

Prepared by/Return to:

PERMIT AND INTERLOCAL AGREEMENT

(No. VB-2[])

THIS PERMIT AND INTERLOCAL AGREEMENT (the “Agreement”), dated this [] day of [], 201[], by and between **INDIAN RIVER FARMS WATER CONTROL DISTRICT**, a drainage district organized and existing under the General Drainage Laws of the State of Florida, whose address is 7305 4th Street, Vero Beach, Florida (the “**District**”), and the **CITY OF VERO BEACH, FLORIDA**, a municipal corporation of the State of Florida, whose address is 1053 20th Place, P.O. Box 1389, Vero Beach, Florida 32961-1389 (the “**Permittee**”).

NOW, THEREFORE, the District does hereby grant unto the Permittee a permit and license (collectively, the “**Permit**”), which Permit shall be effective from the date hereof and continue for a period of fifty (50) years (collectively, the “**Term**”), for the purpose of installing, maintaining, inspecting, operating, repairing and using electrical transmission lines, utility poles and related improvements collectively, (the “**Electrical Facilities**”) on, over and across District right-of-way along the Main Canal at the locations (the “**Permit Area**”) and in accordance with the plans and specifications attached hereto as “**Exhibit A**” signed by the parties and incorporated herein by reference, together with the right of ingress and egress on and over the property at said locations.

Permittee agrees to and with the District as follows:

1. That the rights herein granted shall extend into District right-of-way from utility pole to utility pole in the locations and widths, which vary from utility pole to utility pole, as shown on the plans approved by the District in accordance with said “**Exhibit A**”. Unless otherwise agreed to by District, the rights shall extend only for Electrical Facilities owned and used exclusively by Permittee or its sublicensee pursuant to Paragraph 19 herein, and Permittee, except as specifically permitted pursuant to Paragraph 19 herein, shall not have any right to otherwise assign, sublet, grant a sub-permit or sublicense of this Permit or any part thereof unto a third party.

2. Permittee assumes full responsibility for the operation and maintenance of said Electrical Facilities and shall save and hold harmless District from any expense, loss, damage or claim in regard thereto, and the District assumes and shall have no liability in connection therewith.

3. Permittee and District acknowledge and agree that each operates critical infrastructure and provides necessary services to Florida residents. As a result, Permittee and District agree to work together in good faith to ensure that neither interferes with the facilities or operations of the other, and to work together in a cooperative fashion following any storm event to ensure prompt restoration of critical services. Each party will provide the other with a direct emergency contact number to be used for purposes of addressing issues arising in the field. All such field issues will be addressed by the parties within twenty-four (24) hours of the affected party's notice to the other party. Notwithstanding the foregoing, Permittee agrees and acknowledges that the Permit is subject always to the paramount right of the District to keep and maintain its drainage district functions and operations, and should the occupation or use by Permittee of District's property by Permittee hinder or prevent District's water control function, then Permittee's use or occupation of such property must and will yield to water control functions, and is subject to revocation and cancelation following a default by Permittee herein and Permittee's failure to cure such default. The parties further agree that within sixty (60) days following the District's delivery of written notice to Permittee advising of an interference, problem or obstruction caused by Permittee's use or occupation of District's property that is adversely affecting District's functions Permittee shall cure the problem, interference or obstruction, provided, however, in the event the functional loss, problem, interference or obstruction is not reasonably capable of cure within sixty (60) days following the delivery of written notice from the District to Permittee of such loss and Permittee, within sixty (60) days of the receipt of such notice, commences to cure such loss and thereafter diligently and continuously prosecutes such cure to completion, Permittee shall not be in default under this Agreement.

4. ~~3-~~In no event shall the District be liable for any damages done or caused by the ~~District~~Permittee to the public, ~~to Permittee~~ or any other person; using the right-of-way or Permit Area under this Permit, and Permittee shall, to the extent provided and allowed by law, save the District, its officers, agents, supervisors, and employees harmless from any costs, charge ~~or~~, expense ~~or~~, claim or demand of any person against the District for bodily injury, death or property damage arising from or pertaining to Permittee's exercise of rights under this Permit. Permittee shall, prior to accessing the Permit Area, provide ~~to~~the District with evidence satisfactory to District, of adequate reserves held or owned by Permittee or Sublicensee, as self insurer, to protect the interests of District. ~~The Permit may be suspended by the District for so long as Permittee fails to maintain adequate reserves as a self insurer, and Permittee fails to provide District with a letter from Permittee's City Manager affirming such Permittee self insurance.~~

5. ~~4-~~Permittee is cautioned that electrical, water, sewer, gas or other installations or utilities may be located within the Permit Area, and Permittee shall use diligent efforts to first detect and locate all such installations and shall coordinate construction with all other lawful users of said right-of-way. Permittee shall be liable for all damages proximately resulting from its interference with or interruption of services provided by other lawful right-of-way users

within the Permit Area. District shall ensure that this provision is included in all permits issued to water, sewer, gas or other installations or utilities that are or may be located within the Permit Area.

6. ~~5.~~ Any construction on District right-of-way or property by Permittee and related cleanup shall be completed promptly by Permittee and in a workmanlike manner with minimum disturbance to existing berm, channel slopes and grade, with proper restoration and planting of any disturbed areas to prevent erosion occurring within thirty (30) days after completion of Permittee construction or installation of Electrical Facilities.

7. ~~6.~~ District and Permittee acknowledge that Permittee's Electrical Facilities currently exist within the Permit Area. For all ~~newly installed~~ replacements of Permittee's Electric Facilities lines, Permittee shall at all times maintain cable markers above ground at 100 foot intervals to show the location of the electrical transmission cables. For all newly ~~installed~~ replaced Electrical Facilities, the replacement of electrical transmission lines and utility poles shall be constructed and installed to permit the crossing of heavy equipment used by the District for the maintenance of its laterals, sublaterals and canals and for any similar heavy equipment used by land owners within the District. In any case where ~~newly installed Electric~~ replacement Electrical Facilities, including electrical transmission lines, i) cross a pipe or culvert used for drainage or irrigation purposes, or ii) a pipe or culvert is needed hereafter for drainage or irrigation of adjacent lands, and the pipe or culvert is deemed by District to be in need of repair or replacement, then District will provide Permittee with written notice of such event, and Permittee and District will devise a mutually agreeable schedule for the implementation of such work. Permittee agrees to make personnel and equipment available at the time of such repair or replacement work, at no cost to the District, to insure that the transmission lines do not interfere with such activities. District agrees that all District contractors and employees will attend a Permittee Safety Six presentation (which will be provided without cost to the District or its contractors) prior to commencing any such work in the vicinity of the Electrical Facilities. The District has the right to approve the location of each new electrical transmission ~~line~~ pole installed within the Permit Area, which approval will not be unreasonably withheld, conditioned or delayed, to ensure that such installation will not interfere with the District's functions and operations.

8. ~~7.~~ Permittee shall provide advance notice to the District's office of any planned construction, or the anticipated completion date of all new construction.

9. ~~8.~~ Permittee shall not discharge any pollutants or contaminants into waters or canals owned or maintained by, or subject to the jurisdiction of District, nor shall Permittee permit Permittee's employees, contractors and agents to obstruct the flow of water within the District's canals. Permittee shall save and hold District harmless from ~~an~~ any expense, loss or damage incurred by the District as a result of Permittee, its employees, contractors or agents discharging pollutants or contaminants into the waters or canals owned, operated or maintained by the District in violation of applicable environmental law, or obstructing the flow of waters in such canals. Permittee shall cure, or commence to cure, any such default within thirty (30) days following written notice of such default from District to Permittee.

10. ~~9.~~ Permittee shall comply with all applicable requirements of the Department of Environmental Protection for the State of Florida, as such requirements relate to Permittee's use of the District's Permit Area under the Permit, and if, at any time, the Permittee shall fail to meet such requirements, which failure continues beyond the applicable cure period as set forth in paragraph 3 of this Permit, Permittee shall be in default of this Agreement.

11. ~~10.~~ Permittee shall reimburse District, within forty-five (45) days of Districts' demand together with detailed, supporting documentation, for any reasonable fees for testing or other professional services, costs or expenses to District associated with or arising from Permittee's use of District's Permit Area. ~~The Permit may be suspended by the District for so long as such costs or expenses remain unpaid beyond such forty-five (45) day period.~~

12. ~~11.~~ The Permittee shall pay to the District ~~an annual rent of _____ and No/100 Dollars (\$ _____)~~ for the use of the Permitted area [~~\$12,015 for VB-2/\$1,950 for VB-5/\$5,280 for VB-6~~], payable in advance ~~(the "Annual Rent"), which is computed as follows: 1.3 lineal miles of right of way subject to the Permit at _____ Dollars (\$ _____) per lineal mile, as the first year's rent.~~ District may increase the ~~Annual Rent by two percent (2%) per year over the preceding year's rent amount due hereunder by the annual cost of living over that of the first year hereof, or by 3% per year, whichever is greater.~~

13. ~~12.~~ In addition, Permittee shall pay a one time permit fee of _____ Dollars (\$ _____) to District ~~within ten (10) days following the execution of this Permit by District. If the processing of this Permit requires engineering or legal work for approval by District, then Permittee shall pay, within forty five (45) days following District's demand together with detailed supporting documentation, District's reasonable engineering and legal fees incurred in connection with such processing. [Reserved].~~

14. ~~13.~~ District and Permittee shall be entitled to exercise any remedy available at law or in equity, including without limitation, a suit for specific performance of any obligations set forth in this Permit or any appropriate injunctive or other equitable relief, or for damages resulting from a default or breach. Notwithstanding the foregoing or anything to the contrary contained in this Permit or applicable law, in no event shall any default or breach of this Permit, or any failure to perform any obligations under this Permit, terminate, or entitle the District or Permittee to terminate, rescind or cancel this Permit or the rights granted hereunder.

15. ~~14.~~ Following termination of the Permit, the Permittee shall, at its expense, promptly remove all Electrical Facilities from the Permit Area.

16. ~~15.~~ The Permit shall be considered to be ~~an irrevocable~~ license only for the Term, for the limited purpose of installation, maintenance, inspection, operation, repair and use of the Electrical Facilities specified in this Permit, and does not convey any other right, title or interest of the District in the subject right-of-way property.

17. ~~16.~~ In the event of any dispute arising hereunder, the parties agree that, as a condition precedent to litigation, the parties shall first submit the same to non-binding mediation for resolution.

18. ~~17.~~ Permittee assumes all risks of its use of the Permit Area under this Permit, which use is at Permittee's sole risk. Any loss or damage to Permittee's Electrical Facilities or bodily injury or death of Permittee's personnel while on the Permit Area, regardless of the cause of the same, ~~including, without limitation, negligence or want of care on the part of District or its employees,~~ is Permittee's responsibility and not District's and, as a condition of the Permit, Permittee promises, covenants and agrees to release District from any such Permittee claims and indemnify District, to the extent provided and allowed by law, against any claims by Permittee's employees against District by reason of bodily injury, death or property damage suffered by such Permittee ~~Employees~~employees, including reasonable attorneys fees, fines and penalties. The parties hereto further acknowledge and agree that this hold harmless, indemnification and release is further consideration to the District for Permittee's use of the Permit Area under this Permit.

19. ~~18.~~ Concurrent with the sale of all or substantially all of Permittee's electrical power system, Permittee may enter into a sub-license of this Permit of Permittee's rights and obligations under this Permit (a "**Sublicense**") with the new owner of Permittee's electrical power system (the "**Sublicensee**"). Permittee shall not grant or attempt to grant any greater rights or powers to the Sublicensee than are permitted or granted to Permittee herein. Permittee shall not charge Sublicensee more than the amounts set forth in paragraphs 12 and 13 of this Permit. In the event Permittee enters into a Sublicense as provided herein, the following terms shall apply:

- a. within three (3) business days following the execution of the Sublicense by Permittee and Sublicensee, an original of the fully executed Sublicense shall be delivered to the District;
- b. the District, Sublicensee and Permittee shall be subject to all of the terms, conditions and obligations imposed upon District and Permittee pursuant to the Permit;
- c. a Sublicense of Permittee's interests under this Permit shall not release Permittee from any of the terms or conditions of this Permit;
- d. in the event any of Sublicensee's Electrical Facilities within the Permit Area described in this Permit are abandoned by the Sublicensee, the Sublicensee shall provide District and Permittee with written notice of such abandonment within ten (10) business days of such event, and Sublicensee shall promptly cause all Electrical Facilities within the abandoned Permit Area to be removed within ninety (90) days from Sublicensee's notice of abandonment, and this Permit shall terminate as to the abandoned Permit Area;
- e. the District may not amend, release or terminate the Permit without at least ninety (90) days prior written notice to Sublicensee and receipt of Sublicensee's written consent to such amendment, release or terminations, which written consent ~~may be withheld in Sublicensee's sole and absolute discretion~~not to be unreasonably withheld, conditioned or delayed;

f. District agrees to provide Sublicensee with written notice of any default by Permittee under this Agreement simultaneously with any notice of default to Permittee. Sublicensee shall have an additional thirty (30) days following the expiration of Permittee's cure period within which to cure or, ~~or~~ as the case may be, commence the cure, of the Permittee default.

g. Except for the Sublicense to the Sublicensee, neither the Permit, nor any portion thereof, may be otherwise assigned, sublet, licensed or otherwise conveyed (collectively, a "Conveyance") by Permittee to a third party without the District's prior written consent, which consent can be withheld in the District's sole and absolute discretion. A Conveyance without the District's consent shall be a default by Permittee herein.

20. In consideration of the grant of the Permittee, for itself, its successors and assigns, of the right to use and occupy District's property without acquiring the same, Permittee expressly waives and relinquishes power of eminent domain or condemnation of the property as to which the Permit applies for the use for which the Permit is granted. This clause shall survive termination or expiration of the Permit for so long as Permittee has the right to use and occupy District's property for the use for which the Permit is granted.

[remainder of page intentionally left blank]

[signatures on following page]

IN WITNESS WHEREOF, said District has caused these present to be executed in its name, by its Secretary and its corporate seal hereto affixed, by due authority of its Board of Supervisors, this ____ day of _____, 201__.

Signed, Sealed and delivered
in the presence of:

**INDIAN RIVER FARMS WATER
CONTROL DISTRICT**

as to District

By: _____
David E. Gunter, Secretary

(SEAL)

[Permittee acceptance on following page]

Permittee hereby accepts the terms of this Agreement, and covenants and agrees that it will comply with the terms and condition of this Agreement and the Permit.

Dated this ____ day of _____, 201__.

Signed, sealed and delivered
in the presence of

CITY OF VERO BEACH, ~~FLORIDA~~

as to Permittee

By: _____

Mayor

Attest: _____

City Clerk

(SEAL)

as to Permittee

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Description	#18002494v6<America> - Exhibit P Permit and Interlocal Agreement and License (2-15-13)
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