencies identified by the District or the Engineer of Record in their inspections and testing. The District Utility Director or his/her designee, the Engineer of Record, and any appropriate utility contractor shall be present for all standard engineering tests to determine that the Utility Systems are being constructed in accordance with the approved plans and specifications, and good engineering practices.

4. Prior to any modification of the Utility Systems' plants or facilities, any improvements to or expansion of said plants or facilities, or improvements to or expansion of the water distribution and wastewater collection systems by Bluefield, Bluefield shall provide the design construction documents, including, but not limited to, plans and specifications to the District for review and approval in accordance with Article Six above. During the construction or expansion of or improvement to the Utility Systems, the District, its agents and employees, shall have the right to inspect the construction, improvements, or expansion for compliance with the approved plans, specifications and shop drawings. Bluefield shall provide reasonable prior notice to the District of all construction to ensure the District's right to inspect the construction.

5. The District shall reasonably cooperate with Bluefield so that the Utility System may be constructed in a timely manner, in accordance with Bluefield's needs. Failure of the District to timely act with respect to a submittal, request or notice from Bluefield shall constitute grounds for Bluefield to proceed without District review and approval.

6. Within ten (10) working days of completion of construction of any phase, Bluefield shall cause the Engineer of Record to submit to the District (i) a copy of the signed Certification of



Completion submitted to the appropriate regulatory agencies, (ii) three (3) sets of "as-built" plans, including hard copy and electronic media, prepared and certified by the Engineer of Record, and (iii) such other documentation reasonably requested by the District. All facilities and equipment installed by Bluefield shall be warranted by Bluefield's contractor(s) for one (1) year from date of final FDEP certification (or in the case of lift station pumps and motor assemblies, two (2) years from the date they are first started up), which warranties shall be assignable to the District.

7. The County shall allow Bluefield to use County rights of way as are necessary for purposes of the design, permitting, installation, construction and completion of the Utility Systems, provided Bluefield must submit standard rights of way applications to the County. Nothing contained in this section shall be construed to be a waiver by the County or the District of any protections under sovereign immunity, Section 768.28, Florida Statutes, or any other similar provision of law. Nothing contained herein shall be construed to be a consent by the County or the District to be sued by third parties in any matter arising out of this or any other agreement.

8. The Utility Systems to be designed, permitted and constructed by Bluefield are intended to be used to serve customers within the S.R. 70 Properties and are not intended to provide service to any properties located outside thereof. Bluefield shall have no obligation to oversize its facilities for the benefit of others, and is not required to do so by the District. Bluefield shall site the Utility System treatment facilities at a location(s) convenient to Bluefield, subject to review and comment by the District. Notwithstanding anything above, Bluefield acknowledges that the District may, but is not obligated to, utilize the Utility System, after transfer from Bluefield, to form the backbone of a sub-regional utility system that may eventually provide utility service outside the S.R. 70 Properties, provided the capacity of the Utility System transferred to the District shall be reserved for use by customers within the S.R. 70 Properties. Bluefield acknowledges that the District has the right to expand the capacity of the Utility Systems transferred by Bluefield to the District, and the District has the right to serve customers located outside the S.R. 70 Properties from any such expanded capacity (and may utilize on a temporary interim basis capacity in the Utility Systems while expanded capacity is being competed), provided that the Reserved Capacity is made available to customers within the S.R. 70 Properties when needed.

9. During the construction of the Utility Systems, Bluefield shall maintain and provide the District with evidence of the following insurance coverage: (a) a builder's all risk insurance policy, in an amount not less than one hundred percent (100%) of the replacement cost of the Utility System improvements being constructed, with standard conditions, naming the District as an additional insured, (b) commercial general liability insurance in an amount not less than One Million Dollars (\$1,000,000.00) combined single limit for bodily injury and property damage per occurrence, (c) automobile liability insurance in an amount not less than \$500,000 combined single limit for bodily injury and property damage per occurrence and (d) workers' compensation insurance providing Florida statutory (F.S. 440) limits to cover all employees and include Employers Liability coverage with limits of not less than \$500,000 for accidents or disease. Effective upon the termination of the builder's all risk insurance policy, Bluefield shall

maintain and provide the District with evidence of property casualty insurance in an amount not less than one hundred percent (100%) of the replacement cost of the Utility System improvements constructed, with standard conditions, naming the District as an additional insured. Each of the policies shall also provide that the District will be given a thirty (30) day written notice of cancellation.

10. Bluefield shall indemnify and hold the District, the County, and their agents, employees, elected officers and representatives and each of them (hereinafter collectively and for the purposes of this paragraph, referred to as "District"), free and harmless at all times from and against any and all claims, liability, expenses, losses, costs, fines and damages, including attorney's fees, and causes of action of every kind and character against the District by reason of any damage to property or the environment, or bodily injury (including death) incurred or sustained by any party hereto, or of any party acquiring any interest hereunder, any agent or employee of any party hereto or of any party acquiring an interest hereunder, and any third or other party whomsoever, or any governmental agency, arising out of or in incident to or in connection with the work of all contractors performing work on the Utility Systems (the "Contractors"), the condition of the premises, the Contractors' acts, or omissions or operations hereunder, or the performance, non-performance or purported performance of the Contractors of any breach of the terms of this Agreement; provided however that Bluefield shall not be responsible to the District or the County for damages resulting out of bodily injury or damages to property which Bluefield can establish as being attributable to the sole negligence of the District, the County, or its respective agents, servants, employees or officers. Bluefield must further agree to hold harmless and indemnify the District and the County for any fines, citations, court judgments, insurance claims, restoration costs or other liability resulting from the Contractors' activities on the project, whether or not the Contractors were negligent or even knowledgeable of any events precipitating a claim or arising as a result of any situation involving such Contractors' activities. This indemnification and hold harmless survives the Closing for a period of one (1) year after the date of the acceptance of Utility Systems by the District. This indemnification and hold harmless is in addition to any other legal remedies that may be available to the District and the County.

## **ARTICLE EIGHT**

### **Startup of the Utility Systems**

Upon the completion of construction of the Utility Systems, or any phase or portion thereof, it shall be the obligation of Bluefield to ensure startup of the Utility Systems, to ensure that they have been constructed in accordance with the permits and Lead Engineer's design and construction plans, and that the Utility Systems operate as intended. Bluefield shall provide a minimum of ninety (90) days testing of any water or wastewater treatment plant facilities, at load, to ensure that they operate as intended. After the appropriate startup and testing procedures have been completed, the Engineer of Record shall issue its notice of substantial completion (the "Completion Certification"), subject to any "punch list" items and, thereafter, oversee the final

completion of such punch list items. The Engineer of Record shall further certify completion of the "punch list" items. No customer may be connected to the Utility Systems prior to issuance of the Completion Certification.

#### **ARTICLE NINE**

##### **Operating Permits.**

After issuance of the Completion Certificate, the Engineer of Record shall apply for and secure all necessary operating permits and approvals to operate the Utility Systems and provide utility service to customers on behalf of the District and Bluefield. Bluefield and the District shall cooperate with the Engineer of Record as necessary to obtain the required permits and approvals.

#### **ARTICLE TEN**

##### **Transfer of Utility Systems to the District**

1. Upon issuance of the Completion Certificate for the initial phase of the Utility Systems as approved by the District, the District shall then close on its acquisition of all parts of the Utility Systems for which the Completion Certificate has been issued. Bluefield may choose to proceed with subsequent phases of construction, and the District may exercise its option to acquire such future phases in accordance with this Agreement, in which event the District shall close on such subsequent phases of the Utility Systems as they are placed into service and Completion Certificates are issued for such phases. Until such time as the Utility Systems are transferred to the District, Bluefield shall operate the Utility Systems in accordance with its FPSC certification and tariff.

2. Upon receipt of the Completion Certificate, the District shall acquire from Bluefield and Evans and Bluefield and Evans shall transfer to the District, the Transfer Assets upon the terms, and subject to the conditions set forth below. It is understood by the parties hereto that this portion of the terms and conditions is prospective, and that the statements and conditions contained below will be true and correct as of each Closing Date. Thus, by way of example, several of the Exhibits referenced below do not exist as of today, but they will be created and will exist as of each Closing Date.

The Transfer Assets shall include:

- i. All assets, business properties, and rights, both tangible and intangible, of the "Utility Systems" including, but not limited to:
- ii. The Real Property.
- iii. All easements, licenses, prescriptive rights, rights-of-way and rights to use public and private roads, highways, streets and other areas for the construction, operation and maintenance of the Utility Systems.

- iv. All water treatment plants, water supply and distribution facilities, wastewater collection, treatment and disposal facilities, including reclaimed water systems, of every kind and description whatsoever, including but not limited to pumps, plants, tanks, transmission mains, distribution mains, force mains, collection lines, supply pipes, irrigation quality water facilities, valves, meters, meter boxes, service connections and all other physical facilities, equipment and property installations used in connection with the Utility Systems, together with all additions or replacements thereto.
- v. All authorizations, immunities, privileges, permits, license rights, consents, grants, ordinances, leaseholds, and all rights to construct, maintain and operate the Utility Systems and its plants and systems for the procuring, treatment, storage and distribution of potable water and the collection, treatment and disposal of sanitary wastewater, including, but not limited to, reclaimed water systems, and every right of every character whatever in connection therewith, and the obligations thereof; all agencies for the supply of water to the Utility System or others; all water rights, flowage rights and riparian rights relating to the operation of the Utility Systems, and all renewals, extensions, additions or modifications of any of the foregoing.
- vi. All items of inventory owned by or on behalf of the Utility Systems on the Closing Date.
- vii. All supplier lists, records, prints, plans, engineering reports, surveys, specifications, shop drawings, equipment manuals, and other information reasonably required by District to operate the Utility Systems, in the possession of Bluefield or its employees, representatives or agents in both electronic and hard copy forms.
- viii. All sets of record drawings, including as-built drawings, showing all facilities of the Utility Systems, including all original tracings, sepias or other reproducible materials, and all rights under the construction contracts, including all construction and equipment warranties.
- ix. All rights under any utility developer agreements assumed by District. This information shall be provided to District at least ten (10) working days prior to Closing.
- x. All rights under the contracts and leases assumed by District. This information shall be provided to District at least ten (10) working days prior to Closing.
- xi. All customer information and customer records, including records relating to connection fees or capital charges paid and customer deposits, if any.
- xii. All connection fees or capital charges not applied against the Cost of Construction and any customer deposits.
- xiii. All obligations assumed by the District related to the Utility Systems transferred at Closing.

3. At Closing, Bluefield, Evans Utilities and Evans shall represent to the District the following:
  - A. Bluefield has exclusive possession, control, and, to its actual knowledge, ownership and good and marketable title to all Real Property being transferred to the District.
  - B. Bluefield has exclusive ownership, possession, control, and good and marketable title to all Transfer Assets.
  
4. At Closing, District will represent to Bluefield, Evans Utilities and Evans the following:
  - A. All necessary public hearings required to authorize District's acquisition of the Utility Systems will have been duly held prior to each Closing and all appropriate governmental actions required to be taken by District will have been duly taken prior to each Closing Date.
  - B. District shall, subsequent to each Closing, and consistent with prudent business practices, industry standards applicable thereto, and the requirements of the appropriate governmental agencies having jurisdiction over the assets and businesses of the Utility Systems, and the capacity and capability of the Utility Systems acquired, provide water, sanitary wastewater, and reclaimed water services to all properties, improvements thereon and the occupants thereof, located within the section of the S.R. 70 Properties which the Utility Systems were designed to serve, after connection has been made, in a uniform and nondiscriminatory manner.
  - C. That the Utility System's capacity has been reserved for that portion of the S.R. 70 Properties intended to be served by the Utility System until buildout of the properties.
  
5. Bluefield shall cause to be issued and delivered a current title insurance commitment issued by a title company licensed to do business in the State of Florida, covering all fee title interests in the Real Property, which shall be in an amount equal to the fair market value of the Real Property at the time of such conveyance. The cost of the title insurance commitment and title insurance shall be paid by Bluefield as part of the Cost of Construction. The title insurance commitment shall commit the insurer to issue owner's title insurance policies to the District covering all fee title interests in the Real Property substantially in accordance with the ALTA Standard Owner's Form OF6, with Florida modifications, reflecting title to the Real Property to be marketable or insurable, except for any permitted encumbrances, the standard printed exceptions usually contained in an owner's title insurance policy, and the standard exclusions from coverage; provided, however, that the title insurance company shall delete the standard exceptions customarily deleted for such items as materialman's liens, survey, and mechanic's

liens. Bluefield shall execute or cause to be executed, at, or prior to, Closing, in favor of the title insurance company, the appropriate mechanic's lien affidavit and "Gap" affidavit sufficient to allow the title insurance company to delete all standard exceptions addressed by such affidavits. Any survey performed shall be updated as necessary in order to eliminate survey exceptions from the title insurance policy. Bluefield shall deliver, promptly after Closing, the title insurance policy.

6. The obligations of each party to close the transaction(s) contemplated above are subject to the conditions that, at or before the Closing Date:

- A. Neither party shall be prohibited by decree or law from consummating the transaction.
- B. There shall not be pending on the Closing Date any legal action or proceeding that prohibits the acquisition or sale of the Transfer Assets or prohibits District or Bluefield from closing the transaction or District from acquiring the Utility Systems, as appropriate, or that inhibits or restricts in any material manner District's use, title, or enjoyment of the Transfer Assets.
- C. District shall have held a public hearing as required pursuant to Section 125.3401, Florida Statutes, and shall have ratified and approved the execution of this Agreement and authorized the acquisition of the Transfer Assets and copies of the Resolutions evidencing such ratification and approval have been delivered to Bluefield within ten (10) working days. Bluefield shall cooperate with the District and provide such information necessary to comply with the provisions of Section 125.3401, Florida Statutes.
- D. Each of the parties hereto shall have performed all of the undertakings required to be performed by them under the terms of this Agreement prior to or at Closing.

7. Prior to the Closing Date, the parties covenant to each other, and shall conduct themselves, as follows:

Bluefield shall either furnish to District, or provide District with ready access to the following, to the extent they are in the possession of Bluefield, its employees, representatives, or agents:

- i. Copies, in both hard copy and electronic form, of all plans and specifications showing the Utility Systems as presently constructed (as-built with State Plain Coordinates), including any under construction, together with a detailed engineering map showing the water treatment plants, water supply and distribution facilities, and appurtenances as now constructed, and all other facilities constituting the Utility Systems.

- ii. Copies of developer agreements identified above.
- iii. Copies of the contracts and leases identified above.
- iv. Copies of permits, applications, or other documents, together with effective dates and expiration dates (if any), demonstrating approval of the facilities of the Utility Systems by all applicable governmental authorities, including, as applicable: (a) the FDEP, (b) the United States Environmental Protection Agency, and (c) the South Florida Water Management District.
- v. A recent survey of any fee title interest in the Real Property being conveyed, as prepared by a Florida licensed surveyor, and certified to District and Bluefield, in accordance with the minimum technical standards adopted by the Florida Society of Professional Land Surveyors.
- vi. Copies of the easements, licenses, prescriptive rights and rights-of-way owned and used by Bluefield for the construction, operation and maintenance of the Utility System.
- vii. A copy of all environmental permits and applications for the Utility Systems.

8. Each transfer transaction shall be closed neither sooner than ninety (90) calendar days nor later than one hundred eighty (180) calendar days from the date that the District receives the Certificate of Completion (such date to be known as the "Closing Date"), unless advanced or extended by mutual written agreement of the parties, at a location mutually acceptable to both parties.

A. At Closing:

- i. District shall acquire the phase of the Utility Systems as provided for herein.
- ii. Title to all fee title interests in the Real Property shall be conveyed to the District by special warranty deed free of all claims, liens, or mortgages, whatsoever.
- iii. Bluefield shall assign its right, title and interest in all easements and rights-of-way relating to the Utility Systems.
- iv. Bluefield and District shall enter into separate Assignment and Assumption Agreements with respect to the (i) developer agreements, (ii) contracts and (iii) regulatory permits.
- v. Real Property and personal property taxes on the Transfer Assets and Utility Systems, and any other applicable taxes, if any, shall be prorated as of the Closing Date and Bluefield shall be required to pay its pro rata share at Closing. All taxes and assessments accrued or owed by Bluefield as of the Closing Date with respect to the Transfer Assets shall be paid by Bluefield. All taxes and assessment

accruing after the Closing Date with respect to the Transfer Assets shall be paid by the District.

- vi. Subject to compliance with employee screening and normal human resources procedures, current employees of Bluefield engaged in the operation of the Utility Systems shall be offered employment by District at a rate of pay approved by the District and with equal benefits then offered to District employees, or, if District contemplates entering into an Operating Agreement for the Transfer Assets, District shall require its contract operator to offer such employment to the current employees of Bluefield at the pay rate set forth in the contract operator agreement for a term of at least one (1) year with the same benefits as provided to the other contract operator employees, subject to compliance with the contract operator's human resources procedures.
- vii. Connection Charges or allowance for funds prudently invested charges received by Bluefield prior to the Closing Date shall be retained by Bluefield in partial reimbursement of the Cost of Construction. Bluefield shall not collect any charges after the Closing Date, provided Bluefield provides the District verified accounting of such receipts by customer.
- viii. All transfers required or necessary to carry out the intent and purpose of this Agreement shall take place, unless waived or extended by mutual consent.
- ix. All bills for services, materials and supplies rendered in connection with the operation of the Utility Systems prior to Closing, including but not limited to electricity for a period up to and including the Closing Date, shall be paid by Bluefield. All such bills for services, materials and supplies rendered after Closing shall be paid by the District.
- x. Bluefield shall transfer and District shall assume the liability for all customer deposits, if any, and credit shall be given to the District therefore.
- xi. To the extent that Bluefield is required to reasonably expend monies in connection with the Closing process, such expenditures shall be part of the Cost of Construction and Bluefield shall be entitled to reimbursement therefore in accordance with the approved reimbursement mechanism.
- xii. The District shall provide Evans with written confirmation that the Utility System's capacity has been reserved for that portion of the S.R. 70 Properties intended to be served by the Utility System, to the extent the capacity was available or reserved before transfer to the District.
- xiii. The MSTU shall reimburse Bluefield in the amount of the Fair Market Value of any Real Property conveyed to the District at Closing by Bluefield, as such Fair Market Value is determined in accordance with Article Ten, Paragraph 9 below. If such Real



Property is conveyed to the District by Evans, or another entity, then Evans, or such other entity, shall receive such reimbursement from the MSTU.

- B. On and after the Closing, and in recognition that until build-out of the S.R. 70 Properties, customer revenues will not be sufficient to cover the entire cost of operating the Utility Systems, the MSTU shall levy taxes or operating assessments on the S.R. 70 Properties to cover the difference between such customer revenues and the District's actual monthly costs to operate the Utility Systems, including, but not limited to operating and maintenance costs, renewal and replacement costs, and administrative and general costs of operating and maintaining the Utility Systems ("Operating Costs"). The District's Operating Costs shall not exceed what is reasonable and customary for water and wastewater utilities.
- C. Within forty-five (45) days after the Closing, Bluefield shall file an application with the FPSC to approve the transfer of the Utility Systems to the District and to remove that portion of the S.R. 70 Properties then served by the Utility Systems from Bluefield's Utility Territory, and shall diligently pursue securing an order of the FPSC effectuating such request. If a utility system is constructed and transferred to the District in phases, then each phase shall be removed from Bluefield's Utility Territory as it is turned over to the District.

9. For the purpose of determining the Cost of Construction, the "Fair Market Value" of any Real Property conveyed to the District as part of the Utility Systems, shall be included in such Cost of Construction. At or before Closing, the "Fair Market Value" of any such Real Property shall be determined as follows: (a) an amount mutually agreed to by the parties; or (b) a value established by a qualified appraiser or appraisers selected by the parties, as provided herein. If the parties cannot agree upon an appraiser, then each party shall select a qualified appraiser, who shall then each prepare an appraisal. If the values determined by those appraisals are within five percent (5%) of the higher appraisal amount, then the fair value shall be the average of the two appraisals. If the difference is greater than five percent (5%), then the two qualified appraisers shall name a third qualified appraiser, who shall determine which of the two appraisals more accurately represents fair value, and that appraisal shall constitute fair value. If two appraisers are engaged, each party shall bear the cost of its own appraiser. If a third appraiser is engaged, then the parties shall equally share the cost of the third appraiser. For purposes of this Agreement, the term "qualified appraiser" shall mean an appraiser certified by the Florida Department of Business and Professional Regulation. For the purpose of determining the Fair Market Value of the Real Property, any buildings or other improvements to the Real Property, the cost of which is already included in the Cost of Construction, shall be

excluded from the Fair Market Value of the Real Property. Any buildings or other improvements to the Real Property, the construction of which is not included in the Cost of Construction, shall only be valued at the actual cost of the design, permitting and construction of such buildings or improvements.

## ARTICLE ELEVEN

### District Operation of the Utility Systems

1. Upon District's acquisition of the Utility Systems, or any part thereof, any taxes or assessments levied against the S.R. 70 Properties, or any part thereof, to fund the construction of the Utility Systems shall remain in place until such time as District chooses to satisfy the indebtedness, or the indebtedness is paid off, and Bluefield has been reimbursed for the Cost of Construction.
2. After acquisition, District shall be responsible for the perpetual operation and maintenance of the Utility Systems. In that regard, the District will, subsequent to Closing and consistent with prudent business practices and industry standards applicable thereto:
  - A. Provide water, wastewater, and reclaimed water utility services in accordance with its Utility Extension and Service Policies, as amended from time to time, by whatever name known, to such properties, improvements thereon, and the occupants thereof, located within the S.R. 70 Properties entitled to receive service pursuant to County approved development orders, and, in accordance with its Utility Extension and Service Policies;
  - B. Until customer revenues are sufficient to cover the cost of operating the Utility Systems and the MSTU no longer levies taxes or assessments on the S.R. 70 Properties, District will provide Bluefield, upon written request, operating information with respect to the Utility Systems, including, but not limited to, (a) monthly operating reports for each water treatment and wastewater treatment plant; (b) reports on average daily water and wastewater flow; (c) copies of all operating permits and modifications to such permits; (d) copies of all reports filed with the regulatory agency having jurisdictional authority over the operation of the Utility Systems; (e) reports on the revenue collected by the District, and expenses of the District, relating to the S.R. 70 Properties.
  - C. The District will refrain from, in any manner, contracting the S.R. 70 Properties service area or intentionally diverting customers, properties, or potential customers within the S.R. 70 Properties to any other utility system, whether operated by the District or any other governmental or private entity, whether by the construction of a competing or parallel system or otherwise, and will not adopt any material policy or procedure which will prevent, hamper, or delay in any manner the expansion of the

water, wastewater, and reclaimed water utility systems and related facilities required to provide service to all then present and future customers and properties located within the S.R. 70 Properties.

- D. Until buildout of the S.R. 70 Properties, the District shall not permanently divert water, wastewater, and/or reclaimed water plant capacity constructed by Bluefield, whether such capacity is from first phase or any phase thereafter of the Utility Systems additions constructed by Bluefield, from the Utility Systems to provide service to any area outside of the S.R. 70 Properties, without the prior written consent of Bluefield and Evans. Nothing herein contained shall obligate Bluefield or Evans to so consent.
  - E. The District shall not impose utility impact fees, connection fees or other capital charges upon Bluefield, or any party building homes or commercial properties within the S.R. 70 Properties, other than those imposed for reimbursement of the Cost of Construction to Bluefield, reimbursement of District costs to expand the Utility Systems or reimbursement of any actual costs of the District to connect such homes or commercial properties to the Utility Systems. Impact fees, connection fees or capital charges set forth in the District's Utility Extension and Service Policies and rate tariffs applicable to customers of the District outside of the S.R. 70 Properties, shall not apply to the S.R. 70 Properties. The above restriction shall not apply to MSTU taxes and assessments to the S.R. 70 Properties.
  - F. The District shall be bound by and shall honor any agreements then existing as of the Closing Date between Bluefield and any other person or entity that reserve capacity of the Utility System, provided that such capacity is available as of the Closing Date.
3. Should there be in the future any moratorium on connection to the Utility Systems, Bluefield shall have the right of self-help and the right to take such actions, as it deems necessary to prevent same from occurring. Any such self-help actions shall be coordinated in advance with the District and shall be implemented pursuant to the provisions of the Utility Extension and Service Policies.

#### **ARTICLE TWELVE**

##### **Amendment of Agreement**

This Agreement may only be amended in writing by mutual consent of the parties or their successors in interest.

## **ARTICLE THIRTEEN**

### **Default**

Neither party shall be in breach or default hereunder, unless within thirty (30) calendar days after receipt of written notice, the party fails to cure any breach of any obligation under this Agreement that is set forth in such notice, or if such cure cannot reasonably be effected within a thirty (30) day period, the party fails to commence the cure within the thirty (30) day period and diligently pursue the cure to completion. If any such failure continues beyond such cure period, the non-defaulting party may seek specific performance and/or seek any other remedy available.

## **ARTICLE FOURTEEN**

### **Enforcement of Agreement/Remedies**

1. The parties hereto stipulate that damages resulting from a breach of this Agreement cannot be reasonably ascertained.
2. If a party breaches this Agreement, the other party shall notify the breaching party of such breach by delivering written notice to the breaching party as set forth in this Agreement. Such notice shall identify the breach complained of and request that the breaching party cease and desist from continuing such breach and, if applicable, that the breaching party cure such breach. If, within thirty (30) calendar days after delivery of the written notice, the breaching party fails to acknowledge, cease and desist from continuing the activities alleged to be a breach or, if applicable, fails to cure such breach as provided in Article Thirteen above, the other party may institute an action to enjoin the breaching party from continuing such breach of this Agreement or to seek specific performance to cure such breach, and shall be entitled to injunctive or other equitable relief without the showing of irreparable harm or inadequate remedy at law. The parties hereto stipulate that proof of a breach of this Agreement shall be sufficient for a court of competent jurisdiction to (i) enter an injunction prohibiting the breaching party from continuing such breach of this Agreement, (ii) enter a judgment requiring specific performance, (iii) to require a cure of such breach, and (iv) award such other relief as is necessary and consistent to carry out the intent and purpose of this Agreement. In no case shall either party be required to post a bond in order to secure the injunctive or other equitable relief envisioned herein. Bluefield agrees not to raise any defense or seek to dismiss any Court action brought by the District or the County on a breach of this Agreement by Bluefield based on comity with or supervening jurisdiction of the FPSC, and shall not file an action or application with the FPSC to block, interfere with, impact or otherwise attempt to abrogate the exercise of jurisdiction by the Court over such action.

## ARTICLE FIFTEEN

### Successors and Assigns

1. Neither Bluefield, Evans Utilities nor Evans shall transfer or assign this Agreement or the duties or obligations created herein, without the prior written consent of the District, such consent not to be unreasonably withheld. The District shall not transfer or assign this Agreement or the duties or obligations created herein to any other municipality, utility, utility district, utility authority or other entity and no successor or assign of the District shall have any right to enforce this Agreement. If the District or the District's utility is conveyed to or merges with another municipality, utility, utility district, utility authority, or other entity, the terms and restrictions set forth in this Agreement shall have no further force or effect and shall not be assignable to any successor entity.
  
2. Notwithstanding the foregoing or any other provision of this Agreement, in the event that Bluefield conveys to the District the first phase of a Utility System which is designed and constructed to be built in phases, then this Agreement shall be binding upon and enforceable by (a) any successors and assigns of Bluefield, Evans Utilities, Evans and the District (including any municipality, utility, utility district, utility authority, or other entity which may assume the District's rights and obligations to provide utility services within the District's utility service area), for the sole purpose of completing the remaining phases of such Utility System, in accordance with any existing Phasing Plan, and turning the remaining phases over to such successor or assign of the District for operation, and (b) the County for the purpose of providing the MSTU financing for the construction of such future phases.

## ARTICLE SIXTEEN

### Other Provisions

1. The parties hereto recognize that the Water and Wastewater Utility System referenced herein may be designed, permitted, financed, and constructed in phases, and it is the intention of the parties hereto that the same may be transferred to the District in phases, as it is constructed, in accordance with the provisions of this Agreement. Furthermore, separate Utility Systems may be constructed on different parts of the S.R. 70 Properties from time to time, and it is the intention of the parties hereto that the District may exercise its option to acquire each separate Utility System. If a Utility System is constructed in phases, or if separate Utility Systems are constructed on different parts of the S.R. 70 Properties, and the County exercises its Option to acquire such phases or Utility Systems, then the MSTU must undertake separate bond issues as required to ensure that any ad valorem taxes or special assessments levied by the MSTU to finance the construction of any Utility System, or any phase of a Utility System, are only levied against the properties which such Utility System is designed to serve. All of the provisions relating to transfer contained herein shall thus apply to each phase, as well as to the entire system, as appropriate.
  
2. This Agreement shall control the dealings between the parties relative to the subject

matter contained herein. Each of the parties shall cooperate and assist each other in every reasonable way in carrying out the intention of the parties hereto.

3. The County shall not require, as a condition of any development approval for any project within the S.R. 70 Properties, or any other part of Bluefield's Utility Territory, that such project connect to the District's utility system, except in accordance with the terms of this Agreement. Notwithstanding the above, any project within the S.R. 70 Properties shall be required to comply with the applicable requirements of the St. Lucie County Comprehensive Plan and Land Development Code relating to land use, zoning, site planning and construction permitting.

4. The failure of this Agreement to address a particular permit, condition, term or restriction does not relieve either party of the necessity of complying with the law governing those permitting requirements, conditions, terms or restrictions.

5. This Agreement incorporates and includes all prior negotiations, correspondence, conversations, agreements and understandings applicable to the matters contained herein; and the parties agree that there are no commitments, agreements or understandings concerning the subject matter of this Agreement that are not contained in or incorporated into this Agreement. Accordingly, it is agreed that no deviation from the terms hereof shall be predicated upon any prior written or oral representations or agreements. No deviations or modifications hereof shall take place except and unless agreed to by the parties hereto in writing. The duties and obligations of the parties hereto may not be changed from those contained herein except upon mutual agreement of the parties, as reflected in a written instrument duly adopted by the parties hereto.

6. If any provisions of this Agreement are contrary to, prohibited by, or deemed invalid under any applicable law or regulation, as determined by the Court, such provisions shall be inapplicable and deemed omitted to the extent so contrary, prohibited or invalid. The remainder of this Agreement shall not be invalidated thereby and the intent of the parties shall be given full force and effect.

7. The parties agree that suits or actions at law arising from the provisions, performance, or breach of this Agreement shall be brought exclusively in St. Lucie County, Florida, and no other jurisdiction. This Agreement shall be construed and interpreted under the laws of the State of Florida.

8. The parties shall have all rights available by law to enforce this Agreement. This Agreement shall not be construed more strictly against any party.

9. In the event litigation is required by any party to enforce the terms of this Agreement, each party to such action shall bear its own witnesses, experts, attorneys and/or paralegal fees and costs incurred by reason of such action and all costs of suit and those incurred in preparation thereof, whether related to trial, collection or appeals.

10. Each of the parties agree that at any time and from time to time after the initial Closing that they will execute and deliver to any other party such further instruments or documents as may be reasonably required to give effect to the transactions contemplated herein, including, but not limited to, those that may be of assistance to the other, providing that no such instrument shall alter the Agreement of the parties hereunder.

11. It is agreed by and between the parties hereto that all words, terms and conditions contained herein are to be read in concert, each with the other, and that a provision contained under one heading may be considered equally applicable under another in the interpretation of this Agreement.

12. Time is of the essence as to all matters agreed to herein by the parties.

[end of Attachment 3]

**ATTACHMENT 4**

Prepared by and Return to  
St. Lucie County Water and Wastewater Utility District  
Attn: County Attorney  
2300 Virginia Avenue  
Fort Pierce, FL 34982

**MEMORANDUM OF UTILITY AGREEMENT**

**THIS MEMORANDUM OF AGREEMENT** is executed this \_\_\_\_\_ day of \_\_\_\_\_, 2012, by and among, St. Lucie County, St. Lucie County Water and Sewer District (District"), Evans Properties, Inc., Bluefield Utilities, LLC, and Evans Utilities Company, Inc. (collectively referred to as "Evans").

**WITNESSETH**

**WHEREAS**, on \_\_\_\_\_, 2012, the parties entered into an Agreement (the "Agreement") related, in part, to the provision of water, wastewater and reclaimed water utility service ("Utility Service") to certain properties owned by Evans along S.R. 70 (the "S.R. 70 Properties"), as more fully described on Attachment 1 to this Memorandum; and

**WHEREAS**, the District and Evans desire to record this Memorandum to incorporate and memorialize the Agreement and to notify future owners of the S.R. 70 Properties of the existence of this Agreement.

**NOW THEREFORE**, in consideration of the mutual covenants and agreements expressed herein, the parties hereby agree as follows:

1. The foregoing recital is true and correct.
2. Utility service to the S.R. 70 Properties is subject to the terms and conditions of the Agreement. For further provisions of the Agreement, reference should be made to the Agreement and documents related to the Agreement, true copies of which are available at the office of the County Attorney for St. Lucie County, at 2300 Virginia Avenue, Fort Pierce, FL 34982
3. This Memorandum of Agreement may be executed in more than one counterpart as of the day and year set forth above.



IN WITNESS WHEREOF, the parties have hereunto set their hands and seals on the date first above written.

ST. LUCIE COUNTY WATER AND SEWER DISTRICT:

By: \_\_\_\_\_  
County Administrator

Approved as to Form and Correctness:

\_\_\_\_\_  
County Attorney

WITNESSES:

EVANS PROPERTIES, INC.

[Signature]  
Print Name: W. Lee Dobbins

[Signature]  
Print Name: Linda M. Briglia

By: Ronald L. Edwards  
Ronald L. Edwards  
Print Name

Its: President

NOTARY CERTIFICATE

STATE OF FLORIDA  
COUNTY St. Lucie

The foregoing instrument was acknowledged before me this 17<sup>th</sup> day of August, 20 12 by Ronald L. Edwards, on behalf of Evans Properties, Inc. He/she is personally known to me or has produced \_\_\_\_\_ as identification.

LINDA M. BRIGLIA  
NOTARY PUBLIC - STATE OF FLORIDA  
COMMISSION # EE120916  
EXPIRES 9/1/2015  
BONDED THRU 1-888-NOTARY1

[Signature]  
Signature of Notary  
Linda M. Briglia  
Typed, Printed, or Stamped Name of Notary Public  
Serial Number EE120916

WITNESSES:

EVANS UTILITIES COMPANY, INC.

[Signature]

Print Name: W. Lee Dobbins

[Signature]  
Print Name: Linda M. Briaglia

By: Ronald L Edwards

Ronald L. Edwards  
Print Name

Its: President

NOTARY CERTIFICATE

STATE OF FLORIDA

COUNTY St. Lucie

The foregoing instrument was acknowledged before me this 17<sup>th</sup> day of August, 20 12 by Ronald L. Edwards on behalf of Evans Utilities Company, Inc. ~~He/she is personally known to me~~ or has produced

\_\_\_\_\_ as identification.

LINDA M. BRIGLIA  
NOTARY PUBLIC - STATE OF FLORIDA  
COMMISSION # EE120916  
EXPIRES 9/1/2016  
BONDED THRU 1-888-NOTARY1

[Signature]  
Signature of Notary

Linda M. Briaglia  
Typed, Printed, or Stamped Name of Notary Public  
Serial Number EE120916

WITNESSES:

BLUEFIELD UTILITIES, LLC.

[Signature]

Print Name: W. Lee Dobbins

[Signature]

Print Name: Linda M. Briglia

By: Ronald L Edwards

Ronald L. Edwards  
Print Name

Its: Manager

NOTARY CERTIFICATE

STATE OF FLORIDA  
COUNTY St. Lucie

The foregoing instrument was acknowledged before me this 17<sup>th</sup> day of August, 20 12 by Ronald L. Edwards on behalf of Bluefield Utilities, LLC. He  she  is personally known to me or has produced \_\_\_\_\_ as identification.

LINDA M. BRIGLIA  
NOTARY PUBLIC - STATE OF FLORIDA  
COMMISSION # EE120916  
EXPIRES 8/1/2018  
BONDED THRU 1-888-NOTARY1

[Signature]

Signature of Notary

Linda M. Briglia

Typed, Printed, or Stamped Name of Notary Public

Serial Number EE120916