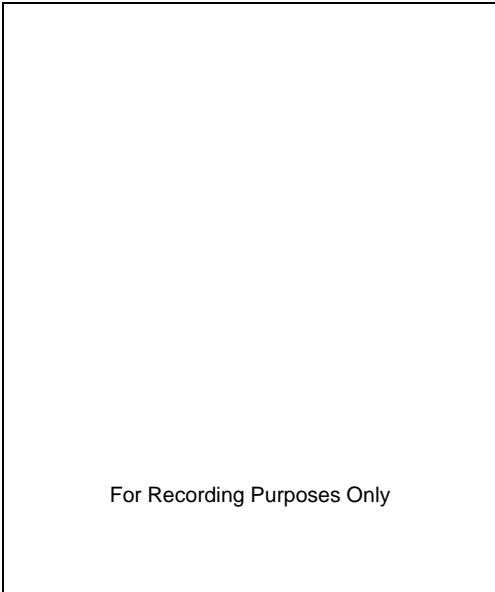


**THIS INSTRUMENT PREPARED UNDER  
THE DIRECTION OF AND SHOULD BE  
RETURNED TO:**

Jason Yarborough  
Palm Bay Utilities Director  
City of Palm Bay  
250 Osmosis Drive, SE  
Palm Bay, FL 32909  
321-952-3410



## **CITY OF PALM BAY WATER AND WASTEWATER SYSTEM AGREEMENT**

THIS AGREEMENT made and entered into this \_\_\_\_ day of \_\_\_\_\_, 200\_,  
by and between School Board of Brevard County a unit of the State of Florida  
(hereafter "BOARD"), and **CITY OF PALM BAY, FLORIDA**, a municipal corporation  
created under the laws of the State of Florida (hereafter the "CITY").

Project: Heritage High School (CCC)

### **R E C I T A L S**

1. The BOARD has or is about to develop real property more particularly described in Exhibit "A" attached to and incorporated herein by reference (together, the "Property").

2. The BOARD is desirous of prompting the modification, replacement, construction and/or maintenance of central water and wastewater facilities so as to receive adequate service.

3. The CITY is willing to provide, in accordance with the provisions and stipulations hereinafter set out, and in accordance with all applicable laws, water and wastewater service through central water and wastewater facilities, and to accept and operate water distribution and wastewater collection systems, and to thereafter operate

such facilities so the occupants of the improvements constructed on the Property will receive adequate retail water and wastewater service from the CITY.

**ACCORDINGLY**, for and in consideration of the Recitals, the mutual undertakings and agreements herein contained and assumed, and other good and valuable consideration the receipt and sufficiency of which are acknowledged by the parties, the BOARD and the CITY hereby covenant and agree as follows:

**SECTION 1. RECITALS.** The above Recitals are true and correct, and form a material part of this Agreement.

**SECTION 2. DEFINITIONS.** The following definitions and references are given for the purpose of interpreting the terms as used in this Agreement and apply unless the context indicates a different meaning:

(1) "Service" - the readiness and ability on the part of the CITY to furnish water and wastewater service to the Property.

(2) "Point of Delivery or Distribution" - the point where the pipes of utility are connected with the pipes of the customer. Unless otherwise indicated, the point of delivery shall be at a point on the customer's lot line.

(3) "Contribution-in-aid-of-Construction" - The sum of money, and/or property, represented by the value of the water distribution and wastewater collection systems constructed by BOARD, which BOARD covenants and agrees to pay and/or transfer to the CITY, as a contribution-in-aid-of-construction, to induce the CITY to continuously provide water and wastewater service to the Property.

**SECTION 3. EASEMENT AND RIGHT OF ACCESS.** BOARD hereby grants and gives the CITY the exclusive right or privilege to construct, own, maintain, and operate the water and wastewater facilities in, under, over and across the present and future streets, roads, easements, reserved utility sites and public places on the Property as provided and dedicated to public use in the record plats, or as provided for in agreements, dedications or grants made otherwise and independent of said record plats. BOARD hereby further agrees that the foregoing grants include the necessary right of ingress and egress to any part of the Property; that the foregoing grants shall be perpetual. The CITY covenants that it will use due diligence in ascertaining all easement locations; however, should the CITY install any of its facilities outside a dedicated easement area, BOARD, the successors and assigns of BOARD, covenant and agree that the CITY will not be required to move or relocate any facilities lying outside a dedicated easement area so long as the facilities do not interfere with the then or proposed use of the area in which the facilities have been installed. The CITY hereby agrees that all easement grants will be utilized in accordance with the established and generally accepted practices of the wastewater industry with respect to the installation of all its water and wastewater facilities in any of the easement areas; and the BOARD in granting easement herein, or pursuant to the terms of this

instrument, shall have the right to grant exclusive or non-exclusive rights, privileges and easement to other entities to provide to the Property any utility services other than water and wastewater service. The route of the lines from the BOARD's Property to the CITY's Facilities shall be as determined by the CITY, and the BOARD shall obtain, at its own expense, upon direction by the CITY, any and all easements necessary which easements shall be in favor of the CITY. The BOARD agrees to dedicate to the CITY an easement, as to be determined by the CITY, so as to allow the CITY to enter the Property and make such alterations, repairs, or other work, as CITY shall deem necessary to achieve efficient service in the sewer system. Any easement shall be dedicated to the CITY and recorded in the Public Records of Brevard County, Florida within ten days of the signing of this Agreement, at BOARD's expense.

**SECTION 4. CONDITIONS TO AND PROVISION OF SERVICE; PAYMENT OF RATES; BILLINGS.**

**4.1.** Upon the continued accomplishment of all the prerequisites contained in this Agreement to be performed by the BOARD, the CITY covenants and agrees that it will allow the connection of the water distribution and wastewater collection facilities installed by BOARD to the central water and wastewater facilities of the CITY in accordance with the terms and intent of this Agreement. Such connection shall be in accordance with rules and regulations of the Department of Health and Rehabilitative Services and the Florida Department of Environmental Protection. The CITY agrees that once it provides water and wastewater service to the Property and BOARD, or others have connected customer installations to its system, that thereafter, the CITY will continuously provide, in accordance with the other provisions of this Agreement, and of applicable laws, including rules and regulations and rate schedules, water and wastewater service to the Property in a manner to conform with all requirements of all governmental agencies having jurisdiction over the water and wastewater systems of the CITY. The BOARD, its successors and assigns agree to timely and fully pay all applicable monthly rates, fees, and charges to the CITY and otherwise fully comply with the CITY's rules, regulations, and ordinances applicable to the provision of water and wastewater service.

**4.2.** The BOARD, its successors and assigns agrees to pay to the CITY for monthly service within thirty (30) days after statement is rendered by the CITY all sums due and payable as set forth in such statement. Upon failure or refusal to pay the amounts due on statements as rendered, the CITY may, in its sole discretion, terminate service.

**4.3.** The BOARD warrants and represents that it is either the owner of the Property or has the complete authority to act on behalf of the owner in executing this Agreement and that the capacity purchased pursuant to Section 20 shall run with the land. It is acknowledged that this Agreement is for the purpose of providing a volume and rate of service to the property described and that charges to be paid to the CITY for use of the system shall be charged to the ultimate user. Any increase in volume or rate of flow shall make this Agreement void able in the discretion of the CITY, after providing BOARD

notice pursuant to this Agreement. The CITY reserves the right to collect additional fees if the volume or rate of flow increases.

**4.4.** For the use of the CITY's Facilities, the Customer shall pay a user rate established by the City Council of the City of Palm Bay the billing to be issued by the CITY and paid by the BOARD on a basis as the CITY customarily bills. The Customer shall, immediately upon demand, pay to the CITY a non-interest bearing deposit as determined by the CITY. Upon failure of the Customer to pay the periodic charges for service, the deposit shall immediately forfeit to the CITY. The CITY shall have a right to adjust its service rates to reflect current or future costs, and the Customer agrees to pay all such lawfully imposed rates. The CITY reserves all rights it may have pursuant to Chapter 193, Part 1, Florida Statutes.

**4.5.** If sewer service is covered by this Agreement, the BOARD agrees that it shall not discharge or cause to be discharged into the sewer lines any of the following described waters or waste:

- (1) Any surface drainage water or ground water infiltration.
- (2) Any gasoline, benzene, naphtha, fuel oil or other inflammable or explosive liquid, solid or gas.
- (3) Any noxious or malodorous gas or substances, which either singly or by interaction with other wastes, is capable of creating a public nuisance or hazard to life or preventing maintenance and repair of the lines or connecting lines and treatment facility.
- (4) Any waters or waste containing toxic or poisonous substances in sufficient quantity to constitute a hazard to any structures and appurtenances of the lines and connecting lines and treatment facility, humans or animals or create any hazard or aesthetically undesirable conditions within or without lines and connecting lines and treatment facility. Such materials shall include, but shall not be limited to:
  - (a) Any cyanides in excess of 2.9 milligrams per liter weight.
  - (b) Arsenic in excess of three 1.4 milligrams per liter by weight
  - (c) Cadmium in excess of 0.9 milligrams per liter by weight.
  - (d) Chromium in excess of 21 milligrams per liter.
  - (e) Copper in excess of 29 milligrams per liter.
  - (f) Lead in excess of 2.9 milligrams per liter.
  - (g) Zinc in excess of 5.9 milligrams per liter.
  - (h) Mercury in excess of 0.3 milligrams per liter.
  - (i) Silver in excess of 7.5 milligrams per litter.
  - (j) Molybdenum in excess of 0.8 milligrams per liter.
  - (k) Selenium in excess of 1.1 milligrams per litter.

The methods of analysis shall conform to Standard Methods for the Examination of Water and Waste Water, Twenty First Edition as published by the American Public Health Association, as amended and/or updated from time to time.

The quality limitations of this paragraph shall apply to concentrations or other physical characteristics obtained by analysis of a composite sample of the waters or wastewater collected for a 24-hour period, proportioned to flow. Periodic quality control tests on Facilities located on the Property shall be performed by chemists hired by the Utilities Department of the CITY at the BOARD's expense. The CITY may, from time to time, impose additional reasonable restrictions on the quality of discharge into the lines. BOARD agrees that in addition to any remedies provided by law, the CITY may terminate any water and sewer service until the violation by the BOARD is corrected to the satisfaction of the CITY.

## **SECTION 5. DESIGN, REVIEW, CONSTRUCTION, INSPECTION, AND CONVEYANCE OF FACILITIES.**

**5.1.** To induce the CITY to provide water and wastewater service, and to continuously provide customers located on the Property with water and wastewater services, BOARD hereby covenants and agrees to pay for the construction and to transfer ownership and control to the CITY as a contribution-in-aid-of-construction, the on-site and off-site water distribution and wastewater collection facilities referred to herein. All design and construction shall be in accordance with CITY rules, regulations, and utility standards.

**5.2.** BOARD shall pay a reasonable fee as outlined in the CITY rate resolutions and ordinances, as amended from time to time, to the CITY to review engineering plans and specifications of the type and in the form as prescribed by the CITY, showing the on-site and off-site water distribution and wastewater collection facilities proposed to be installed to provide service to the subject Property. The CITY will advise BOARD's engineer of any sizing requirements as mandated by the CITY's system extension policy and utility standards for the preparation of plans and specifications for facilities within the Property. If applicable, such detailed plans may be limited to a phase of the Property, and subsequent phases may be furnished from time to time. However, each such phase, if applicable, shall conform to a master plan for the development of the Property and such master plan shall be submitted to the CITY concurrent with or prior to submission of plans for the first phase. All such plans and specifications shall be submitted to the CITY and no construction shall commence until CITY has approved such plans and specifications in writing. The complete plans and specifications, as to be approved by the CITY's Utilities Director or designee, for Improvements to Facilities for Utility Service to service the Property and the connection to the CITY's system shall be prepared by the BOARD's Professional Engineer, who shall be registered in the State of Florida. All construction shall be in strict conformity with the final plans and specifications as approved by the CITY. The CITY, its Utilities Director, or other representative, shall have the right to inspect any and all portions of the Improvements to Facilities whether in public rights-of-way or on private property and upon notification of any deviation from the approved plans and specifications, the BOARD shall

immediately make modifications as directed by the CITY. No construction shall be commenced without final approval of the plans and specifications by the CITY's Utilities Department Director. After approval, BOARD shall cause to be constructed, at BOARD's expense, the water distribution and wastewater collection facilities as shown on all plans and specifications.

**5.3.** During the construction of the water distribution and wastewater collection facilities by BOARD, the CITY shall have the right to inspect such installation to determine compliance with the plans and specifications, adequacy of the quality of the installation, and further, shall be entitled to perform standard tests for pressure, filtration, line and grade, and all other normal engineering tests required by specifications and/or good engineering practices. Complete as-built plans shall be submitted to the CITY upon completion of construction. CITY inspections of the off-site and on-site facilities will not delay the construction schedule.

**5.4.** Fees levied by the CITY to cover the cost of plan review, inspection testing and related administrative costs will be paid by the BOARD upon completion of the improvements to facilities. The BOARD shall be reimbursed for these costs in accordance with Section 20.

**5.5.** By these presents, upon completion and approval by the CITY, the BOARD shall transfer to the CITY, all rights, title and interest, free and clear of any encumbrances whatsoever, to the on-site and off-site water distribution and wastewater collection facilities installed by BOARD's contractor, pursuant to the provisions of this Agreement. Such conveyance is to take effect without further action upon the acceptance by the CITY of the said installation. As further evidence of said transfer to title, and upon the completion of the installation and prior to the rendering of service by the CITY, BOARD shall convey to the CITY, by bill of sale, or other appropriate documents, in form satisfactory to the CITY's counsel, the complete on-site and off-site water distribution and wastewater collection facilities as constructed by BOARD and approved by the CITY. BOARD shall further cause to be conveyed to the CITY, all easements and/or rights-of-way covering areas in which off-site water distribution and wastewater collection facilities are installed by recordable document in form satisfactory to the CITY's counsel. All conveyance of easements and/or rights-of-way shall be accompanied by a title policy or other evidence of title (including letter from attorney), satisfactory to the CITY, establishing BOARD's rights to convey such continuous enjoyment of such easements or rights-of-way for those purposes set forth in this Agreement to the exclusion of any other person in interest. The use of easements granted by BOARD shall include the use by other utilities so long as such uses by electric, telephone, or gas utilities, or cable television etc. that do not interfere with use by the CITY. The CITY agrees that the acceptance of the water distribution and wastewater collection facilities installed by BOARD, for service, or by acceptance of the bill of sale, shall constitute that assumption of responsibility by the CITY for the continuous operation and maintenance of such systems from that date forward.

**5.6.** All installations by BOARD or its contractors shall be warranted for one (1) year from the date of acceptance by the CITY. Mortgagee(s), if any, holding prior liens on such properties shall be required to release such liens, subordinate their position and join in the grant or dedication of the easements or rights-of-way. The water distribution and wastewater collection facilities shall be covered by easements if not located within platted or dedicated rights-of-way. CITY will allow BOARD to assign warranty to CITY with written approval from BOARD's contractors that such assignment meets their approval and they will fulfill the terms and conditions of the warranty.

**5.7.** Payment of the contributions-in-aid-of-construction does not and will not result in the CITY waiving any of its rates, rate schedules or rules and regulations, and their enforcement shall not be affected in any manner whatsoever by BOARD making the contribution. The CITY shall not be obligated for any reason whatsoever nor shall the CITY pay any interest or rate of interest upon the contribution. Neither BOARD nor any person or other entity holding any of the Property by, through or under BOARD, or otherwise, shall have any present or future right, title, claim or interest in and to the contributions or to any of the water and wastewater facilities and properties of the CITY, and all prohibitions applicable to BOARD with respect to no refund of contributions, no interest payment on said contributions and otherwise, are applicable to all persons or entities. No user or customer of water and wastewater service shall be entitled to offset any bill or bills rendered by the CITY for such service or services against the contributions. BOARD shall not be entitled to offset the contributions against any claim or claims of the CITY.

**5.8.** All costs relating to the Improvements to Facilities including but not limited to labor, overhead, taxes, licenses, application fees, easement acquisitions, lift stations, pumps, pipes, materials, and any other direct or indirect costs related to installation of the Improvements to Facilities shall be borne by the BOARD and shall be fully paid by the BOARD. All of the CITY's fees and costs in connection with the Improvements to Facilities including but not limited to charges by the CITY's Utilities Director, inspections, maintenance, administrative expenses, and any other costs incurred by the CITY in connection with this matter, as described in Section 20, shall be paid by the BOARD upon completion of the improvements to facilities. The BOARD shall be reimbursed for these fees and costs in accordance with Section 20. It is agreed that no reservation of capacity will be made by the CITY until all fees, set forth in Section 20, have been paid. The BOARD shall install, at the BOARD's own expense, a backflow control device in accordance with the CITY's specifications.

**SECTION 6. OWNERSHIP OF FACILITIES.** BOARD agrees with the CITY that the water distribution and wastewater collection facilities conveyed to the CITY for use in connection with providing water and wastewater services to the Property, shall at all times remain in the complete and exclusive ownership of the CITY, and any entity owning any part of the Property or any residence or building constructed or located thereon, shall not have the right, title, claim or interest in and to such facilities, or any part of them, for any purpose, including the furnishing of wastewater services to other persons or entities located within or beyond the limits of the Property. Such parts of the

Facilities that are on the Customer's property shall at all times be maintained and repaired by the Customer; however, the CITY shall have the right, at any time and without notice to the Customer, to inspect such Facilities and the Customer, upon the CITY's direction, shall make such repairs and maintenance as the CITY directs.

**SECTION 7. APPLICATION OF RULES, REGULATIONS, AND RATES.** The CITY may establish, revise, modify and enforce rules, regulations and rates covering the provision of water and wastewater service to the property owners on the Property. Such rules, regulations and rates are subject to the approval of the City Council of the City of Palm Bay, Florida. Such rules and regulations shall at all times be reasonable and subject to regulation as may be provided by law or under contract. Rates charged to BOARD or customers located upon the Property shall be identical to rates charged for the same classification of service. All rules, regulations, and rates in effect, or placed into effect in accordance with the preceding, shall be binding upon BOARD, upon any other entity holding by, through or under BOARD; and upon any customer of the wastewater service provided to the Property by the CITY.

**SECTION 8. PERMISSION TO CONNECT REQUIRED.** BOARD, or any owner of any parcel of the Property, or any occupant of any residences or buildings located thereon, shall not have the right to and shall not connect to any customer installation to the water and wastewater facilities of the CITY until payment is received for such connection and approval for such connection has been granted by the CITY, such approval not to be unreasonably withheld.

**SECTION 9. BINDING AGREEMENT; ASSIGNMENTS BY BOARD.** This Agreement shall be binding upon and shall inure to the benefit of BOARD, the CITY and their respective assigns and successors by merger, consolidation or conveyance. This Agreement shall not be sold, conveyed, assigned or otherwise disposed of by BOARD without the written consent of the CITY first having been obtained. The CITY agrees not to unreasonably withhold such consent.

**SECTION 10. NOTICES; PROPER FORM.** Until further written notice by either party to the other, all notices provided for herein shall be in writing and transmitted by messenger, or by mail to:

CITY:                      City of Palm Bay  
                                 120 Malabar Road, Southeast  
                                 Palm Bay, FL 32907  
                                 Attention: CITY MANAGER

BOARD:                    School Board of Brevard County  
                                 2700 Judge Fran Jamieson Way  
                                 Viera, FL 32940  
                                 ATTN: Superintendent



**SECTION 11. SURVIVAL OF COVENANTS.** The rights, privileges, obligations and covenants of BOARD and the CITY shall survive the completion of the work of BOARD with respect to completing the water and wastewater facilities and services to any phase area and to the Property as a whole.

**SECTION 12. ENTIRE AGREEMENT; AMENDMENTS; APPLICABLE LAW; ATTORNEY'S FEES.** This Agreement supersedes all previous agreements or representations, either verbal or written, heretofore in effect between BOARD and the CITY, made with respect to the matters herein contained, and when duly executed, constitutes the agreement between BOARD and the CITY. No additions, alterations or variations of the terms of this Agreement shall be valid, nor can provisions of the Agreement be waived by either party, unless such additions, alterations, variations or waivers are expressed in writing and duly signed. This Agreement shall be governed by the laws of the State of Florida, as well as all applicable local ordinances of the CITY and it shall be and become effective immediately upon execution by both parties hereto. In the event that the CITY or BOARD is required to enforce this Agreement by court proceedings or otherwise, by instituting suit or otherwise, then the CITY or BOARD shall be entitled to recover all costs incurred, including reasonable attorney's fees.

**SECTION 13. DISCLAIMERS; LIMITATIONS ON LIABILITY.**

**13.1. STATUS.** The parties deem each other to be independent contractors, and not agents of the other.

**13.2. FORCE MAJEURE.** The CITY shall not be liable or responsible to the BOARD by reason of the failure or inability of the CITY to take any action it is required to take or to comply with the requirements imposed hereby or any injury to the BOARD or by those claiming by or through the BOARD, which failure, inability or injury is caused directly or indirectly by force majeure (as hereinafter set forth). The term "force majeure" as employed herein shall mean acts of god, strikes, lock-outs, or other industrial disturbance; acts of public enemies, war, blockades, riots, acts of armed forces, militia, or public authority, epidemics; breakdown of or damage to machinery, pumps, or pipe lines; landslides, earthquakes, fires, storms, floods, or washouts; arrests, title disputes, or other litigation; governmental restraints of any nature whether federal, state, county, municipal or otherwise, civil or military; civil disturbances; explosions, failure or inability to obtain necessary materials, supplies, labor or permits or governmental approvals whether resulting from or pursuant to existing or future rules, regulations, orders, laws or proclamations whether federal, state, county, municipal or otherwise, civil or military; or by any other causes, whether or not of the same kind as enumerated herein, not within the sole control of the CITY and which by exercise of due diligence the CITY is unable to overcome.

**13.3. DISCLAIMER OF THIRD PARTY BENEFICIARIES.** This agreement is solely for the benefit of and shall be binding upon the formal parties hereto and their respective

authorized successors and assigns, and no right or cause of action shall accrue upon or by reason hereof, to or for the benefit of any third party not a party to this agreement or an authorized successor or assignee thereof.

**13.4. DISCLAIMER OF SECURITY.** Notwithstanding any other provision of this agreement, the BOARD expressly acknowledges (1) that it has no pledge of or lien upon any real property (including, specifically, the CITY's system), any personal property, or any existing or future revenue source of the CITY (including, specifically, any revenues or rates, fees, or charges collected by the CITY in connection with the CITY's system) as security for any amounts of money payable by the CITY under this agreement; and (2) that its rights to any payments or credits under this agreement are subordinate to the rights of all holders of any stocks, bonds, or notes of the CITY, whether currently outstanding or hereafter issued.

**SECTION 14. COVENANT NOT TO ENGAGE IN UTILITY BUSINESS.** The BOARD, as a further consideration for this Agreement, agrees that it shall not (the words "shall not" being used in a mandatory definition) engage in the business of providing water or wastewater service to the Property during the period of time the CITY, its successors and assigns, provide water or wastewater service to the Property, it being the intention of the parties hereto that the foregoing provision shall be a covenant running with the land and under said provision and also under other provisions of this Agreement the CITY shall have the sole and exclusive right and privilege to provide water service or wastewater service or both to the Property and to the occupants of each residence, building or unit constructed thereon; provided, however, that (a) if the BOARD provides the CITY written notice that it requires additional wastewater service capacity in the future and (b) the CITY is unable to provide such additional capacity within 12 months after the notice from the BOARD, then the CITY will not oppose BOARD's efforts to pursue the permitting and construction a wastewater treatment facility on the Property sufficient to serve its own excess wastewater treatment capacity needs of BOARD.

**SECTION 15. RECORDATION.** The parties hereto agree that an executed copy of this Agreement and Exhibits attached hereto shall be recorded in the Public Records of Brevard County, Florida at the expense of the BOARD.

**SECTION 16. SEVERABILITY.** If any part of this Agreement is found invalid or unenforceable by any court, such invalidity or unenforceability shall not affect the other parts of this Agreement if the rights and obligations of the parties contained therein are not materially prejudiced, and if the intentions of the parties can continue to be effected. To that end, this Agreement is declared severable.

**SECTION 17. AUTHORITY TO EXECUTE AGREEMENT.** The signature by any person to this Agreement shall be deemed a personal warranty by that person that he has the full power and authority to bind the entity for which that person is signing.

**SECTION 18. CAPACITY.** No specific reservation of water or wastewater capacity is granted by CITY under this Agreement.

**SECTION 19. ARMS LENGTH TRANSACTION.** Both parties have contributed to the preparation, drafting and negotiation of this document and neither has had undue influence or control thereof. Both parties agree that in construing this Agreement, it shall not be construed in favor of either party by virtue of the preparation, drafting, or negotiation of this Agreement.

**SECTION 20. SPECIAL CONDITIONS.** Notwithstanding any other section in this Agreement, the following Special Conditions are mutually agreed between the BOARD and the CITY. In the event of a conflict between this Section 20 and the rest of the Agreement, Section 20 shall control.

(1) The BOARD agrees to construct, at its expense, a potable water main to serve the school property [see Exhibit "A"] in accordance with engineering plans and specifications provided by the BOARD. Such plans and specifications shall meet criteria and standards set by the CITY and State agencies and shall have been reviewed and approved by the CITY. The cost of construction shall be provided by the BOARD and made part of the Utilities Agreement [see Exhibit "B"]. All FDEP and CITY permits have been received, as of this date. The CITY shall have the right to inspect the work during construction and to stop the work if not in accordance with the agreed upon plans and specifications. The CITY shall have the right to be present at all tests of the mains and to receive certified copies of the results of such testing. The CITY agrees to assume responsibility for the offsite system's maintenance and operation when completed. The BOARD shall provide a one year warranty on all offsite utility lines, appurtenances and workmanship.

(2) The BOARD agrees to construct, at its expense, a wastewater force main and a lift station to serve the school property [see Exhibit "A"] in accordance with engineering plans and specifications provided by the BOARD. Such plans and specification shall meet criteria and standards set by the CITY and State agencies and shall have been reviewed and approved by the CITY. The cost of construction shall be provided by the BOARD and made part of the Utilities Agreement [see Exhibit "B"]. All FDEP and CITY permits have been received, as of this date. The CITY shall have the right to inspect the work during construction and to stop the work if not in accordance with the agreed upon plans and specifications. The CITY shall have the right to be present at all tests of the mains and to receive certified copies of the results of such testing. The CITY agrees to assume responsibility for the offsite system's maintenance and operation when completed. The BOARD shall provide a one year warranty on all offsite utility lines, appurtenances and workmanship.

(3) The BOARD agrees to pay the CITY's fees and costs in connection with the Improvements to Facilities in the amount of \$30,485.00 [see Exhibit C].

(4) The CITY shall reimburse the BOARD for the additional cost of the design and construction of the off-site water and wastewater mains required to service the school property and requested by the CITY to accommodate its future plans. The CITY shall

also reimburse the BOARD for payment of the CITY's fees and costs in connection with the Improvements to Facilities. The total cost to be reimbursed to the BOARD is \$224,896.83

(5) To reimburse the BOARD for the additional cost of construction of the off-site water and wastewater mains and payments of the CITY's related fees and costs, the CITY agrees to impose a fee on all third party users of the BOARD-constructed systems to access the CITY's water and wastewater treatment systems pursuant with the CITY of Palm Bay definition of Equivalent Residential Connection (ERC) as described in Palm Bay Code of Ordinance's Chapter 200-Utilities. The fee will be a one (1) time only charge based on the user's ERC expressed in gallons per day multiplied by \$2.40 or \$504.00 per ERC for connection to the wastewater system and \$2.25 or \$618.75 per ERC for connection to the water system.

(6) The CITY shall pay the BOARD the fees collected from Third Party Users annually for a term of not more than six (6) years, after which time any portion of the reimbursement will have lapsed and thereafter, such agreement will be cancelled. In no event shall the reimbursement cover an amount greater than \$224,896.83; the difference between the cost of such off-site facilities and the applicant's own hydraulic shares of such facilities, plus payments of the CITY's related fees and costs. The CITY shall not include any interest upon the rebates.

(7) That the provisions of this Agreement shall not be construed as establishing a precedent as to the amount or basis of contributions to be made by BOARD or other customers, or the acceptance thereof on the part of the CITY, for other CITY system extensions that may be required hereafter by BOARD and which are not presently covered by this Agreement.

**WITNESS WHEREOF**, BOARD and the CITY have executed or have caused this Agreement, with the named Exhibits attached, if any, to be duly executed in several counterparts, each of which counterpart shall be considered an original executed copy of this Agreement.

ATTEST:

**CITY OF PALM BAY, FLORIDA, a  
municipal corporation created under  
the laws of the State of Florida**

\_\_\_\_\_  
Alice Passmore, Clerk

By: \_\_\_\_\_  
Lee Feldman, City Manager

Date: \_\_\_\_\_

FOR THE USE AND RELIANCE  
OF PALM BAY ONLY.  
APPROVED AS TO FORM.

Dated: \_\_\_\_\_

\_\_\_\_\_  
Jason Yarborough, Utilities Director

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 200\_, by \_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_ authorized to do business in the State of Florida, on behalf of the \_\_\_\_\_. He/she is personally known to me or has produced \_\_\_\_\_ as identification and did (did not) take an oath.

\_\_\_\_\_  
Signature of Person Taking Acknowledgment

\_\_\_\_\_  
Name of Acknowledger Typed, Printed or Stamped

\_\_\_\_\_  
Title or Rank

\_\_\_\_\_  
Serial Number, if any.

Signed, sealed and delivered  
In the presence of:

**School Board of Brevard County:**

\_\_\_\_\_

\_\_\_\_\_

Print Name: \_\_\_\_\_

By: \_\_\_\_\_  
Robert Jordan

Title: School Board Chairman

\_\_\_\_\_

Date: \_\_\_\_\_

Print Name: \_\_\_\_\_

[CORPORATE SEAL]

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2009, by \_\_\_\_\_, \_\_\_\_\_ of \_\_\_\_\_, a \_\_\_\_\_ authorized to do business in the State of Florida, on behalf of the \_\_\_\_\_. He/she is personally known to me or has produced \_\_\_\_\_ as identification and did (did not) take an oath.

\_\_\_\_\_  
Signature of Person Taking Acknowledgment

\_\_\_\_\_  
Name of Acknowledger Typed, Printed or Stamped

\_\_\_\_\_  
Title or Rank

\_\_\_\_\_  
Serial Number, if any.

**EXHIBIT "A"**

**THE LAND**

A PARCEL OF LAND IN THE EAST ½ OF SECTION 32, TOWNSHIP 28 SOUTH, RANGE 36 EAST, BREVARD COUNTY, FLORIDA BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCE AT THE SOUTHEAST CORNER OF SAID SECTION 32 AND RUN S89°44'45"W, ALONG THE SOUTH LINE OF SAID SECTION 32, A DISTANCE OF 1423.15 FEET; THENCE N00°40'13"E A DISTANCE OF 33.00 FEET TO THE NORTH RIGHT-OF-WAY LINE OF MALABAR ROAD, (A66 FOOT WIDE PUBLIC RIGHT-OF-WAY, AND THE POINT OF BEGINNING OF THE PARCEL OF LAND HEREIN DESCRIBED; THENCE S89°44'45"W, ALONG SAID NORTH RIGHT-OF-WAY LINE, A DISTANCE OF 100.01 FEET; THENCE N00°40'13"E A DISTANCE OF 449.90 FEET; THENCE S89°44'45"W A DISTANCE OF 967.35 FEET; THENCE S00°44'27"W A DISTANCE OF 449.91 FEET TO SAID NORTH RIGHT-OF-WAY LINE; THENCE S89°44'45"W, ALONG SAID NORTH RIGHT-OF-WAY LINE, A DISTANCE OF 75.01 FEET TO AN INTERSECTION WITH THE EAST RIGHT-OF-WAY LINE OF WATER CONTROL DISTRICT OF SOUTH BREVARD (MELBOURNE-TILLMAN DRAINAGE DISTRICT) CANAL NUMBER 6, (A 148 FOOT WIDE RIGHT-OF-WAY); THENCE N00°44'27"E, ALONG SAID RIGHT-OF-WAY LINE, A DISTANCE OF 3072.04 FEET; THENCE DEPARTING SAID EAST RIGHT-OF-WAY LINE, N89°46'39" E A DISTANCE OF 992.81 FEET; THENCE S00°38'45"W A DISTANCE OF 464.63 FEET; THENCE S00°40'06"W A DISTANCE OF 864.20 FEET; THENCE N89°44'20"E A DISTANCE OF 146.10 FEET; THENCE S00°40'13"W A DISTANCE OF 1742.62 FEET TO THE POINT OF BEGINNING. CONTAINING 66.00 ACRES, MORE OR LESS.

**EXHIBIT "B"**

**W.G. Mills, Inc.  
Brevard County High School CCC  
Additional Off-Site Utility Costs  
6-18-2008**

<b>Item Description</b>	<b>Units</b>	<b>U.O.M.</b>	<b>Unit Cost</b>	<b>Total Cost</b>
<b>Additional 1,050 LF of 16" Force Main</b>				
16" PVC Force Main	1050	LF	\$ 35.50	\$ 37,275.00
Fittings and Restraints	3	Ea.	\$ 675.00	\$ 2,025.00
16" Plug Valve	1	Ea.	\$ 5,525.00	\$ 5,525.00
Hydrostatic Testing	1	Ea.	\$ 225.00	\$ 225.00
<b>Subtotal Additional Length of Force Main =</b>				<b>\$ 45,050.00</b>
<b>Negotiated Cost of Palm Bay Utilities will Reimburse</b>				<b>\$ 22,525.00</b>
<b>Total Cost for Additional Length of Force Main =</b>				<b>\$ 22,525.00</b>
<b>Additional 1,055 LF of 20" PVC Water Main</b>				
20" PVC Water Main	1055	LF	\$ 50.25	\$ 53,013.75
Fittings and Restraints	3	Ea.	\$ 775.00	\$ 2,325.00
Hydroseed R.O.W	8800	SF	\$ 0.05	\$ 440.00
<b>Subtotal Additional Length of Water Main =</b>				<b>\$ 55,778.75</b>
<b>Negotiated Cost of Palm Bay Utilities will Reimburse</b>				<b>\$ 27,889.38</b>
<b>Total Cost for Additional Length of Water Main =</b>				<b>\$ 27,889.38</b>
<b>Additional Cost to Upsize Force Main to East Entrance Road</b>				
16" PVC Force Main	1675	LF	\$ 35.50	59,462.50
8" PVC Force Main	55	LF	\$ 12.95	712.25
Original 8" PVC Force Main	1730	LF	\$ 12.95	(22,403.50)
Connect to Existing Valve	1	Ea.	\$ 1,190	1,190.00
Original Connect to Existing Valve	1	Ea.	\$ 1,190	(1,190.00)
Fittings and Restraints	16	Ea.	\$ 675.00	10,800.00
Original Fittings and Restraints	16	Ea.	\$ 235.00	(3,760.00)
16" Plug Valve	1	Ea.	\$ 5,525.00	5,525.00
8" Plug Valve	1	Ea.	\$ 1,940.00	1,940.00
Original 8" Plug Valve	2	Ea.	\$ 1,940.00	(3,880.00)
Manual Air Release Valve	3	Ea.	\$ 1,150.00	3,450.00



Original Manual Air Release Valve	3	Ea.	\$	1,035.00	(3,105.00)
Hydrostatic Testing	1	Ea.	\$	500	500.00
Original Hydrostatic Testing		Ea.	\$	500	500.00

**Subtotal Additional Cost to Upsize Force Main = \$ 48,741.25**

**Additional Cost to Upsize Water Main to East Entrance Road**

20" PVC Water Main	1670	LF	\$	50.25	\$ 83,917.50
Original 12" PVC Water Main	1670	LF	\$	20.50	\$ (34,235.00)
Connect to Existing Valve	1	Ea.	\$	1,190.00	\$ 1,190.00
Original Connect to Existing Valve	1	Ea.	\$	1,190.00	\$ (1,190.00)
Fittings and Restrains	20	Ea.	\$	775.00	\$ 15,500.00
Original Fittings and Restrains	20	Ea.	\$	375.00	\$ (7,500.00)
Jumper	1	Ea.	\$	1,800.00	\$ 1,800.00
Original Jumper	1	Ea.	\$	1,550.00	\$ (1,550.00)
20" Butterfly Valve	2	Ea.	\$	4,425.00	\$ 8,850.00
Original 12" Butterfly Valve	2	Ea.	\$	2,415.00	\$ (4,830.00)
Fire Hydrant Assembly	2	Ea.	\$	5,865.00	\$ 11,730.00
Original Fire Hydrant Assembly	2	Ea.	\$	4,050.00	\$ (8,100.00)
Manual Air Release	2	Ea.	\$	1,325.00	\$ 2,650.00
Original Manual Air Release	2	Ea.	\$	1,165.00	\$ (2,330.00)
Blowoff	1	Ea.	\$	690.00	\$ 690.00
Original Blowoff	1	Ea.	\$	690.00	\$ (690.00)
10" PVC	30	LF	\$	19.00	\$ 570.00
Original 10" PVC	30	LF	\$	19.00	\$ (570.00)
10" Gate Valve	1	Ea.	\$	2,070.00	\$ 2,070.00
Original 10" Gate Valve	1	Ea.	\$	2,070.00	\$ (2,070.00)
Dewatering at Ditch Crossing	1	Ea.	\$	690.00	\$ 690.00
Original Dewatering at Ditch Crossing	1	Ea.	\$	690.00	\$ (690.00)
Regrade Ditch Swale	70	Ea.	\$	6.00	\$ 420.00
Original Regrade Ditch Swale	70	Ea.	\$	6.00	\$ (420.00)
Bahia Sod Ditch	1200	LF	\$	0.26	\$ 312.00
Original Bahia Sod Ditch	1200	LF	\$	0.26	\$ (312.00)
Hydroseed Right of Way	13600	Sq Ft.	\$	0.05	\$ 680.00
Original Hydroseed Right of Way	13600	Sq Ft.	\$	0.05	\$ (680.00)

**Subtotal Additional Cost to Upsize Force Main = \$ 65,902.50**

**SUBTOTAL = \$ 165,058.13**  
**CM OH & FEE = \$ 21,853.70**  
**ADDITIONAL ENGINEERING COSTS = \$ 7,500.00**  
**TOTAL ADDITIONAL COSTS = \$ 194,411.83**

**EXHIBIT "C"**

**Utility Department Plan Review/Inspection Fee**

<b>Base Fee</b>	<b>\$ 700.00</b>
<b>Charge per Equivalent Residential Connection (ERC)</b>	
<b>\$65.00 per Water ERC</b>	
<b>\$65.00 x 175 ERC</b>	<b>\$11,375.00</b>
<b>\$65.00 per Sewer ERC</b>	
<b>\$65.00 x 175 ERC</b>	<b>\$11,375.00</b>
<b>\$1.00 per Linear Feet of Force Main</b>	
<b>2780 LF @ \$1.00</b>	<b>\$ 2,780.00</b>
<b>\$1.00 per Linear Feet of Force Main</b>	
<b>2755 LF @ \$1.00</b>	<b>\$ 2,755.00</b>
<b>\$1,500.00 per Lift Station</b>	
<b>1 Lift Station</b>	<b>\$ 1,500.00</b>
<b>TOTAL COSTS</b>	<b>\$30,485.00</b>