

A.K. (BEN) SHARMA, P.E.
DIRECTOR OF POWER SUPPLY



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Orig: To Vault

May 4, 1992

Mr. Brian Wheeler
Director of Water & Sewer Department
City of Kissimmee
101 North Church Street
Kissimmee, FL 34741

RE: Executed Agreement and Easement Concerning Delivery and Use
of Treated Sewage Effluent

Dear Brian:

I am returning herewith an original of the fully executed agreement between the City of Kissimmee and KUA for the utilization of the City's effluent at KUA's Cane Island site.

We very much appreciated the time and effort you and Don Smallwood put in to develop this agreement and get it approved.

Sincerely,

A. K. Sharma

A. K. (Ben) Sharma, P.E.
Director of Power Supply

AKS/css

Enclosure

cc: Mr. Mike Soltys, B&V
Mr. Myron Rollins, B&V

**Agreement and Easement Concerning Delivery
and Use of Treated Sewage Effluent**

This Agreement and Easement is made and entered into this 28th day of April, 1993, by and between the CITY OF KISSIMMEE, a municipal corporation, organized and existing under the laws of the State of Florida (hereinafter referred to as City); and KISSIMMEE UTILITY AUTHORITY, a body politic (hereinafter referred to as KUA).

Witnesseth:

WHEREAS, KUA is a body politic, organized under the laws of the State of Florida, empowered among other things to plan, finance, acquire, construct, reconstruct, own, lease, operate, maintain, repair, improve, or extend electric generation, transmission, and distribution projects; and

WHEREAS, the City is a municipal corporation empowered among other things to plan, finance, acquire, construct, reconstruct, own, lease, operate, maintain, repair, improve, or extend wastewater treatment and disposal facilities; and

WHEREAS, KUA and the City both serve residents of the City and the surrounding area providing the essential services of electricity and wastewater disposal; and

WHEREAS, KUA has purchased an electrical generating unit site, the Cane Island Site, adjacent to the City's treated wastewater effluent pipeline (Effluent Pipeline); and

WHEREAS, KUA has entered a joint participation agreement with the Florida Municipal Power Agency (FMPA) to construct two electrical generating units at the Cane Island Site; and

WHEREAS, FMPA has designated KUA as its agent; and

WHEREAS, KUA must obtain water for cooling tower makeup for the second unit to be constructed at the Cane Island Site; and

WHEREAS, KUA must dispose of wastewater from the Cane Island Site; and

WHEREAS, KUA anticipates building additional generating units at the Cane Island Site in the future which will require water for cooling tower makeup and wastewater discharge; and

WHEREAS, it is to the mutual benefit of KUA, the City, and their customers for KUA at the Cane Island Site to use the City's treated sewage effluent for cooling tower makeup and to discharge plant wastewater into the Effluent Pipeline;

NOW, THEREFORE, in consideration of the premises and other valuable consideration given one party to the other, the City and KUA hereby agree as follows:

I. Terms, Volume and Delivery Schedule.

A. The City shall deliver and KUA shall accept, use, and return treated sewage effluent, in quantities and under the quality provisions set forth herein. This Agreement shall be effective for a term of thirty (30) years. This Agreement shall be extended for additional terms of five (5) years unless written notification is given at least 18 months prior to the expiration of the initial thirty year term. KUA agrees to notify the City at least 30 days prior to the date it expects to actually accept the treated sewage effluent. Notwithstanding this provision, in the event changes in state or federal law subsequently prohibit the use of treated sewage effluent in the manner contemplated by this Agreement, the Agreement shall be terminated as a matter of law.

B. The City shall deliver treated sewage effluent to KUA for use at the Cane Island Site via the Effluent Pipeline. The City shall deliver up to 800,000 gallons per day at a flow rate of up to 600 gallons per minute for Cane Island Unit 2 through the term of the Agreement. The average annual withdrawal rate for this initial increment is estimated to be up to 220,000,000 gallons per year.

C. Throughout the term of the Agreement the parties acknowledge that the withdrawal and delivery of the treated sewage effluent will be on an as needed basis. KUA agrees to give reasonable notice (i.e., by telephone or written communications) of the expected treated sewage effluent quantities and the anticipated dates and times of withdrawal. The City must give KUA prior written notice of its inability to supply the treated sewage effluent to KUA as soon as practicable under the circumstances upon the initial discovery by the City. KUA acknowledges that from time to time there may be an interruption of flow or significant diminution of flow due to failure of mechanical equipment at the treatment plants, failure of the

pipeline, and/or failure due to substandard effluent quality. The City agrees to notify KUA at least 60 days in advance of scheduled outages of the Effluent Pipeline and any associated treatment plant and to cooperate with KUA during the scheduled outages. The City agrees to repair mechanical, pipeline, or effluent quality failures within seventy-two hours of the initial discovery by the City. If the City is not able to deliver the average daily allocation of treated sewage effluent to KUA because of mechanical, pipeline or effluent quality failures, KUA has the right to obtain water from an alternate source during such period of the City's inability to supply. During the periods of the City's inability to supply, wastewater discharges resulting from water obtained from other sources shall be excluded from any computation of ratios of annual withdrawals. No penalties shall be assessed against KUA for the amount of alternate wastewater discharged to the City.

D. The City agrees to notify KUA of any proposed agreements with third parties, negotiated for delivery and use of treated sewage effluent from the Effluent Pipeline prior to approval and execution by the City. The City will, upon request, demonstrate that the proposed additional agreement will not prevent the City from fulfilling the terms and obligations contained herein, materially affect the quality of the treated sewage effluent provided to KUA, or otherwise affect KUA in a detrimental manner. The City agrees to favor KUA with copies of any and all agreements between the City and third parties relating to the subject matter of this Agreement.

II. Option.

A. The City shall maintain subject to availability of sufficient quantity the capability to deliver to the KUA Cane Island Site additional treated sewage effluent in the following sequential increments.

Table of Increments of Treated Sewage Allocation

<u>Increment</u>	Gallons per Day <u>(1,000)</u>	Gallons per Minute <u>GPM</u>
A	2,900	2,200
B	1,000	800
C	900	700

D	900	700
E	2,900	2,200
F		
Upset Maximum Limit	8,600	6,600

The term of this availability of additional treated sewage effluent shall be twenty (20) years, however, the term of availability may be extended for additional terms of five (5) years based upon written request of KUA at least twelve (12) months prior to expiration of the initial twenty year term.

B. KUA shall notify the City in writing of its intent to exercise its option to utilize the next increment of allocation of treated sewage effluent in the sequence a minimum of two (2) years in advance of the projected date for the Cane Island Site to actually need the increased allocation. Within thirty (30) days of receipt of the KUA notice of intent to utilize the next increment of allocation of treated sewage effluent, the City shall provide KUA written notice of its availability to provide the increment of allocation with the schedule provided in the KUA notice. If the City does not have or project to have sufficient quantity of treated sewage effluent to fully provide the increment of allocation requested in the KUA notice, the City shall provide KUA in writing the estimated date of availability of the total quantity of treated sewage effluent.

C. KUA may substitute one increment for another increment subject to availability of sufficient quantity of treated sewage effluent and with the consent of the City by amendment to this Agreement. KUA may also establish an additional increment F by modifying one or more of the increments A-E above, however, the total upset limit of all increments A-F shall not exceed 8.6 million gallons per day and/or 6,600 gallons per minute of treated sewage effluent as established in the table contained herein. Additional amendments or modification to the Table of Increments of Treated Sewage Allocation not outlined herein may be requested by KUA, but will be subject to maintaining the Upset Maximum Limits contained in the table, the availability of sufficient quantity of treated sewage effluent and the consent of the City.

D. KUA shall not exercise its option for the next increment of allocation of treated sewage effluent in the sequence until the two (2) year period has expired from the last KUA written notification of intent to utilize an increment of allocation, e.g., if KUA notifies the City in writing on January 1, 1994, of its intent to utilize Increment A no earlier than January 1, 1996; then KUA cannot file written notification of its intent to utilize Increment B until January 1, 1996.

E. KUA may request in writing that the minimum two (2) year period between notification of intent to utilize the next increment of allocation of treated sewage effluent be waived. The City may grant a request for waiver of the minimum two (2) year period based on the City's ability to provide the requested increased allocation within the reduced schedule.

F. The schedule of sequential increment of treated sewage effluent allocation may be modified by the mutual consent of both parties.

G. KUA may request increased withdrawal rates in excess of the schedule contained in Paragraph II A by filing a request which indicates with specificity the increased withdrawal rate, date of proposed increase, the proposed increase in wastewater discharge and characteristics, and all other information which may be necessary for the City to evaluate the request. Such additional request must be filed a minimum of six months in advance of desired increased withdrawal. Within thirty (30) days of receipt of said request the city shall in writing either approve, reject, or approve with conditions the additional withdrawal.

H. Notwithstanding the above, throughout the term of this Agreement specified in Paragraph I A., the City will not modify or enter into any agreements that would limit the City's ability to supply KUA at the Cane Island Site the amounts of treated sewage effluent specified in Paragraph II A without providing KUA a first right of refusal. The first right of refusal shall be exercised by the City providing KUA a proposed agreement executed by the third party seeking the use of treated sewage effluent as well as the City's best effort projections of the availability of treated sewage effluent with and without the proposed agreement. At the same time, the City shall provide KUA the City's costs associated with foregoing the proposed agreement. KUA shall have 90 days to notify the City of KUA's decision as to whether KUA will exercise KUA's first right of refusal. If KUA exercises the first right of refusal, KUA will pay the City's costs associated with foregoing the proposed agreement and the City will maintain the capability to provide KUA with the amounts of treated sewage effluent specified in Paragraph II A. If KUA does not

give notice to the City that KUA will exercise KUA's first right of refusal within 90 days, the City may reduce the schedule of treated sewage effluent reserved for KUA by the amount of the third party agreement. The City agrees to make its best effort (subject to the conditions contained in this Agreement) to maintain the amounts of treated sewage effluent specified by the schedule in Paragraph II A available to KUA even though KUA does not exercise its first right of refusal. KUA and the City agree to cooperate and upon request provide the other party their best effort projections of availability and use of treated sewage effluent.

I. The City agrees to project the availability of treated sewage effluent and the consumption of reuse water. In the event the installation of a new reuse system in a new development is projected to result in the City's inability to provide KUA with the treated sewage effluent in accordance with the schedule in Paragraph II A, the City shall notify KUA of the proposed installation of the reuse system together with estimated costs of installation, costs of operation and maintenance and/or costs to perform (including but not limited to loss of revenue, cost of retrofitting reuse facilities, etc.). KUA shall have a 90 day period in which to exercise a first right of refusal for the proposed reuse system. If KUA gives notice to the City that KUA is exercising the first right of refusal, KUA shall reimburse the City for the City's cost associated with the installation of the reuse system; however, the users of the reuse system will only be provided with treated sewage effluent when it is not needed by KUA. KUA will also reimburse the City for the City's additional disposal costs until the effective date of the KUA's additional treated sewage effluent withdrawal. KUA will also reimburse the City for any ongoing costs including loss of revenue after KUA's additional treated sewage effluent withdrawal begins that are the result of KUA exercising this first right of refusal. Interest on KUA's costs to reimburse the City for the installation of the reuse water system will accrue monthly based on the rate per annum reported in Muniweek on the last publication of the calendar month as the Current Bond Buyer Revenue Bond Index. Revenues collected by the City from the sale of reuse water in the systems paid for by KUA will be paid to KUA by the City until the cost of the system including interest as calculated above has been repaid at such time and for thereafter the City will retain the revenues from the sale of the reuse water.

III. Effluent Quality.

A. All wastewater effluent delivered to KUA under this Agreement shall be treated by advanced treatment methods to control the levels of bacteria and any other constituents which would constitute a damage to human health and in accordance with the requirements of permits issued by state and federal regulatory agencies. The quality of the wastewater effluent shall be treated to meet the public access levels of treatment standards as defined in Florida Department of Environmental Regulation (FDER) Rule 17.610 Florida Administrative Code (F.A.C.) (the primary and secondary drinking water standards). The City agrees to provide to KUA copies of its monthly monitoring reports which are required to be filed with the FDER.

B. The City agrees to provide to KUA an annual chemical analysis of the treated sewage effluent from each wastewater treatment facility discharging to the Effluent Pipeline. This effluent will be analyzed for primary and secondary drinking water standards as established by the FDER. The City will not modify or enter into any agreements that would substantially reduce the quality or characteristics of the treated sewage effluent delivered to KUA without KUA concurrence. KUA agrees to provide the City with a copy of all reports as required by the FDER for KUA's wastewater returned to the Effluent Pipeline. KUA and the City will comply with the water quality standards set forth by the applicable permits issued by FDER.

C. Upon discovery by the City of any effluent discharged to the pipeline which does not meet the standards or requirements of the FDER permit, the City will immediately notify KUA. Notification will be made by telephone to the Cane Island Site followed by written notification to KUA at:

Kissimmee Utility Authority
Director of Power Supply
P. O. Box 423219
Kissimmee, Florida 34742-3219

D. The City and KUA each agree to indemnify and hold the other harmless for damages resulting from its actions causing wastewaters to be discharged into the Imperial Effluent Disposal Site which exceeds the FDER permit limits. The City also agrees to indemnify KUA for damages resulting from the actions of third parties with whom the city contracts, which cause wastewater to be discharged into the Imperial Effluent Disposal Site exceeding the FDER permit limits.

E. Should a dispute arise as to a determination of compliance or noncompliance with the FDER primary and secondary drinking water standards, hydraulic balance and mass balance analyses shall be conducted. If KUA and City Engineers' conclusions conflict, a mutually agreed upon independent Certified Engineer will be hired as a consultant to conduct an analysis.

F. Both parties agree to initially share equally the cost of such independent Certified Engineer. The opinion of the independent consultant shall be binding on the parties. If the results of the analysis determine that the discharge from the Cane Island Site is responsible for the effluent within the pipeline to be out of compliance with standards or requirements of the FDER permit or any other applicable permit, KUA shall immediately take all necessary and reasonable remedial actions at its cost and expense, and shall insure that any discharge from its facility does not result in non-compliance by the City of the standards and requirement of its permits. KUA shall be the party liable for all corrective action, fines and damages, including the initial analysis if the Cane Island Site is determined to be the cause of the non-compliance incident. If the cause of the non-compliance incident is determined to have been the City, then KUA shall not be liable for any required corrective action, fines and damages, including the initial analysis.

IV. Use of Treated Effluent.

A. It is contemplated by the parties hereto that KUA will use the treated sewage effluent as make-up supply for cooling towers for its facility. However, the parties agree that KUA may use the treated sewage effluent made available by the City for any on site purposes and in any manner determined by KUA; provided, however, that (i) KUA's use of treated sewage effluent shall at all times be consistent with all local, state, and federal guidelines and requirements; (ii) KUA shall not discharge the treated sewage effluent directly into any surface waters of the State of Florida without the express, written authorization of FDER, EPA, or any other jurisdictional agency, (iii) KUA shall comply with all local, state, and federal regulations and guidelines, and advise potential users of the limitations on the use of the treated sewage effluent. The City recognizes that the treated sewage effluent quality in the Effluent Pipeline at point of KUA's withdrawal must be of a quality that is better than required by F.A.C. 17.610 in order for KUA to meet the discharge permit quality requirements. The City will use reasonable efforts to provide KUA with treated sewage effluent which is of a quality that is better than that required by

F.A.C. 17.610 and which will meet KUA's requirements; however, the City is under no obligation to expend capital funds or increase the City's operating cost to provide treated sewage effluent which is of better quality than that required by F.A.C. 17.610 unless requested to do so by KUA. If KUA requests the City to take action to provide KUA with treated sewage effluent which is of better quality than that required by F.A.C. 17.610 which requires the City to expend capital funds and/or increases the City's operation costs the KUA shall fully reimburse the City for the additional costs the City incurs.

V. Return/Discharge.

A. KUA shall discharge and the City agrees to accept wastewater from the KUA Cane Island Site. The wastewater from the Cane Island Site will be injected into the City's Effluent Pipeline for disposal. The composition of the wastewater includes pretreatment equipment wastewater, neutralized demineralized wastes, and cooling tower blowdown. The City shall begin accepting return wastewater from KUA on or about November 1, 1993.

B. The KUA facility shall not discharge a chemical constituent in a concentration which, when combined with the effluent from the City's wastewater treatment facility at the end of the Effluent Pipeline, will result in a concentration of that constituent which will violate applicable permits or would prohibit Florida Power Corporation from exercising its rights under its contract with the City for delivery and use of Treated Sewage Effluent dated January 5, 1993.

C. KUA will sample the treated sewage effluent from the City of Kissimmee at the point of KUA withdrawal from the Effluent Pipeline and analyze for the following parameters:

<u>Parameter</u>	<u>Units</u>	Daily <u>Average</u>	Daily <u>Maximum</u>	Sample <u>Type</u>	<u>Freq.</u>
Nitrates (Total)	mg/l	Report	Report	Composite	weekly
Nitrates (Total)	lb/day	Report	Report	Composite	weekly

Total Nitrogen	mg/l	Report	Report	Composite	weekly
Total Nitrogen	lb/day	Report	Report	Composite	weekly

D. Samples shall be taken prior to the point of discharge from the Cane Island Site into the Effluent Pipeline and analyzed as follows:

<u>Parameter</u>	<u>Units</u>	<u>Daily Average</u>	<u>Daily Maximum</u>	<u>Sample Type</u>	<u>Freq.</u>
Flow	MGD	0.110	report	metered	daily
pH	SU	6.0 min.	8.5 max.	composite	2/mo.
TDS	mg/l	report	report	composite	2/mo.
Chlorides (total)	mg/l	report	report	composite	2/mo.
Sodium	mg/l	report	report	composite	2/mo.
Sulfates (total)	mg/l	report	report	composite	2/mo.
TRPH*	mg/l	BDL**	5.0	composite	weekly
Nitrates (total)	lbs/day	***	***	composite	weekly
Nitrogen (total)	lbs/day	***	***	composite	weekly
Nitrates (total)	mg/l	report	report	composite	weekly
Nitrogen (total)	mg/l	report	report	composite	weekly

*Total Recoverable Petroleum Hydrocarbon.

**Below detectable limits.

***There shall be no net increase in nitrates compared with the nitrates already present in the effluent line and the ground water used at the Cane Island Site.

E. There shall be no net increase in nitrates compared to the water sources. Parameters may be amended, from time to time, by agencies having jurisdiction over

the permit requirements of this Agreement. KUA agrees to modify sampling parameters in accordance with any future permit modifications.

F. If the City's treated sewage effluent does not exceed its permit limits at the point where KUA accepts the treated sewage effluent yet the discharge from the Cane Island facility contains any constituent in a concentration resulting in the City's violation of its disposal site permits or any federal, state or local regulation, the City shall immediately notify KUA of the problem. Notification will be made as indicated in Section III C, above. Upon receiving said notification, KUA will terminate the discharge of wastewater and review its data in an effort to determine the source of the problem. KUA acknowledges the contractual rights of Florida Power Corporation and the foreseeability that such permit violation may result in damages suffered by the City and Florida Power Corporation.

G. If the City notifies KUA that the quality of treated sewage effluent is such that the treated sewage effluent cannot be utilized as set forth in Agreement and Easement Concerning Delivery and Use of Treated Effluent between the City and Florida Power Corporation (FPC) dated January 5, 1993, KUA will review operations at the Cane Island Site and coordinate with FPC to attempt to provide treated sewage effluent of a quality adequate for FPC's use, although, KUA has no obligation to modify discharges to the Effluent Pipeline to provide treated sewage effluent of a quality better than that required for the combined effluent of the City's wastewater treatment facilities and the KUA Cane Island Site effluent to meet the requirements of the governing permit requirements and F.A.C. 17.610 as may be amended from time to time.

H. Should a dispute arise as to a determination of the cause of the noncompliance resolution shall be by the procedure outlined in Paragraphs III E and F.

I. KUA shall provide the City with copies of permits associated with the use of the treated sewage effluent and discharge of wastewater as well as reports summarizing sampling results and immediately notify the City of any violation or failure to meet the requirements of such permits.

VI. Rates.

A. This section governs the rates and compensation associated with the use of the treated sewage effluent at the Cane Island Site. For purposes of determining

charges, year will be defined as KUA's fiscal year which runs from October 1 through September 30. Payments for partial years will be prorated.

B. The ratio of annual gallons withdrawn to annual gallons returned will be 2.2/1. KUA and the City shall use this ratio as the basis for establishing compensation for the use of treated sewage effluent and administrative costs associated with the monitoring of effluent quality and quantity as required by the FDER and this Agreement.

C. On or about October 1 of each year, KUA will pay the City the Annual Base Rate (ABR). The first day of each month or as soon thereafter as practical, the City will read the meter recording the treated sewage effluent withdrawal and the wastewater discharge. Each month the City will bill KUA for the treated sewage effluent withdrawal in accordance with the charge outlined herein. The ABR shall be applied as a credit against the monthly treated sewage effluent charge for the contract year (October 1 through September 30). KUA shall receive a bill each month indicating the monthly and cumulative amounts for the contract year of treated sewage effluent withdrawn and wastewater discharged, the amount of credit, if any, remaining from the ABR and the amount, if any, due to the City. Payment shall be made to the City within twenty (20) days of receipt of the bill for any amounts due. A penalty of five percent (5%) shall be applied to any delinquent payments. The initial payment for the ABR shall not be made until KUA withdraws treated sewage effluent or discharges wastewater. The initial payment for the ABR shall be prorated based on the amount of the contract year remaining.

D. Compensation to the City shall be defined by the formula: annual payment = ABR (new year) + [(cumulative sum of MGW for the current operating year) * RWC - ABR (current year)] where: ABR = (Annual Base Rate), equals the incremental expenses incurred by the City for lab fees, monitoring, meter reading, and administrative costs. The ABR will escalate at a rate equal to the annual increase in the Consumer Price Index for the previous calendar year as published in the January issue of the *Survey of Current Business*. The first adjustment will be made for the ABR in October 1994.

RWC = (Reuse Water Charge) is the lowest commercial rate available for the suburban service area by City ordinance for reuse water charges.

MGW = (Monthly Gallon Withdrawals) is the KUA monthly gallon withdrawals from the Effluent Pipeline as read locally by the City using the KUA installed meters.

E. For the 1993-94 contract year, the City has established the following rates: ABR = \$12,000 and RWC = \$0.25/1,000 gallons. Should the annual ratio of 2.2/1 minus 0.05 not be achieved by KUA in any given year, then a rate penalty may be assessed at the end of that year according to Section VII (Penalties) of this contract.

VII. Penalties.

A. Beginning in October 1994, and each successive October thereafter, the ratio of the annual withdrawal of the treated sewage effluent to the discharge of wastewater shall be calculated. The calculation of the ratio will be based upon the meter readings of the treated sewage effluent withdrawal and the wastewater discharge for the previous contract year. If the minimum annual ratio of 2.2/1 with an allowance of minus 0.05 is not achieved, KUA shall pay a penalty surcharge on the incremental amount of wastewater discharged which is in excess of the amount allowed to maintain the 2.2/1 ratio. The surcharge shall be equal to three times the RWC. KUA shall be billed for the surcharge, if any, in November.

B. The amount of wastewater against which the surcharge shall be applied will be calculated as follows:

$$SCF = TWW - (RW/2.2)$$

SCF = Incremental amount of wastewater to be assessed penalty surcharge.

TWW = Wastewater discharged by KUA into the Effluent Pipeline.

RW = Treated sewage effluent withdrawn by KUA from the Effluent Pipeline.

VIII. Connection and Metering.

A. KUA shall be responsible for connecting to the City's Effluent Pipeline to receive the treated sewage effluent from the City and to discharge its wastewater from its facility to the Effluent Pipeline. KUA shall be responsible for the connection, all costs of installation, and agrees that it will be responsible for all damages associated with the loss of use, or damage to or destruction of the Effluent Pipeline resulting from the KUA connection.

B. KUA agrees to retain a professional engineer licensed/registered in Florida and a contractor, likewise licensed in Florida, both of whom are experienced in handling concrete pipe under pressure (PCP). KUA shall submit plans and procedures for connecting to the Effluent Pipeline for review and approval by the City. The City shall review and approve or disapprove the engineer, contractor, and connection plans within 30 days of receipt from KUA.

C. Within 30 days of execution of this agreement, the City agrees to make application to FDER to obtain and/or modify all necessary permits as required by FDER to allow KUA to connect to the Effluent Pipeline. The City will use due diligence to obtain permit approval as soon as possible thereafter. KUA agrees to obtain all permits required to connect to the Effluent Pipeline and to notify the City at least 30 days prior to the start of construction.

D. KUA shall provide metering of the treated sewage effluent taken from the City's Effluent Pipeline and of the discharge of wastewater from the KUA Cane Island Site to the Effluent Pipeline. The two meters and their location shall be subject to approval by the City, and will be easily accessible for reading, testing, and maintenance. The City shall retain the responsibility for testing and maintaining the meters. Unless an emergency arises, the City shall give KUA a 24-hour notice should service be interrupted to KUA operations due to maintenance or testing activity.

IX. Excuse from Performance by Governmental Act.

A. If for any reason during the term of this Agreement any local, state or federal governments or agencies shall fail to issue necessary permits, grant necessary approvals, or require any change in the operation of the treatment, transmission and distribution systems or the application and use of the treated sewage effluent by KUA, then, to the extent that such requirements shall affect the ability of any party to perform any of the terms of this Agreement, the affected party shall be excused from the performance thereof. The parties hereto shall immediately undertaken to renegotiate that portion (and only that portion) of this Agreement affected by such requirements so that this Agreement, as renegotiated, will be in conformity with such permits, approvals or requirements.

X. Assignment and Damages

A. The City shall have the right to transfer all or any part of the treatment, transmission or distribution facilities to another entity, and to assign all or any part of its rights and obligations under this Agreement to an alternate entity, who shall be bound by, accept, and be exclusively responsible for all applicable terms and conditions of this Agreement.

B. If KUA improperly refuses to accept the treated sewage effluent specified in this Agreement for any reason, and the City has otherwise complied with the terms

of this Agreement and the FDER permit, KUA shall be liable to the City for the City's reasonable, verifiable costs to dispose of the improperly refused treated sewage effluent, not to exceed three times the RWC. If exercised by the City, these costs shall be invoiced to KUA within one year of the refusal to accept the treated sewage effluent. Failure to invoice these costs within one year of the refusal to accept the treated sewage effluent shall constitute a waiver by the City for reimbursement of those costs, but failure to exercise this right by the City shall not constitute a waiver by the City for reimbursement upon subsequent breaches of this Agreement. For the purposes of this paragraph, "improperly refused" is defined as: KUA using water from another ultimate source for cooling tower makeup when the volume and flow rate of treated sewage effluent necessary for KUA's needs was available from the Effluent Pipeline and the quality of the treated sewage effluent at the point of KUA's withdrawal from the Effluent Pipeline meets the City's discharge permit requirements and is of sufficient quality to enable KUA to meet its discharge permit requirements after treatment and discharge.

C. If the City improperly refuses to supply the agreed upon annual allocation of treated sewage effluent for any reason and KUA has otherwise complied with the terms of this Agreement and the FDER permit, the City shall be liable to KUA for its reasonable costs to acquire placement water. If exercised by KUA, these costs shall be invoiced to the City within one year of the refusal to supply the treated sewage effluent. Failure to invoice these costs within one year of the refusal to supply the treated sewage effluent shall constitute a waiver by KUA for reimbursement of these costs, but failure to exercise this right by KUA shall not constitute a waiver by KUA for reimbursement upon subsequent breaches of this Agreement. For the purposes of this paragraph "improperly refused" is defined as: the City having the treated sewage effluent available from treatment facilities, making all reasonable efforts to treat the treated sewage effluent to an acceptable quality level, and not be subject to a force majeure event relative to delivery.

XI. Decisions by the City.

A. In those circumstances set forth herein in which a decision must or can be made by the City, the City shall not exercise such discretion in an unreasonable or arbitrary manner, nor will the City unreasonably or arbitrarily withhold or delay a decision or approval. For purposes of this agreement, decisions on behalf of the City shall be made by the City Manager or designee. In the case that such position does

not exist, a comparable administrative office of the City shall make decisions on behalf of the City.

XII. Administrative Review, Arbitration.

A. All determinations, approvals, etc. made by the City respecting the rights and duties of the Parties, and all demands made by the City to KUA respecting the performance of its obligations to the City consistent with the provisions herein, shall be binding upon KUA; provided, however, that such determinations and demands shall be subject to administrative review and arbitration as provided below.

B. In the event the City alleges that KUA is in breach of its obligations herein or determines course of action to be taken by the KUA; the KUA may within fourteen (14) business days following receipt of written notice from the City containing a determination or demand, send a written notice with any objections to the City Manager and request that the City Manager review such determination or demand. Such notice shall set forth KUA's position on the matter to the extent possible. KUA shall have the right to meet with the City Manager to explain more fully its position.

C. The City Manager shall review the matter after receiving information from KUA, and make a determination on the matter. For purposes hereof, the failure of the City Manager to make a determination within seven (7) business days following the receipt of KUA's request shall be deemed to constitute a determination supporting the position of the City. KUA shall also have the right to an administrative review of the City Manager's determination by the City Commission (Commission) of the City of Kissimmee. In order to exercise this right, KUA shall, within thirty (30) days following KUA's receipt of the written notice from the City Manager containing the review determination, or within twenty-one (21) business days following the City's receipt of the KUA written objection(s), send a written notice (by certified mail return receipt requested) to the Commission and request that the Commission review this determination.

D. The Commission shall schedule a hearing thereon at the next regularly scheduled Commission meeting at which the hearing can reasonably become part of the agenda, but no later than thirty (30) days following the Commission's receipt of such notice. KUA shall be notified of the date, time, and location of the hearing and be permitted to present evidence and argument at the hearing. The Commission

shall make a determination on the matter, which determination shall constitute the final and binding determination.

E. So long as KUA shall comply in a timely fashion with the foregoing administrative review procedures, its good faith failure to comply with a determination or demand of the City Manager or the Commission shall not constitute a breach of this Agreement. However, if any damages to the City shall accrue as a result of KUA's failure or delay in complying with any such determinations or demands, KUA shall be fully liable for all reasonably foreseeable damages unless the determinations of demands are found by the Commission, to be invalid.

F. In the event that KUA alleges that the City is in breach of its obligations herein, it shall request in writing that the City Manager make a determination as to whether the City is complying with its obligations. Such request shall set forth KUA's position on the matter and KUA shall have the right to meet with the City Manager to explain more fully its position. If the City Manager determines that the City is in breach hereof, he shall immediately initiate action directed at curing the breach, and the City shall be fully liable to KUA for any reasonably foreseeable damages suffered by KUA during the period for which the breach occurred and remains uncured.

G. If the City Manager determines that the City is not in breach of such obligations, KUA may utilize the administrative review procedures outlined above with respect to such determination. For purposes hereof the failure of the City Manager to make a determination within seven (7) business days following KUA's request shall be deemed to constitute a determination that the City is not in breach of such obligations, and KUA shall be entitled to request an administrative review by the Commission as outlined above.

H. If the City Manager determines that the City is not in breach of this Agreement, or if the City Manager fails to make any determination within fourteen (14) business days after receipt of such request by KUA, and KUA shall fail to timely utilize the administrative review procedure described above, then KUA shall be deemed to have agreed that the subject matter of such request does not constitute a breach hereunder.

I. The parties agree that no legal action related to this Agreement shall be brought in any court of competent jurisdiction except for an action arising from the contractual obligations contained in the Florida Power Corporation agreement dated January 5, 1993.

XIII. Notices.

All notices required or authorized under this Agreement shall be given in writing, and shall be served by United States Mail to the parties at the addresses listed below (or as such addresses may be changed from time to time in the same manner):

CITY: City Manager
 City of Kissimmee
 101 North Church Street
 Kissimmee, FL 34741

WITH COPY TO: Director of Water & Sewer
 City of Kissimmee
 101 North Church Street
 Kissimmee, FL 34741

KUA: Kissimmee Utility Authority
 James Welsh
 President and General Manager
 P. O. Box 423219
 Kissimmee, FL 34742-3219

XIV. Inspection.

The City shall have the right to enter upon the Cane Island Site to review and inspect KUA's operating practices as they relate to this Agreement.

XV. Joinder.

This Agreement is being executed by KUA as acknowledgement on their parts that this Agreement impacts them and further acknowledges their acceptance of the terms.

XVI. Severability.

If any part of this Agreement is found invalid or unenforceable by any court of competent jurisdiction, such invalidity or unenforceability shall not affect the other parts of this Agreement if the right and obligations of the parties contained therein

are not materially prejudiced, and if the intentions of the parties can continue to be effectuated. To that end, this Agreement is declared severable.

XVII. Land Use Approvals.

This Agreement shall not be construed as granting, or assuring, or indicating any future grant of any land use or zoning approvals, permissions, variances, special exceptions or rights thereof with respect to the land.

XVIII. Entire Agreement.

This Agreement as executed by both the parties supersedes all previous agreements or representations, either verbal or written, heretofore in effect between the City and KUA that may have concerned the matters covered herein. No additions, alterations, or variations to the terms of this Agreement shall be valid, nor can the provisions of this Agreement be waived by either party unless such additions, alterations or waivers are expressly set forth in writing in a document of import equal to this Agreement and duly executed by the parties hereto.

XIX. Time is of the essence.

XX. Execution of Agreement.

IN WITNESS WHEREOF, the Parties hereto have caused this AGREEMENT to be executed by their duly authorized officers, and copies delivered to each Party, as of the day and year first above stated.

Witnesses to

Kissimmee Utility Authority

Rosemary E. Klinge

Alga A. Runder

KISSIMMEE UTILITY AUTHORITY

BY Richard L. Hall 4/28/16
Chairman Date

ATTEST Barbara G. Goff
Secretary

(Seal)

Witnesses to
City of Kissimmee

Cindy Frazer
CINDY FRAZER

Gwendolyn A. Davis Wiggins
Gwendolyn A. Davis Wiggins

CITY OF KISSIMMEE

BY John B. Pollet

Mayor-Commissioner

Date 4-20-93

ATTEST

Sandra L. Yeager
Secretary City Clerk

(Seal)

APPROVED AS TO FORM AND
LEGALITY

By [Signature]

City Attorney

4-20-93

Date