

# EXHIBIT “D”

## PURCHASE AND SALE AGREEMENT

THIS PURCHASE AND SALE AGREEMENT ("Agreement") dated as of the date the last principal to this Agreement executes the same (the "Effective Date"), by and between \_\_\_\_\_, with a mailing address of \_\_\_\_\_ (collectively the "Buyer"), and **EMERALD COAST UTILITIES AUTHORITY**, an independent special district created by the Laws of the State of Florida, with an address of 9255 Sturdevant Street, Pensacola, Florida 32514 (the "Seller").

1. **SALE AND PURCHASE.** Seller agrees to sell, assign, transfer, and convey to Buyer, and the Buyer agrees to purchase from Seller the following:
  - A. The real property in fee simple, situated generally in Escambia County, Florida, and as described on **Exhibit "A"** attached hereto and by this reference made a part hereof.
  - B. All title and interest improvements, if any, of Seller, all appurtenances, rights, easements, right-of-way, tenements, and hereditaments incident thereto.
  - C. Seller has requested and Buyer agrees that Seller shall retain, pursuant to Section 270.11, Florida Statutes, all phosphate, mineral, and metals that are or may be in, on, or under the Land, and all Seller's interest in all the petroleum that is or may be in, on or under that Land without any right of entry to mine, explore, or develop for same.
  - D. Unless the context clearly requires otherwise, the property described in Paragraphs 1A, 1B and 1C are collectively called the "Property."
2. **PURCHASE PRICE AND PAYMENT.** In consideration of the conveyance of the Property to Buyer, Buyer shall pay to Seller the sum of \_\_\_\_\_ and 00/100 Dollars (\$\_\_\_\_\_) (the "Purchase Price"), payable to Seller and which shall be paid to Seller as follows:
  - A. A deposit of ten percent (10%) of the bid amount (Earnest Money Deposit, hereinafter referred to as "EMD") being held by Escrow Agent (as defined below) under the provisions of Paragraph 23 upon execution of this Agreement by Buyer;
  - B. The balance shall be due and payable in cash at Closing (as adjusted by prorations and payment of expenses as herein provided).
3. **QUALITY OF TITLE.** Buyer shall not be obligated hereunder unless title to the Property shall be marketable of record as will enable Litvak Beasley Wilson & Ball, LLP as agent for an ALTA member title insurance underwriter, and authorized to do business in Florida, to issue to Buyer, at regular rates, its full purchase price coverage, standard marketability revised ALTA Owner's Title Insurance Policy, in the amount of the Purchase Price hereunder, without exception as to survey (if one obtained) or mechanic's or similar liens, and free and clear of all other liens and encumbrances and subject only to: A. General and special real property ad valorem taxes; B. Other matters as may be approved in writing by

Buyer or title objections waived by Buyer pursuant to this Paragraph (The items in 6A through 6B and this Paragraph are the "Permitted Exceptions").

4. **SELLER COVENANTS, WARRANTIES AND REPRESENTATIONS.** Seller covenants, warrants, and represents to Buyer that each of the statements set forth in this Paragraph are true and correct as of the date of this Agreement, and through the Closing Date. Each of Seller's representations and warranties shall expressly survive the execution, delivery, and performance of this Agreement, and shall survive closing, including the following:
  - A. **LEASES.** There are no adverse or other parties in possession of the Property, or of any part thereof. No party has been granted any license, lease or other right relating to the use or possession of the Property or any part thereof.
  - B. **ACCESS.** No facts or conditions exist which would result in the termination of the current access from the Property to any presently existing highways and roads adjoining or situated on the Property, or to any existing sewer or other utility facilities servicing, adjoining, or situated on the Property.
  - C. **LIABILITIES.** Seller has no knowledge or notice of any pending or threatened litigation or governmental action which would adversely affect the value of the Property to the Buyer or its intended use thereof or the right of the Buyer to acquire the Property.
  - D. **NO OTHER FACTS.** There are no facts material to the intended use and operation of the Property which are known to Seller and which Seller has not disclosed to Buyer.
  - E. **NOT A FOREIGN PERSON.** Seller is not a "foreign person" as that term is used in Section 1445(b)(2) of the Internal Revenue Code of 1986, as amended, and the related regulations.
  - F. **MATERIAL MISSTATEMENTS OR OMISSIONS.** None of the information contained in the representations and warranties of Seller set forth in this Agreement or in any of the certificates, lists, documents, exhibits, or other instruments delivered or to be delivered to Buyer as contemplated by any provision hereof, contains any untrue statement of a material fact, or omits to state a material fact necessary to make the statements contained herein or therein not misleading.
  - G. **CONDEMNATION.** To the best of Seller's knowledge, information and belief, there is not now pending any condemnation proceeding affecting the Property or any portion thereof. Seller has received no notice of any such proceeding.
5. **COVENANTS AND CONDITIONS OF SETTLEMENT.** On the Closing Date, Seller shall execute and deliver a Special Warranty Deed to Buyer as shall be required to convey title to the Property in accordance with this Agreement and Owner's Affidavit of Possession and No Liens. The Special Warranty Deed shall be in form and substance reasonably satisfactory to the Seller and the Buyer and in proper form for recording. Seller and Buyer shall execute

closing statements, a FIRPTA certificate, and such other documents as may be reasonably required to complete closing and accomplish transfer of the Property to Buyer hereunder.

6. **TIME FOR ACCEPTANCE.** Seller shall have three (3) days after the ECUA Board approves the sale to sign this Agreement and notify the highest responsive bidder of the award of sale.
7. **CLOSING AND CLOSING DATE.** The closing of this sale and purchase by Seller and Buyer (the "Closing") shall be held within sixty (60) days of ECUA Board approval, at a time and place mutually agreeable to the parties, but if none is agreed to, at the offices of Litvak Beasley Wilson & Ball, LLP, 40 Palafox Place, Suite 300, Pensacola, Florida 32502.
8. **APPORTIONMENTS.** All ad valorem taxes, assessments, rents, interest, insurance, and other expenses and revenues of the Property shall be prorated between Seller and Buyer as of midnight immediately preceding the Closing Date. The ad valorem tax proration shall be based upon the fully documented amount based on the current year's assessment. If the current year's assessment is not available, taxes will be prorated on the prior year's assessment and either party shall have the right to the request and obtain a proration or receipt of the appropriate tax bill.
9. **CLOSING COSTS.** Seller shall pay for the cost of recording the deed, for any costs necessary to cure title and/or survey matters. Buyer shall pay for the owner's title insurance policy, documentary stamps on the deed required by applicable Florida law in the amount of the Purchase Price and closing fee. Buyer shall also pay for the survey and any financing costs of Buyer incurred to purchase the Property including, but not limited to, any intangible tax and documentary stamps on the note and mortgage, and Buyer's attorney's fees. All other closing costs, if any, shall be paid by Buyer.
10. **BROKERAGE.** Seller and Buyer warrant each to the other (and it is agreed that this warranty shall survive delivery of the deed) that Pete Morgan of Service Matters Realty has been employed by Seller with respect to the sale of the Property. Seller shall pay Seller's side realtor's commissions owed. Each party agrees to indemnify and hold harmless the other from any claim made by any other brokers or agents who claim to act for the party sought to be charged for a commission, compensation, brokerage fees, or similar payments in connection with this transaction and against any and all expense or liability arising out of any such claim.
11. **DEFAULT.**
  - A. *Notice of Default.* No default as to any provision of this Agreement shall be claimed or charged by either party against the other until notice of such default has been given to the defaulting party, and such default remains uncured for a period of ten (10) days after such notice. Notwithstanding the foregoing, the Closing Date shall not be changed, delayed, postponed, or extended by any requirement for notice of default, if such default consists of failure to appear at the Closing.

- B. *Default by Buyer.* If the conditions precedent to Buyer's obligations to perform under this Agreement have been fulfilled within the time periods required under this Agreement, or if Buyer does not diligently and in good faith pursue the satisfaction of such conditions precedent, and Buyer thereafter fails to perform any of the covenants of this Agreement applicable to Buyer, Seller may retain the portion of the Deposit actually paid by Buyer for the account of Seller as liquidated and agreed upon damages as consideration for the execution of this Agreement and in full settlement of any claims for damages, and Seller and Buyer shall be relieved of all further obligations and liability under this Agreement, except as otherwise specifically provided in other parts of this Agreement.
- C. *Default by Seller.* If Seller fails to perform any of the covenants of this Agreement applicable to Seller, except the inability of Seller to cure title defects as provided in the paragraph of this Agreement entitled "Title Matters," the Deposit shall at the option of Buyer be returned to Buyer, and Seller and Buyer shall be relieved of all further obligations and liability under this Agreement, except as otherwise specifically provided in other parts of this Agreement.

12. **NOTICES.** All notices, demands, requests, and other communications hereunder shall be in writing and shall be deemed to have been given if delivered personally, or sent by registered or certified mail, return receipt requested, postage pre-paid, or by another recognized overnight delivery service (e.g., Federal Express) as follows:

If to Seller: Emerald Coast Utilities Authority  
ATTENTION: J. Bruce Woody, P.E., M.P.A.  
9255 Sturdevant Street  
Pensacola, Florida 32514-0311

With Copy to: Litvak Beasley Wilson & Ball, LLP  
ATTENTION: Robert O. Beasley  
40 Palafox Place, Suite 300  
Pensacola, Florida 32502

If to Buyer: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

or at such other address as the party may specify from time to time by written notice to the other party.

13. **SUCCESSORS AND ASSIGNS.** All terms of this Purchase and Sale Agreement shall be binding upon and shall inure to the benefit of and be enforceable by the parties hereto and their respective legal representatives, heirs, successors, and assigns. This Agreement may not be assigned without the written consent of Seller.

14. **GOVERNING LAW.** This Purchase and Sale Agreement is intended to be performed in the State of Florida and shall be governed and construed in all respects in accordance with the laws of the State of Florida. Venue in any action arising under this Agreement shall lie in the Circuit Court in the county where the Property is located.
15. **CAPTIONS.** The captions of this Agreement are inserted for convenience or reference only and not to define, describe, or limit the scope or the intent of this Agreement or any term hereof.
16. **COUNTERPARTS.** This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original but all of which together shall constitute one and the same instrument.
17. **CHANGES AND MODIFICATIONS; CHANGES AND INCORPORATIONS OF PRIOR AGREEMENTS.** This Agreement may not be orally changed, modified, or terminated; it supersedes any and all prior understandings and/or letter agreements; other matters of similar nature shall be deemed to be of no force or effect in the interpretation of this Agreement, it being intended that this Agreement represents the entire understanding of the parties. No modification or waiver of any provision hereof shall be valid unless in writing and signed by a party against whom it is to be enforced.
18. **WAIVER.** No failure of either party to exercise any power given hereunder or to insist upon strict compliance with any obligations specified herein, and no custom or practice at variance with the terms hereof, shall constitute a waiver of any party's right to demand strict compliance with the terms hereof; provided, however, that any party may, at its sole option, waive any requirement, covenant or condition herein established for the benefit of such party without affecting any of the other provisions of this Agreement.
19. **FURTHER ASSURANCES.** Seller and Buyer each agree to execute and deliver to the other such further documents and instruments as may be reasonable and necessary in furtherance of and to effectuate the intent of the parties as expressed by the terms and conditions hereof.
20. **ATTORNEY'S FEES.** If either party commences an action against the other to enforce any of the terms hereof or because of the breach by either party of any of the covenants, terms or conditions hereof, the prevailing party shall be entitled to costs, expenses, and reasonable attorney's fees at both trial and appellate levels, incurred in connection with the bringing and/or defense of any such action.
21. **RISK OF LOSS.** Until the purchase of the Property has been consummated on the date of Closing, all risk of, or damage or, or destruction of, the Property, whether by fire, flood, tornado, hurricane or other casualty, or by the exercise of the power of eminent domain, or otherwise, shall belong to and be borne by the Seller. If, prior to Closing, the Property or any part thereof shall be damaged or destroyed, Buyer, at Buyer's option, may declare this Agreement null and void and receive a full refund of the Deposit, plus interest. If Buyer elects to proceed and to consummate the transfer and conveyance under this Agreement despite such damage or destruction, there shall be no reduction in, abatement

of, or set-off against the Purchase Price, and Seller shall assign to Buyer all of Seller's right, title and interest in and to all insurance proceeds resulting from such damage or destruction. Seller agrees to keep the Property and all improvements located thereon insured against fire and all other hazards at the Property's full insurable value.

22. **ESCROW AGENT.** Seller and Buyer appoint Litvak Beasley Wilson & Ball, LLP to serve as escrow agent hereunder ("Escrow Agent"). The Escrow Agent receiving funds agrees to promptly deposit them in a non-interest-bearing escrow account, to hold them in escrow, and disburse them in accordance with this Agreement. No funds shall be returned to the Buyer during the Investigation Period, if any, until the Buyer furnishes proof satisfactory to the Escrow Agent that all costs incurred in connection with the investigation have been fully paid. The funds will be released only (1) at Closing; or (2) upon written direction from both parties; or (3) to the Buyer at Seller's written direction; or (4) to the Seller five (5) days after receipt of written direction from the Seller stating that the Buyer is in default under the terms of the Agreement, in which event the Escrow Agent shall promptly furnish a copy of the directions to Buyer and if there is no written objection thereto within five (5) days, the Escrow Agent shall remit the Deposit to Seller. If a written objection is filed within the time allowed or if the Escrow Agent is in doubt as to its duties, the Escrow Agent may continue to hold the funds in escrow until the matter is resolved either by joint written direction from the parties or by order of the Circuit Court having jurisdiction of the dispute, or the Escrow Agent may interplead the same in the Circuit Court. In any such action or proceeding, the Escrow Agent shall be entitled to recover its reasonable costs and attorney's fees in an equal amount from both Parties.

A. All deposits paid pursuant to this Agreement prior to the Closing shall be held in escrow by Litvak Beasley Wilson & Ball, LLP in a non-interest bearing account subject to the terms of the Agreement.

B. The Escrow Agent shall be subject to the following terms and conditions and no others:

(1) The duties and obligations of the Escrow Agent shall be determined solely by the express provisions of this Agreement and no implied duties or obligations shall be read into this Agreement against the Escrow Agent. Further, the Escrow Agent shall be under no obligation to refer to any other documents between or among Buyer and Seller related in any way to this Agreement.

(2) The Escrow Agent shall not be liable to anyone by reason of any error of judgment, or for any act done or step taken or omitted by the Escrow Agent in good faith, or for any mistake of fact or law, or for anything which the Escrow Agent may do or refrain from doing in connection herewith, unless caused by or arising out of the actual and intentional misconduct of the Escrow Agent or any act of the Escrow Agent in willful disregard of this Agreement or involving gross negligence on the part of the Escrow Agent.

- (3) The Escrow Agent shall be entitled to rely upon and shall not be subject to any liability in acting in reliance upon, any writing furnished to the Escrow Agent by either Buyer or Seller and shall be entitled to treat as genuine and as the document it purports to be, any letter, paper, or other document furnished to the Escrow Agent in connection with this Agreement. The Escrow Agent may rely on any affidavit of either Buyer or Seller or any other person as to the existence of any facts stated therein to be known by the affiant.
- (4) In the event of any disagreement between the Buyer and Seller resulting in adverse claims and demands being made in connection with or against the funds held in escrow, the Escrow Agent shall be entitled, at the Escrow Agent's option, to refuse to comply with the claims or demands of either party until such disagreement is finally resolved (a) by a court of competent jurisdiction (in proceedings which the Escrow Agent or any other party may initiate, it being understood and agreed by the Buyer and Seller that the Escrow Agent has authority (but no obligation) to initiate such proceedings); or (b) by an arbitrator in the event that Buyer and Seller determine to submit the dispute to arbitration pursuant to the applicable rules of the American Arbitration Association, and in so doing the Escrow Agent shall not be or become liable to any party.
- (5) Buyer and Seller each agree to indemnify the Escrow Agent against any and all losses, liabilities, costs (including reasonable legal fees) and other expenses in any way incurred by the Escrow Agent in connection with or as a result of any disagreement between Buyer and Seller under this Agreement or otherwise incurred by the Escrow Agent in any way on account of their role as escrow agent, except that neither Buyer nor Seller shall have any obligation to pay the Escrow Agent any fee for escrow services hereunder.

C. Buyer and Seller acknowledge that the Escrow Agent is counsel to Seller and agree that the Escrow Agent may continue to act as Seller's counsel notwithstanding any dispute or litigation arising with respect to the deposit or Escrow Agent's duties.

23. **TIME OF ESSENCE.** TIME IS OF THE ESSENCE IN THIS AGREEMENT.

24. **RADON.** Radon is a naturally occurring radioactive gas that, when it has accumulated in a building in sufficient quantities, may present health risks to persons who are exposed to it over time. Levels of radon that exceed federal and state guidelines have been found in buildings in Florida. Additional information regarding radon and radon testing may be obtained from your county public health unit. This disclosure is required by Florida law to be contained in all contracts for sale or lease of buildings.



25. **CONTINGENCIES.** This Agreement is contingent upon the following:
- A. Buyer has been advised and understands that all sales of real property by Seller must be approved by the ECUA (the "Board") after proper notice, presentation, and consideration. This offer to buy, as executed by Buyer, shall be presented to the Board within 30 days of the date of notification to the highest responsive bidder, during which period this Offer to Buy shall be irrevocable and may not be withdrawn by Seller. If the Board accepts this offer within 30 days from the date hereof, this offer, and Buyer's acceptance shall become a legally binding contract fully enforceable by either party hereto with the Effective Date being the same date that the Board accepts this Purchase and Sale Agreement. If the Board fails to accept this offer within 30 days from the date hereof, this offer shall be automatically withdrawn and from thenceforth shall be null and void.
26. **RECORDING.** Neither this Agreement nor any portion thereof, nor any memorandum relating hereto shall be placed of record by any party to this Agreement.
27. **WAIVER OF JURY TRIAL.** SELLER AND BUYER HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY, WAIVE THE RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH THIS AGREEMENT AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONNECTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTION OF EITHER PARTY. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE SELLER AND BUYER ENTERING INTO THIS AGREEMENT.

\*\*\*\*\* *Signature page to follow* \*\*\*\*\*

IN WITNESS WHEREOF, the Buyer and Seller have executed this Agreement as of the Effective Date.

Signed, Sealed and Delivered  
in the Presence of:

**BUYER:**

\_\_\_\_\_

2. By: \_\_\_\_\_

\_\_\_\_\_

2. \_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_

(Names should be typed or printed below signatures)

\_\_\_\_\_

2. By: \_\_\_\_\_

\_\_\_\_\_

2. \_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_

(Names should be typed or printed below signatures)

**SELLER:**

**EMERALD COAST UTILITIES AUTHORITY**

1. \_\_\_\_\_

\_\_\_\_\_

Its Executive Director

2. \_\_\_\_\_ Date: \_\_\_\_\_

\_\_\_\_\_

(Names should be typed or printed below signatures)