

**PORT OF PALM BEACH DISTRICT
REQUEST FOR DISCUSSION AND
COMMISSION ACTION**

**NEW BUSINESS
ITEM H-2**

PREPARED BY: Jarra Kaczvara July 19, 2018
Senior Director, Business Development & Communications

SUBJECT: Florida Sugar & Molasses Exchange, Inc. (FSME) Amendments

- a) **Sixth Amendment to Lease Agreement**
(FSME – f/k/a Florida Sugar Marketing & Terminal Assoc., Inc.)

 - b) **Tenth Amendment to Lease Agreement**
(successor by merger to Florida Molasses Exchange, Inc.)
-

BACKGROUND INFORMATION: The Port and FMSE have agreed to modify the following terms of each agreement as follows:

Sixth Amendment to Lease Agreement (Sugar Agreement)

- Renewal Term
FSME will exercise their lease option from Oct 31, 2018 – Oct 31, 2028; and therefore is provided an additional 10-year lease option ending Oct 31, 2048

***FSME has an additional 10-year renewal option from Oct 31, 2028 – Oct 31, 2038 under their current agreement.*

Tenth Amendment to Lease Agreement (Molasses Agreement)

- Renewal Term
FSME will exercise their lease option from Oct 31, 2018 – Oct 31, 2028; and therefore is provided an additional 10-year lease option ending Oct 31, 2048

***FSME has an additional 10-year renewal option from Oct 31, 2028 – Oct 31, 2038 under their current agreement.*
- CPI Adjustment Date
CPI adjustment date the Molasses agreement will no longer be April 1 – it will be the same as the Sugar agreement on November 1 of each year beginning in 2018 and every 3 years thereafter
- Temporary Relinquishment of Parcel
 - Commencing on September 1, 2018, and for 3 years, and thereafter
 - Year-to-Year upon request of the Port and approval of FSME
 - 36,374 sq. ft. (shown on attachment) will be relinquished back to the Port for Purposes of Port and port tenant use for cargo and equipment storage
 - Weight provisions apply for a small area over the equalization pipe (shown on attachment)
 - Waiver of rent, \$18,914 annually, during this period

ADDITIONAL INFORMATION ATTACHED:

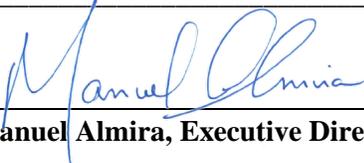
No _____ Yes X

FINANCIAL IMPACT: Decrease \$18,914 annually / Unknown increase in storage fees

RECOMMENDATION: Port Staff Respectfully Requests Consideration and Approval of Florida Sugar & Molasses Exchange, Inc. (FSME) Amendments as presented:

- a) Sixth Amendment to Lease Agreement (FSME – f/k/a FL Sugar Marketing & Terminal Assoc., Inc.)
- b) Tenth Amendment to Lease Agreement (successor by merger to FL Molasses Exchange, Inc.), and final execution by the Executive Director.

Respectfully Submitted By:



Manuel Almira, Executive Director

DATE ACTION TAKEN:

Approved: _____
Disapproved: _____
Deferred To: _____
Incorporated into Minutes: _____

Motion By: _____
Seconded By: _____
Unanimous: Yes _____ No _____
By: _____

Sixth Amendment to Lease Agreement

THIS SIXTH AMENDMENT is made this 10th day of July 2018 by and between the PORT OF PALM BEACH DISTRICT, a quasi-public corporation and political subdivision of the State of Florida (hereinafter referred to as the "DISTRICT"), and FLORIDA SUGAR & MOLASSES EXCHANGE, INC. (f/k/a FLORIDA SUGAR MARKETING & TERMINAL ASSN., INC.), a Florida Agricultural Cooperative Marketing Association (hereinafter referred to as the "CORPORATION").

WITNESSETH:

WHEREAS, the DISTRICT and the CORPORATION entered into that certain Lease Agreement dated October 11, 1977 (hereinafter, together with any and all amendments thereto, called the "Lease Agreement"), pursuant to which the CORPORATION leases from the DISTRICT certain premises (further defined in the Lease Agreement and hereinafter referred to as the "Premises") at the DISTRICT's Maritime Terminal; and

WHEREAS, the DISTRICT and the CORPORATION amended said Lease Agreement by First Amendment to Lease Agreement dated July 8, 1999 (the "First Amendment"); and

WHEREAS, the DISTRICT and the CORPORATION amended said Lease Agreement by a Second Amendment to Lease Agreement dated May 20, 2004; and

WHEREAS, the DISTRICT and the CORPORATION amended said Lease Agreement by a Third Amendment to Lease Agreement dated January 23, 2007; and

WHEREAS, the DISTRICT and the CORPORATION amended said Lease Agreement by a Fourth Amendment to Lease Agreement dated October 23, 2014 (the "Fourth Amendment"); and

WHEREAS, the DISTRICT and the CORPORATION amended said Lease Agreement by a Fifth Amendment to Lease Agreement dated February 18, 2016; and

WHEREAS, the DISTRICT and the CORPORATION desire to further amend and modify the Lease Agreement, as provided herein.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and other good and valuable considerations, receipt of which is hereby acknowledged by each party from the other, the DISTRICT and the CORPORATION hereby agree to amend the provisions of the Lease Agreement in accordance with the following terms and conditions.



1. Recitals and Definitions. The parties hereby acknowledge that the recitals set forth above are true and correct, and are incorporated herein by reference. Unless specifically defined herein, all of the terms, as utilized in this Sixth Amendment to Lease Agreement (hereinafter referred to as the "Amendment") shall be as defined in the Lease Agreement.

2. Exercise of Renewal Term. The parties acknowledge that the CORPORATION has exercised the fourth renewal option for the Premises pursuant to the First Amendment, which extends the terms of the Lease Agreement from October 31, 2018 to October 31, 2028.

3. Additional Renewal Term. Provided that the Fifth Renewal Term provided for in the Fourth Amendment is exercised, then the CORPORATION shall have an option for an additional ten (10) year term ("Sixth Renewal Term"), beginning at the end of the Fifth Renewal Term and ending on October 31, 2048 upon the same terms, covenants, and conditions as contained in the Lease Agreement by furnishing the DISTRICT written notice of the exercise of such option of renewal not less than one-hundred eighty (180) days prior to the expiration date of the then current term, with rental adjustments continuing throughout the Sixth Renewal Term on the terms set forth in the First Amendment and this Amendment; and it is specifically agreed that the CORPORATION's rights under the Non-Exclusive Easement Deed dated December 29th, 1977 shall extend for the term of the Lease Agreement, as the same may be renewed, and be co-terminus with the Lease Agreement.

4. Rent Based on Cost of Living Index. Notwithstanding anything to the contrary in the Lease Agreement, the rent payable under the Lease Agreement shall be adjusted based on the change in the Cost-of-Living Index as set forth in the First Amendment, provided that the next adjustment shall occur on November 1, 2018 and rent shall continue to be adjusted on November 1 every three (3) years thereafter.

5. Miscellaneous. All of the terms, covenants and conditions set forth in the Lease Agreement shall continue in full force and effect, except to the extent modified by this Amendment.

[SIGNATURES ON FOLLOWING PAGES]



IN WITNESS WHEREOF, the undersigned have executed this Amendment this ____ day of _____, 2018.

DISTRICT:

PORT OF PALM BEACH DISTRICT

By: _____, as Chairman

Witness

Witness

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me on _____, 2018 by _____, as Chairman of Port of Palm Beach District, who is ___ personally known to me or who produced _____ as identification.

Notary
Print Notary Name: _____

Notary Public--State of Florida

CORPORATION:

FLORIDA SUGAR & MOLASSES
EXCHANGE, INC.

Kathy Colucci

Witness

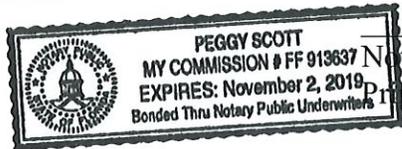
Fabrizio [Signature]

Witness

By: Michael J Zally
_____ as President
Vice President

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me on July 10, 2018 by Michael J Zally as Vice, as President of FLORIDA SUGAR & MOLASSES EXCHANGE, INC., who is personally known to me or who produced _____ as identification.



[Signature]

Print Notary Name: Peggy Scott

Notary Public--State of Florida

Tenth Amendment to Lease Agreement

THIS TENTH AMENDMENT made as of this 10th day of July 2018 by and between the PORT OF PALM BEACH DISTRICT, a quasi-public corporation and political subdivision of the State of Florida (hereinafter referred to as the "DISTRICT"), and FLORIDA SUGAR & MOLASSES EXCHANGE, INC., a Florida Agricultural Cooperative Marketing Association (successor by merger to FLORIDA MOLASSES EXCHANGE, INC.) (hereinafter referred to as the "CORPORATION").

WITNESSETH:

WHEREAS, the DISTRICT and the CORPORATION entered into that certain Use Agreement dated April 24, 1973, that certain Lease Agreement dated August 26, 1980, as amended by Addendum to Lease Agreement dated October 30, 1980, as further amended by Second Amendment to Lease Agreement dated August 12, 1987, as further amended by Third Amendment to Lease Agreement dated January 29, 1988 (the "Third Amendment"), as further amended by Fourth Amendment to Lease Agreement dated July 20, 1988, as further amended by Fifth Amendment to Lease Agreement dated October 15, 1997, as further amended by Sixth Amendment to Lease Agreement dated June 17, 1999 (the "Sixth Amendment"), as further amended by Seventh Amendment to Lease Agreement dated April 24, 2003 (the "Seventh Amendment"), as further amended by Eighth Amendment to Lease Agreement dated October 23, 2014 (the "Eighth Amendment"), and as further amended by Ninth Amendment to Lease Agreement dated January 19, 2017 (all of the foregoing being hereinafter collectively called the "Lease Agreement"), pursuant to which the CORPORATION leased from the DISTRICT certain premises described as Parcel 1, Parcel 2, and the Additional Premises (hereinafter referred to collectively as the "Premises") at the DISTRICT's Maritime Terminal; and

WHEREAS, the DISTRICT and the CORPORATION desire to amend and modify the Lease Agreement, as provided herein.

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and other good and valuable considerations, receipt of which is hereby acknowledged by each party from the other, the DISTRICT and the CORPORATION hereby agree to amend the provisions of the Lease Agreement in accordance with the following terms and conditions:



Section 1 Recitals and Definitions.

The parties hereby acknowledge that the recitals set forth above are true and correct, and are incorporated herein by reference. Unless specifically defined herein, all of the terms as utilized in this Tenth Amendment to Lease Agreement (hereinafter referred to as the "Amendment") shall be as defined in the various documents comprising the Lease Agreement.

Section 2 Exercise of Renewal Term

The parties acknowledge that the CORPORATION has exercised the third renewal option for the Premises pursuant to the Sixth Amendment, which extends the terms of the Lease Agreement from October 31, 2018 to October 31, 2028.

Section 3 Additional Renewal Period of Premises

Section 13 of the Lease Agreement, as amended by the Third Amendment, the Sixth Amendment, and the Eighth Amendment, is further amended by the addition of a fifth additional renewal period as follows:

The CORPORATION shall have the right and option to renew the tenancy arising under the Lease Agreement, for a fifth additional ten (10) year term, beginning October 31, 2038 and ending on October 31, 2048 upon the same terms, covenants, and conditions as contained in the Lease Agreement by furnishing the DISTRICT written notice of the exercise of such option of renewal not less than one-hundred eighty (180) days prior to the expiration date of the then current term. In the event of such renewal of the Lease Agreement, the rent payable under the Lease Agreement shall continue to be adjusted based on the change in the Cost-of-Living Index as set forth in the Lease Agreement.

Section 4 Rent Based on Cost of Living Index

Notwithstanding anything to the contrary in the Lease Agreement, the rent payable under the Lease Agreement shall be adjusted based on the change in the Cost-of-Living Index as set forth in the Lease Agreement, provided that the next adjustment shall occur on November 1, 2018 and rent shall continue to be adjusted on November 1 every three (3) years thereafter.

Section 5 Temporary Relinquishment of Parcel 2

Commencing September 1, 2018 and for a period of three (3) years thereafter, the portion of the Premises referred to as "Parcel 2" containing 36,374 square feet, the location of which is



shown on Exhibit "A", may be temporarily used by the DISTRICT as a lay-down area for the DISTRICT's tenants' cargo and equipment, provided that the DISTRICT shall, and shall cause all of the DISTRICT's tenants using Parcel 2, to not place items on or over the general area containing the concrete molasses equalization pipe, the location of which is shown on Exhibit "B" (the "Pipe Area"), which exceed 7,400 pounds for up to a 40 foot empty chassis or which would otherwise damage or harm the concrete molasses equalization pipe. Further, the DISTRICT shall, and shall cause all of the DISTRICT's tenants using Parcel 2, to not store or keep on Parcel 2 fuel, oil, or chemicals of any kind nor store or park motorized vehicles on Parcel 2, without the prior written permission from the CORPORATION (provided that, ingress and egress of motor vehicles is permitted in connection with the movement of cargo and equipment on and off of Parcel 2). The DISTRICT shall provide reasonable prior notice to the CORPORATION prior to any DISTRICT's tenants' use of Parcel 2. Notwithstanding the foregoing, the CORPORATION shall continue to have the right to use the Pipe Area for the maintenance, repair, and replacement of the concrete molasses equalization pipe. The CORPORATION shall have the right to install concrete ballards or other structures or improvements to prevent the placement of items on or over the Pipe Area. Accordingly, during the temporary period of non-use of Parcel 2 by the CORPORATION, the CORPORATION shall not be required to pay rent, taxes, or any other amount due under the Lease Agreement for Parcel 2. The temporary period of non-use may be extended by the DISTRICT on a year-to-year basis upon the prior written approval of the CORPORATION, in its sole and absolute discretion, provided that the DISTRICT provides at least six months' prior written notice to the CORPORATION of the DISTRICT's intent to extend the period. The DISTRICT shall repair (including replacement if required in CORPORATION'S reasonable judgment) any damage to Parcel 2 and the concrete molasses equalization pipe resulting from use by the DISTRICT, the DISTRICT's employees, agents, and contractors, the DISTRICT's tenants, or the DISTRICT's tenants' employees, agents, and contractors. Upon the expiration of the temporary period of non-use, the DISTRICT shall return Parcel 2 in the same or better condition as existed on the commencement date of the temporary period of non-use. The DISTRICT shall indemnify, defend, and hold harmless the CORPORATION from and against any and all liability (including reasonable attorneys' fees) resulting from claims by third parties and based on the acts and omissions (specifically including negligence) of the DISTRICT, the DISTRICT's employees,



agents, and contractors, the DISTRICT's tenants, and the DISTRICT's tenants' employees, agents, and contractors in connection with Parcel 2.

Section 6 DISTRICT's Insurance.

During the temporary period of non-use, the DISTRICT shall, and shall cause all tenants using Parcel 2, to obtain and maintain in full force and effect the insurance coverages described on **EXHIBIT "C"**. The DISTRICT shall furnish evidence that the DISTRICT and each of the DISTRICT's tenants using Parcel 2 maintains all insurance coverages required under this Amendment at least five days before any such use of Parcel 2 by each applicable party for any reason.

Section 7 Ratification

All of the terms, covenants, and conditions set forth in the Lease Agreement shall continue in full force and effect, except to the extent modified by this Amendment.

[SIGNATURES ON FOLLOWING PAGES]



IN WITNESS WHEREOF, the undersigned have executed this Amendment this ____ day of _____, 2018.

DISTRICT:

PORT OF PALM BEACH DISTRICT

By: _____, as Chairman

Witness

Witness

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me on _____, 2018 by _____, as Chairman of Port of Palm Beach District, who is ____ personally known to me or who produced _____ as identification.

Notary
Print Notary Name: _____

Notary Public--State of Florida

CORPORATION:

FLORIDA SUGAR & MOLASSES
EXCHANGE, INC.

By: Michael J Zully
_____, as President

Kathy Colucci

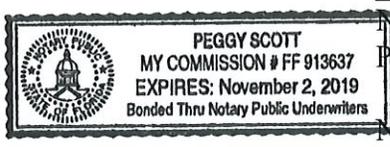
Witness

Fabricio Hernandez G

Witness

STATE OF FLORIDA
COUNTY OF PALM BEACH

The foregoing instrument was acknowledged before me on July 10, 2018 by
Michael J Zully as vice, as President of FLORIDA SUGAR & MOLASSES EXCHANGE, INC.,
who is personally known to me or who produced _____ as identification.

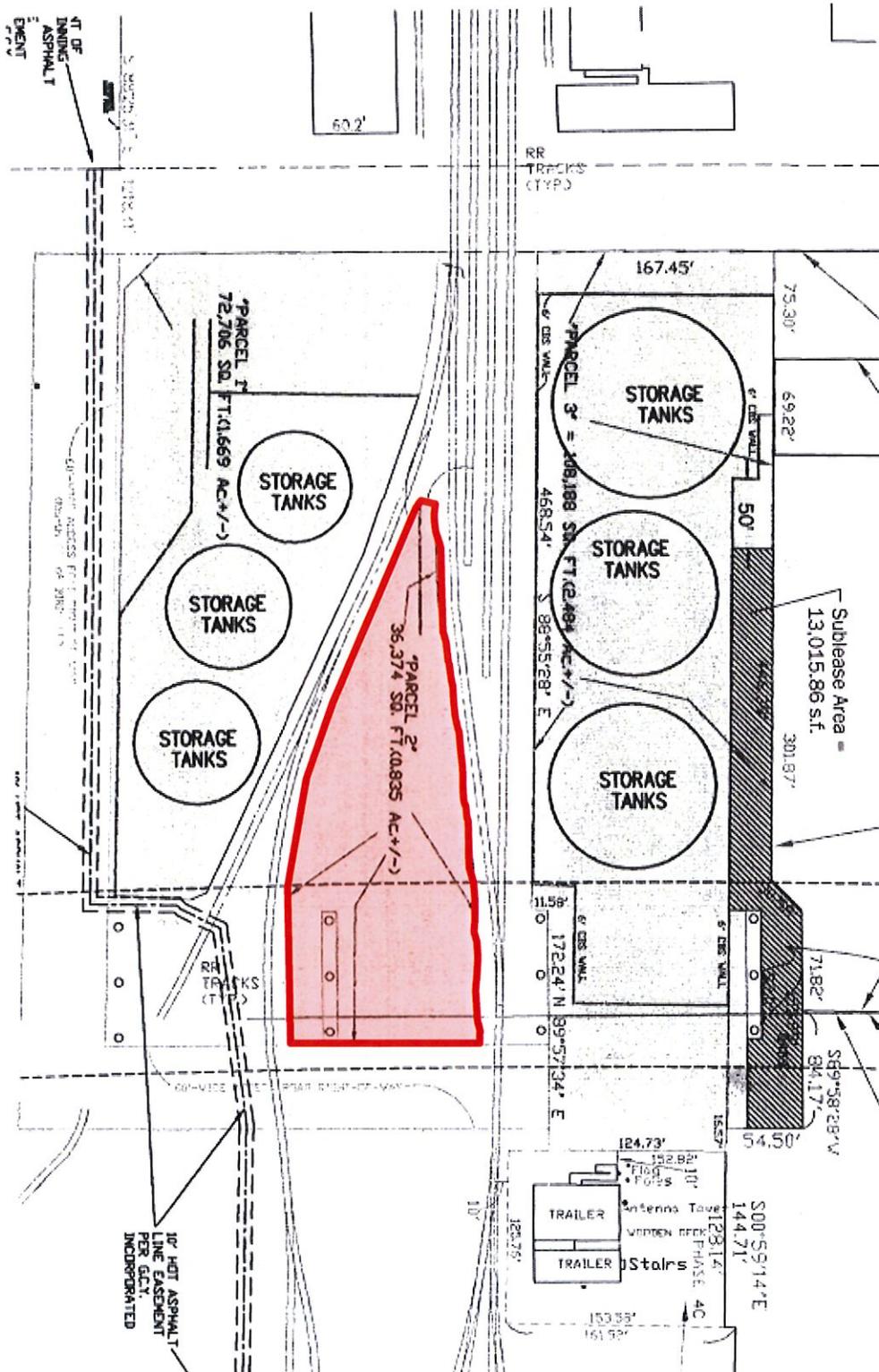


PSS

Notary
Print Notary Name: Peggy Scott

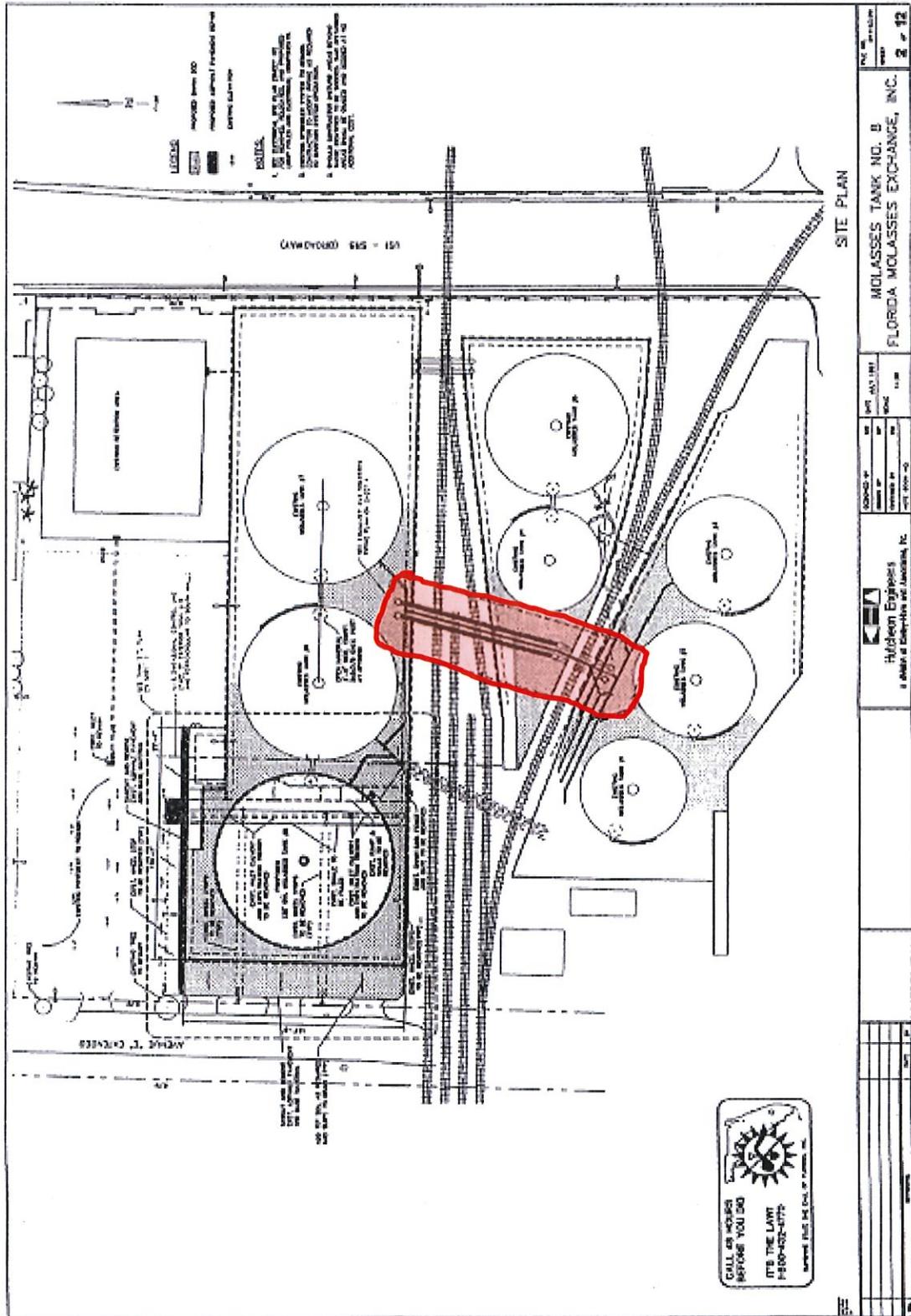
Notary Public--State of Florida

EXHIBIT "A"
LOCATION OF PARCEL 2



Handwritten signature in blue ink.

EXHIBIT "B" LOCATION OF PIPE AREA



Handwritten signature

EXHIBIT "C"
INSURANCE REQUIREMENTS

General Liability – Limit \$1,000,000

Worker's Compensation – Statutory Limits including USL&H

Auto Liability – Limit \$1,000,000 – including Hired/Non-Owned Liability

Umbrella/Excess – Limit \$4,000,000

FLORIDA SUGAR & MOLASSES EXCHANGE, INC., its officers, directors and employees, shall be named specifically as Additional Insureds on the General Liability, Pollution, and Auto policies. DISTRICT tenants shall also name the DISTRICT as an Additional Insured. For DISTRICT tenants only, Waiver of Subrogation in favor of FSMEI, to be included for all policies, including WC. Such insurance shall be primary and non-contributing.

